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European Scrutiny Committee

Thirty-third Report of Session 2017–19

Documents considered by the Committee on 27 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.

Summary

Justice Programme

The proposed Justice programme would continue the current programme's development of an integrated EU justice area and cross-border judicial cooperation through activities such as judicial training. The UK does not participate in the current programme on the grounds of insufficient "value for money".

The proposed Regulation has been drafted on the basis that the UK will not be participating because of EU exit. However, the UK's Justice and Home Affairs opt-in applies. The deadline for the Government to opt-in is 11 September (with the 8-week period for the Committee to consider the opt-in expiring on 26 July). There is a third country option for the UK to participate in the programme after the transition/implementation period, but the financial cost for this is as yet unknown. Despite the UK's current non-participation, the Government in its Explanatory Memorandum does not rule out UK participation in the new programme as a third country because it says that depends on the nature of any EU-UK agreement on future judicial cooperation. We note the relevance of recent developments: the EU's slides on future EU-UK police and judicial cooperation and the Government's publication of its slides on the "Future EU-UK Partnership on Civil Judicial Cooperation". The Government is asked to give an early indication of its likely opt-in decision, preferably in time for us to consider before the Summer Recess. It is also asked to provide an estimate of the likely financial cost of the UK participating as a third country once the position is clearer.

Not cleared; request for further information; drawn to the attention of the Justice Committee

Improving cross-border law enforcement access to financial information

The Commission has proposed a Directive which seeks to improve cross-border law enforcement access to financial information and analysis to support the investigation and prosecution of serious crime. It complements the EU's latest (5th) anti-money laundering legislation and would take effect at the same time—post-exit but during the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement. The Government says that the proposal is broadly in line with UK law and practice but raises two concerns: the possible encroachment on the decision-making autonomy of Financial Intelligence Units (responsible for gathering information and providing analysis on

suspicious financial transactions) and the tight time limits for intra-EU exchanges of information. The proposal is subject to the UK's justice and home affairs opt-in meaning that it will only apply to the UK if the Government opts in. We ask for progress reports on the negotiations and seek further information on the practical implications of the Government's opt-in decision as well as the wider Brexit implications.

Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Justice Committee

Water re-use for agricultural irrigation

In order to encourage greater re-use of water for agricultural irrigation, the Commission proposes a set of minimum requirements to establish a safe framework for water re-use. The Government considers that the proposal could contribute to an increase in the uptake of re-use schemes in the UK, where there is currently a very low rate of water re-use, and provide reassurance to the public on the safety of crops irrigated with waste water. We note that the Government's analysis of the impact of this potentially significant proposal—which the UK may be obliged to implement during the post-Brexit implementation period, and which could also facilitate post-Brexit UK-EU trade in crops irrigated with reused water—is at an early stage. We look forward to receipt of the Government's further assessment.

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

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: Duty on alcohol, tobacco and fuel: EU excise reforms [(a) Proposed Directive (NC), (b) Proposed Decision (NC), (c) Proposed Regulation (NC), (d) Proposed Directive (NC)]; European Defence Industrial Development Programme (EDIDP) [Proposed Regulation (NC)]

Defence Committee: US sanctions against EU firms with operations in or with Iran [Commission Delegated Regulation (C)]; European Defence Industrial Development Programme (EDIDP) [Proposed Regulation (NC)]

Digital, Culture, Media and Sport Committee: Creative Europe Programme 2021–27 [Proposed Regulation (NC)]

Environment, Food and Rural Affairs Committee: Water reuse for agriculture irrigation [Proposed Regulation (NC)]; Unfair trading practices in the food supply chain [Proposed Directive (NC)]

Exiting the European Union Committee: The European Citizens' Initiative [Proposed Regulation (NC)]; European Defence Industrial Development Programme (EDIDP) [Proposed Regulation (NC)]

Foreign Affairs Committee: US sanctions against EU firms with operations in or with Iran [Commission Delegated Regulation (C)]

Home Affairs Committee: Improving cross-border law enforcement access to financial information [Proposed Directive (NC)]; Preventing document fraud and identity theft [Proposed Regulation (NC)]

International Trade Committee: US sanctions against EU firms with operations in or with Iran [Commission Delegated Regulation (C)]

Justice Committee: Improving cross-border law enforcement access to financial information [Proposed Directive (NC)]; Justice Programme [Proposed Regulation (NC)]

Treasury Committee: Duty on alcohol, tobacco and fuel: EU excise reforms [(a) Proposed Directive (NC), (b) Proposed Decision (NC), (c) Proposed Regulation (NC), (d) Proposed Directive (NC)]

1 The European Citizens' Initiative

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

Summary and Committee's conclusions

1.1 The European Citizens' Initiative (ECI) was introduced by the Lisbon Treaty. It is intended to give EU citizens a direct say in shaping the laws that govern them by inviting the Commission to propose new measures in areas where it has powers to act under the EU Treaties. A 2011 Regulation sets out the procedures and conditions for implementing the ECI. These seek to ensure that an ECI is representative of opinion across the EU. To reach the stage of formal examination by the Commission, the ECI must attract the support of at least one million EU citizens and achieve a minimum number of signatories in at least a quarter of all Member States—the qualifying threshold for signatories in the UK is currently 54,000.[1]

1.2 Following a process of review and consultation, the Commission has concluded that the ECI has not met its full potential and, unless made more accessible for EU citizens and less burdensome for organisers, could eventually become obsolete.[2] It has proposed a new Regulation on the European Citizens' Initiative which seeks to remove "bottlenecks" in the operation of the ECI and clarify the rules and conditions governing its use.[3] Most of the changes are designed to streamline the ECI process. The most eye-catching is giving young people aged 16 the right to support an ECI, even if they have not reached voting age in their home Member State. The Regulation is expected to apply from 1 January 2020, although some preparatory provisions would take effect earlier.

1.3 The Government largely supports the changes proposed by the Commission and has made clear that extending the right to participate in an ECI to 16-year olds would not affect the franchise for elections in the UK. It intends to "engage openly and cooperatively with our EU partners" while still a member of the EU and "consider all our obligations and take decisions in relation to the timing and implementation of these proposals as required during the exit negotiations period".[4]

1 The threshold for signatories corresponds to the number of MEPs elected in each Member State, multiplied by 750 (roughly approximating to the total number of MEPs—751—in the European Parliament). Under the changes proposed by the Commission, the minimum number of signatories in the UK would increase to 54,750.
2 See p.8 of the Commission Staff Working Document—ADD 2.
3 See p.3 of the Commission's explanatory memorandum accompanying the proposed Regulation.
4 See the Explanatory Memorandum of14 November 2017 submitted by the Parliamentary Secretary to the Cabinet Office (Chris Skidmore).

1.4 Whilst we, too, have no concerns with the substance of the proposed Regulation, we have sought to clarify how it (and the earlier 2011 Regulation) will be dealt with under the European Union (Withdrawal) Bill and the Withdrawal Agreement and Implementation Bill, as well as how the UK's exit from the EU will affect the participation of UK citizens (either as organisers or signatories) in ECIs initiated before exit day.

1.5 In her letter of 25 April, the Minister for the Constitution (Chloe Smith) told us that:

- she expected the proposed Regulation to be adopted before the UK leaves the EU but that it was only likely to apply from 1 January 2020, during the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement;
- the UK would "continue to align with EU rules and regulations" during the transition/implementation period and would therefore apply the Regulation if it became operational during this period under the Withdrawal Agreement and Implementation Bill ("WAIB");
- UK nationals would no longer be EU citizens from 30 March 2019 and so would no longer be entitled to take part in European Citizens' Initiatives after Brexit as "the legislation in question only refers to EU citizens";
- the UK would nonetheless continue to engage with the ECI process "until such time as the UK is no longer an EU Member State"—this would include liaising with ECI organisers and validating UK signatories; and
- further discussions would be needed within Government and with the European Commission to clarify "transitional arrangements regarding UK nationals' participation in an ECI" as the draft EU/UK Withdrawal Agreement "does not address the practicalities of separation from the ECI" during the transition/implementation period.

1.6 In our Report agreed on 9 May, we noted that the draft EU/UK Withdrawal Agreement appeared to contradict the Minister's view that the 2011 Regulation on European Citizens' Initiatives and its proposed successor would apply to the UK during the transition/implementation period (for reasons we explain in the background section of this chapter).[5] We asked the Minister to explain this apparent contradiction.

1.7 We also asked the Minister:

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

1.8 We questioned the Minister's assertion that UK nationals would no longer be EU citizens from 30 March 2019, given that the draft Withdrawal Agreement provides that "Union law shall be applicable to and in the United Kingdom during the transition period" unless it is expressly stated not to apply and that any reference to Member States in EU law

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

"shall be understood as including the United Kingdom".[6] We asked the Minister to clarify the status of UK nationals during the transition/implementation period and the extent to which they would be entitled to exercise rights associated with EU citizenship. We also requested further information on the concept of associated citizenship being mooted within the EU and the Government's position on its feasibility.

1.9 In her letter of 6 June, the Minister explains that only the parts of the proposed Regulation that are "operative […] at the time of our departure will be retained by the Bill", adding:

> "This staggered applicability may mean that only certain parts of the Regulation may be retained by the Bill."

The relevant provisions of the draft Withdrawal Agreement (Articles 121 and 122) mean that "the 2011 Regulation […] and any successor agreed before the UK leaves the EU or during the implementation period will not apply to UK nationals during the implementation period". The UK will, however, "continue to implement and recognise" this legislation "insofar as it applies to the rights of EU nationals in the UK".

1.10 The Minister reiterates that British nationals will no longer hold EU citizenship when the UK ceases to be a member of the EU unless they are also a dual national of another EU Member State, but adds:

> "The terms of the implementation period reached with the EU in March mean that UK nationals will, for certain purposes, be treated as if they are EU citizens, such as in relation to the right to move and reside freely, but they will not retain all the rights that flow from EU citizenship during this period, for example the right to vote and stand as candidates in the European Parliament."

1.11 Whilst "associate citizenship" has been suggested by some members of the European Parliament, the Minister considers that this would require changes to the EU Treaties.

1.12 Since writing, officials at the Cabinet Office have informed us that the Council will be invited to agree a general approach on the proposed Regulation before the end of the Bulgarian Presidency, most likely on 26 June.

Our Conclusions

1.13 **It is unfortunate that the Minister was unable to give us earlier warning of the Bulgarian Presidency's intention to seek a general approach on the proposed Regulation before its term ends on 30 June. We ask her to report back to us on the outcome of the Council meeting, highlighting any significant changes to the Commission's original proposal and explaining the position taken by the Government. We would also welcome details of the European Parliament's position (once agreed) and the prospects for reaching agreement on a compromise text before the UK leaves the EU.**

1.14 **We remain unclear as to the status in domestic law of the 2011 Regulation and its proposed successor post-exit. The Minister indicates that the UK will "implement and recognise" EU legislation on European Citizens' Initiatives during a post-exit**

6 See Article 122 of the draft Withdrawal Agreement.

transition/implementation period "insofar as it applies to the rights of EU nationals in the UK" but says it will not apply to UK nationals. This distinction between the rights of EU citizens and UK nationals during the transition/implementation period is not apparent in Article 122 of the draft EU/UK Withdrawal Agreement which states simply that EU measures based on Article 24(1) TFEU "shall not be applicable to and in the United Kingdom during the transition period". We ask the Minister to clarify what she means by "staggered applicability" and how this can be reconciled with the current wording of the draft EU/UK Withdrawal Agreement. Does she anticipate that the Agreement will need to include specific provisions on transitional arrangements for European Citizens' Initiatives?

1.15 **Pending further information, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Committee on Exiting the European Union.**

Full details of the documents

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

Background

1.16 Our earlier Reports listed at the end this chapter provide a more detailed overview of the proposed Regulation and the Government's position.

1.17 Under Articles 121 and 122 of the draft EU/UK Withdrawal Agreement, EU law will continue to apply during a transition/implementation period ending on 31 December 2020, subject to a number of exceptions. One of these exceptions concerns EU measures based on Article 24 of the Treaty on the Functioning of the European Union (TFEU).[7] The 2011 Regulation on the European Citizens' Initiative and its proposed successor are both based on Article 24 TFEU. This Treaty Article authorises the EU Council and European Parliament to establish the procedures and conditions for citizens' initiatives. Article 122(1) of the draft Withdrawal Agreement provides that measures based on Article 24(1) TFEU "shall not be applicable to and in the United Kingdom during the transition period".

The Minister's letter of 6 June 2018

1.18 The Minister first seeks to clarify whether the 2011 Regulation and its proposed successor will form part of the body of retained EU law incorporated by the EU (Withdrawal) Bill:

> "The purpose of the EU (Withdrawal) Bill is to provide for a functioning statute book on the day we leave the EU without prejudice to the outcome of the negotiations. To ensure there is maximum clarity within our statute book, the Bill is designed to preserve and retain within our domestic law EU law which applies in the UK immediately before our departure from the EU, as far as is possible and appropriate.

7 Strictly-speaking, Article 122(1)(b) of the draft Withdrawal Agreement refers to the first paragraph of Article 24 TFEU.

> "Therefore the Regulation and its successor will only be retained within the Bill if they are not only in force but are stated to apply in the UK before our departure from the EU. If certain parts of the Regulation are stated to apply before our exit and others are not, only the operative parts at the time of our departure will be retained by the Bill. This staggered applicability may mean that only certain parts of the Regulation may be retained by the Bill."

1.19 If the 2011 Regulation and its proposed successor are to be incorporated by the EU (Withdrawal) Bill, we asked the Minister what further action might be needed to disapply the legislation during the transition/implementation period. She responds:

> "The UK is leaving the EU on 29 March 2019 and from this point UK nationals will no longer be EU citizens unless they hold dual nationality with another EU Member State. As agreed at Articles 121 and 122 of the draft Withdrawal Agreement, the 2011 Regulation on European Citizens' Initiatives and any successor agreed before the UK leaves the EU or during the implementation period will not apply to UK nationals during the implementation period.
>
> "For the duration of the implementation period, the UK will continue to implement and recognise the 2011 Regulation on European Citizens' Initiatives and any successor agreed before the UK leaves the EU or during the implementation period, insofar as it applies to the rights of EU nationals in the UK.
>
> "The Withdrawal Agreement and Implementation Bill will implement the major elements of the Withdrawal Agreement and will therefore also make provision to give effect to the provision agreed in relation to citizens' rights."

1.20 The Minister seeks to clarify the status of UK nationals during the transition/implementation and the extent to which they will be entitled to exercise rights associated with EU citizenship:

> "EU treaty provisions make it clear that only citizens of EU Member States are able to hold EU citizenship. Therefore, when the UK ceases to be a member of the European Union, British nationals will no longer hold EU citizenship unless they hold dual nationality with another Member State.
>
> "The UK recognises dual nationality, but not all countries do. Each Member State will have different rules surrounding citizenship—some will allow dual nationality, some will not.
>
> "The terms of the implementation period reached with the EU in March mean that UK nationals will, for certain purposes, be treated as if they are EU citizens, such as in relation to the right to move and reside freely, but they will not retain all the rights that flow from EU citizenship during this period, for example the right to vote and stand as candidates in the European Parliament."

1.21 Finally, responding to our request for further information on the concept of associated citizenship, the Minister observes:

> "The Government is determined to get the best possible deal for UK nationals living in the EU and is considering very carefully the options open to it. Associate citizenship is a matter that has been suggested by some members of the European Parliament but is not currently provided for by the EU Treaties. The Government believes that changes to the Treaties would therefore be required to pursue this further."

Previous Committee Reports

Twenty-seventh Report HC 301–xxvi (2017–19), chapter 3 (9 May 2018) and Fourth Report HC 301–iv (2017–19), chapter 2 (6 December 2017).

2 Creative Europe Programme 2021–27

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Digital, Culture, Media and Sport Committee
Document details	Proposal for a Regulation establishing the Creative Europe programme (2021 to 2027)
Legal base	Articles 167(5) and 173(3) TFEU; ordinary legislative procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(39821), 9170/18 + ADD 1, COM(18) 366

Summary and Committee's conclusions

2.1 Creative Europe is the European Union's flagship programme for investment in the creative and cultural industries of its Member States, performing a role similar to Arts Council England and Creative Scotland in the UK. Its overall objectives are to "promote […] European cooperation" on "cultural and linguistic diversity" and "heritage" and to "reinforce the competitiveness of the cultural and creative sectors" (in particular the audio-visual sector for films, television and video games). Reflecting the fact that cultural policy is only a supporting competence of the EU, with responsibility for setting such policy resting at the national level, it represents only a fraction of the EU budget: between 2014 and 2020, Creative Europe has a financial endowment of €1.46 billion (£1.27 billion), representing 0.15 per cent of total planned EU expenditure over that period.[8]

2.2 The financial endowment of the Programme is used to support the creative and cultural sectors in two ways: through direct grants, and by means of a Guarantee Facility (which aims to compensate for the creative industries' limited access to traditional forms of finance, by providing a guarantee to banks or other investors which invest in the sector). Funding decisions are taken by the European Commission's Executive Agency for Culture, Audiovisual and Education (EACEA), with the support of sector-specific external advisors. However, any grant awards have to be in line with an annual Work Programme, which must be approved by a qualified majority of EU Member States on the 'Creative Europe Committee'.

2.3 The Digital, Culture, Media and Sport Committee recently reported that the UK has been "disproportionately successful" in applying for Creative Europe funding, resulting in the UK having been involved in nearly half (44 per cent) of all projects since 2014. Between 2014 and 2016, UK recipients received grants totalling €57 million, over one-tenth of the Programme's investments over that period. As a result, the representatives of the UK's creative and cultural industries appear to overwhelmingly favour staying part of Creative Europe even after Brexit.

8 The total budget for commitment appropriations from annual EU budgets between 2014 and 2020 is €960 billion (in 2011 prices).

2.4 In May 2018, as part of the wider negotiations about the EU's long-term budget for the period from 2021 to 2027 (the so-called Multiannual Financial Framework), the European Commission tabled a proposal for the next iteration of Creative Europe. It has proposed an increase in its budget, both in absolute terms and as a share of the total Financial Framework: over the seven-year period, the Programme would be able to invest €1.85 billion (a nominal increase of approximately €400 million compared to the current period, which according to the Commission translates to a 17 per cent increase in real terms when the EU budget is adjusted to take account of the UK's exit from the EU).

2.5 The 2021–2027 Programme, like the current iteration, would consist of three strands:

- The **Media** strand, which supports EU's the film, television and video games sectors, would remain the largest component of Creative Europe. The Commission has proposed to give it a budget of €1.1 billion (£960 million), 60 per cent of the total. The aim is to support the development, distribution and promotion of European films, TV programmes and video games, with a greater focus on the international promotion and distribution of European works and innovative storytelling, including virtual reality (including the creation of an online directory of EU films "to reinforce the accessibility and visibility of European works").

- The **Culture** strand, which will provide €609 million (£533 million) for non-audiovisual creative and cultural industries such as publishing, performing arts and music, architecture and cultural heritage.

- Finally, a **cross-sectoral strand** to fund cooperation between the audiovisual and other cultural sectors. As the smallest strand, this would have a financial endowment of €160 million (£140 million), and include support for media freedom and media literacy.

2.6 The Commission proposal contains a mechanism—modelled on the current Programme—that allows 'third' (i.e. non-EU) countries to seek 'association' to Creative Europe. Under the terms of association, the creative and cultural industries of a third country are eligible for funding as if they were based in an EU Member State in return for an annual financial contribution by their Government to the budget for the Programme. The extent of such participation, with respect to the three strands (media, culture and cross-sectoral), can be varied on a country-by-country basis. As noted, the UK's creative industries appear to overwhelmingly favour making use of this option.

2.7 However, under the Commission proposal for the 2021–2027 programme, third countries would not have any "decisional powers". This appears to be an explicit reinforcement of the current situation: Governments of associated countries would be represented as observers only—without voting rights—on the committee where EU Member States have to approve the annual Creative Europe Work Programme (which establishes how funding will be spent and under which conditions). In addition, third country participation in the media and cross-sectoral strands (which together would account for two-thirds of the Creative Europe budget) is "subject to fulfilment of the

conditions set out in Directive 2010/13/EU". This is the EU's Audiovisual Media Services Directive, which is currently being updated. At present, there are 11 non-EU countries which are associated with Creative Europe, Switzerland being the major exception.[9]

2.8 The Minister for the Arts (Michael Ellis) submitted an Explanatory Memorandum on the 2021–2027 Creative Europe Programme on 14 June 2018. Beyond summarising the objectives and substance of the proposal, the Minister states only that there are "no immediate new policy implications arising from the Creative Europe 2021–2027 legal proposal", adding that "should the UK wish to continue to participate in Creative Europe as a third country (…), it would need to adhere to the criteria for third country participation". He does not clarify if the Government is actively considering this option, and if so what the potential financial and policy implications might be.

2.9 **We thank the Minister for his summary of the Creative Europe proposal. Provided the post-Brexit transitional period ends on 31 December 2020 as scheduled, the UK will not be part of the Creative Europe programme by default. The Commission proposal for the 2021–2027 iteration of the programme contains a mechanism of 'association' which would allow the UK to remain a participant in all or parts of the programme beyond Brexit. We are disappointed that the Government is unable to confirm if it will seek to make use of this option, even though the benefits and conditions attached are not in substance markedly different from those that apply for other 'third countries' at present. As such, we believe it should have been possible for the Minister to at least indicate whether the option is under consideration.**

2.10 **Any decision to seek 'association' with Creative Europe (as well as other EU programmes, such as the Framework Programme for Research) would come at a financial cost in the form of an annual contribution. If the UK's hypothetical contribution were to be calculated in the same manner as Norway's, the proposed €1.8 billion budget for Creative Europe for 2021–2027 would result in a possible €288 million (£251 million) gross UK contribution over that period, or €41 million (£36 million) per year. The net contribution would be lower, especially if UK applicants retained their current high levels of success when applying for funding.**

2.11 **In light of the above, we ask the Minister to keep us up to date on developments in the legislative process, and inform us as and when the Government has decided whether to seek 'association' with Creative Europe from 2021 onwards. We also ask him to write to us by 13 July 2018 to clarify what the legal and policy implications would be if the UK were to seek association with the 'Media' strand of the Programme specifically, as this depends on the "fulfilment of the conditions set out in Directive 2010/13/EU". In particular, we expect his reply to confirm whether this would effectively require continued adherence to all or parts of the Audiovisual Media Services Directive, including the recently-agreed revision of that legislation, and if so which 'conditions' in particular the UK would have to fulfil.**

2.12 **In anticipation of the Minister's reply, we retain the proposal under scrutiny, and draw it to the attention of the Digital, Culture, Media & Sport Committee.**

9 EFTA-EEA countries Norway and Iceland, as well as Serbia, Montenegro, North Macedonia, Albania, Bosnia & Herzegovina, Ukraine, Moldova, Georgia and Tunisia. Switzerland has sought association, but those negotiations are not yet concluded due to the dispute over the extension of free movement rights to Croatian nationals when Croatia joined the EU in 2013.

Full details of the documents

Proposal for a Regulation establishing the Creative Europe programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013: (39821), 9170/18, COM(18) 366.

Previous Committee Reports

None.

3 Water reuse for agricultural irrigation

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council on minimum requirements for water reuse
Legal base	Article 192(1) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39791), 9498/18 + ADDs 1–3, COM(18) 337

Summary and Committee's conclusions

3.1 Water over-abstraction, in particular for agricultural irrigation but also for industrial use and urban development, is one of the main threats to the EU water environment. One way in which water scarcity could be alleviated is through greater water re-use, particularly for agricultural irrigation. At the moment, however, there is limited water re-use, which the Commission judges is partly due to the lack of common EU environmental or health standards for water re-use and the potential obstacles to the free movement of agricultural products irrigated with reclaimed water.

3.2 The Commission therefore proposes a set of minimum requirements for water re-use in order to establish a safe framework within which water re-use can develop. Requirements are classified by type of crop, use and irrigation method.

3.3 In his EM, the Parliamentary Under-Secretary of State (David Rutley) says that the UK has a low rate of water re-use (estimated to be less than 1% of all treated waste water, of which none is used for agricultural irrigation). Previous research noted the potential for greater re-use and identified public concerns and the lack of a regulatory framework as obstacles. He considers that the Commission's proposal could contribute to an increase in the uptake of reuse schemes in the UK and provide reassurance to the public on the safety of crops irrigated with waste water, both those grown in the UK and those grown elsewhere in the EU.

3.4 The Minister notes that any significant planned use of treated waste water for irrigation purposes could impact upon current and emerging UK practice relating to reuse of water to supplement drinking water during periods of water scarcity. He adds that the Government will also need to consider whether the standards proposed are adequate to protect the environment and human health. The Government is still in the process of considering the impact of the proposal on the UK and is working with relevant stakeholders to that end.

3.5 The Minister observes that the proposal includes a provision on access to justice, which mirrors requirements under the United Nations Aarhus Convention on Access to

Environmental Justice.[10] While the Government does not consider it necessary to replicate in EU environmental legislation provisions already included in the Aarhus Convention, its inclusion does not create a problem.

3.6 On timing, the Minister considers it likely that the legislation will enter into force in 2019 and will become applicable one year after that date, which would fall within the proposed post-Brexit implementation period (lasting until 31 December 2020).

3.7 **We note that the Government's analysis of the impact of this potentially significant proposal—which the UK may be obliged to transpose during the proposed post-Brexit implementation period, and which could also facilitate post-Brexit UK-EU trade in crops irrigated with reused water—is at an early stage. We look forward to receipt of the Government's further assessment of the potential impact and desirability of this draft legislation. In the meantime, we retain the proposal under scrutiny. We draw it to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on minimum requirements for water reuse: (39791), 9498/18 + ADDs 1–3, COM(18) 337.

Previous Committee Reports

None.

10 The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

4 Unfair trading practices in the food supply chain

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain
Legal base	Article 43(2) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39625), 7809/18 + ADDs 1–3, COM(18) 173

Summary and Committee's conclusions

4.1 With the aim of improving farmers' and other small and medium sized enterprises' (SMEs) position in the food supply chain, the European Commission proposed new legislation on unfair trading practices (UTPs), which are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing.

4.2 We first considered this proposal at our meeting of 16 May 2018, noting the Government's concerns based on the importance of Member State flexibility to make arrangements most appropriate to its market and on the cost of the increased remit of the regulator. The Minister for Agriculture, Fisheries and Food (George Eustice) has responded, clarifying his position.[11]

4.3 On the nature of the UK supply chain, the Minister observes that supply chains vary both between sectors within a nation and between different Member States. Any action taken should address these unique characteristics and is best pursued at a national level, the Minister continues to believe.

4.4 Concerning the question of whether an EU approach could benefit UK small and medium-sized enterprises (SMEs) selling to EU buyers, including those operating across the Irish border, the Minister's answer only covers the Irish border question. He says that the Republic of Ireland currently has a domestic regime in place to prohibit UTPs.[12] This protects UK businesses supplying Irish buyers and, similarly, Irish SMEs supplying the ten biggest UK grocery retailers are protected by the UK's Groceries Supply Code of Practice ("the Code").

11 Letter from George Eustice to Sir William Cash, dated 7 June 2018.

12 The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016.

4.5 Regarding the concerns about the regulatory costs of increasing the remit of the national regulator, the Minister assures the Committee that the UK is actively engaged in Council discussions and is openly sharing its national experience of running its domestic regulator (the Groceries Code Adjudicator), including the costs involved.

4.6 In response to the Committee's queries about the quantitative impact of the proposal on the number of businesses covered by the UK's Code, the Government estimates that there are 240 non-SMEs (buyers) and 22,936 SMEs (suppliers) involved in "the manufacture of food products" in the UK. This suggests, says the Minister, that the proposed Directive may result in a significant increase compared to the current coverage of the ten largest retailers and approximately 10,000 suppliers.

4.7 The Committee noted that the proposed payment limit of 30 calendar days would be more stringent than current practice in the UK. The Minister responds that payment terms beyond 60 days are unacceptable and the Code encourages 30 days as a norm.

4.8 The Minister reports that there is "near consensus" among Member States that the transposition period should be the standard two years rather than the proposed six months with a further six months to apply the transposed legislation. On the assumption that the legislation is unlikely to be agreed by the end of the year, a two-year transposition deadline would fall outside the proposed post-Brexit implementation period lasting until 31 December 2020.

4.9 Finally, the Minister explains that he does not consider that the proposal breaches the principle of subsidiarity (whereby action should only be taken by the EU where it is better placed to act than Member States) because the delivery of an EU-wide approach cannot be achieved by the Member States acting alone.

4.10 **The Minister has responded helpfully to our queries. We repeat, however, our query as to how sympathetic the Minister is to the potential benefits of a coherent EU approach for those UK suppliers trading with buyers elsewhere. We asked, too, what engagement the Government had with such suppliers in formulating its position on this proposal. While the Minister covered businesses trading across the Irish border, his response did not cover UK SMEs trading with suppliers beyond the UK and Ireland.**

4.11 **We look forward to a response on the above query in due course and to an update on negotiations. The proposal is retained under scrutiny. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain: (39625), 7809/18 + ADDs 1–3, COM(18) 173.

Previous Committee Reports

Twenty-eighth Report HC 301–xxvii (2017–19), chapter 1 (16 May 2018).

5 Duty on alcohol, tobacco and fuel: EU excise reforms

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; drawn to the attention of Business, Energy & Industrial Strategy Committee and the Treasury Committee
Document details	(a) Proposal for a Council Directive laying down the general arrangements for excise duty (recast); (b) Proposal for a Decision on computerising the movement and surveillance of excise goods (recast); (c) Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register; (d) Proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages
Legal base	(a), (c) and (d) Article 113 TFEU; special legislative procedure; unanimity; (b) Article 114 TFEU; ordinary legislative procedure; QMV
Department	Revenue and Customs AND Treasury
Document Numbers	(a) (39854), 9571/18 + ADDs 1–3, COM(18) 346; (b) (39847), 9567/18 + ADD 1, COM(18) 341; (c) (39840), 9568/18, COM(18) 349; (d) (39836), 9570/18 + ADDs 1–2, COM(18) 334

Summary and Committee's conclusions

5.1 Within the EU, there is an extensive legal framework for the application of excise duty to certain goods (alcoholic products, tobacco products and oils), as well as the rules for moving such goods between Member States. These rules are set by EU Directives and implemented by domestic law in each EU country. Excise duty revenues amounted to £48 billion in the UK in 2016–17.[13]

5.2 The EU's current legal system and electronic infrastructure for excise were created specifically to allow for the complete abolition of border controls on goods moving between EU Member States within the internal market: a core feature is therefore that it allows businesses within the EU to move excise goods between countries using a compulsory tracking mechanism (the Excise Movement & Control System or EMCS), which seeks to ensure that excise duty is paid before the goods are released for consumption. Excise goods that enter the EU from *outside* the Customs Union must first clear customs controls before they can be entered into the EMCS.

13 The total £48 billion excise duty tax take for 2016–17 can be divided into fuel (£28 billion), alcohol (£11.5 billion) and tobacco (£8.9 billion).

5.3 In May 2018, following an evaluation exercise, the European Commission proposed a number of legal changes to the EU's Excise Directives affecting excise on alcoholic drinks (especially cider). The proposed reforms, which we have described in more detail in "Background" below,[14] include:

- Allowing individual Member States to apply a **reduced rate of duty to cider** produced by small cider makers (in line with similar exceptions for beer and spirits), using a **new EU-wide statutory definition of 'cider';**
- Extending the optional **reduced rate of duty for low-alcoholic beers** to a larger range of products (by increasing the maximum alcohol content from 2.8% to 3.5% ABV);
- Creating an **EU-wide certification system for small drinks producers**, allowing them to prove more easily that they are entitled to benefit from the reduced excise rates for small brewers and cider makers when exporting their products to other EU countries; and
- Extending the use of the electronic Excise Movement & Control System (EMCS) to **movements of excise goods between EU countries where duty has already been paid**, to counter the high proportion of fraud affecting this trade (which currently uses paper-based procedures).

5.4 The Minister's Explanatory Memoranda broadly welcomed the proposed changes, with some reservations with respect to the interaction between the proposed EU definition of 'cider' and the reduced duty rates with current UK practice, as well as the cost-benefit analysis of extending the EMCS to 'duty paid' intra-EU movements (which only account for 3 per cent of cross-border excise movements in the EU).

5.5 The proposals related to alcohol duty would apply from January 2020, and the general changes to the overall excise system from April 2021. The former would therefore have to be implemented in the UK under the post-Brexit transitional arrangement (due to end on 31 December 2020), while the latter would not. However, the implications of these proposals (and the effect of EU excise law in the UK more generally) after the scheduled end date of the transition are not yet clear, even though the Government's ambition of continued trade in goods with the EU without customs controls requires an agreement on excise. Despite this, the Minister's Explanatory Memoranda make no comment on the long-term implications of Brexit for trade with the EU in alcohol, tobacco and fuel.

5.6 We note in this respect that the European Commission has, by contrast, issued a detailed notice on the implications of EU exit for indirect taxes, including excise duty. If the UK leaves the common excise area, goods exported from the UK to the EU will not be subject to the same legal framework and therefore will not benefit from the systems that allow such trade to happen without border controls.[15] Instead, the Commission says, "movements of excise goods from the United Kingdom to the EU will have to be released from customs formalities before a [duty suspension] movement under EMCS can begin". The same will apply in respect of customs duty, import VAT and regulatory standards for

14 The Commission is also consulting on possible changes to the excise treatment of tobacco products and e-cigarettes, but it has not yet tabled any specific legislative proposals in that area yet.

15 The UK would also be free to apply duty rates below the EU minimum, but given UK duty rates are higher than the EU average there appears to be little appetite for such a move.

goods, meaning excise duty cannot be seen in isolation when considering possible options to keep UK-EU trade—in particular across the border with Ireland—free of the need for physical controls, which is a key Government objective in the trade negotiations with the EU.

5.7 It is worth repeating in this respect that the EU's current legal system for trade in goods, including excise duty, was constructed specifically with the objective of removing the need for border controls on goods moving between Member States. To remove the need for fiscal controls on trade in goods with the EU, the UK therefore either has the option of seeking to stay part of the current system, or successfully agreeing with the EU an entirely separate—and therefore untested—solution.

5.8 Faced with this choice, and the time and resources needed to achieve the latter, the Government recently proposed a 'customs backstop' to partially fulfil its commitment to keep the border with Ireland free of customs and regulatory infrastructure *after* the end of the transitional period (when the UK would fully stay in the Customs Union and Single Market) but *before* a new comprehensive trade agreement is ready for implementation. Under the Government's proposal, during this interim period, the UK would effectively stay part of the necessary parts of EU's customs, VAT and excise regimes (and therefore continue applying unspecified elements of EU law in those areas) until the Government has achieved its ambition of a free trade agreement so deep that no border controls are necessary on any UK-EU trade in goods.[16] The Government is apparently still preparing its proposals for alignment on regulatory standards, such as food safety controls, that will also be necessary as part of the backstop.[17] It also has not set out its actual long-term proposals for cooperation on excise with the EU after transition and the backstop.

5.9 **We thank the Minister for his Explanatory Memoranda on the excise reform proposals published by the Commission in May. We note that there are several areas—including the proposed definition of 'cider', the technical requirements for the certificates for small producers, and the extension of the EMCS to 'duty paid' movements—where the Government has concerns. With respect to the substance of the proposals, we ask him to keep us informed of developments in the legislative deliberations in the Council, and to clarify:**

- **In what way the proposal for an optional reduced rate for cider produced by small cider makers, in the Minister's words, "is different from the UK's current structure";**
- **Why the maximum annual production value to benefit from the reduced rate of excise on cider is so much lower than the equivalent maximum production volumes for beer (15,000 vs 200,000 hectolitres per year);**
- **Whether each Member State would be legally *required* to recognise the validity of another Member State's certificate of a brewer or cider maker's annual production volumes, to prove their entitlement to a reduced rate of duty when exporting to another Member State and whether the Government**

16 This is in contrast to the European Commission's proposal for the backstop, which would keep Northern Ireland only in the common excise regime (and subject to EU law in this area), with the necessary controls on incoming goods from Great Britain to the EU and Northern Ireland shifted to the Irish Sea.

17 The Government's backstop proposal does not cover regulatory issues such as food safety controls, but acknowledges the need for those issues to be discussed as well.

will seek to keep the UK included in this system for the benefit of small producers that want to export beer or cider to the EU after the post-Brexit transitional period; and

- **What benefits for businesses and consumers the Government or its stakeholders have identified for the UK of leaving the EU's common excise area.**

5.10 **With respect to the Brexit implications of the Commission proposals, we find it extremely concerning that the Minister's Memoranda make no reference whatsoever to the Government's proposal for the customs 'backstop' in Northern Ireland. This effectively proposes to keep the UK bound, without a legally-binding end date, to unspecified elements of EU excise law necessary for the "common cross-border processes and procedures" that would allow a hard border between Ireland and Northern Ireland to be avoided.**

5.11 **The fact the Government has been unable to specify what elements of the EU's Excise Directives might be within scope of the backstop gives the appearance that it is yet to arrive at a firm view on this point. As a result of this ambiguity, the European Commission has already dismissed the UK proposal as a "piecemeal application of EU VAT and excise rules" which creates "serious risks of fraud".**

5.12 **Whatever the EU's position, we remain extremely concerned that the Government is now itself advocating a policy that requires the UK to continue applying EU legislation on taxation—with respect to bothVAT and excise—for a prolonged period of time after it ceases to be a Member State. All proposals for EU tax law are subject to unanimity in the Council of Ministers, giving the UK a veto—but only until 29 March 2019. If the UK were blocking adoption of proposals in this area, the other Member States now need only wait until 30 March 2019 to circumvent the Government's veto. While the Government has not explicitly said the backstop would need to include UK application of future amendments to EU law on excise and VAT (even if the UK did not have a vote when they were adopted), this appears an inevitable consequence, given that the whole point of the backstop is to establish "common […] processes and procedures". The arrangement proposed by the Government therefore risks eroding the UK's fiscal sovereignty, requiring it to apply EU law on VAT and excise which it could no longer substantially influence or block.**

5.13 **We hope the Government's upcoming Brexit White Paper will provide more clarity about its long-term proposals for cooperation with the EU on matters of VAT and excise, including how the UK would protect its fiscal autonomy while allowing for border controls of a fiscal nature to be waived on trade in goods with the EU-27.**

5.14 **However, given the current uncertainty about the possibility that EU excise legislation may apply in the UK indefinitely as part of the Northern Ireland 'backstop', we retain the proposals under scrutiny. We also draw them to the attention of the Treasury Committee and, with respect to the general implications for companies that trade in excise goods, the Business, Energy & Industrial Strategy Committee.**

Full details of the documents

(a) Proposal for a Council Directive laying down the general arrangements for excise duty (recast): (39854), 9571/18 + ADDs 1–3, COM(18) 346; (b) Proposal for a Decision on computerising the movement and surveillance of excise goods (recast): (39847), 9567/18 + ADD 1, COM(18) 341; (c) Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register: (39840), 9568/18, COM(18) 349; (d) Proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages: (39836), 9570/18 + ADDs 1–2, COM(18) 334.

Background

5.15 Excise duties are indirect taxes on the sale or use of alcohol, tobacco and hydrocarbon oils like diesel and petrol. The aim of these taxes is to disincentive their use, or to provide Governments with revenue to address the externalities that arise from their use. Within the EU, all Member States are required to apply excise duty, but the revenues are retained entirely by the country where consumption takes place (the 'destination' principle).[18]

5.16 To avoid distortions of competition in trade between Member States, the EU's system of excise includes minimum rates of duty (although these have not been updated to account for inflation since they were set in 1992). The current EU legal framework consists of goods-specific Directives that govern alcohol, tobacco and fuel respectively, with an overarching set of common provisions which apply to all products subject to excise duty.[19] Before the abolition of border controls on goods moving with the EU when the Single Market was created in 1992, excise could still be levied in one Member State before being exported to another; the existence of customs controls allowed national authorities to verify that goods were actually leaving their territory, and authorise a refund of duty paid (the same system also applied to Value Added Tax on intra-EU supplies).

Intra-EU movements under duty suspension

5.17 To achieve a 'true' internal market without border controls, the Member States in the early 1990s agreed on a new mechanism of 'duty suspension'. This allows companies to move excise goods around the EU without paying excise duty up front, improving cash flow. Goods moved between EU countries under duty suspension must be declared to the EU's electronic Excise Movement & Control System (EMCS) before they are dispatched.[20]

5.18 Only authorised economic operators listed in the System for Exchange of Excise Data (SEED) can make use of this system. Because of the revenue risks of allowing excise goods to be moved before duty is paid, EU law and Member States impose stringent conditions

18 This is contrast to the revenue accrued from customs duties and VAT, a share of which is transferred to the EU budget to fund EU expenditure.

19 Council Directive 2008/118 sets out general arrangements for goods subject to excise duty, including those around production, storage and movement of excise goods. These apply across the territory of the European Union, with the exception of a small number of territories, where its provisions do not apply.

20 The EMCS supervises the cross-border intra-EU movement and export of excise goods under duty suspension; each movement in EMCS must be declared to the system, before the dispatch of the goods, via an "electronic Administrative Document" (e-AD) and is uniquely identified by its "Administrative Reference Code" (ARC).

on the granting of authorisations for duty suspension. For example, most storage facilities and movements of excise goods require a financial guarantee, usually provided for by the consignor at the place of dispatch. When the recipient (consignee) in the Member State of destination receives the goods, they submit a "report of receipt" (which should mention any anomalies, such as shortages or excesses in the consignment). At that stage, if there are no reported issues, the sender of the excise goods (the consignor) can then discharge the movement and recover any financial guarantees they had to make for the excise products (in the absence of paying the full duty up front).

Intra-EU movements under duty paid

5.19 Businesses also have the possibility of moving excise goods throughout the EU under 'duty paid', where excise duties are paid in advance in the Member State of dispatch and then again at destination (at which point the excise duty paid at dispatch can be refunded). National registration or authorisation procedures tend to be simpler than duty suspension, because of the lower fiscal risk, but it costs more up-front and there is an additional administrative burden on companies because of the need to apply for refunds.

5.20 This procedure is currently paper-based, and does not make use of the EMCS system to track goods because there is a lower risk of fraud. It uses three copies of a so-called 'Simplified Administrative Accompanying Document' (SAAD). After excise duty is paid in the Member State of dispatch, the first copy is kept by the business that initiates the movement of the goods ("the consignor"). The two other copies accompany the goods. At destination, excise duty is paid (again) by the consignee, which keeps the second copy of the SAAD for their records. The third copy is then returned to the Member State of dispatch, used as proof that the initial payment of excise duty can be refunded. The 'duty paid' procedure is used in only 3 per cent of intra-EU movements of excise goods, mainly alcoholic drinks, representing only 0.1 per cent (€200 million) of the value of such goods traded between EU countries annually.[21] However, the Commission estimates that levels of fraud are much higher proportional to the value of the goods compared to the 'duty suspension' procedure tracked by the EMCS.

5.21 The harmonised system for movements of excisable goods without customs controls does not apply to trade between the EU and a 'third country' (see "*Excise duty and the UK's exit from the EU*" below). Such goods must clear customs and regulatory controls—such as food safety controls for drinks[22]—when entering the EU before they can be released for free circulation and enter either the 'duty suspension' or 'duty paid' procedure.

Continued risk of duty evasion

5.22 The sophisticated EU-wide legal framework notwithstanding, excisable goods moving across EU borders continue to present a "high inherent fiscal risk" for various reasons:

- The duty rates of some excise products (often cigarettes) lead to a taxation burden that exceeds the net value of the goods, creating an incentive to operate a black market;

21 Commission Impact Assessment SWD(2018) 260, p. 20.

22 For example, for imports of malt beer from a 'third country' into the Netherlands, the Commission lists compliance with a variety of EU food safety legislation as a prerequisite for entry: control of contaminants in foodstuffs; control of Genetically Modified (GM) food; health control of foodstuffs of non-animal origin; traceability, compliance and responsibility in food and feed; and labelling of foodstuffs.

- The rates vary greatly from one Member State to another, which acts as an incentive to divert excise goods from low-rate Member States to the black markets of high-rate Member States. For example, in the UK there is an estimated 'tax gap' for excise goods that totalled £4.1 billion in 2016–17 (although that includes the VAT lost in addition to duty);[23] and
- The total amount of excise duty due on a set of excise goods is collected from one taxpayer at a single time and location (the vendor who sells the goods for final consumption), which makes excise duty more vulnerable to fraud than VAT, which is subject to a self-policing fractionalised system along the supply chain.

5.23 To analyse what further action might be taken to avoid excise duty loss, the European Commission carried out an evaluation of Common Excise Provisions Directive and submitted a report in April 2017.[24] The main areas of concern highlighted by the evaluation concerned the improvement of the alignment between excise and customs procedures where goods are imported from or exported to a non-EU country, and the possibility of tracking intra-EU movements of excise goods that have already been released for consumption (i.e. on which excise duty has been paid). The Commission also published a separate report on the excise duty structure for alcoholic drinks, which included a recommendation to consider extending the application of reduced duty rates to small producers of wines and cider.[25]

5.24 The results of the evaluation were largely echoed by a set of Council conclusions on excise adopted by EU Finance Ministers on 5 December 2017.

The Commission proposals

5.25 To address the shortcomings identified in the evaluations, the European Commission in May 2018 published four Directives: three to amend the common provisions for excise and related IT-system, and one to modernise the rules affecting excise on alcoholic products (in particular cider) specifically. We have summarised the key points of these proposals below, accompanied by the Government's position as set out in the Explanatory Memorandum we received from the Exchequer Secretary to the Treasury (Robert Jenrick) on 16 June 2018.

5.26 We have also made an assessment of the implications of Brexit for the UK's system of alcohol, fuel and tobacco duty, including in trade with the EU (paragraphs 5.45 to 5.60).

The common provisions on excise duty

5.27 Following the general evaluation of the EU's excise regime, the European Commission tabled three Directives to amend the common excise provisions, the Excise Movement & Control System (EMCS) and the electronic register for authorised excise operators. These are designed to support trade facilitation and increase the transparency of movements using IT solutions to assist anti-fraud activities.

5.28 The first main element of the proposals is to better align customs and excise procedures to ensure consistency across the two regimes. It also seeks to expand EMCS

23 HM Revenue & Customs, Measuring tax gaps 2018 edition, p. 32.
24 See Commission document COM(2017) 184.
25 See Commission document COM(2016) 676.

to include movement declarations for goods that have been released for consumption (duty-paid movements, see paragraph 5.17 above). The reason for this was that the current paper-based procedures for 'duty paid' movements are considered "out of date, unclear and burdensome" for businesses and tax authorities, and lead to high levels of fraud when excise goods move across national borders within the EU.[26]

5.29 Additionally, the new Directives aim to:

- improve the arrangements for the cross border distance selling of excise goods so that distance sellers selling to consumers may declare and pay the duty themselves in the Member State of consumption (rather than via a tax representative);
- introduce a common solution for dealing with natural losses of product when shipped between EU Member States;[27] and
- automate processes for handling goods where exemption from excise duty applies.

5.30 The Minister's Explanatory Memorandum describes these changes as "highly technical", adding that the UK's subject matter experts"will work with the Commission to discuss the detail of the proposals". Overall, he says, the Government "broadly supports the objectives to improve processes and procedures to manage risks while minimising burdens on legitimate business", but it will want to ensure in particular that "any extension of the EMCS to cover movements of duty paid goods is proportionate to the risk presented". The Minister's Memorandum makes no mention of any Government proposals for future cooperation between the UK and the EU on excise duty matters to facilitate the continued flow of trade in excise goods after the UK leaves the Customs Union.

Specific proposals relating to excise duty on alcohol

5.31 The second element of the Commission's 2018 package of measures on excise duty is a Directive on the rules applicable to duty on alcoholic products specifically. At present, excise duties for alcohol—including beer, wine, and spirits—are regulated through two Directives:

- Directive 92/83/EEC, the 'Alcohol Structures Directive', which sets common definitions of alcoholic products that are subject to excise duty and aims to ensure that all Member States treat the same products in the same way; and
- Directive 92/84/EEC, the 'Alcohol Rates Directive', which sets out the actual minimum rates of excise duty on alcohol products that Member States must apply, based on the rate structure mentioned above.

5.32 By derogation from the minimum duty rates, Member States are allowed to apply a reduced rate of excise to beer and spirits produced by small independent companies. In addition, denatured alcohol, which has been made unfit for human consumption, is exempt from excise to allow it to be made available at relatively low cost for purposes other

26 The Commission's impact assessment notes that average processing time for SAADs for 'duty paid' movements varied between four and eight hours depending on the nature of the consignment. This compares with a few minutes on average for the administration of an EMCS movement. See Commission document SWD(2018) 260.

27 An example of 'natural loss' would be the evaporation of petrol while in a tank, which creates discrepancies between amounts of a good dispatched and received.

than human consumption (but without the risk of its diversion to the consumer market).[28] The rules on what constitutes an acceptable denaturing process to exempt alcohol from excise duty vary from Member State to Member State, and there is no centralised system for notifying national procedures for partial denaturing. Duty evasion using (alleged) denatured alcohol is estimated to result in lost tax revenues in the region of €150–200 million (£130–175 million) per year across the EU.

5.33 A Commission evaluation of the Directive on the Alcohol Structures Directive found that it was "effective and generally appropriate",[29] but that the large variation in duty levels between Member States provided a "strong incentive for tax evasion". For example, on still wine, excise duty rates range from zero in 15 Member States including France, to €616 per hectolitre in Ireland[30] (the UK's rate is the fourth highest among Member States at €326 (£288) per hectolitre).[31] The evaluation also found that the "burdensome administrative procedures" for both tax authorities and businesses had the effect of preventing some small producers of alcoholic drinks from benefitting from the Single Market as an export opportunity.

Cider duty

5.34 The Commission has now tabled a proposal to amend the Alcohol Structures Directive based on the outcome of its evaluation exercise. The key reform affects the potential rate of duty on cider, as the Commission has proposed allowing Member States to apply a **reduced rate on cider made by small producers** with an annual production of less than 15,000 hectolitres per year. The reduced rate cannot be lower than 50 per cent of the normal prevailing rate of cider duty.

5.35 While there is no EU legal minimum excise duty rate for cider (and as such Member States can decide to allow it to be sold duty-free), the Commission notes that "most [Member States] with a traditional cider market apply a positive excise rate". The UK, for example, typically imposes cider duty of £40.38 per hectolitre. However, where a Member State chooses to do so, it cannot differentiate between large and small producers of cider: the Alcohol Structures Directives only permit the application of different rates depending on the alcohol by volume of the product, not the characteristics of the company that made it.

5.36 The new option for a reduced rate of cider duty mirrors an existing option to apply a lower rate of duty for products made by small independent breweries and spirit producers,[32] although the maximum production thresholds are different (for example, for beer, annual production can be up to 200,000 hectolitres before the full rate must be applied).[33] The maximum production values set by the Directive are ceilings, and individual Member States can therefore decide to apply the reduced rate only to producers with even lower

28 The Commission explains that partially denatured alcohol (PDA) is used for products not intended for human consumption but for which complete denaturing (CDA) is not suitable (i.e. because the intentionally strong smell and taste of CDA make it unusable for products like comsetics, perfumes, inks or paints).

29 See Commission Impact Assessment SWD(2018) 259.

30 A hectoliter is 100 hundred litres, or approximately 0.7 imperial beer barrels.

31 Ireland has two excise rates for still wine, with the higher rate applied to products with alcohol content exceeding 15 per cent. Finland also as a higher rate for wine than the UK.

32 In the UK, cider duty currently ranges from £40.38 to £279.46 per hectolitre depending on the alcohol content and whether the product is still or sparkling.

33 See article 4 of Directive 92/83/EEC. For spirits, the reduced rate of duty can only be applied to distillers who produce less than 10 hectoliters of pure alcohol annually (article 22(1) of the Directive).

volumes (or not to apply the reduced rate at all).[34] For beer, it appears all Member States except Poland, Spain and Sweden have chosen to apply a reduced rate for products of small breweries. The Commission also considered, but ultimately dismissed, the possibility of introducing reduced rates for small wine producers.[35]

Statutory definition of 'cider'

5.37 To bring the Directive in line with case law of the Court of Justice on different types of 'fermented beverages',[36] and to define the scope of the new possibility of reduced rates, the proposal also contains a new **EU-wide definition of cider** ("a beverage obtained only from fermentation of apples and/or pears of between 1.2% abv and 8.5% abv"). The Minister in his Explanatory Memorandum notes that this "is similar to the UK definition, but inclusion of '*only*' could result in a narrower interpretation".[37]

Certification of production volumes for small brewers and cider makers

5.38 The Commission has also noted that small brewers (and, under its proposals on cider duty as set out above, cider makers) may struggle to prove they are entitled to a lower rate of duty when selling their products in another Member State, because the tax authorities in the country of sale do not know if the production volumes are below the statutory threshold. Customs authorities in the EU country of sale can request confirmation from the country of origin about those production volumes for a specific producer, but not all EU Member States issue formal confirmation of this kind and, secondly, not all Member States recognise the validity of such confirmation even when it is issued.[38]

5.39 To further facilitate the export of craft beers and ciders by small independent producers from one EU country to another, the Commission has now proposed that national governments should provide small breweries and cider makers with **official certification of annual production volumes**, and make it easier to prove if are entitled to benefit from a reduced rate of duty applicable in other Member States (where both the maximum production volume and duty rates are likely to be different). The technical detail of this certification system is to be established by means of implementing regulations (statutory instruments) at a later stage.

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34 The European Commission regularly publishes an overview of the applicable excise duty rates in all EU Member States, including reduced rates for small producers. For beer, it appears all Member States except Poland, Spain and Sweden have chosen to apply a reduced rate for products of small breweries. The possibility of reducing excise for small producers of spirits appears less widely-used, with only 11 Member States using it. For beer, it appears all Member States except Poland, Spain and Sweden have chosen to apply a reduced rate for products of small breweries

35 The Commission Impact Assessment notes that small wine makers are not included in the proposal because a) many Member States do not charge wine duty and as such there would be no tax benefits; and b) stakeholders expressed concern that the introduction of variable rates for wine in this way "could result in the subsequent removal of the zero rate, an outcome which would negatively affect all businesses, both large and small". (See Commission document SWD(2018) 259, p 18.

36 See for example the judgement of the Court in case C-150/08.

37 The UK's domestic definition of 'cider' under the Alcoholic Liquor Duties Act 1979,is: "cider or perry of a strength exceeding 1.2% alcohol by volume (ABV) but less than 8.5% ABV obtained from the fermentation of apple or pear juice without the addition at any time of any alcoholic liquor or of any liquor or substance which communicates colour or flavour other than such as the Commissioners may allow as appearing to them to be necessary to make cider or perry".

38 In the UK, for example, small brewers from other Member States self-certify and controls by HM Revenue & Customs are risk-based, whereas in France they have to submit a one-off set of documents to the tax authorities to prove their production volumes.

Other amendments to the Alcohol Structures Directive

5.40 In addition to making the above changes relating to duty on cider and beer, the Commission proposal would also:

- Increase the maximum alcohol content for low-alcohol beer to which Member States can apply a reduce rate of excise (from 2.8 to 3.5 per cent abv);
- Establish clearer conditions for the application of the exemption from excise to completely and partially denatured alcohol, to ensure that duty exemptions are applied uniformly by different Member States;
- Clarify the provision governing the measurement of degrees Plato[39] of sweetened or flavoured beer to ensure products with the same alcoholic content are treated equally for excise purposes by different Member States; and
- Delete a number of optional exemptions from excise for certain alcoholic products in the UK, which are no longer applied by HMRC and therefore obsolete.[40]

5.41 With the exception of allowing reduced rates of excise duty to be applied to cider and more types of beer, the latest Commission proposals would not affect the minimum duty rates. A 2006 proposal[41] to increase the minimum rates of excise on alcoholic drinks (which were established in 1992) in line with inflation was formally withdrawn in 2015 because there was no unanimous support among the Member States for the changes proposed.

5.42 The Minister's Explanatory Memorandum on the Alcohol Structures Directive appears broadly supportive of the proposed reforms. In particular, the Government has welcomed the proposal to allow Member States to apply a reduced rate of beer duty to drinks with of a strength up to 3.5% alcohol by volume (up from 2.8%) and "will consider whether it is appropriate for the UK to take advantage of this option" (reflecting the fact that the new duty rules are due to take effect in 2020, when the UK would still be applying EU law under the terms of the post-Brexit transitional arrangement). With respect to the new option to apply reduced duty to cider made by small producers, the Minister says that the proposed relief "is different from the UK's current structure" for cider duty and that further analysis will be undertaken when the Commission publishes further information.

5.43 Similarly, while the Government "recognises the rationale" for introducing 'cider' as a EU-wide definition, he warns that the UK has its own domestic definition "whose interaction must be considered in detail" because the proposed EU definition would reserve the terms 'cider' only for beverages made entirely from the fermentation of pear and/or apple juice. The Minister also agrees that a standardised certification system for application of beer and cider small producer reliefs is sensible, "although much will depend on the details to be determined by the implementation regulations".

39 Plato refers is a measurement of how much beer has been mixed with non-alcoholic additives or beverages; its application to determine the relevant excise duty (which, under EU law depends on alcohol content) varies between the Member States that use it. Degrees Plato are not used in the UK.

40 These obsolete exemptions from excise duty were for certain 'concentrated malt beverages' and certain 'aromatic bitters'.

41 See Commission document COM(2006) 486.

5.44 As with the proposed changes to the Common Provisions Directive for excise, the Minister's Memorandum contains no indication of the Government's long-term proposals for cooperation on excise duty and trade in alcoholic drinks with the EU as and when the UK leaves the common excise system. We have considered the implications in more detail below in the absence of any information from the Treasury.

Excise duty and the UK's exit from the EU

5.45 The impact of Brexit on the UK's excise duty regime, and its trade in excisable goods with the EU, remains unclear because of the uncertainty about the long-term economic partnership and the implications of the Government's recent 'backstop' proposal (see below).

5.46 EU law underpins the UK's current system of excise duty, in particular with respect to the requirements for cross-border trade in excisable goods with other EU countries. There is, however, a significant degree of national latitude (especially with respect to rates of duty). Leaving the common excise area would allow the Government to apply excise duty below the EU-mandated minimum, and to vary rates for different products or producers not permitted by EU law. However, all EU legislation relating to taxation requires unanimity among Member States—meaning all the existing Excise Directives were adopted with the UK's support. Moreover, the UK currently has excise duty rates well above the legal minimum rates for all types of alcoholic products, tobacco and fuel. Any regulatory or fiscal gains in this area would therefore appear to be minimal, and the Government's Explanatory Memorandum does not identify any.

5.47 In any event, any new domestic autonomy to amend (or abolish) excise duty rates notwithstanding, the UK's departure from the common legal system for excise in the EU is likely to have a significant impact on trade in excise goods (both in terms of commercial traffic and travellers' personal allowance when moving between the two) unless specific mitigating measures are agreed between the Government and the European Commission. At this stage, it is unclear what the Government's detailed proposals in this area might be, although it has proposed, as part of the 'backstop' to keep the Northern Ireland border free of customs and regulatory infrastructure, that the UK as a whole might continue to apply some parts of the EU's *acquis* on excise duty for an indefinite period (see paragraphs 5.53 to 5.60 below).

Implications for commercial traffic in excisable goods

5.48 The default position once the UK leaves the Single Market and the Customs Union is that the UK will also leave the common excise area. The European Commission outlined the implications of that in a recent 'Brexit Preparedness' notice.

5.49 In summary, exports of excisable goods from the UK to the EU will no longer be able to benefit from the 'duty suspension'[42] process under the EMCS, which accounts for 97 per cent of all cross-border movements of excise goods within the EU without the use of border controls. Instead, for commercial movements, the UK will have its own process for certifying excise goods have left the country, after which they will be checked

42 See paragraph 5.17 for more information on the 'duty suspension' process.

by the customs and regulatory authorities at the border of the receiving EU country (at which point they could be placed under duty suspension under the EMCS to be moved to another Member State).

5.50 As a result, UK exporters will have to mirror the additional administrative requirements that currently apply to exports of excisable goods to non-EU countries: they will need to lodge an export declaration with HM Revenue & Customs; prove the goods have left the country so that no excise duty has to be paid in the UK; and clear customs, VAT and excise checks, as well as product standard controls, at the point of entry in the EU. The same would presumably apply in reverse for shipments of goods from the EU-27 to the UK, although the Government's latitude to set UK-specific requirements will depend on the outcome of the negotiations with the EU on a future economic partnership.

5.51 As such, trade in excisable goods between the UK and EU countries would become more costly and less efficient than it is at present. Once the UK ceases to apply the legal framework that underpins the tracking of excise goods throughout the EU, any decision not to apply border controls on alcohol, tobacco and fuel entering the UK from the EU would most likely lead to massive duty evasion. There would also be no requirement for the EU-27 to recognise the proposed certificate confirming the production volumes of small brewers and cider makers (to help them prove entitlement to sell their products at reduced rates in EU countries) when issued by the UK authorities. That system of certification would be part of the wider EU excise system, underpinned by binding technical regulations, and ultimately subject to the jurisdiction of the Court of Justice.

5.52 The exit from the common excise system would also affect excise goods carried by travellers between the UK and the EU in their luggage. Duty-free shopping could become available again on UK-EU routes, but conversely quantitative limitations would apply to the amount of alcohol and tobacco products that could be brought into the EU from the UK. Any limits on travellers entering the UK from the EU or anywhere else would be for the Government to decide.

Excise controls on imports and the Irish 'backstop'

5.53 The implications described above are the default scenario after the UK leaves the Customs Union and the Single Market (whether on 29 March 2019 in the event of a 'no deal' Brexit, or at a later stage under the terms of a transitional arrangement in the Withdrawal Agreement). While the Government has an ambition for a free trade agreement that completely obviates the need for customs, VAT and excise (as well as regulatory) controls on goods moving between the UK and the EU, it has not presented detailed proposals. However, the specific controls that apply to excise goods entering the EU from a 'third country' are covered by the Cabinet Office's recent proposal for the customs 'backstop' for Northern Ireland.

5.54 In December 2017, the UK and the EU agreed that—in the absence of an 'agreed solution'—the UK would remain fully aligned with the necessary rules of the Customs Union and the Single Market to keep its land border with Ireland free from regulatory and customs infrastructure. The European Commission proposal for the backstop would keep Northern Ireland, but not Great Britain, inside the EU's Customs Union and the common excise duty regime. Effectively, this would mean the Northern Irish Executive would apply

the Excise Directives (including any future amendments), while goods entering Northern Ireland from the rest of the UK would be subject to EU customs and regulatory controls.[43] Rightly, the Prime Minister immediately rejected this proposition.

5.55 The Government's own proposal for the backstop was published on 7 June 2018. It effectively extends the customs, VAT and excise arrangements proposed by the Commission to the whole of the UK. The proposal argues that, to avoid a hard border between Northern Ireland and Ireland, "the application of common cross-border processes and procedures for (…) excise would be necessary, as well as some administrative cooperation and information exchange to underpin risk-based enforcement". In practice, this would presumably mean the UK would continue to apply the elements of EU legislation on excise duty that both sides considered necessary to allow UK exports of alcohol, tobacco and fuel to the EU (and vice versa) to continue using the 'duty suspension' procedure and the EMCS.[44]

5.56 The immediate problem is that the Government's proposal does not specify which provisions of EU law it considers it might need to continue to apply for the duration of the backstop to make this approach work in practice. Bizarrely, the Minister's Explanatory Memoranda on the recent proposals for reform of the Excise Directives make no mention at all of the UK version of the 'backstop', or how the proposed changes might interact with it. As a result of the Government's ambiguity about the exact scope of its backstop, the European Commission has already dismissed the UK proposal as a "piecemeal application of EU […] excise rules" which creates "serious risks of fraud".[45]

5.57 Even if its proposal were acceptable to the EU, the Government is yet to clarify how excise goods would continue to be traded between the UK and the EU after it expires without the need for the customs controls described in paragraph 5.48 above. The Government has said that it 'expects' the backstop to function only until the end of 2021. At that point, the new UK-EU free trade agreement would become effective and—by means of some unspecified mechanism—allow excise goods to enter the EU from the UK both without border controls, and (apparently) without the UK applying the necessary EU legislation to participate in the Excise Movement & Control System. As a detailed prospectus on how this might be achieved in a way that satisfies both the UK and the EU[46] has not been forthcoming, we hope the Government's upcoming White Paper on the future partnership with the EU will provide more clarity.

5.58 In any event, the very principle behind the Government's backstop—the continued application of certain provisions of EU law—is worrisome in itself. The reforms proposed to the Excise Directives are due to take effect in 2020, when the UK would still be applying new EU law under the terms of the transitional arrangement (and possibly for a substantial

43 Draft Withdrawal Agreement (19 March 2018), "Protocol on Ireland/Northern Ireland", p. 108.

44 The Government proposal has a legal operative text reading "The provisions of Union law on excise duties listed in Annex 2.4 to this Protocol shall apply to and in the United Kingdom". However, no proposed contents for this 'Annex 2.4' are provided, and as such it is unclear which provisions of EU excise legislation the Government envisages might continue to apply to the UK if the backstop became operational.

45 Slides on UK technical note on temporary customs arrangements (11 June 2018).

46 It is worth noting that the EU's current system, including the minimum rates combined with the Excise Movement & Control System, was created precisely to allow for border controls to be abolished within the EU. If the UK is not seeking continued alignment with the EU in this area, the Government must either propose an entirely new—and therefore untested—technological solution, or propose a mechanism to avoid the need for border controls in relation to excise that has already been previously considered but did not have the support of all Member States.

period of time thereafter, under the 'backstop'). However, it will lose its veto over EU law on taxation on 29 March 2019. Any UK opposition could therefore be overcome by simply deferring adoption of the new Directives until April 2019.

5.59 The Government's original argument was that the long lead-in time for the adoption and implementation of new EU law meant that the policy implications of the transitional period until 31 December 2020 were limited, because any new laws taking effect during that time would have been under discussion while the UK, in the Prime Minister's words, "would have been able to say whether they would be a rule that we would sign up to or a rule that we would not wish to sign up to". With respect to the areas of EU law covered by the proposed 'backstop', that clearly no longer applies as its duration is not firmly established. We therefore appear to be drifting into a situation where the UK could have to make significant changes to its excise duty regimes—which accounted for £48 billion in tax revenues in 2016–17[47]—without the ability to opt-out from new EU law in this area. This is also clearly problematic in the context of the pending reforms to EU VAT law, which affects an even larger part of the Government's tax base.

5.60 We wrote to the Financial Secretary on 13 June 2018 to seek urgent clarification of the legislative and financial impact of the Government's proposed backstop, and we will continue to press Ministers on these issues.

Previous Committee Reports

None.

47 The total £48 billion excise duty tax take for 2016–17 can be divided into fuel (£28 billion), alcohol (£11.5 billion) and tobacco (£8.9 billion).

6 Improving cross-border law enforcement access to financial information

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	Proposal for a Directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA
Legal base	Article 87(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(39666), 8411/18 + ADDs 1–2, COM(18) 213

Summary and Committee's conclusions

6.1 Criminal activity frequently has a cross-border dimension, making it difficult to gather the evidence needed to advance a criminal investigation or prosecution. The proceeds of a crime committed in one Member State may be concealed in another or funds held in a foreign bank account used to finance acts of terrorism elsewhere in the EU. A report published in 2017 by Europol, the EU's law enforcement agency, called for "reflection on how to adapt policies which are meant to be supervised only at national level, while the underlying business is already transnational and globalised in its own nature".[48]

6.2 The Commission considers that existing mechanisms for accessing and exchanging financial information within the EU are too slow, given the pace at which funds can be moved across borders:

> "In some Member States, it can take weeks or months to receive the necessary information. Currently, the authorities responsible for the prevention, detection, investigation or prosecution of criminal offences often do not have direct access to this information. This lack of access to financial information during criminal investigations may jeopardise their ability to investigate serious crimes, disrupt criminal activities, foil terrorist plots, or detect and freeze the proceeds of crime. It is imperative that law enforcement authorities have access to the most crucial pieces of financial information as quickly as possible to complete their investigations and crack down on the financing of terrorism and serious crime."[49]

48 See Europol's report, *From Suspicion to Action: Converting financial intelligence into greater operational impact.*

49 See the European Commission's fact sheet, *Frequently Asked Questions: Security Union—Denying terrorists the means to act.*

6.3 The Commission has proposed a Directive which is intended to improve access to financial information for law enforcement purposes. The proposal would require Member States to:

- give designated national law enforcement authorities and Asset Recovery Offices *direct* access to bank account information held in their Member State's central bank account registries (or electronic data retrieval systems) where necessary to prevent, detect, investigate or prosecute a serious criminal offence;
- strengthen the exchange of financial information and analysis between their own designated national law enforcement authorities and Financial Intelligence Units (national centres which collect information on suspicious or unusual financial activity) as well as between Financial Intelligence Units in different Member States;[50]
- introduce a three-day time limit for the exchange of information between Financial Intelligence Units in different Member States (24 hours in "exceptional and urgent cases"); and
- give Europol indirect access to bank account and other financial information or analysis via each Member State's National Europol Unit.

6.4 The proposed Directive is subject to EU data protection rules and includes additional safeguards:

- each designated law enforcement authority must specifically designate individuals authorised to access and search central bank account registries;
- access is limited to information needed to identify the bank account holder and account number (so excludes "content" such as details of transactions or the balance on an account);
- Financial Intelligence Units can only request information relating to money laundering and terrorist financing;
- law enforcement access to financial information is limited to the categories of serious crime specified in the Europol Regulation and can only be requested on a case-by-case basis;[51] and
- the processing of sensitive data (revealing an individual's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or orientation) is only allowed if "strictly necessary and relevant in a specific case".

6.5 The Commission envisages that the proposed Directive would have to be implemented in domestic law at the same time as the provisions of the recently agreed Fifth Anti-Money Laundering Directive which requires Member States to establish central bank registries or electronic data retrieval systems so that account holders can be readily identified. This is

50 Whilst it would be for each Member State to designate the relevant national law enforcement authorities, they must include the National Europol Unit.

51 See Annex 1 to Regulation (EU) 2016/794 on the EU Agency for Law Enforcement Cooperation (Europol).

likely to be in early 2020, before the end of the post-exit transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement during which the UK will continue to apply EU laws.

6.6 As the proposed Directive is a criminal law measure, it is subject to the UK's Title V (justice and home affairs) opt-in and will only apply to the UK if the Government decides to opt in.

6.7 The Minister for Security and Economic Crime (Mr Ben Wallace) expresses the Government's strong support for international cooperation to tackle serious crime and considers that action at EU level is appropriate as financial crime and money laundering often has a cross-border dimension. Whilst the proposed Directive is "broadly in line with existing UK legislation and practice on the sharing of financial information", his Explanatory Memorandum of 12 June identifies two concerns.

6.8 First, national Financial Intelligence Units (FIUs) would be required to provide financial information and analysis in response to a "duly justified request" made by Europol. Whilst the UK's FIU is able to provide this information, the Minister questions whether it should be under an obligation to do so. He highlights a potential conflict with Recommendation 29 of the Financial Action Task Force[52] and with Article 32(4) of the EU's Fourth Anti-Money Laundering Directive[53] which provide that FIUs should have autonomy in deciding whether to share information.

6.9 Second, the Minister explains that the three-day time limit for providing financial information or analysis requested by a FIU in another Member State is "shorter than existing standards for such exchanges". He questions whether a request from a FIU in another EU Member State should be handled with greater urgency than a request from a FIU in a non-EU country.

6.10 The Minister is unable to confirm when the three-month deadline for opting into the proposed Directive will expire[54] but sets out the factors which will inform the Government's opt-in decision:

- the result of the June 2016 referendum and the decision to leave the EU;
- the fact that the UK is broadly compliant with the proposal (or will be once it implements the requirement in the Fifth EU Anti-Money Laundering Directive to establish a central bank account registry); and
- the UK currently participates in a Council Decision (adopted in 2000) on cooperation between Member States' national Financial Intelligence Units which the proposed Directive would repeal.[55] According to the Minister the proposed Directive would repeal, but not replace, the 2000 Council Decision.

52 Recommendations made by the Financial Action Task Force (FATF) establish international standards for combating money laundering and terrorist financing. Recommendation 29 concerns Financial Intelligence Units (FIUs) whose role is to gather information and provide analysis on suspicious financial transactions. Guidance issued by the FATF states that FIUs should be "operationally independent and autonomous".

53 Article 32(4) of the Fourth Anti-Money Laundering Directive provides that it is for each FIU to decide whether to carry out an analysis or disseminate information.

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

55 Council Decision 2000/642/JHA concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information. The UK re-joined this Decision and 34 other EU measures in December 2014, after deciding to opt out *en masse* of EU police and criminal justice measures adopted under the pre-Lisbon Treaty arrangements.

6.11 The Minister does not anticipate that there would be significant costs or other financial implications for the UK if the Government were to decide to participate in the proposed Directive.

Our Conclusions

The Government's opt-in decision

6.12 **We would welcome further information on the practical implications of the Government's opt-in decision. We ask the Minister:**

- **whether he considers that the proposed Directive would be of greater operational benefit to the UK than the 2000 Council Decision in which the UK already participates;**
- **if the Government were to decide *not* to opt into the proposed Directive, whether the 2000 Council Decision would continue to apply to the UK until the end of the transition/implementation period (31 December 2020); and/or**
- **whether the UK's non-participation in the proposed Directive would make the earlier Council Decision "inoperable" for other Member States, meaning that the UK could be ejected from it before the end of 2020.**[56]

Brexit implications

6.13 **Under Article 122(1)(a) of the draft EU/UK Withdrawal Agreement, the proposed Directive will only apply if it is "binding upon and in the UK" by exit day. We ask the Minister:**

- **whether this means that the proposed Directive will only apply if the Government decides to opt in *and* the proposal is formally adopted by the Council and the European Parliament by 29 March 2019; and**
- **whether there is a realistic prospect that the proposed Directive will be adopted before the UK leaves the EU.**

6.14 **The Minister indicates that the proposed Directive will repeal, but not replace, the 2000 Council Decision even though both measures concern the exchange of information between Member States' Financial Intelligence Units. We ask him to explain why he considers the proposed Directive to be a simple repeal (rather than repeal and replace) measure and how this would affect the application of Article 122(5) of the draft EU/UK Withdrawal Agreement. Under this Article, an EU measure adopted after exit but during the transition/implementation period which "amends, builds upon or replaces" an existing measure in which the UK participates would still apply to the UK (if the Government opts in).**

6.15 **The proposed Directive does not include provisions on third (non-EU) country access to financial and bank account information held within the EU.**[57] **We ask the**

56 Under Article 4a of Protocol 21 to the EU Treaties, the Council may decide that the UK can no longer participate in an existing EU measure if the UK's non-participation in an amending measure would make it inoperable for other Member States. An amending measure includes a measure which repeals and replaces an earlier EU measure.

57 Recital (27) of the proposed Directive makes clear that the transfer of financial data outside the EU must comply with EU data protection rules on the transfer of personal data to third countries.

Minister to explain the basis on which the UK's Financial Intelligence Unit would be able to exchange financial information with its counterparts in the EU post-exit (and post-transition).

6.16 **In its Framework for the UK-EU Security Partnership, the Government says it will seek a new internal security treaty with the EU to "sustain cooperation on the basis of existing EU measures" and "provide the legal basis for ongoing cooperation". We infer from this wider context that a decision to opt into the proposed Directive would signal an intention to maintain and develop close cooperation with the EU in tackling cross-border financial crime and ask the Minister whether he envisages that the proposed Directive would be amongst the measures to be included in a new internal security treaty with the EU.**

6.17 **Pending further information, the proposed Directive remains under scrutiny. We ask the Minister to confirm the three-month deadline for opting into the proposal and to explain how the concerns identified in his Explanatory Memorandum on the autonomy of Financial Intelligence Units and the time limits for exchanging information are addressed in negotiations. We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents

Proposal for a Directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA: (39666), 8411/18 + ADDs 1–2, COM(18) 213.

Background and Brexit implications

EU anti-money laundering legislation

6.18 Existing EU anti-money laundering legislation seeks to prevent money laundering and terrorist financing by requiring banks and other businesses handling financial transactions to apply due diligence to their customers and report suspicious activity to the authorities. Its primary purpose is to prevent illicit flows of money which may damage the stability and integrity of the financial sector and undermine the EU's internal market.[58] The EU's Fourth Anti-Money Laundering Directive requires each Member State to establish a Financial Intelligence Unit responsible for receiving and analysing information on suspicious financial transactions which may be linked to money laundering or terrorist financing.[59] The UK's Financial Intelligence Unit forms part of the National Crime Agency. In December 2017, the Council and European Parliament agreed substantial changes to the EU's anti-money laundering rules.[60] They include a requirement for each Member State to:

58 The EU's Fourth and Fifth Anti-Money Laundering Directives cite an internal market (Article 114 TFEU) legal base.

59 See Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

60 See the agreed text. For further information, see our Twelfth Report HC 301–xii (2017–19), chapter 14 (31 January 2018) on the Fifth Anti-Money Laundering Directive.

- establish a central bank account registry or electronic data retrieval system to allow for quick identification of the holders of a bank or payment account; and
- ensure that their national Financial Intelligence Units have direct access to the information held in the central registry or data retrieval system and can share this information with Financial Intelligence Units in other Member States.

6.19 The changes do not give similar direct access to law enforcement authorities responsible for investigating and prosecuting other types of serious crime, nor do they regulate the exchange of financial information and analysis between these authorities and Financial Intelligence Units except in cases concerning money laundering or terrorist financing. The Commission believes that this creates a risk of "significant delays which may prejudice criminal investigations" and hinder effective cross-border cooperation.[61] Often, law enforcement authorities have to issue a "blanket request" for information to all financial institutions within their jurisdiction in order to identify where a criminal suspect holds an account.

Brexit implications

6.20 Under the EU's Fifth Anti-Money Laundering Directive (5AMLD), Member States will have until 10 January 2020 to set up their own central registries of bank or payment accounts.[62] The Commission envisages that the proposed Directive giving designated law enforcement authorities direct access to these registries and strengthening cooperation between these authorities and Financial Intelligence Units will take effect at the same time.

6.21 The UK is expected to leave the EU on 29 March 2019. EU and UK negotiators have agreed that there should be a transition/implementation period after the UK has left the EU to prevent an abrupt departure. Under the draft Withdrawal Agreement which sets out the terms of the UK's exit from the EU, EU laws will continue to apply to the UK as if it were a Member State until the transition/implementation period ends on 31 December 2020.[63] The Minister confirms that the UK will therefore be required to implement the Fifth Anti-Money Laundering Directive. Should the Government decide to opt into the proposed Directive on law enforcement access to financial information, it seems likely that it will also have to be implemented to the same timescale.

6.22 The proposed Directive does not seek to regulate the transfer of financial data to third (non-EU) countries. However, a recital to the proposal makes clear that any transfers must comply with the requirements set out in the EU's Law Enforcement Data Protection Directive or General Data Protection Regulation.[64] In most cases, this is likely to require a Commission "adequacy decision" or a legally binding instrument containing "appropriate safeguards" for the protection of personal data.

Previous Committee Reports

None on this document.

61 See p.2 of the Commission's explanatory memorandum accompanying the proposed Directive.
62 See Directive (EU) 2018/843.
63 See Article 122 of the draft Withdrawal Agreement.
64 See recital (27) of the proposed Directive.

7 Preventing document fraud and identity theft

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on strengthening the security of identity cards of EU citizens and of residence documents issued to EU citizens and their family members exercising their right of free movement
Legal base	Article 21(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(39646), 8175/18 + ADDs 1–2, COM(18) 212

Summary and Committee's conclusions

7.1 Twenty-six EU Member States issue identity cards to their nationals. These can be used instead of a passport to travel within the EU as well as to enter the EU from a third (non-EU) country. EU citizens who are not nationals of the Member State in which they live ("mobile EU citizens") are entitled to obtain a permanent residence document after five years of continuous lawful residence. Family members of mobile EU citizens who are not themselves EU citizens must obtain a residence card to prove that they have a right to live in the host Member State. These residence documents cannot be used as travel documents, but a residence card used with a passport gives a third country family member the right to enter the EU without a visa when accompanying or joining an EU citizen. Given this connection with rights conferred on EU citizens and their families under the EU Free Movement Directive,[65] the Commission considers that identity cards and residence documents "have an intrinsic European dimension" and are also "a key element in the fight against terrorism and organised crime"—many of the EU's security measures, such as enhanced checks at the EU's external border, depend on secure travel and identity documents.[66]

7.2 The proposed Regulation is intended to make national identity cards and residence documents issued by Member States less susceptible to falsification and identity fraud, close security gaps within the EU and create the trust needed to underpin free movement. It would apply to all Member States but the Commission makes clear that the proposal would not require them to introduce identity cards where they are not already provided for in national law, nor would it introduce a uniform EU identity card.[67] Identity cards and residence cards issued to the family members of mobile EU citizens that do not meet

65 See Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

66 See pp 1 and 5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

67 See recital (6) of the proposed Regulation.

the new standards would be phased out over a five-year period (two years for the least secure documents). The Commission envisages that the proposed Regulation would apply in Member States 12 months after the date on which it enters into force.[68]

7.3 In her Explanatory Memorandum of 10 May, the Immigration Minister (Caroline Nokes) accepted that better document security would yield "direct savings and a reduced administrative burden for citizens and their family members, public administrations and public and private service operators", as well as contributing to a reduction in document fraud and identity theft and improved security within the EU and at its external borders. She confirmed that the proposed new requirements for national identity cards would not apply to the UK as the UK does not issue identity cards, but said they would apply to Gibraltar's identity card system. The Government was "exploring what this might entail for Gibraltar" as Gibraltar's identity cards do not comply with the new standards proposed by the Commission. These are based on standards developed by the International Civil Aviation Organisation (ICAO) on machine-readable travel documents and biometric identifiers. The Minister indicated that "the soonest the Regulation as drafted could be operational is late 2019, with non-compliant documents phased out by late 2024".

7.4 In our Report agreed on 23 May, we noted that the UK had a clear interest in ensuring that national identity cards were as secure as possible, even after Brexit, as EU citizens whose rights are protected under the Withdrawal Agreement would retain the right to use their national identity cards to enter and leave the UK long after the UK had ceased to be a member of the EU. We asked the Minister:

- whether the changes proposed to national identity cards would make them as secure as passports;
- how border control authorities would be able to differentiate between EU citizens who are entitled, under the Withdrawal Agreement, to use their national identity cards to travel to and from the UK and those who are not and would need to travel with a passport; and
- whether the proposed Regulation would necessitate changes to the UK's Biometric Residence Permit when issued to third country family members of EU citizens.

7.5 We also requested further information on the Government of Gibraltar's position on the proposed Regulation, including its assessment of the impact that issuing non-compliant identity cards after 2025 would have on movement across the Spain/Gibraltar border.

7.6 In her letter of 15 June, the Minister says that "modern biometric national identity cards which meet, or exceed, minimum ICAO recommendations can be as secure as a biometric passport". However, not all national identity cards meet ICAO standards. Whilst the counterfeiting of a passport may involve "a higher volume of work" than for an identity card, she considers that identity cards can contain "numerous security features within a small area making them difficult to counterfeit effectively".

7.7 The Minister notes that the draft EU/UK Withdrawal Agreement envisages a post-exit transition/implementation period lasting until 31 December 2020. During this

68 The Regulation will enter into force 20 days after its publication in the EU Official Journal.

period, there would be no change to the current requirements concerning the use of travel documents by EU citizens, UK nationals and their family members and so no need to differentiate between EU citizens entitled to travel to and from the UK with a national identity card and those required to produce a passport. The right to travel to and from the UK with a national identity card would continue for a further five years (post-transition) for EU citizens who have exercised free movement rights and are covered by Part Two of the Withdrawal Agreement on Citizens' Rights.[69] Once the further five-year period has ended (in December 2025), the UK and the EU27 can refuse to accept as travel documents identity cards which do not include a chip complying with ICAO standards on biometric identification. As a consequence:

> "In terms of travel documents used for entry and exit, there will be no impact on the UK and Gibraltar during the implementation period and for those covered by the Withdrawal Agreement for at least five years afterwards."

7.8 The Minister adds that "a decision on identity cards in relation to those not covered by the Withdrawal Agreement is yet to be made". She says that the impact on Gibraltar is still under consideration and undertakes to provide further information "when available".

7.9 The Minister is unable, at this stage, to tell us whether the proposed Regulation would necessitate changes to the UK's Biometric Residence Permit when issued to third country family members of EU citizens—this will depend on the outcome of discussions with the EU on the UK's continued participation in EU measures establishing a uniform format for residence permits. She adds, however, that "any replacement will have comparative (sic) levels of security to prevent fraudulent abuse".

7.10 Finally, the Minister confirms that the Regulation (if adopted) would cease to apply at the end of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement and would not continue during a further six-month "grace period" referred to in her Explanatory Memorandum.

Our Conclusions

7.11 **It is disappointing that the Minister is unable to provide any information on the Government of Gibraltar's position on the proposed Regulation, or an assessment of the likely impact of the proposal on movement across the Spain/Gibraltar border when the new requirements are expected to take effect—likely to be late 2019, with a maximum five-year phasing-in period for ICAO-compliant biometric identity cards. We expect her to provide this information before the proposed Regulation is brought to the Council for a political agreement, general approach or approval of a negotiating mandate.**

7.12 **The Minister tells us that, for border control purposes, there will be no need to differentiate between EU citizens who are entitled to use their national identity cards to travel to and from the UK under the terms of the draft EU/UK Withdrawal Agreement and those who are not (and will need to produce a passport) "until at least 31 December 2020". We ask her when she expects the Government to reach a decision on the use of identity cards as travel documents by EU citizens who are not covered by Part Two of the Withdrawal Agreement *after* 2020.**

69 See Article 13 of the draft EU/UK Withdrawal Agreement.

7.13 **The proposed Regulation would make the collection of biometric information—a facial image and two fingerprints—mandatory for Member States that issue identity cards. Analysis by Statewatch estimates that this would affect almost 85% of the EU's citizens (excluding the UK and Denmark who do not issue identity cards):**

> **"[…] 175 million of whom would be subject to a new obligation to provide fingerprints for ID cards. The remaining 195 million, who are already under such an obligation according to existing national law, would also be affected by the new measures—once introduced at EU level there would be no way to reverse requirements for fingerprints in ID cards through national measures alone."**[70]

7.14 **In her progress reports on negotiations, we ask the Minister to include information on Member States' reactions to the proposed Regulation, particularly those in which there is currently no obligation to include biometric information in national identity cards.**

7.15 **Pending further information, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Regulation on strengthening the security of identity cards of EU citizens and of residence documents issued to EU citizens and their family members exercising their right of free movement: (39646), 8175/18 + ADDs 1–2, COM(18) 212.

Background

7.16 Our earlier Report listed at the end of this chapter provides a more detailed overview of the proposed Regulation and the Government's position. In summary, the proposal would:

- introduce minimum security features for national identity cards based on the International Civil Aviation Organisation's standards for machine-readable travel documents (ICAO Document 9303);
- make the inclusion of biometric identifiers—a facial image and two fingerprints—mandatory for Member States that issue identity cards;[71]
- specify the information that Member States must, as a minimum, include in residence documents issued to mobile EU citizens; and
- require Member States to issue residence cards for third country family members of mobile EU citizens in a uniform format.

7.17 Under Article 13 of the draft EU/UK Withdrawal Agreement, qualifying EU citizens who are lawfully resident in the UK before the end of the post-exit transition/implementation period (31 December 2020) will be entitled to use their national identity

70 See Statewatch Analysis, *Fingerprints in identity cards: unnecessary and unjustified.*
71 Children under the age of 12 would not be required to give fingerprints.

cards to travel to and from the UK until at least the end of 2025. After 2025, the UK may stipulate that it will only accept the use of identity cards as travel documents if they comply with ICAO standards on biometric identification.

7.18 The right to use an identity card as a travel document after the end of the transition/implementation period does not extend to EU citizens travelling to and from the UK post-2020 who are not covered by Part Two of the draft EU/UK Withdrawal Agreement on Citizens' Rights.

Previous Committee Reports

Twenty-ninth Report HC 301–xxviii (2017–19), chapter 7 (23 May 2018).

8 Justice Programme

Committee's assessment	Legally and politically important
Committee's decision	(a) Not cleared from scrutiny; further information requested; drawn to the attention of the Justice Committee; (b) Cleared from scrutiny
Document details	(a) Proposed Regulation establishing the Justice Programme; (b) Commission Staff Working Document Impact Assessment Accompanying the Proposed Regulations establishing the Rights and Values Programme, the Justice Programme and the Creative Europe Programme
Legal base	(a)Articles 81(1), (2) and 82(1) TFEU, ordinary legislative procedure, QMV; (b)—
Department	Ministry of Justice
Document Numbers	(a) (39816), 9598/18 + ADD 1, COM(18) 384; (b) (39815), 9616/18 + ADD 1, SWD(18) 290

Summary and Committee's conclusions

8.1 The proposed Justice programme (see document (a)) will continue to support the development of an integrated EU justice area and cross-border judicial cooperation envisaged by the current programme which runs from 2014–2020. The UK does not participate in the current Justice programme.[72]

8.2 The new programme will run from January 2021 to December 2027. It will cover matters such as:

- cooperation in civil matters, including civil and commercial matters, insolvencies, family matters and successions;
- judicial cooperation in criminal matters;
- judicial training, including language training on legal terminology, with a view to fostering a common legal and judicial culture;
- effective access to justice in Europe, including rights of victims of crime and procedural rights in criminal proceedings; and
- initiatives in the field of drugs policy (judicial cooperation and crime prevention aspects).

8.3 The programme's objectives are to be achieved through the award of grants to eligible bodies within participating Member States for activities provided for by the terms of the

72 This current programme cleared scrutiny in the previous Committee on 23 May 2012. See Third Report HC 86–iii (2012–13), chapter 17 (23 May 2012).

proposed Regulation. The specific types of activities funded by the programme are aimed at improving the knowledge of EU law and policies,[73] particularly of practitioners and the judiciary.

8.4 In addition to the programme being based on mutual recognition and trust, there is particular emphasis in this new proposal to Member States' respect for the Rule of Law. Recital 24 of the proposed Regulation states "Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in the case of generalised deficiencies as regards the rule of law in Member States, as respect for the rule of law is an essential precondition for sound financial management and effective EU funding". This reflects the newly proposed Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States: (39685), 8356/18 and wider concern about the state of the rule of law in some Member States, principally Poland.

8.5 The original intention of the Commission was to merge the 2014–20 Rights, Equality and Citizenship Programme, the Europe for Citizens programme, the Creative Europe programme and the Rights programme. This was to simplify and streamline funding, develop links between the different programmes and enhance EU impact and added value by consolidating available funding. The Commission analysed the potential impact of such a proposal in a Staff Working, document (b). However, as a result of this impact assessment, the Commission decided to have a self-standing Creative Europe Fund and to create a Justice, Rights and Values Fund with two underlying programmes: the Justice programme and the Rights and Value programme. We report on the Creative Europe Fund in another chapter of this Report of 27 June.[74]

8.6 The combined Justice and Rights and Values fund will have a budget for the period of the programmes of €947 million (£830.3 million).[75] The Justice programme itself will have a financial allocation for the period of that programme of €305 million (£267.4 million).

8.7 The proposed Regulation would need to be adopted before the beginning of January 2021, but adoption is likely to be earlier than that as part of the wider Multi-annual Financial Framework (MFF). It is possible then that if the UK opt-in to the proposal, it could apply to the UK before the end of the transition/implementation period. However, the proposal is currently drafted on the basis of the UK's non-participation in the light of UK exit from the EU.

8.8 In terms of Brexit implications, Article 5 is the most significant provision in the proposed Regulation. It sets out the basis of third country association with the programme:

- Non-EU EEA States may participate on the basis of the framework for cooperation established under the EEA Agreement; and
- Acceding, candidate, European Neighbourhood countries and other countries on the basis of corresponding legal instruments.

73 In addition to judicial training, other activities envisaged include: Mutual learning, cooperation activities, exchange of good practices, peer reviews, development of ICT tools; Awareness-raising activities, dissemination, conferences; Support for main actors (key European NGOs and networks, Member States' authorities implementing Union law); Analytical activities (studies, data collection, development of common methodologies, indicators, surveys, preparation of guides).

74 See chapter xx of this Report: (39821), 9170/18, COM(18) 366.

75 Current exchange rate—€1: £0.87680.

8.9 In an Explanatory Memorandum of 15 June 2018, the Secretary of State for Justice (Mr David Gauke) says (in brief) that:

- The UK did not participate in the current Justice programme because the previous Government concluded that it did not provide the UK with value for money when UK contributions were compared with successful UK bids for funds;
- As regards participation as a third country after the end of the transition/implementation period, "depending on the nature of any agreement which the UK reaches with the EU for judicial cooperation after our exit, it might be appropriate to consider where we might want access to the programme by that route";
- Despite some uncertainties as to when the programme will be adopted and what the UK's future relationship with the EU will be, the UK intends to fully exercise its current opt-in rights and will apply the usual criteria for making an opt-in decision as well as the implications for any decision for the UK's exit negotiations; and
- It is not yet clear what the financial arrangements would be for the UK should it negotiate to participate in the programme as a third country after it leaves the EU.

8.10 **Given that the UK does not participate in the current Justice programme, we are interested to hear that the Government has not ruled out future participation as a third country after the transition/implementation period, depending on the nature of EU-UK future judicial cooperation. We note in this regard the recent publication of the EU Article 50 taskforce slides on future** EU-UK police and criminal justice cooperation **and the Government's slides on a** "Framework for the UK-EU partnership: Civil judicial cooperation". **The Minister says that it is not yet clear what the financial arrangements would be for the UK to participate in the programme as a third country. We would be grateful if he could let us know the position once it is clearer.**

8.11 **We note that the Government has until 11 September to notify its opt-in decision. If possible, it would be helpful for the Committee to have some indication of the Government's likely decision and reasoning for that before 13 July. This will enable us to reconsider the matter before the Summer recess and possibly to clear the proposal from scrutiny, if appropriate. If this is not possible, then we request that the Minister write to us in time for our first meeting in September with this information.**

8.12 **In the meantime, we retain document (a) under scrutiny but clear document (b) as it is non-legislative in nature and simply provides background to the genesis of document (a). We draw doucument (a) to the attention of the Justice Committee.**

Full details of the documents

(a) Proposed for a Regulation of the European Parliament and of the Council establishing the Justice Programme: (39816), 9598/18 + ADD 1, COM(18) 384; (b) Commission Staff

Working Document Impact Assessment Accompanying the Proposed Regulations establishing the Rights and Values Programme, the Justice Programme and the Creative Europe Programme: (39815), 9616/18 + ADD 1, SWD(18) 290.

Previous Committee Reports

None; but see the Third Report HC 86–iii (2012–13), chapter 17 (23 May 2012); Fifty-fourth Report HC 428–xlix (2010–12), chapter 12 (1 February 2012).

9 US sanctions against EU firms with operations in or with Iran

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Defence Committee, Foreign Affairs Committee and the International Trade Committee
Document details	Commission Delegated Regulation amending the Annex to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom
Legal base	Article 1 of Council Regulation (EC) No 2271/96;—
Department	International Trade
Document Number	(39872), 9831/18 + ADD 1, C(18) 3572

Summary and Committee's conclusions

9.1 In July 2015, the EU, China, France, Germany, Russia, the UK and the US reached an agreement with Iran on the dismantling of the latter's nuclear weapons programme. The agreement is known as the Joint Comprehensive Plan of Action or JCPOA. In January 2016, after international monitors concluded Iran had fulfilled its initial requirements under the agreement, the EU and the US lifted specific sanctions against Iran including a ban on exploitation, sale or purchase of Iranian oil (a significant source of revenue for the country).

9.2 On 8 May 2018, US President Donald Trump decided to withdraw his country from the JCPOA and to reinstate all sanctions that had been lifted as a result of the Agreement. The re-imposed US sanctions will all take effect between 6 August and 4 November 2018, including a ban on exploitation of Iran's oil fields. Crucially, the American decision also creates secondary sanctions for any foreign (e.g. EU-based) companies that do business in or with Iran after the US deadline.[76] The EU, with the UK's support, remains committed to the JCPOA. It has decided to maintain current ties with Iran (for example through cooperation on energy matters and levels of bilateral trade), and attempt to mitigate the impact of the US sanctions on EU companies engaged in trade with Iran.

9.3 In particular, the European Commission has proposed the reactivation of the EU's 'Blocking Statute', which will legally prohibit companies based in the EU from complying with the extraterritorial effects of US sanctions (except if they have been expressly authorised to do so by the Commission);[77] allow them to seek recovery of damages arising from them; and prevent any court judgements based on the sanctions from having effect

76 For example, French energy company Total has said it will pull out of an energy deal with Iran unless it can be protected from the EU's secondary sanctions.

77 European Commission, "European Commission acts to protect the interests of EU companies investing in Iran as part of the EU's continued commitment to the Joint Comprehensive Plan of Action" (18 May 2018).

in the EU. Enforcement of the Statute is the responsibility of individual Member States, which must "determine the sanctions to be imposed in the event of breach of any relevant provisions of this Regulation", which "must be effective, proportional and dissuasive".

9.4 A formal proposal to reactivate the Blocking Statute in response to the re-imposition of US sanctions, in the form of a Delegated Commission Regulation, was published on 6 June 2018. It will take effect on or before 6 August, unless either a qualified majority of Member States or a simple majority in the European Parliament veto the measure.

9.5 The Secretary of State for International Trade (Dr Liam Fox) submitted an Explanatory Memorandum on the proposal on 18 June, explaining that the Government supports the measure given its "long-held position […] to oppose US extra-territorial sanctions in relation to Iran, Libya and Cuba, that target persons without any connection to the US and are otherwise outside of the US' jurisdiction". As such, the Government also "intend[s] to uphold the policy intent of this regulation in our statute book once we have left the EU, so that we can mitigate the impact of extra-territorial sanctions on [UK] trading interests". The Secretary of State also writes that the UK "will be engaging at a national level and EU level to ensure that business gets as much clarity and guidance as possible" on how to comply with the amended legislation.

9.6 **We thank the Secretary of State for the information provided he has provided on the Blocking Statute, and note the Government's support for the measure to limit the extraterritorial effect of US sanctions on UK and EU firms.**

9.7 **However, the practical impact of the measure is not yet clear, as we understand its enforcement in the 1990s in response to the extraterritorial effects of previous US sanctions—targeting commercial links with Iran, Libya and Cuba—was fragmented at best. If the US administration is not responsive to the pressure exerted by the reactivation of the Statute, it puts EU and UK companies in the position of having to choose between risking enforcement measures at home (if they choose to comply with the American sanctions) or in the US (if they abide by the Blocking Statute and ignore the US legislation). We note that the European Investment Bank, which is owned by the EU's Member States, has already expressed concern about being asked to provide investment support for Iran to compensate for restrictions on private investment[78] because it requires access to US capital markets for its general operations.[79] Given the potential commercial ramifications of being shut out of the American market, similar concerns are likely to abound in the private sector as well; we therefore welcome the fact the Secretary of State is pressing the European Commission for guidance for businesses.**

9.8 **Nevertheless, we appreciate the Government's position and now clear the Delegated Regulation from scrutiny, on the condition that the Minister inform us if either the European Parliament or the Council vote to reject the proposal. We draw these developments to the attention of the Defence, Foreign Affairs and International Trade Committees. We also ask the Minister to inform us of any official guidance to be issued by the European Commission to companies on how to ensure compliance with the amended Blocking Statute.**

78 See paragraph 9.13 for more information on the role of the European Investment Bank in Iran.

79 https://www.reuters.com/article/us-iran-nuclear-europe-eib/eib-says-cannot-ignore-u-s-sanctions-on-iran-idUSKCN1J21XR.

Full details of the documents

Commission Delegated Regulation amending the Annex to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom: (39872), 9831/18 + ADD 1, C(18) 3572.

Background

The Joint Comprehensive Plan of Action

9.9 Since 2006, the EU has been involved in diplomatic efforts between China, France, Germany, Russia, the UK and the US on the one hand, and Iran on the other, to bring an end to the nuclear weapons programme of the latter. This resulted in the Joint Comprehensive Plan of Action (JCPOA) in July 2015. The JCPOA requires Iran to use its nuclear programme exclusively for peaceful purposes. In return the UN, US and EU would lift their nuclear-related sanctions[80] against the country (which included an import ban on Iranian oil). The Plan of Action is overseen by a Joint Commission where the seven countries party to the negotiations, plus the EU, are represented.

9.10 The Plan of Action took effect in October 2015 ('Adoption Day'), when the EU adopted the necessary legislation allowing it to lift its nuclear-related economic and financial sanctions[81] against Iran when the latter had ended its military nuclear programme.[82] In January 2016, the International Atomic Energy Agency (IAEA) certified that the Iranian Government fulfilled its commitments under the agreement, and at that point, the EU, US and UN revoked their sanctions ('Implementation Day').[83]

US withdrawal from the JCPOA and EU response

9.11 The next stage of the JCPOA is 'Transition Day', had been due to take place in October 2023 (or earlier if the IAEA concludes before then that all remaining nuclear material in Iran is used only for peaceful activities). This would trigger the lifting of the remaining nuclear-related sanctions.[84] The final stage of the Plan of Action, 'Termination Day', would then take place in 2025 at which point all remaining sanctions would be terminated.

9.12 However, on 8 May 2018 US President Donald Trump announced that he was withdrawing America from the JCPOA and would be reinstating the US sanctions against Iran which had been in place prior to 'Implementation Day' (see above). Those sanctions would also affect any companies, American or not, which continued to maintain commercial links in or with Iran in contravention of US law. On 9 May, the EU issued a declaration reconfirming its commitment to the continued full and effective

80 Sanctions imposed by the EU in view of the human rights situation in Iran, support for terrorism and other grounds are not part of the JCPOA.

81 The sanctions lifted by the EU in January 2016 included the buying and selling of oil; the provision of banking and insurance services; and shipping and transport services.

82 See the EU Official Journal of 18 October 2015.

83 See the Council Decision 2016/37. This set the date of entry into force of the revocation of the EU's nuclear-related sanctions at 16 January 2016. The JCPOA contains a 'snapback' mechanism allowing the EU to reinstate sanctions if Iran fails to meet its obligations.

84 The remaining sanctions relate primarily to the arms embargo, sanctions related to missile technology, restrictions on certain nuclear-related transfers and activities, provisions concerning certain metals and software which are subject to an authorisation regime.

implementation of the JCPOA and its "determination to work with the international community to preserve it, so long as Iran continues to respects its commitments". On 15 May, the EU's High Representative Federica Mogherini met with the Foreign Ministers of France, Germany, the United Kingdom and Iran to discuss the US decision, and agree on a common set of lines of action and measures to put in place.

9.13 Subsequently, the European Commission proposed a number of actions to demonstrate the EU's commitment to the Joint Plan despite the US withdrawal, and to protect EU companies with operations in Iran from being adversely affected by the re-imposition of American sanctions. These measures are:

- Allowing the European Investment Bank (EIB) to finance projects in Iran using its financial guarantee under the EU budget. This would allow the EIB to support EU investment in Iran;
- Continuing to engage in sectoral cooperation with the Iranian authorities, for example with respect to energy policy (with a pre-planned visit to Tehran by EU Energy Commissioner Miguel Arias Cañete going ahead in May as planned);[85]
- Encouraging individual Member States, including the UK, to explore the possibility of one-off bank transfers to the Central Bank of Iran. This, it said, could help the Iranian Government to receive oil-related revenues which would otherwise be the target of US sanctions against EU companies active in oil transactions with Iran; and
- Reactivating the EU's "Blocking Statute", a piece of legislation from the 1990s that aimed at indemnifying EU companies against US sanctions for having commercial dealings in or with Cuba. We have explored this element of the EU response in more detail below, as it requires an EU-level legislative act and therefore falls within the remit of the European Scrutiny Committee.

The EU's "Blocking Statute"

9.14 The EU's Blocking Statute (Regulation 2271/96) aims to protect EU businesses "against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom". It was approved by the EU's Member States in the 1990s in response to the extraterritorial effects of US sanctions against Cuba, Libya and Iran adopted during Bill Clinton's presidency. It has not been updated since in response to any other sanctions.[86]

9.15 The Regulation provides protection against specific overseas legislation (in practice, US laws) listed in its Annex where it affects EU companies "engaging in international trade and/or the movement of capital and related commercial activities between the [EU] and third countries". Any persons whose economic and financial interests are affected by the foreign legislation listed must inform the European Commission accordingly within

85 The Commission is also expected to provide financial assistance for Iran's economic development under the EU's Development Cooperation Instrument and the Partnership Instrument.

86 The European Commission proposed a recast of the Regulation in 2015, but this proposal was never formally adopted. See also the previous Committee's Reports of 18 March 2015 and 9 September 2015.

30 days from the date on which it obtained such information.[87] Concretely, for overseas sanctions listed in the Regulation, the law legally prohibits companies based in the EU from complying with them in their dealings with Iran. It also allows them to recover damages arising from such sanctions from the person causing them, and bars any non-EU court judgements based on those sanctions from having effect in any EU Member State. As the Blocking Statute is an EU Regulation, it is directly applicable in all Member States and does not require any national implementing legislation.

9.16 Following discussions with the Member States and the European Parliament in late May, the European Commission announced measures to preserve the JCPOA despite the US' withdrawal (see paragraph 9.12 above) including the reactivation of the Blocking Statute because the American sanctions "unduly affect the interests of natural and legal persons established in the Union and engaging in trade and/or the movement of capital and related commercial activities between the Union and Iran" and "violate international law and impede the attainment of the Union's objectives".

9.17 On 6 June 2018, the European Commission therefore formally proposed the reactivation of the Blocking Statute (which requires a Delegated Regulation) by amending the Annex, which lists the US legal acts from which the EU is seeking to protect its companies. This proposed Annex enumerates the specific US sanctions of which the EU is seeking to limit the extraterritorial effects, such as the 'Iran Freedom and Counter-Proliferation Act of 2012' (which requires US banks not to provide financial services to EU companies involve in trade with Iran). The practical impact of the new Blocking Statute remains to be seen as enforcement—i.e. ensuring that companies do not comply with the sanctions unless authorised to do so by the Commission—is largely the responsibility of individual Member States. In the UK, the original Blocking Statute was given 'teeth' by means of the Extraterritorial US Legislation Order 1996.

9.18 The Secretary of State for International Trade (Dr Liam Fox) submitted an Explanatory Memorandum on the Blocking Statute on 18 June 2018, expressing the Government's support for the measure. The aim is to have the amendments to the Blocking Statute take effect before 6 August 2018, when the first batch of US sanctions is due to take effect.

9.19 The Delegated Regulation was formally published on 6 June, and under EU law the Council and the European Parliament have a maximum of two months to block the measure (by qualified majority in the Council or by simple majority in the Parliament).[88] However, either institution can pass a motion before the deadline to notify the Commission that it intends not to object to the Delegated Regulation. Member State diplomats had a first exchange of views on the proposal on 7 June. It is now expected to be discussed at ambassador level in COREPER on 11 July, ahead of formal consideration by Ministers at the Foreign Affairs Council on 16 July 2018.

Previous Committee Reports

None.

87 The European Commission can authorise compliance with the US sanctions on a case-by-case basis if non-compliance could "seriously damage their interests or those of the [EU]".

88 See article 8 of the Blocking Statute and Article 290(2)(b). As this is not a proposal which requires the approval of the Council, the House of Commons scrutiny reserve does not apply.

10 EU-Singapore Partnership and Cooperation Agreement

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Council Decision on the signing, on behalf of the Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part
Legal base	Articles 207 and 212 in conjunction with Article 218(5) TFEU; QMV
Department	Foreign and Commonwealth Office
Document Number	(39873), 7322/18;—

Summary and Committee's conclusions

10.1 Negotiations on a EU-Singapore Partnership and Cooperation Agreement (PCA) were completed in 2013, the same year as the completion of the separate EU-Singapore Free Trade Agreement (FTA).

10.2 The PCA provides a framework for relations between the EU, its Member States and Singapore; covering issues such as health, environment, climate change, energy tax, education and culture, labour, employment and social affairs, science and technology, and transport. It also addresses legal and illegal migration, money laundering, illicit drugs, organised crime and corruption.

10.3 The PCA has been held up due to issues related to provisional application i.e. whether all or parts of it should be applied before it is ratified (by Member States) and concluded (by the EU). It has also given rise to issues concerning the applicability of the UK opt-in. The more significant FTA was held up by a dispute over competence which was resolved by the Court of Justice's formal Opinion 2/15 of May 2017.

10.4 This proposal would authorise the EU to sign the PCA. Being a mixed agreement,[89] it also needs to be signed by Member States in their own right. Separate proposals would need to be pursued in order to trigger provisional application of the PCA or its conclusion (ratification) by the EU.

10.5 In a letter of 14 June 2018 the Minister for Europe and the Americas (Sir Alan Duncan) sought clearance of this document from scrutiny ahead of the a COREPER meeting of 20 June. We now understand from FCO officials that the signing of the PCA is being brought into line with the signing of the FTA and as a consequence the deadline has moved to 9 July 2018. We do not, therefore, need to comment on the timing of this matter.

89 A mixed agreement is entered into by the EU and its Member States separately, as each are exercising competence over parts of the PCA.

10.6 In his Explanatory Memorandum of 15 June 2018 the Minister indicates that

a) the UK has been a political champion of the SPA;

b) it will not be possible for the UK to ratify the PCA before the UK formally leaves the EU in March 2019;

c) its provisional application will be discussed after signature; and

d) the UK continues to assert that the UK opt-in is engaged to that part of the proposal which covers Article 19(6) of the PCA itself,[90] and the UK has not opted in. A minute statement will be made in the Council minutes to this effect.

10.7 **As the PCA does not raise any political issue, we are content to clear it this document from scrutiny.**

10.8 **As we have indicated in relation to other documents, we, like other Member States and the EU institutions, do not agree with the Government that the UK opt-in is engaged in a case, such as this, where the EU instrument does not have a legal base falling within Part Three of Title V TFEU. Our position is reinforced by the reasoning of the CJEU in paragraph 218 of its Opinion 2/15.**

10.9 **The Government's assertion that part of the Decision will not apply to the UK is not reflected in the legal text which, on its face, applies in its entirety to the UK. The proposal of a minute statement could help alleviate the confusion created by the Government's minority view.[91] We ask the Minister to provide a copy of the minute statement he intends to lay.**

10.10 **Under the draft Agreement on the withdrawal of the UK from the EU, during any transitional/implementing period (scheduled to be from 29 March 2019 to 31 December 2020) the UK would have to comply with the obligations of the SPA to the extent that it applies either by provisional application or because it has come fully into effect after ratification/conclusion. We therefore ask the Minister (a) whether the Government has taken any steps to reach an agreement with Singapore, or anticipates that it will do so, for the UK to benefit from the SPA during the transitional/implementation period. If not, will the absence of such agreement have any significant practical effect? Also will the UK be taking steps with Singapore to agree an SPA to come into effect once any transitional/implementation period has passed?**

10.11 **The UK policy is that, normally, Member States should exercise their competence (including shared competence) to enter into agreements with third countries, leaving the EU to exercise only its exclusive competence.[92] The absence of any reference to the extent to which the EU is acting in the current text compromises this policy. Has the Minister taken any steps to clarify the extent to which the EU is exercising competence?**

90 "The Parties agree to negotiate, upon request, with a view to concluding an agreement between the Union and the Republic of Singapore regulating the readmission of nationals of the Republic of Singapore and of the Member States, nationals of other countries and stateless persons."

91 That confusion is exacerbated by the recitals o the PCA itself which notes that "that the provisions of this Agreement United Kingdom and/or Ireland is bound as part of the Union in accordance with the Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union".

92 Where the EU has exclusive competence only it can act. Where competence is shared either the EU or the Member States (in their own right) can act—the choice is political.

Full details of the documents

Proposal for a Council Decision on the signing, on behalf of the Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part: (39873), 7322/18;—.

Previous Committee Reports

None, but see in respect of an earlier version of this proposal—Thirty-third Report HC 219–xxxii (2014–15), chapter 8 (11 February 2015); Forty-sixth Report HC 83–xli (2013–14), chapter 16 (9 April 2014); Forty-first Report HC 83–xxxviii (2013–14), chapter 6 (19 March 2014).

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

Department for Culture, Media and Sport

(39763)
9264/18
+ ADDs 1–8
COM(18) 269

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Engaging, Connecting and Empowering young people: a new EU Youth Strategy.

Department for Environment, Food and Rural Affairs

(39853)
9662/18
COM (18) 376

Recommendation for a COUNCIL DECISION to authorise the Commission to open negotiations on behalf of the European Union to accede to the Convention for the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean.

HM Treasury

(39500)
6229/18
COM (18) 98

Communication from the Commission a new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020 The European Commission's contribution to the Informal Leaders' meeting on 23 February 2018.

(39682)
8353/18
COM (18) 321

Communication from the Commission a Modern Budget for a Union that Protects, Empowers and Defends the Multiannual Financial Framework for 2021–2027.

(39741)
9217/18
COM(18) 400

Communication from the Commission 2018 European Semester Country-specific recommendations.

(39742)
9216/18
COM(18) 427

Recommendation for a Council Recommendation on the 2018 National Reform Programme of the United Kingdom and delivering a Council opinion on the 2018 Convergence Programme of the United Kingdom.

(39743)
9212/18
COM(18) 424

Recommendation for a Council Recommendation on the 2018 National Reform Programme of Slovakia and delivering a Council opinion on the 2018 Stability Programme of Slovakia.

(39744) 9210/18 COM(18) 421	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Portugal and delivering a Council opinion on the 2018 Stability Programme of Portugal.
(39745) 9207/18 COM(18) 418	Recommendation for a Council Recommendation on the 2018 National Reform Programme of the Netherlands and delivering a Council opinion on the 2018 Stability Programme of the Netherlands.
(39746) 9206/18 COM(18) 417	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Malta and delivering a Council opinion on the 2018 Stability Programme of Malta.
(39747) 9204/18 COM(18) 414	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Lithuania and delivering a Council opinion on the 2018 Stability Programme of Lithuania.
(39748) 9203/18 COM(18) 413	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Latvia and delivering a Council opinion on the 2018 Stability Programme of Latvia.
(39749) 9205/18 COM(18) 415	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Luxembourg and delivering a Council opinion on the 2018 Stability Programme of Luxembourg.
(39750) 9201/18 COM(18) 407	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Ireland and delivering a Council opinion on the 2018 Stability Programme of Ireland.
(39751) 9199/18 COM(18) 405	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Germany and delivering a Council opinion on the 2018 Stability Programme of Germany.
(39752) 9198/18 COM(18) 409	Recommendation for a Council Recommendation on the 2018 National Reform Programme of France and delivering a Council opinion on the 2018 Stability Programme of France.
(39753) 9197/18 COM(18) 425	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Finland and delivering a Council opinion on the 2018 Stability Programme of Finland.
(39754) 9196/18 COM(18) 406	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Estonia and delivering a Council opinion on the 2018 Stability Programme of Estonia.

(39755) 9195/18 COM(18) 404	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Denmark and delivering a Council opinion on the 2018 Stability Programme of Denmark.
(39756) 9194/18 COM(18) 403	Recommendation for a Council Recommendation on the 2018 National Reform Programme of the Czech Republic and delivering a Council opinion on the 2018 Stability Programme of the Czech Republic.
(39757) 9193/18 COM(18) 412	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Cyprus and delivering a Council opinion on the 2018 Stability Programme of Cyprus.
(39758) 9192/18 COM(18) 410	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Croatia and delivering a Council opinion on the 2018 Stability Programme of Croatia.
(39759) 9191/18 COM(18) 402	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Bulgaria and delivering a Council opinion on the 2018 Stability Programme of Bulgaria.
(39760) 9190/18 COM(18) 429	Report from the Commission Belgium Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
(39761) 9189/18 COM(18) 419	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Austria and delivering a Council opinion on the 2018 Stability Programme of Austria.
(39765) 9245/18 COM (18) 370	Report from the Commission to the European Parliament and the Council Convergence Report 2018 (prepared in accordance with Article 140(1) of the Treaty on the Functioning of the European Union)
(39784) 9220/18 COM(18) 401	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Belgium and delivering a Council opinion on the 2018 Stability Programme of Belgium.
(39785) 9214/18 COM(18) 408	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Spain and delivering a Council opinion on the 2018 Stability Programme of Spain.
(39786) 9213/18 COM(18) 423	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Slovenia and delivering a Council opinion on the 2018 Stability Programme of Slovenia.

(39787) 9211/18 COM(18) 422	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Stability Programme of Romania.
(39788) 9209/18 COM(18) 420	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Poland and delivering a Council opinion on the 2018 Stability Programme of Poland.
(39789) 9202/18 COM(18) 411	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Italy and delivering a Council opinion on the 2018 Stability Programme of Italy.
(39790) 9200/18 COM(18) 416	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Hungary and delivering a Council opinion on the 2018 Stability Programme of Hungary.
(39817) 9591/18 COM(18) 360	Draft amending budget No 4 to the general budget for 2018 accompanying the proposal to mobilise the European Union Solidarity Fund to provide Assistance to Bulgaria, Greece, Lithuania and Poland
(39818) 9590/18 COM(18) 361	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the European Union Solidarity Fund to provide assistance to Bulgaria, Greece, Lithuania and Poland.
(39834) 9564/18 COM(18) 431	Recommendation for a Council Recommendation with a view to correcting the significant observed deviation from the adjustment path toward the medium-term budgetary objective in Hungary.
(39835) 9559/18 +ADD 1 COM(18) 432	Recommendation for a Council Decision establishing that no effective action has been taken by Romania in response to the Council Recommendation of 5 December 2017.
(39841) 9569/18 COM(18) 319	Report from the Commission to the Council Commission report to the Council pursuant to Article -11(2) of Regulation (EC) No 1466/97 on the enhanced surveillance mission in Romania, of 10–11 April 2018.
(39842) 9575/18 —	Commission Recommendation of 23.5.2018 with a view to giving warning on the existence of a significant observed deviation from the adjustment path toward the medium-term budgetary objective to Hungary.

(39843) 9572/18 —	Commission Recommendation of 23.5.2018 with a view to giving warning on the existence of a significant observed deviation from the adjustment path toward the medium-term budgetary objective to Romania.
(39845) 9538/18 COM(18) 433	Recommendation for a Council Decision abrogating Decision 2009/414/EC on the existence of an excessive deficit in France.
(39846) 9521/18 COM(18) 428	Report from the Commission Italy Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
(39868) 9746/18 +ADD 1 COM(18) 430	Recommendation for a Council Recommendation with a view to correcting the significant observed deviation from the adjustment path toward the medium-term budgetary objective in Romania.
(39918) 9215/18 COM(18) 426	Recommendation for a Council Recommendation on the 2018 National Reform Programme of Sweden and delivering a Council opinion on the 2018 Convergence Programme of Sweden.

Department for Transport

(39724) 9035/18 + ADD 1 COM(18) 291	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No x/xxxx of that Committee.
(39725) 9033/18 + ADD 1 COM(18) 290	Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco.
(39726) 9025/18 + ADD 1 COM(18) 288	Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus.

Formal Minutes

Wednesday 27 June 2018

Members present:

Sir William Cash, in the Chair

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

2. Scrutiny Report

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

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

Paragraphs 1.1 to 11 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Tuesday 3 July 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*)