House of Commons

European Scrutiny Committee

Thirty-fifth Report of Session 2017–19

Documents considered by the Committee on 11 July 2018

Report, together with formal minutes

Ordered by the House of Commons
to be printed 11 July 2018

HC 301-xxxiv
Published on 17 July 2018
by authority of the House of Commons

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.

Summary

Upgrading the EU Visa Information System

The Commission has proposed changes to the Visa Information System (VIS) to make it interoperable with other EU migration and security information systems, ensure that more thorough background checks can be carried out on visa applicants, close information gaps and support law enforcement in tackling terrorism and other serious crime. As VIS builds on part of the Schengen rule book in which the UK does not participate and the changes envisaged will not apply to the UK, the Government considers that the proposal will have no direct legal, policy or financial implications for the UK. It does not address the possibility that the biometric information of UK nationals could be collected and stored in VIS if the EU were to introduce visa requirements post-exit/transition. This, in turn, is likely to depend on decisions the Government takes on the future immigration status of EU citizens in the UK. Given these uncertainties, the European Scrutiny Committee is holding the proposed Regulation under scrutiny and requesting further information on the wider Brexit implications, both for UK citizens (including the adequacy of safeguards) and for UK law enforcement access to data held in VIS.

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

Europol: exchanging personal data with third countries

These proposals would authorise the Commission to negotiate agreements enabling Europol to exchange personal data with the law enforcement authorities of eight countries — Jordan, Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt and Algeria. As the Government indicated that the Presidency intended to reach a swift agreement, the European Scrutiny Committee cleared the proposals from scrutiny in March, noting that it would be beneficial for the UK to be involved in the negotiations (not least because they might serve as a model for a future agreement on the exchange of personal data between the UK and Europol). The Government now confirms that the proposals have been adopted by the Council. The Committee urges the Government to make the case for "country by country impact assessments" to inform discussions on the necessary human rights and data protection safeguards to be included in each agreement and says it will wish to consider the adequacy of these safeguards when the negotiations have been completed and the Council is invited to sign and conclude the agreements.

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

Proceeds of crime: mutual recognition of freezing and confiscation orders

The proposed Regulation would replace and improve existing EU mechanisms which provide for freezing and confiscation orders issued in one Member State to be recognised and enforced in another. The Government has opted in to signal its commitment to continued cooperation in this area post-exit. The Council has concluded negotiations with the European Parliament and is expected formally to adopt the proposed Regulation after summer, meaning that it would apply to the UK during the post-exit transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement. The Government reiterates its aim of securing "a comprehensive new treaty on internal security cooperation" to take effect immediately after the end of the transition/implementation period. The European Scrutiny Committee clears the proposed Regulation from scrutiny but highlights the uncertainty from 2021 onwards and ask the Government to report back to the Committee on the progress being made in discussions with the EU on a new internal security treaty.

Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee and the Committee on Exiting the European Union

Interoperable EU information systems for security, border control and migration management

These two proposed Regulations contain the technical detail to meet the objective of making EU security, border and migration information systems fully interoperable so that information on cross-border security threats and irregular migration can be shared more rapidly. The main features are the creation of a European search portal (a "one-stop shop" enabling multiple EU information systems to be searched simultaneously), a shared biometric matching service, a common identity repository and a multiple identity detector. All four features are intended to be mutually reinforcing, making it quicker and easier to spot individuals using multiple identities to evade detection. The UK is only entitled to participate in one of the proposed Regulations — the other covers Schengen-related information systems from which the UK is excluded. In its latest update, the Government responds to questions raised by the European Scrutiny Committee in February concerning the impact of interoperability on the rights of individuals whose data may be held in EU information systems (post-exit this will include the data of British citizens); the factors informing the Government's decision on participation in the first of the two proposals; and the wider Brexit implications. The Committee continues to press the Government on the costs of UK participation, the timing (given that the Commission does not expect full interoperability to be in place until around 2023) and the mechanics for continued cooperation in this area post-exit.

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

Civil Judicial Cooperation: Taking of evidence and service of documents in the EU

These new proposals would amend existing Regulations on the taking of evidence and service of documents in civil and commercial proceedings in the EU to keep pace with

technological developments and to make other improvements. The Government considers that it is "highly unlikely" that the proposals will be adopted before 29 March 2019. Even if adopted before that date, it says that the date of application is likely to be towards the end of, or after the proposed transition/implementation period (31 December 2020).

The UK's JHA opt-in applies to both proposals. The Government must notify its opt-in decisions to the EU by 29 August. The UK already participates in both existing Regulations which these new proposals will amend. Under the UK's opt-in Protocol, there is a risk that if the UK does not opt-in, it could be excluded from the existing Regulations and face financial consequences caused by non-participation.

We ask the Government for an early indication before the Summer recess of the likely opt-in decisions. We also probe for more details of the kind of future partnership sought, using the EU-Denmark international agreements on service of documents and on recognition and enforcement of judgments and the Lugano Convention as a benchmark. As CJEU jurisdiction is a feature of the Denmark agreements and so would breach a UK "red line", we question what sort of model of cooperation the UK seeks.

We also ask about the substance of the proposals, including questions about whether compulsion to give direct evidence to another Member State court could breach the fundamental right to a fair trial (Article 47 Charter, Article 6 ECHR), restrictions on courts' discretion about how to take and assess evidence, about differences between the EU proposals on service of documents electronically and existing domestic rules, the impact on the Scottish system for service of documents and costs implications for Member States arising from centralised and national databases for transmission of documentation.

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

Documents drawn to the attention of select committees:

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

Defence Committee: Operation Atalanta: relocation of Operational HQ away from the UK [Council Decision (C)]; European Defence Industrial Development Programme [Proposed Regulation (C)]

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

Environmental Audit Committee: Agriculture and Sustainable Water Management [(a) Staff Working Document, (b) Report (C)]

Exiting the European Union Committee: Proceeds of crime: mutual recognition of freezing and confiscation orders [Proposed Regulation (C)]

Foreign Affairs Committee: Operation Atalanta: relocation of Operational HQ away from the UK [Council Decision (C)]; EU sanctions against the Maldives [(a) Council Decision, (b) Council Regulation (C)]

Home Affairs Committee: Europol: exchanging personal data with third countries [(a)-(h) Recommended Council Decisions (C)]; Upgrading the EU Visa Information System

[Proposed Regulation (NC)]; Interoperable EU information systems for security, border control and migration management [Proposed Regulations (NC)]; Proceeds of crime: mutual recognition of freezing and confiscation orders [Proposed Regulation (C)]; International measures of safety and security at football matches [Proposed Council Decision (NC)]

International Development Committee: EU sanctions against the Maldives [(a) Council Decision, (b) Council Regulation (C)]

Joint Committee on Human Rights Committee: Europol: exchanging personal data with third countries [(a) – (h) Recommended Council Decisions (C)]; Taking of evidence and service of documents in civil or commercial proceedings [Proposed Regulations (NC)]

Justice Committee: Interoperable EU information systems for security, border control and migration management [Proposed Regulations (NC)]; Proceeds of crime: mutual recognition of freezing and confiscation orders [Proposed Regulation (C)]; Taking of evidence and service of documents in civil or commercial proceedings [Proposed Regulations (NC)]

Treasury Committee: Pan-European Personal Pension Product (PEPP) [Proposed Regulation (NC)]; Asset management: cross-border distribution of funds within the Single Market [(a) Proposed Directive, (b) Proposed Regulation (NC)]

Work and Pensions Committee: Pan-European Personal Pension Product (PEPP) [Proposed Regulation (NC)]

1 The ".eu" internet Top-Level Domain

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; further information requested; (b) cleared from scrutiny
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004; (b) Report from the Commission to the European Parliament and the Council on the implementation, functioning and effectiveness of the .eu Top-Level Domain
Legal base	(a) Article 172 TFEU (trans-European networks); ordinary legislative procedure; QMV; (b)—
Department	Digital, Culture, Media and Sport
Document Numbers	(a) (39664), 8468/18 + ADDs 1–6, COM(18) 231; (b) (39312), 15472/17, COM(17) 725

Summary and Committee's conclusions

1.1 The .eu Top Level Domain (TLD) was launched in December 2005. The .eu TLD allows businesses to promote their European status, and also assures citizens that they are dealing with businesses which have a commercial presence within the EU.

1.2 Following a Regulatory Fitness and Performance Programme (REFIT) review of the rules governing the .eu TLD, which found that the regulatory framework was outdated, overly complex, and not amenable to rapid technical updates as required by developments in the digital economy, the European Commission has proposed a simplified, principles-based regulatory framework for the domain's management.

1.3 Aside from technical changes, the two most distinctive features of the proposal are to permit EU citizens to register .eu domain names irrespective of their place of residence, and to create a "Multistakeholder Council" which would advise the Commission on the implementation of the Regulation, including its management, organisation and administration. The members of the Council would include representatives from the private sector, technical community, Members State administrations, international organisations and civil society (including rights organisations), and academic experts.

1.4 The Minister of State at the Department for Digital, Culture, Media and Sport (Margot James) indicated in an Explanatory Memorandum[1] that the Government supported these technical changes, on the basis that they would remove outdated legal and administrative

1 Explanatory Memorandum from the Minister, Department for Digital, Culture, Media and Sport (DCMS) (1 June 2018).

requirements identified by the impact assessment, increase and enhance the role of stakeholders in the governance and administration of the .eu Registry, and generally enhance the performance of the .eu TLD in the expanding domain names market.

1.5 Article 3 of the draft Regulation concerning eligibility criteria states that eligibility for .eu domain registrations will apply to:

i) EU citizens irrespective of their place of residence—this is a new provision with the effect that EU citizens resident in the UK will be able to register domains under .eu;

ii) people who are not EU citizens but who reside in a Member State;

iii) businesses established in the EU; and

iv) organisations established within the EU.

1.6 With the exception of the addition of allowing EU citizens to register .eu domains irrespective of their place of residence, this text retains the effects of the equivalent provision in Regulation (EC) 733/2002. This means that, in the absence of provisions which provide otherwise within the scope of the future economic partnership, UK citizens not resident in a Member State and UK-based businesses and organisations without a place of establishment in a Member State would be unable to acquire new .eu registrations after the UK leaves the EU or to renew existing ones (notwithstanding any transitional arrangement).

1.7 The Minister also draws the Committee's attention to the Commission's Notice to Stakeholders on the withdrawal of the United Kingdom and EU rules on .eu domain names, which was published on 28 March 2018. The Minister notes that the Notice observes that:

- as of the withdrawal date (notwithstanding any transition period that is agreed), undertakings and organisations that are established in the UK but not in the EU, and natural persons who reside in the UK, will no longer be eligible to register .eu domain names or to renew .eu domain names registered before the withdrawal date; and

- where a UK registrant of a domain name no longer fulfils the general eligibility criteria set out in Regulation (EC) 733/2002, the Registry for .eu will be entitled to revoke such a domain name on its own initiative and without submitting the dispute to any extrajudicial settlement of conflicts.

1.8 The Committee previously considered this issue in its report of 17 January 2018 on an EU Communication on the subject of the .eu Top Level Domain, in which it concluded that "by default, when the UK leaves the European Union, and any transition period ends, UK persons and organisations that have registered .eu domain names will no longer be legally eligible for these registrations. 340,000 UK users potentially stand to be affected by this development". The Committee requested further information from the Government on any stakeholder engagement the Government had undertaken and whether workarounds existed which would permit different types of .eu domain name users to continue to do so post-exit, in the absence of any agreement.

1.9 Following the publication of the Committee's report, EURid (the organisation which manages the .eu domain name registry) responded to suggestions on twitter that .eu jurisdictions were open to anyone by tweeting that ".eu registrations are only open to those residing in the European Union or in Iceland, Liechtenstein or Norway, which we monitor and act upon accordingly".

1.10 In a letter[2] in response to the Committee's report, the Minister stated that:

- the Government had engaged with various UK business organisations and trade associations to ask whether any of their members had raised the issue of EU exit and .eu, but that all of those organisations that replied said that none of their members had raised this issue;
- the Government was still considering its negotiating position on this issue; and
- large UK multinationals with multiple offices across the European Economic Area (EEA) could retain their use of .eu, but "for solely UK-based businesses, small or otherwise, and UK-based citizens, it is possible that they may not be able to retain the use of a .eu domain in the absence of a post-exit agreement on this issue".

1.11 An employee of Estonia's e-residency programme also published an article on Medium on 26 January 2018—"How to register a .EU domain from anywhere (or keep it after Brexit)[3]"—which explained that UK businesses would, post-exit, be able to apply for e-residency in Estonia, which would give them "the right to register a .eu domain or receive a .eu domain that a British citizen transfers to it". For UK businesses that are not multinationals which are to some extent reliant on a .eu domain name, Estonian e-residency may thus offer a possible solution.

1.12 The Minister indicates that the Government anticipates that the draft Regulation will be agreed by both the Parliament and the Council before the end of 2018. It has not yet been decided when the draft Regulation would replace Regulation 874/2004: the text of the proposal states only that this should happen "no later than three years after the entry into force". The Regulation's provisions could therefore apply directly to the UK during any transition period, although this would depend on both the length of the transition period and the timescales for implementing the Regulation that are agreed. Obviously, the Regulation would apply to UK stakeholders when it has left the EU and any transitional arrangements have ended, effectively limiting their rights to register and renew .eu domain names.

1.13 **The Commission's draft Regulation streamlines the existing rules governing the operation and management of the .eu Top Level Domain (TLD) by removing unnecessary legal and administrative requirements and making the rules less prescriptive and more principles-based, with the aim of making it more competitive vis-à-vis other TLDs. The Government does not have any concerns about the proposal, which it believes is justified, and complies with the principle of subsidiarity.**

2 Letter from the Minister, Department for Digital, Culture, Media and Sport (DCMS), to the Chairman of the European Scrutiny Committee (5 March 2018).

3 Adam Rang, How to register a .EU domain from anywhere (or keep it after Brexit) (26 January 2018).

1.14 **In terms of the implications of EU exit, the draft Regulation does not significantly alter the implications for UK stakeholders noted in our previous report: the legal default under both the draft Regulation and Regulation (EU) 733/2002 is that when the UK leaves the European Union, and any transition period ends, UK persons and organisations will no longer be legally eligible to apply for .eu domain name registrations or to have existing ones renewed. The Commission has clarified in a notice to stakeholders that the Registry for .eu will be entitled to unilaterally revoke such domain names. At present, there are 317,000 UK-based registrations for .eu domain names which potentially stand to be affected by these developments.**

1.15 **We note the Minister's assessment that there may be an impact for UK businesses which "have invested in long business plans based on .eu websites for their online presence and operations" and that DCMS is consulting with key stakeholders on the impact of this change. However, the Minister clarifies that UK businesses which have a place of establishment in another Member State will retain their eligibility. We also note suggestions from other parties that UK businesses, including SMEs, could retain their eligibility for a .eu domain name by applying for Estonian e-residency. We are not aware of any means by which UK citizens who have registered a .eu domain name can retain their eligibility, unless they are resident in an EU Member State.**

1.16 **We ask the Government to provide us with:**

- **an update on DCMS's consultation with key stakeholders on the impact of the loss of eligibility of UK stakeholders for the .eu domain name;**
- **a summary of the extent to which Estonian e-residency may offer a solution to UK businesses which currently use a .eu domain name, and whether this would have negative implications for the UK or not; and**
- **an indication of whether the Government intends to seek the inclusion of provisions on the .eu domain name within the scope of the future economic partnership.**

1.17 **We ask for responses to the above questions by 27 July 2018. We retain the draft Regulation under scrutiny. We are content to clear the report on the functioning of the .eu Top Level Domain from scrutiny.**

Full details of the documents

(a) Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004: (39664), 8468/18 + ADDs 1–6, COM(18) 231; (b) Report from the Commission to the European Parliament and the Council on the implementation, functioning and effectiveness of the .eu Top-Level Domain: (39312), 15472/17, COM(17) 725.

Previous Committee Reports

Tenth Report HC 301–x (2017–19), chapter 3 (17 January 2018).

2 Environmental policy reporting obligations

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Regulation of the European Parliament and of the Council on the alignment of reporting obligations in the field of environment policy and thereby amending Directives 86/278/EEC, 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU, Regulations (EC) No 166/2006 and (EU) No 995/2010, and Council Regulations (EC) No 338/97 and (EC) No 2173/2005
Legal base	Articles 114, 192(1) and 207, TFEU; QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39813), 9617/18, COM(18) 381

Summary and Committee's conclusions

2.1 In order to be effective, environmental policy must be effectively monitored and enforced. To that end, EU environmental legislation includes reporting obligations. Following a review (a "Fitness Check"), the Commission proposes to streamline reporting obligations across a number of Directives. The amendments should: increase transparency; provide an evidence base for future evaluations; and simplify and reduce administrative burden for Member States and the Commission.

2.2 The proposal covers EU legislation in the following areas:

- sewage sludge;[4]
- noise management;[5]
- Environmental Liability Directive (ELD);[6]
- Infrastructure for Spatial Information in Europe (INSPIRE);[7]
- Birds' Directive;[8]
- animals used for scientific purposes;[9]
- European Pollutant Release and Transfer Register (E-PRTR);[10]
- Convention on International Trade in Endangered Species (CITES);[11] and

4 Directive 86/278/EEC.
5 Directive 2002/49/EC.
6 Directive 2004/35/EC.
7 Directive 2007/2/EC.
8 Directive 2009/147/EC.
9 Directive 2010/63/EU.
10 Regulation (EC) 166/2006.
11 Regulation (EC) 338/97.

- EU Timber Regulations[12] and Forest Law Enforcement Governance and Trade (FLEGT).[13]

2.3 The Parliamentary Under Secretary of State (David Rutley) sets out in his Explanatory Memorandum[14] the Government's initial assessment of the policy implications for identified areas. He is supportive of most of the changes, but has concerns about the proposed changes to the Environmental Liability Directive and to the European Pollutant Release and Transfer Register (E-PRTR) Regulation.

2.4 The Environment Liability Directive contained a one-off reporting requirement to provide data on the first few years' implementation by 2013. It is proposed to replace this with an ongoing obligation to collate and publish information on incidents involving, or potentially involving, "environmental damage". Doing this in the UK, says the Minister, would potentially require considerable administrative effort, involving multiple authorities and with unclear benefits. Furthermore, the information which the Commission considers should be made public may in some cases be unobtainable, commercially confidential or its publication might adversely affect the conduct of legal proceedings. The Government will seek further clarification from the Commission on its proposals and work to ensure changes are proportionate and yield any intended benefits.

2.5 Concerning the E-PRTR Regulation, the Commission proposes to reduce the reporting period for Member States from 15 months to nine months after the end of the reporting year. This is in order to streamline it with related legislation such as the Industrial Emissions Directive. The proposed shorter period may present problems for UK authorities, who are required to collate information from a large number of industrial sites. The Government is working to influence discussions in Brussels to reach an achievable compromise.

2.6 The legislation is a draft Regulation. As such, it will enter into force upon formal publication of the final adopted text and will be directly applicable in UK law, assuming it enters into force before the end of the implementation period (i.e. by 31 December 2020).

2.7 **It is welcome that the Commission is seeking in principle to streamline reporting obligations, but it is clearly necessary that the outcome delivers on that objective. The Minister has highlighted areas where the Commission's proposals risk creating new obstacles rather than removing them. We support the Government's approach and look forward to an update on progress. The draft Regulation remains under scrutiny.**

Full details of the documents

Regulation of the European Parliament and of the Council on the alignment of reporting obligations in the field of environment policy and thereby amending Directives 86/278/EEC, 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU, Regulations (EC) No 166/2006 and (EU) No 995/2010, and Council Regulations (EC) No 338/97 and (EC) No 2173/2005: (39813), 9617/18, COM(18) 381.

Previous Committee Reports

None.

12 Regulation (EU) 995/2010.
13 Regulation (EC) 2173/2005.
14 Explanatory Memorandum from the Department for Environment, Food and Rural Affairs, dated 14 June 2018.

3 Pan-European Personal Pension Product (PEPP)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted for the ECOFIN Council of 13 July 2018; drawn to the attention of the Treasury and Work & Pensions Committees
Document details	Proposal for a Regulation on a pan-European Personal Pension Product (PEPP)
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Number	(38875), 10654/17 + ADDs 1–2, COM(17) 343

Summary and Committee's conclusions

3.1 In summer 2017, the European Commission proposed a new legal framework for a pan-European Personal Pension Product (PEPP) with the aim of providing consumers across the EU with a "simple, safe and cost-efficient" retirement product that can be sold from providers based anywhere in the Single Market.

3.2 The proposed PEPP Regulation does not replace or harmonise existing national personal pension schemes, and would enable—but not require—providers to create a personal pension product that meets the requirements set out in the Regulation. In effect, this creates a separate regulatory regime for PEPPs that will exist in parallel to any existing domestic regulations applicable to other personal pension products. The product could be sold at a distance from any EU country to a consumer in any Member State, with supervision provided by the regulator of the country where the provider is established. A key feature of the PEPP is meant to be its cross-border portability: the product would be portable throughout its lifecycle, so that consumers could keep saving into—or draw from—the product even if they move between Member States. However, it does not contain any rules on the taxation of the product, given the varying approach to tax on retirement incomes across the European Union and the need for unanimity among all Member States to agree EU tax law under the Treaties.[15]

3.3 The then-Economic Secretary to the Treasury (Stephen Barclay) submitted an Explanatory Memorandum on the proposed Regulation in July 2017. His main conclusions were that there was "very little evidence of demand for a PEPP" in the UK, with providers unlikely to offer the product and little demand from British consumers. In addition, he saw "clear difficulties that need to be overcome of determining the tax status of such a product", as well as "potential risks around regulatory arbitrage".

3.4 The European Scrutiny Committee considered the proposal when it was re-constituted following the last general election, in November 2017. We expressed scepticism about

15 Instead of proposing binding rules on the taxation of PEPPs, the European Commission issued a non-binding recommendation calling on Member States to apply the most favourable tax treatment available to the PEPP.

the added value of the PEPP product offer for the UK, given its well-developed domestic market for private pensions, and echoed concerns by the Financial Services Consumer Panel that the introduction of a parallel regulatory regime for PEPPs was "unlikely to bring clarity to a market that many consumers already find confusing and complex". We also took the view that the divergent approaches to tax of pension products between EU countries was likely to decrease the product's attractiveness as a portable product.[16] Despite the UK's decision to leave the EU, we retained the proposal under scrutiny given that the new Regulation could apply to the UK under the terms of the proposed post-Brexit transitional arrangement.[17]

3.5 On 29 June 2018, the Economic Secretary (John Glen) provided the Committee with an update on the state of play on the PEPP proposal. He explained that Member States in the Council had made progress in their deliberations on the file, and were expected to vote on a common negotiating position—a 'general approach'—for talks with the European Parliament on the final text of the Regulation at a meeting of EU Finance Ministers on 13 July.

3.6 According to the Bulgarian Presidency of the Council,[18] the "most controversial" issue during the negotiations was the question of which type of company would be allowed to provide PEPPs. A number of countries, including the Netherlands,[19] opposed the possibility of allowing workplace pension schemes—called institutional occupational retirement providers (IORPs) in EU law—to offer the new private pension product.[20] As a compromise, providers of workplace pension schemes will only be able to offer PEPPs if authorised to do so by domestic law.[21] In addition, even in Member States where IORPs will be allowed to offer the new product, they cannot independently cover biometric risk but have to use an insurer to do so (since workplace schemes are based on mutualisation of risk, with no variation in contributions to or payments from the scheme based on an individual worker's health or life expectancy).[22] Under the Council text, banks, asset managers and life insurers will also be able to offer PEPPs.

3.7 The Council also wants to amend the PEPP proposal to:

- Ensure that individual Member States will not be required to make any changes to their national tax treatment of personal pension products with respect to the PEPP (i.e. whether retirement income is taxed when contributions are made, on investment returns, or during the decumulation phase);
- Remove the proposed role for the European Insurance and Occupational Pensions Authority (EIOPA) in authorising individual providers to offer PEPPs.

16 In particular, it cannot be ruled out that contributions could be subject to double taxation when a pension pot is transferred between Member States.

17 The draft Withdrawal Agreement contains a transitional arrangement, scheduled to last until 31 December 2020, during which the UK would remain subject to EU law as if it had remained a Member State.

18 See for more information the Presidency progress report (Council document 9975/18).

19 https://zoek.officielebekendmakingen.nl/kst-22112–2587.html.

20 Workplace schemes, called the 'second pillar', are mandatory in the Netherlands on a sectoral basis and as a result of the companies that provide each sector's retirement scheme have a guaranteed client base. This would give them an unfair competitive advantage over other providers if they could also offer private ('third pillar') retirement products, with the potential for cross-subsidy that makes it difficult or impossible for other market players to compete.

21 Where allowed by national law, the provider would also have to ring-fence assets and liabilities related to their 'second pillar' offering.

22 Second pillar products, for example in the Netherlands, are covered by mutualisation of risk rather than individual premiums.

Instead, registration would be the responsibility of a national regulator in each Member State, with EIOPA's role reduced to entering any providers authorised by an EU country on a central EU-wide register; and

- Give the financial regulators of a 'host' Member State—i.e. an EU country where a provider from another Member State markets PEPPs—would be able, as a last resort, to ban a provider if the latter "distribute[s] the PEPP in a manner that is clearly detrimental to the interests of host Member State's PEPP savers or to the orderly functioning of the market for pension products in that Member State". However, before it can take such action it must raise its concerns with the regulator of the 'home' Member State.

3.8 The changes proposed by the Council are not yet binding. They must still be approved by the European Parliament, and further amendments to the legal text of the PEPP Regulation are therefore likely. The Parliament's Economic and Monetary Affairs Committee (ECON) is due to adopt its negotiating position on 11 July 2018, with trilogue talks to follow after the 2018 summer recess. However, it is not clear when the final legislation may be adopted (and consequently when it would take effect, which would be two years after publication in the EU Official Journal). Whether the UK would still be covered by the Regulation will depend on the timing of its adoption and, consequently, whether it becomes applicable before the end of the proposed post-Brexit transitional period.[23]

3.9 **We thank the Minister for the very helpful information he has provided on the state of the negotiations on the pan-EU personal pension proposal. We remain concerned about the potential consumer protection implications of the introduction of the PEPP into the UK's well-developed pensions market, especially given the 'passporting' provisions that will allow firms from outside the UK to offer the PEPP directly to UK consumers. However, we welcome the insertion by the Council of a provision allowing a 'host' country for a PEPP to ban a provider registered in another EU country if necessary, given our concerns about the conduct risks of UK consumers purchasing a private pension product from an overseas company. We are content to grant the Minister a scrutiny waiver to support a general approach at the ECOFIN meeting on 13 July.**

3.10 **As we noted in our previous Report on the PEPP, the exact implications of the proposal—for UK companies that may wish to offer the product, and for consumers who might be offered to invest in one—remain unclear. The Government has said it expects demand in the UK to be low. Depending on progress in the UK's EU exit negotiations and the timetable for adoption of the PEPP Regulation, the legislation could however take effect while the UK's post-Brexit transitional arrangement (requiring the Government to continue to apply EU law) is still in operation. We therefore retain the proposal under scrutiny and ask the Minister to keep us informed of any future developments in the trilogue negotiations with the European Parliament. We also draw the changes to the legal text to the attention of the Treasury and Work and Pension Committees.**

23 The current draft of the Withdrawal Agreement provides for a transitional arrangement lasting until 31 December 2020, during which the UK would continue applying EU law and therefore stay part of the Single Market and the Customs Union. The Secretary of State for International Trade (Dr Liam Fox) told Sky News on 24 June 2018 that he would not be opposed to an extension of the transitional period beyond that date in certain circumstances.

3.11 **We also note that there are broader implications of Brexit for the UK's insurance and pensions industry, particularly as regards cross-border contracts which do not mature until after the UK leaves the EU but which may become legally impossible to service once UK firms become 'third country' operators for the purposes of EU financial services legislation. When he gave evidence to us on 13 June 2018, the Economic Secretary told us that the Government was "ready to implement whatever statutory instruments or regulatory arrangements we need to in the case that no deal is the outcome". However, he declined to specify what those would be in for cross-border contracts where the UK, by default, cannot act unilaterally. A week later TheCityUK, a financial services industry body, reiterated that a joint UK-EU solution would be necessary to avoid legal chaos and financial hardship for affected individuals.**

3.12 **We remain concerned about the lack of clarity from the Government about the details of its contingency planning in the event of a 'no deal' Brexit, especially in cases —as is the case for cross-border pension and insurance provision—where the UK cannot unilaterally mitigate the consequences of leaving the Single Market and the Customs Union.**

Full details of the documents

Proposal for a Regulation on a pan-European Personal Pension Product (PEPP): (38875), 10654/17 + ADDs 1–2, COM(17) 343.

Previous Committee Reports

See (38875), 10654/17, COM(17) 343: Third Report HC 301–iii (2017–19), chapter 12 (29 November 2017).

4 Asset management: cross-border distribution of funds within the Single Market

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; Scrutiny waiver granted for the ECOFIN Council of 13 July 2018; drawn to the attention of the Treasury Committee
Document details	(a) Proposal for a Directive amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds; (b) Proposal for a Regulation on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013
Legal base	(a) Article 53 (1) TFEU; Ordinary Legislative procedure; QMV; (b) Article 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Numbers	(a) (39548), 6988/18 + ADDs 1–2, COM(18) 92; (b) (39549), 6987/18 + ADDs 1–2, COM(18) 110

Summary and Committee's conclusions

4.1 As part of its effort to create a Single Market for collective investment funds, the EU has legislated to create a number of types of funds and regulate fund managers, including 'undertakings for collective investment in transferable securities' (UCITS), funds, aimed at small investors like households, and various types of Alternative Investment Funds (AIFs) such as hedge funds and European Venture Capital Funds. EU legislation for investments funds contains the so-called 'passport', allowing funds domiciled in one Member State to be marketed to investors, including individual savers, across the entire Union.

4.2 However, use of the 'passport' for both UCITS and AIFs is subject to a number of regulatory requirements, for example relating to supervisory fees or restrictions on marketing materials. These rules are often imposed at the discretion of each individual EU Member State, and therefore vary from country to country. Partially as a result of these divergent regulatory practices, and despite the existence of the EU-level regulatory frameworks for UCITS and AIFs, funds remain largely constrained to national markets rather than the Single Market as a whole. EU investment funds representing 70 per cent of the total assets under management (AuM) are registered for sale only in their own Member State.

4.3 In 2015 the European Commission announced that—as part of its Capital Markets Union (CMU) programme to increase the supply of capital to businesses (particularly from sources other than banks)—it would seek to address regulatory barriers that prevent funds from effectively using their 'passport' under EU law to grow, compete in different national markets, and maximise economies of scale to reduce the cost of investing.[24] This was followed by a concrete legislative initiative to reduce the disparity between the way in which Member States regulate in these areas (and therefore make it easier for investment funds to 'passport' into new national markets within the European Economic Area).

4.4 In practice, the Commission proposals would impose new restrictions on the leeway national regulators would have to set their own rules on the marketing of funds domiciled in another EU country. The new horizontal requirements would affect marketing communications, as well as so-called 'pre-marketing' activities,[25] supervisory fees, and mandatory notifications to regulators by a fund when it makes changes to its operations. It would also ban Member States from requiring UCITS managers to maintain a physical presence if they 'passport' a fund into their territory. Other barriers to cross-border investment, particularly those related to taxation and market structure, were considered "out of scope" of this particular policy initiative.[26] We summarised the detailed implications of the legislative proposals in some detail in our Report of 2 May 2018.

4.5 The Government has been broadly supportive of the changes to the cross-border distribution of funds within the Single Market, although the Economic Secretary to the Treasury cautioned that any legislative change should "genuinely facilitate market access and […] not impose additional and unnecessary burden on firms across the EU" or "result in limitations on the distribution of funds". It was particularly concerned about the provisions relating to pre-marketing requirements (which would entail a significant change to the way many funds currently operate by preventing firms from referring to existing funds in draft documents aimed at prospective investors).

4.6 In our last Report, we also placed the proposal in the context of the UK's withdrawal from the EU. The Government is seeking to secure a transitional arrangement, to take effect when the UK formally leaves the EU on 29 March 2019, during which the country would remain bound by EU law and therefore would also stay in the Single Market and the Customs Union. If the changes to the UCITS and AIFM Directives are adopted by the Council and the European Parliament, and become applicable, before the end of that transitional arrangement, they will have to be implemented by the UK. As such, we expressed our support for the Government's efforts to remain fully involved in the legislative negotiations in Brussels.

4.7 However, as and when the UK fully leaves the Single Market, its change of status to a 'third country' vis-à-vis the EU means that British UCITS funds and alternative investment

24 European Commission document COM(2015) 468, "Action Plan on Building a Capital Markets Union", p. 24.

25 The proposed Regulation would introduce a legal definition of, and restrictions on, "pre-marketing" for alternative investment funds (but not UCITS funds, because pre-marketing — in the Commission's view — should be targeted only at professional investors and not retail investors). The amendment would provide a clear legal basis for AIF managers to test investors' appetite for upcoming investment opportunities without triggering any notification requirement (which is currently the case in some Member States).

26 The Commission argued that tax and market structure should not be addressed in these proposals because they would respectively require a different legal basis (matters of tax being subject to a unanimity requirement among all Member States, compared to the qualified majority for Single Market issues) or because work is already underway at EU-level to make the market structures for distribution and intermediation channels for investment funds more efficient.

funds are likely to have to relocate at least part of their activities to an EEA Member State to continue operating within the Single Market after the UK leaves that market (whether on 29 March 2019 or at the end of any subsequent transitional period).[27] In contrast to the European Commission, the Government has not published a substantive assessment or overview of the implications of this change for the asset management industry's operations in other EU Member States, or its overall functioning.

Developments since May 2018

4.8 The Economic Secretary wrote to us on 4 July 2018 to inform us that the Member States were expected to adopt their common position on the proposals — a 'general approach' — to facilitate cross-border distribution of funds at a meeting of the ECOFIN Council on 13 July 2018. This amended version of the proposals will serve as the Austrian Presidency's mandate for negotiations with the European Parliament on the final text of the Regulations.

4.9 The Minister's latest update confirms that Member States are largely agreed on the measures proposed by the Commission, demonstrated by the fact that they have agreed a common negotiating position for talks with the European Parliament within three months of the publication of the draft legal texts. However, the letter notes that "the most concerning aspect" of the proposals — the harmonisation of 'pre-marketing' requirements for funds — had been removed by Member States because it "would have restricted legitimate market practices, by preventing firms [from] circulating draft documents referring to existing funds". The UK also secured support for an amendment that seeks to exempt closed end funds such as private equity from the new requirement for funds to offer to buy back units from existing investors if they cease to market in a particular EU country.

4.10 The changes made by the Member States are not yet final, as they also need to be agreed with the European Parliament under the ordinary legislative procedure. The Parliament's Economic & Monetary Affairs Committee (ECON) has not yet published a timetable for its consideration of the draft legislation, so its position on the issues referred to above is not yet clear. Similarly, until there is more certainty about the proposals' eventual entry into force we cannot be certain if this new legislation might have to be implemented in the UK during the proposed post-Brexit transitional period.[28]

4.11 **We thank the Minister for his update on progress in the discussions around fund distribution within the Single Market. In view of the possibility that the UCITS and AIFM Directives (as amended by the recent Commission proposals) will have to be applied in the UK under the post-Brexit transitional arrangement, and given the continued uncertainty about the extent of regulatory alignment under any future UK-EU financial services agreement (for example if the UK sought an 'equivalence' arrangement under the AIFMD), we retain the proposals under scrutiny.**

27 The draft Withdrawal Agreement contains provisions for a transitional arrangement, lasting until 31 December 2020, during which the UK would effectively stay in the Customs Union and the Single Market.

28 Under the draft Withdrawal Agreement, the UK would continue applying EU legislation during a transitional period to temporarily remove the need for new customs and regulatory controls on UK-EU trade. That arrangement is due to last from 30 March 2019 until 31 December 2020.

4.12 **In light of the changes to the legal texts which the Treasury has secured, we are content to grant the Minister a scrutiny waiver ahead of the ECOFIN Council on 13 July, enabling the Government to support the General Approach. We also draw these latest developments to the attention of the Treasury Committee.**

4.13 **We have also considered again the implications of Brexit for the UK asset management sector more generally. We continue to take the view that the extent to which UK-based fund managers can continue serving EU clients on a cross-border basis after Brexit will largely depend on:**

- **the nature of any UK-EU financial services agreement;**
- **whether the UK obtains equivalence under the Alternative Investment Fund Managers Directive; and**
- **whether the 'delegation' of portfolio management from EU-based funds to UK-based asset managers could be restricted in the wake of Brexit.**[29]

4.14 **While the Government is largely supportive of the current framework around delegation by EU firms to non-EU firms, it also wants to go further in terms of bilateral market access. The Chancellor has been pushing for a new financial services trade agreement with the EU to maintain a similar level of market access to that enjoyed by the UK at present, based on mutual recognition of regulatory outcomes. Given that this approach has not been positively received in Brussels, we remain concerned about the lack of *detail* about its specific proposals. We hope the upcoming White Paper will provide more information in this regard, with a view to a detailed proposition being developed with the EU that can be included in the political declaration on the future partnership that is to be annexed to the Withdrawal Agreement.**

4.15 **It is also still unclear if the Government, as a fall-back, could seek 'equivalence' in specific areas — for example under the Alternative Investment Fund Managers Directive — if a broader financial services agreement with the EU fails to materialise for whatever reason. We note that the Chancellor has dismissed equivalence as "piecemeal, unilateral and unpredictable" and unable to "provide the stability that a well-regulated market requires".**[30] **While we do not disagree with that assessment, it is not clear what other options the Government considers available if the mutual recognition proposals are not taken further.**

4.16 **In absence of a preferential trade agreement or 'equivalence' decision, the Treasury and industry would have to settle for an abrupt transition of British financial services providers from 'Single Market' recognition of their licences to pure 'third country' status without any type of privileged access to the EU market (and therefore giving it less access overall than competitors in the US, Hong Kong and Australia, all of which have a number of equivalence decisions already in place). The Committee will continue to report to the Treasury Committee and the House more widely about developments on EU legislative files which are relevant in this regard.**

29 We have noted with concern that the European Commission and the European Securities & Markets Authority (ESMA) have repeatedly hinted that the delegation of asset management services by EU funds to non-EU entities could be restricted. We welcome the Minister's remarks in his latest letter in support of existing delegation practices.

30 https://www.gov.uk/government/speeches/mansion-house-2018-speech-by-the-chancellor-of-the-exchequer.

Full details of the documents

(a) Proposal for a Directive amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds: (39548), 6988/18 + ADDs 1–2, COM(18) 92; (b) Proposal for a Regulation on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013: (39549), 6987/18 + ADDs 1–2, COM(18) 110.

Previous Committee Reports

See Twenty-Sixth Report HC 301–xxv (2017–19), chapter 3 (2 May 2018).

5 Interoperable EU information systems for security, border control and migration management

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	(a) Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) (b) Proposal for a Regulation establishing a framework for interoperability between EU information systems (borders and visas)
Legal base	Articles 16(2), 74, 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (39366), 15729/17 + ADDs 1–3, COM(17) 794; (b) (39368), 15119/17 + ADDs 1–3, COM(17) 793

Summary and Committee's conclusions

5.1 The Commission has proposed two Regulations which are intended to make existing and planned new EU information systems in the field of migration and security interoperable so that information can be shared more rapidly. Its aim is to close the information gaps and "blind spots" which hinder effective cross-border security cooperation. The first proposed Regulation on the interoperability of EU asylum and law enforcement information systems, document (a), covers two existing EU information systems (the Eurodac asylum database and the police cooperation parts of the Schengen Information System — SIS II) and one new EU information system which is expected to be agreed shortly (the European Criminal Records Information System for Third Country Nationals — ECRIS-TCN). It would also apply to a limited extent to Europol data and to certain Interpol databases (such as the Stolen and Lost Travel Document database). The UK participates in Eurodac and SIS II and has opted into the proposed ECRIS-TCN information system.

5.2 The second proposed Regulation on the interoperability of EU border control and visa information systems, document (b), covers existing or proposed new EU information systems in which the UK is unable to participate as they are based on parts of the Schengen rule book dealing with border control and visas which do not apply to the UK. These are the border control provisions of SIS II, the Visa Information System (VIS), the EU Entry/Exit System and the European Travel Information and Authorisation System (ETIAS).

5.3 The proposed Regulations have four operational objectives:

- ensuring that end-users (mainly police, immigration and judicial authorities) have "fast, seamless, systematic and controlled access to the information that they need to perform their tasks";
- providing a means to detect multiple identities linked to the same set of biometric data — terrorists have been able to use multiple identities to evade border and law enforcement authorities;
- making it easier to check the identity of third country nationals within the EU; and
- streamlining law enforcement access to information held in EU systems where necessary to prevent, investigate, detect or prosecute serious crime and terrorism.[31]

5.4 The proposals would establish:

- a **European search portal** which would operate as a "one-stop shop", enabling authorised users to carry out a simultaneous search on multiple EU information systems (as well as relevant Interpol systems and Europol data) using both biographical and biometric data;
- a **shared biometric matching service** which would use biometric data (fingerprints and facial images) to discover links between information on the same person held in different EU information systems;[32]
- a **common identity repository** which would contain biographical and biometric information on third country nationals whose data are recorded in Eurodac, VIS and (in the future) the EES, ETIAS and ECRIS-TCN, providing a quick and efficient means of checking identity; and
- a **multiple identity detector** which would check whether identity data exist in different EU systems and help combat identity fraud.

5.5 The Commission makes clear that interoperability "does not mean pooling all data or collecting additional categories of information". Nor would it allow information held in one system automatically to be shared across all other systems. Rather, "interoperability is about a targeted and intelligent way of using existing data to best effect while at the same time ensuring full respect of fundamental rights, in particular data protection requirements".[33] The Commission anticipates that it may take until the end of 2023 to develop and test all the technical components needed to make EU border, migration and security information systems interoperable.[34]

5.6 In his Explanatory Memorandum of 25 January 2018, the Minister for Policing and the Fire Service (Mr Nick Hurd) explained that proposed Regulation on the interoperability

31 See p.4 of the Commission's explanatory memorandum accompanying document (a).
32 This service would not apply to the European Travel Information and Authorisation System — ETIAS — as it will not contain biometric data.
33 See the European Commission's fact sheet on the interoperability of EU information systems for security, border and migration management.
34 See the timeframe set out on p.96 of the Commission's legislative financial statement attached to document (b).

of EU asylum and law enforcement information systems — document (a) — was subject to the UK's Title V (justice and home affairs) opt-in Protocol and the UK's Schengen opt-out Protocol. If the Government wished to participate, it would need to opt into the non-Schengen elements of the proposal — Eurodac and ECRIS-TCN — within the three-month opt-in deadline which expired on 21 May. The UK would be automatically bound by the Schengen elements of the proposal — SIS II — unless the Government decided to opt out within the same three-month period. Whilst broadly supporting the Commission's aims, he anticipated that the interoperability proposals would require "significant investment and technical changes" and said that the Government would need to consider whether the "additional benefits" for the UK and the "likely level of usage" by UK law enforcement and immigration officials would be sufficient to justify "the high costs".[35] He confirmed that the UK is not entitled to participate in the proposed Regulation on the interoperability of EU border control and visa information systems, document (b), as it is based on parts of the Schengen rule book in which the UK does not take part.

5.7 In his letter of 30 May 2018, the Minister informed us of the Government's decision to participate in the proposed Regulation on the interoperability of EU asylum and law enforcement information systems — document (a) — to "maximise the benefits to the UK from access to these databases". He did not address the questions we raised in our Report chapter agreed on 28 February concerning:

- the impact of interoperability on the rights of individuals whose data are held in EU information systems;
- the factors informing the Government's decision on participation in the proposed Regulation on the interoperability of EU asylum and law enforcement information systems — document (a); and
- the wider Brexit implications of the proposals.

5.8 Our questions, and the Minister's response in his letter of 28 June, are set out in detail at the end of this chapter. In summary, the Minister tells us that:

- a "general approach" was agreed on 14 June, paving the way for trilogue negotiations with the European Parliament;
- the Government is "supportive" of the general approach, but a number of technical issues still need to be clarified;
- negotiations are on track to adopt the proposed Regulations before the end of the year (meaning that document (a) would apply to the UK during a post-exit transition/implementation period if agreed as part of exit negotiations);
- the Commission's interoperability proposals "will clearly make a difference in closing information gaps by improving the linking of data between databases";
- the proposals include safeguards which will ensure "proper use of systems and effective audit of all usage";
- UK participation in document (a) will "improve the overall system" as "the more states that participate and the more information shared, the stronger the system will be and the greater increase in security for all";

35 See para 20 of the Minister's Explanatory Memorandum.

- the Government is committed to "ongoing cooperation with the EU on security and law enforcement" but "details of our participation in practical cooperation measures that currently facilitate cooperation will be subject to negotiations"; and
- the Government is concerned that "limitations on third party sharing may inhibit the effectiveness of the system".

Our Conclusions

5.9 **We are disappointed that it has taken the Minister four months to provide a substantive response to the questions we raised in February and that he has only written after a "general approach" has been agreed. We remind him that we expect to receive an update on the progress of negotiations before, not after, the Council agrees its mandate to begin negotiations with the European Parliament. We ask him whether the UK voted for the general approach and whether the compromise text agreed makes any substantive changes to the original Commission proposals.**[36]

5.10 **As we made clear in our earlier Report, the benefits and costs that interoperable information systems would bring the UK are contingent on the timetable for adopting and implementing the proposed Regulations and on the outcome of negotiations on a post-exit transitional/implementation. In previous correspondence with our counterpart Committee in the House of Lords, the Minister questioned whether the proposed Regulations would be adopted before the UK leaves the EU in March 2019.**[37] **This now appears to be a possibility — the Minister indicates that adoption could take place "before the end of the year". The timing is important as, under the draft EU/UK Withdrawal Agreement, the proposed Regulation on the interoperability of EU asylum and law enforcement information systems — document (a) — will only apply to the UK during the post-exit transition/implementation period (ending on 31 December 2020) if it is "binding on and in the UK" before exit day. Assuming this to be the case, we again ask the Minister:**

- **whether he expects the EU information systems covered by the proposals to be fully interoperable before 31 December 2020 so that there would be some benefit for the UK during the transition/implementation period;**
- **whether the UK would have to self-fund any adaptations to its national interfaces with each of the systems covered by document (a) as it does not participate in the relevant EU funding instrument — the EU Internal Security Fund (Borders component); and**
- **what assessment he has made of the costs that the UK might be expected to incur in developing the appropriate end user interfaces for UK agencies.**

5.11 **If the proposed Regulation on the interoperability of EU asylum and law enforcement information systems — document (a) — is adopted *after* the UK's exit from the EU, the draft EU/UK Withdrawal Agreement provides that cooperation**

36 The Council press release issued on 14 June 2018 states that Coreper endorsed a negotiating mandate on behalf of the Council.

37 See the Minister's letter of 23 April 2018 to Lord Boswell.

shall be based on the relevant third country provisions.[38] These state that "personal data stored in or accessed by the interoperability components shall not be transferred or made available to any third country, to any international organisation or to any private party".[39] We ask the Minister whether the Government is pressing for changes to these provisions during negotiations and to explain how he envisages overcoming these restrictions on third country access to data held in EU information systems once the UK has third country status.

5.12 **Pending further information, the proposed Regulations remain under scrutiny. We ask the Minister in his next update to provide details of the European Parliament's position. We also look forward to receiving progress reports on trilogue negotiations once they are underway. We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents

(a) Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration): (39366), 15729/17 + ADDs 1–3, COM(17) 794. (b) Proposal for a Regulation establishing a framework for interoperability between EU information systems (borders and visas) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226: (39368), 15119/17 + ADDs 1–3, COM(17) 793.

Background

5.13 The proposed Regulations encompass six centralised EU information systems, of which three (Eurodac, SIS II and VIS) are already operational and three are "on the brink of development" (the EES, ETIAS and ECRIS-TCN). With the exception of SIS II, the remaining five information systems are "exclusively focussed on third country nationals", meaning that post-exit, they are likely to include the data of British citizens.[40] A new EU Agency — eu-LISA — was set up in 2012 to oversee the operational management of large scale justice and home affairs information systems and will be responsible for making the systems interoperable.[41] Each system has its own founding instrument which contains detailed rules on the information that can be stored in each database, the purposes for which it may be used, and data protection requirements. The systems cannot communicate with one another through the exchange of data or sharing of information unless their founding instruments allow them to do so.

38 See Article 122(1)(a) and 122(5) of the draft EU/UK Withdrawal Agreement.
39 Article 48 of the original Commission proposals.
40 See p.5 of the Commission's explanatory memorandum on document (a),
41 See Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, as amended by Regulation (EU) No 603/2013 establishing Eurodac.

5.14 The table shows which of the existing or proposed EU information systems are open to UK participation.

Information system	Schengen or non-Schengen	UK position
Visa Information System — VIS	Schengen	UK excluded
Schengen Information System — SIS II (border control component)	Schengen	UK excluded
Schengen Information System — SIS II (law enforcement)	Schengen	UK participates in existing SIS II and is also participating in a Commission proposal to strengthen the law enforcement component of SIS II
EU Entry/Exit System — EES	Schengen	UK excluded
European Travel Information and Authorisation System — ETIAS	Schengen	UK excluded
Eurodac	Non-Schengen	UK participates in the existing Eurodac database. The UK has opted into the Commission's proposal to expand its scope
European Criminal Records and Information System — extension to third country nationals (ECRIS-TCN)	Non-Schengen	UK participates in ECRIS and has opted into a supplementary proposal extending ECRIS to third country national offenders

The Minister's letter of 28 June 2018

The impact of interoperability on individual rights

5.15 Our earlier Report noted that the Commission's legislative proposals were based on recommendations made in May 2017 by the High-Level Expert Group on Information Systems and Interoperability and drew attention to observations made by the EU Counter-Terrorism Coordinator (Gilles de Kerchove), the European Data Protection Supervisor ("EDPS"—Giovanni Buttarelli) and the EU Fundamental Rights Agency. We asked the Minister:

- how confident he was that the proposed Regulations would make a difference in closing information gaps and improving security within the EU;
- whether they adequately addressed the concerns expressed by the EDPS and Fundamental Rights Agency; and
- whether he was satisfied that there were robust safeguards to ensure the protection of individual rights in the context of Brexit, given that substantially more data on British citizens will be held on EU information systems post-exit than is currently the case.

5.16 The Minister says that the Commission proposals are "an evolution of existing capability and not a radical change of approach":

> "The proposed systems will clearly make a difference in closing information gaps by improving the linking of data between databases. This in turn will prevent individuals creating multiple identities through such exploitation. The systems however are building on the underlying databases. Member States uploading data will still own that data, in line with the legislation setting up the underlying databases, with all the requisite responsibilities that entails. This also means all the existing safeguards for each individual database will remain for those underlying databases [and] also continue to apply data connected to those databases."

> "The UK has been vocal throughout the process on the importance of data protection. What has been proposed in the draft legislation is in line with best practice and the Law Enforcement Data Protection Directive (LE DPD). It will ensure proper use of the systems and effective audit of all usage."

UK participation in the proposed Regulation on the interoperability of EU asylum and law enforcement information systems — document (a)

5.17 We noted that the main factors informing the Government's decision on participation were the prospective additional benefits that interoperable information systems would bring the UK set against the "high costs" and that both were contingent on the timetable for adopting and implementing the proposals and the outcome of negotiations on a post-exit transitional/implementation period. As the proposals themselves indicate that it may take until 2023 for EU security, border and migration information systems to be fully interoperable, we asked the Minister:

- whether he expected the Commission's legislative proposals to be adopted before the UK leaves the EU on 29 March 2019;
- whether the EU information systems covered by document (a) — Eurodac, SIS II (police cooperation) and ECRIS-TCN — were likely to be fully interoperable before the end of a transitional/implementation period of around two years, meaning that there would be some short-term benefit for the UK; and
- whether the UK would have to self-fund any adaptations to its national interfaces with each of the systems covered by document (a) as it does not participate in the EU Internal Security Fund (Borders component).

5.18 The Minister says that negotiations have kept pace with the goal of reaching agreement (and securing adoption of the proposed Regulations) "before the end of the year". The Government is "supportive of the general approach" agreed on 14 June which will pave the way to trilogue negotiations with the European Parliament. The Minister identifies a number of "technical issues" which will need to be clarified:

> "For example, we believe further clarity is needed on the exemptions for police investigations from data subject access to bring them into line with the safeguards in the Law Enforcement Data Protection Directive."

He also underlines the need for the language to be "be tidied and made more consistent throughout" and to ensure that the reporting process "does not unduly burden end users".

5.19 He reiterates the factors informing the Government's opt-in decision:

> "The Government considered the costs and benefits the system has the potential to provide, the increased functionality provided to the underlying databases, and the improved experience for end users. The closing of gaps in between the silos of current databases will improve the UK's security through better detection of potential terrorists and serious criminals. Further, in light of the UK's unequivocal commitment to European security, as set out in the Prime Minister's speech in Munich earlier this year, we recognised that the UK's participation also improves the overall system. This is because the more states that participate and the more information shared, the stronger the system will be and the greater increase in security for all."

Brexit implications

5.20 We considered that the Government's decision on participation in document (a) could not be disentangled from its longer-term aspiration for a post-exit strategic treaty on security and law enforcement cooperation, particularly as the Minister recognised that participation would entail "significant investment and technical changes". We suggested that it would be difficult for the Government to justify making a substantial investment unless it intended to negotiate continued UK participation in EU security and migration information systems post-exit. We asked the Minister to:

- tell us whether the Government envisaged that the EU information systems covered by document (a) should form part of a new post-exit strategic treaty with the EU; and
- provide an initial assessment of the costs that the UK might be expected to incur in connecting to the new systems and developing the appropriate end user interfaces for UK agencies.

5.21 The Minister recognises the importance of locating the proposed Regulations "within the wider security relationship as we depart the EU", adding:

> "The UK has been instrumental in developing the security, law enforcement and criminal justice co-operation tools which the EU has at its disposal. We want this to continue in a way that works for both the UK and for Europe and are committed to ongoing cooperation with the EU on security and law enforcement. Our relationship with the EU will change as a result of our departure and the details of our participation in practical cooperation measures that currently facilitate cooperation will be subject to negotiations.
>
> "Our *Security, Law Enforcement and Criminal Justice* future partnership paper published on 18th September 2017 outlined how we are seeking a relationship that provides for practical operational cooperation; facilitates data driven law enforcement; and allows multilateral cooperation through EU agencies."

5.22 We noted that the bulk of funding to implement the proposals would come from the EU's post-2020 budget and would be allocated to the EU agency (eu-LISA) responsible for delivering interoperable systems. If the UK were to participate in document (a) beyond a transitional period ending on 31 December 2020, it would doubtless be required to make a financial contribution for several years beyond 2020 but would have no say in setting the overall expenditure limits. We asked the Minister what assessment he had made of the potential costs for the UK after 2020.

5.23 The Minister comments:

> "Once adopted, eu-LISA will start developing the components in parallel to the underlying databases under construction. Once they have set out a more detailed plan and settled some of the technical choices, we will then be able to assess our own plan for technical implementation to fit eu-LISA's timings."

5.24 We noted that the provisions in the proposed Regulations on third country access were highly restrictive. Article 48 of both Commission proposals provides:

> "Personal data stored in or accessed by the interoperability components shall not be transferred or made available to any third country, to any international organisation or to any private party."

We asked the Minister:

- what assessment the Government had made of the (often restrictive) provisions on third country access contained in the EU information systems covered by the Commission proposals;
- whether and how these restrictions could be overcome to enable the UK to continue to participate in these systems post-exit; and
- whether he anticipated that the Commission's goal of making these systems interoperable would make it easier or harder for the UK to negotiate access to them (should it wish to do so) as part of the UK's exit negotiations.

5.25 The Minister observes that "the limitations on 3rd party sharing may inhibit the effectiveness of the system, or prevent Member States providing information on aliases when there is a clear and present danger of terrorist attack in a 3rd country".

Previous Committee Reports

Sixteenth Report HC 301–xvi (2017–19), chapter 9 (28 February 2018).

6 International measures on safety and security at football matches

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

Summary and Committee's conclusions

6.1 The proposed Council Decision would authorise Member States to become parties to a new Council of Europe Convention on the safety and security of international football matches.[42] The EU cannot itself become a party to the Convention but the European Commission considers that the provisions in Article 11(2) to (4) of the Convention requiring contracting parties to set up or designate a National Football Information Point ("NFIP") within their police forces and setting out the tasks assigned to each NFIP fall within the EU's exclusive competence, meaning that EU Member States can only sign and ratify the Convention if authorised to do so by the EU. It says that these provisions take their inspiration from, and "coincide almost fully" with, existing EU measures requiring each Member State to establish a national football information point to share information and facilitate cooperation between police forces on football matches with an international dimension.[43]

6.2 The Commission has proposed a Council Decision which would authorise Member States to become parties to the Convention "in respect of those parts falling under the exclusive competence of the Union".[44] Although the proposal cites a Title V (justice and home affairs) legal base — Article 87(1) of the Treaty on the Functioning of the European Union (TFEU) on cross-border police cooperation — an introductory recital to the proposal states that the UK is bound to take part in the Council Decision (and so cannot rely on its Title V opt-in Protocol to decide not to participate) as the UK participates in the existing measures on which the EU's claim to exclusive external competence is based.[45]

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

43 See Council Decision 2002/348/JHA concerning security in connection with football matches with an international dimension, as amended by Council Decision2007/412/JHA. The UK participates in both Council Decisions. See also the Commission's competence analysis on pp 3–4 of its explanatory memorandum accompanying the proposed Council Decision.

44 Article 1 of the proposed Council Decision.

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

6.3 In his Explanatory Memorandum of 18 May, the Minister for Policing and the Fire Service (Mr Nick Hurd) said that the UK already complied with the Convention. He did not clearly state whether the Government accepted that the EU had exclusive competence in relation to NFIPs, but indicated that the proposed Council Decision was subject to the UK's Title V justice and home affairs opt-in, meaning that it would only apply to the UK if the Government decided to opt in.

6.4 In our Report agreed on 6 June, we asked the Minister to clarify the Government's view on the nature and extent of the EU's competence in relation to the Convention. We also asked him to explain:

- whether the Commission and other Member States accepted that the UK's Title V opt-in applied if (as the Commission asserted in this case) the EU had exclusive external competence based on the adoption of internal justice and home affairs rules that bind the UK;
- if they did not, what action the Government intended to take to make clear whether or not the UK was participating in the proposed Council Decision; and
- whether the Government intended to ratify the Convention.

6.5 In his letter of 3 July 2018, the Minister confirms that the EU has exclusive external competence "insofar as the Convention relates to relations between EU Member States' NFIPs" but says that this does not extend to "relations between EU Member States' NFIPs and non-EU contracting parties' NFIPs". He continues:

> "However, given the existence of some exclusive external competence in relation to Article 11, if the Government were to choose not to opt in, the UK would not be able to become a party to the Convention in our own right, given we are bound by the EU's exclusive external competence in this area. This will be one of the issues the Government considers when taking its opt-in decision."

6.6 The Minister confirms that the Commission and Council consider the UK to be automatically bound by the proposed Council Decision since the UK participates in the underlying EU legislation on which the EU's claim to exclusive external competence is based. By contrast, the Government considers that the UK's Title V opt-in Protocol applies to "all measures that cite a Justice and Home Affairs legal base or that contain JHA obligations". He does not expect the proposal to be amended to include a recital reflecting the Government's view. The Government will therefore lay a minute statement on the adoption of the proposed Council Decision "clarifying that the UK's JHA opt-in Protocol applies". He expects the UK to ratify the Convention "during 2019".

Our Conclusions

6.7 **We are not convinced by the Minister's argument that the EU's external competence is limited in the way he suggests. Nor do we understand why he states that the UK would not be able to become a party to the Convention "in our own right" if the Government were to decide not to opt into the proposed Council Decision. This would**

seem to defeat the purpose of the Government's opt-in policy which seeks to preserve the UK's right to assert that it is *not* bound by the EU's exclusive external competence in justice and home affairs matters unless the UK chooses to opt in.

6.8 **We note that the Minister expects the UK to ratify the Convention during 2019. Given that he has also said that the UK would be unable to become a party to the Convention in its own right unless the Government decided to opt into the proposed Council Decision, we infer that this must be its intention. We ask the Minister to inform us of the Government's opt-in decision and the reasons for it at the earliest opportunity. Meanwhile, the proposal remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee and the Digital, Culture, Media and Sport Committee.**

Full details of the documents

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

Background

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

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

6.10 The Convention also includes measures to prevent and punish acts of violence and misbehaviour, such as stadium bans, sanctions procedures in the country where the offence is committed or in the offender's country of residence or citizenship, or restrictions on travelling abroad to football events. The designation of a national football information point within the police force (NFIP) of each country participating in the Convention is intended to "step up" international police co-operation by facilitating exchanges of information and personal data in connection with international football matches.[46]

46 See the description of the Convention on the Council of Europe's Treaty Office website.

6.11 EU law requires EU Member States have a national football information point to act as "the direct, central contact point for exchanging relevant information and for facilitating international police cooperation in connection with football matches with an international dimension".[47] The main tasks of the information points are to:

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

6.12 In addition, the EU Football Handbook (last updated in 2016) contains detailed guidance on international police cooperation, the exchange of police information and the role and tasks of national football information points.[48]

Previous Committee Reports

Thirtieth Report HC 301–xxix (2017–19), chapter 15 (6 June 2018).

47 See Article 1(3) of Council Decision 2002/348/JHA.

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

7 Upgrading the EU Visa Information System

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 amending the Visa Information System and related measures
Legal base	Articles 16(2), 77(2)(a), (b), (d) and (e), 78(2)(d), (e) and (g), 79(2)(c) and (d), 87(2)(a) and 88(2)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(39714), 8853/18 + ADDs 1–3, COM(18) 302

Summary and Committee's conclusions

7.1 The Visa Information System ("VIS") is a Schengen-wide database containing information on third country nationals applying for short-stay Schengen visas.[49] It contains details of over 55 million visa applications and nearly 47 million fingerprints.[50] VIS enables visa issuing authorities in the consulates of Member States around the world to share information on visa applicants and connects them with border control officials at the EU's external borders. The collection and storage of biometric information — a facial image and fingerprints — makes it easier to verify the identity of visa applicants, prevent fraud and carry out security checks.

7.2 The Commission considers that VIS should be upgraded so that it operates as a more effective tool for preventing irregular migration and strengthening security within the border-free Schengen area. Its proposed amending Regulation would:

- lower the age for fingerprinting visa applicants from 12 to 6 years — the Commission anticipates that this would not only reduce identity fraud but also enhance child protection, making it possible to identify child victims of human trafficking, missing children and unaccompanied asylum-seeking children;
- make VIS fully interoperable with other EU security and migration information systems, meaning that there would be more thorough (and mandatory) background checks on visa applicants and it would be easier to detect multiple identities and counter identity fraud;
- include information on long-stay visas and residence documents issued by Member States[51] so that border control authorities can check their validity and reduce the risk of identity fraud — this information is not routinely stored in any of the EU's security and migration information systems;

49 Short-stay visas entitle the holder to enter and move around the border-free Schengen area for a maximum of 90 days in any 180-day period.

50 As of May 2018. See the European Commission's press release and fact sheets on VIS and on EU information systems issued in May 2018.

51 These documents are similar to short-stay visas in that they entitle their holder to move freely within the border-free Schengen area for 90 days in any 180-day period.

- include copies of each visa applicant's travel document to facilitate the identification, readmission and return of undocumented irregular migrants; and

- ensure that national law enforcement authorities and Europol can access VIS to prevent, detect and investigate terrorism and other serious crime, as well as to search for and identify individuals who are missing or who have been abducted and victims of trafficking.

7.3 The Commission considers that these changes will remove "blind spots" and close information gaps, ensuring that visa-issuing, border control and law enforcement authorities have they information they need to act on security risks without hindering legitimate travel to the EU. The multiple legal bases cited in the proposed Regulation reflect the breadth of its objectives as a tool for implementing the EU's common visa policy, supporting EU asylum and return procedures, identifying victims of human trafficking, strengthening internal security, and ensuring that personal data are protected.

7.4 If the proposed Regulation is agreed before next year's European Parliament elections, the Commission anticipates that it would take effect by the end of 2021. The bulk of funding (estimated at around €182 million) needed to implement the changes envisaged would come from the next (post-2020) EU budget.

7.5 The UK is not entitled to participate in VIS or in the proposed amending Regulation as it builds on parts of the Schengen rule book on a common visa policy and on external border control in which the UK does not take part. This has little consequence for UK nationals while the UK remains an EU Member State or during a post-exit transition/implementation period in which EU rules on free movement continue to apply. The immigration rules that will apply to UK nationals travelling to the EU after the end of the transition/implementation period (expected to be 31 December 2020) will form part of wider negotiations on the UK's future relationship with the EU. The EU's common visa policy operates on the basis of reciprocity, meaning that the EU is unlikely to introduce a visa requirement for UK travellers to the EU unless the UK does so for EU citizens. The Government has not yet published its Immigration White Paper which will contain policy options on the future immigration status of EU citizens who are not protected by the provisions on citizens' rights in the draft EU/UK Withdrawal Agreement. Given this uncertainty, we cannot exclude the possibility that changes to VIS may affect UK nationals post-exit.

7.6 Changes to VIS may also have implications for UK law enforcement authorities. Although the UK has no direct access to information held in VIS, UK law enforcement authorities are nonetheless able to request indirect access to VIS data by routing a request through VIS-participating Member States.[52] It is not clear whether they will be able to do so post-exit and post-transition.

7.7 In her Explanatory Memorandum of 8 June 2018, the Immigration Minister (Caroline Nokes) says that the proposed Regulation has no direct legal, financial or policy implications as the UK does not participate in the immigration and border aspects of the Schengen rule book and does not have access to VIS.

52 See recital (15) of Council Decision 2008/633/JHA on law enforcement access to VIS data. The proposed Regulation would incorporate the main provisions of this Decision and repeal it.

Our Conclusions

7.8 **We ask the Minister when the Government intends to publish its Immigration White Paper and whether the policy options considered are likely to include the possible introduction of visa requirements for EU citizens travelling to the UK after the end of the post-exit transition/implementation period (except those protected by the citizens' rights provisions of the draft EU/UK Withdrawal Agreement).**

7.9 **We would like to hear whether the Government has sought (or intends to seek) an assurance that the EU will not introduce visa requirements for UK nationals. Is it the Minister's expectation that the EU would only do so if the UK were to introduce visa requirements for EU citizens?**

7.10 **Given the current uncertainty, we ask the Minister to explain what assessment the Government has made of the potential impact of the proposed changes to VIS:**

- **on UK citizens travelling to the EU post-exit/transition and the adequacy of the data protection and other safeguards available to them; and**
- **on the ability of law enforcement authorities in the UK to access information held in VIS, particularly as the proposed Regulation would repeal the 2008 Council Decision which contemplates indirect access via Member States participating in VIS.**

7.11 **Whilst the UK will have limited influence and no vote on the proposed Regulation within the EU Council, we consider that it raises potentially important questions in the context of Brexit which we wish to scrutinise further. We are therefore retaining the proposal under scrutiny and ask the Minister to update us on developments.**

Full details of the documents

Proposal for a Regulation amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA: (39714), 8853/18 + ADDs 1–3, COM(18) 302.

Background

7.12 The Visa Information System is one of six existing or planned centralised EU migration and security information systems.[53] The Commission intends to make these systems interoperable so that the authorities entitled to access each one can do so simultaneously, in a single search through the European Search Portal. The operational management of these systems is entrusted to eu-LISA, an EU agency established in 2012 to oversee large-scale EU justice and home affairs information systems. The table shows which of these information systems are open to UK participation.

53 See the European Commission's fact sheet on EU Information Systems —Security and Borders.

Existing information systems managed by eu-LISA	Schengen or non-Schengen	UK position
Visa Information System — VIS	Schengen	UK excluded
Schengen Information System — SIS II (border control component)	Schengen	UK excluded
Schengen Information System — SIS II (police cooperation)	Schengen	UK participates in existing SIS II and is also participating in the Commission's proposal to strengthen the law enforcement component of SIS II
Eurodac	Non-Schengen	UK participates in the existing Eurodac database. The UK has opted into the Commission's proposal to expand its scope
New information systems to be managed by eu-LISA	**Schengen or non-Schengen**	**UK position**
EU Entry/Exit System — EES	Schengen	UK excluded
European Travel Information and Authorisation System — ETIAS	Schengen	UK excluded
European Criminal Records Information System — extension to third country nationals (ECRIS-TCN)	Non-Schengen	UK participates in ECRIS and has opted into a supplementary proposal creating a central database containing the criminal records of third country national offenders in the EU

7.13 The proposed Regulation would repeal a 2008 Decision on law enforcement access to VIS and amend the following measures in which the UK does not participate:

- a 2004 Council Decision establishing the Visa Information System;
- a 2008 Regulation setting out the purpose and functionalities of VIS and the procedures for exchanging information;
- a 2009 Regulation establishing the EU Visa Code;
- a 2016 Regulation establishing the Schengen Borders Code; and
- a 2017 Regulation establishing an EU Entry-Exit System.

7.14 It would amend one new measure (still under negotiation) in which the UK has chosen to participate — a proposed Regulation establishing a framework for interoperable EU migration and security databases.[54]

Previous Committee Reports

None on this document.

54 See our Sixteenth Report HC 301–xvi (2017–19), chapter 9 (28 February 2018).

8 Taking of evidence and service of documents in civil or commercial proceedings

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Justice Committee and the Joint Committee on Human Rights
Document details	(a) Proposed Regulation amending Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters; (b) Proposed Regulation amending Regulation (EC) No 1393/2007 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters
Legal base	Article 81TFEU; ordinary legislative procedure; QMV
Department	Ministry of Justice
Document Numbers	(a) (39870), 9620/18 + ADDS 1–3, COM (18) 378; (b) (39869), 9622/18 + ADDS 1–3, COM (18) 379

Summary and Committee's conclusions

8.1 These two proposals would amend the existing Regulations on taking evidence (Regulation (EC) No 1206/2001) and on service of documents (Regulation (EC) No 1393/2007). The UK participates in both Regulations.[55] Both were modelled on Hague Conventions relating to civil and commercial proceedings: the 1970 Convention on the Taking of Evidence and the 1965 Convention on Service Abroad of Judicial and Extrajudicial documents. It is a common aim of both new EU proposals to incorporate modern communications technology, by making it mandatory to transmit all documents between Member States through a decentralised IT system composed of national IT systems. The Commission considers that this would improve the speed, security and reliability of processing requests.

8.2 The Government considers it "highly unlikely" that the proposals will be adopted before the UK leaves the EU on 29 March 2019 but possible that they might apply towards the end of the transition/implementation period (see the Explanatory Memoranda referred to in paragraphs 8.4 and 8.7). Negotiations on both proposals are expected to commence during the Austrian Presidency. The UK's JHA opt-in applies to both proposals so the Government must notify its opt-decisions to the EU by 29 August.[56] In particular, Article

55 See also that Article 64 of the draft Withdrawal Agreement (ongoing judicial cooperation procedures) provides for how these two measures, as well as others, will be deal with as a separation issue in view of UK exit from the EU.

56 This is based on the Government's information that the proposal was presented in the Council on 6 June. This would also mean that this Committee has until 1 August to express a view on the opt-in decisions.

4(a) of the UK's opt-in Protocol[57] applies, meaning that the UK could be excluded from the existing Regulations if it does not opt-in and that decision makes the new proposals inoperable for other Member States. It would have to bear consequential financial costs.

8.3 The proposed Regulation on taking evidence (document (a)) aims to make it easier for evidence from a person domiciled in one Member State to be taken directly by courts in another Member State (the requesting court). Measures include a new power to compel a person to give evidence directly to a requesting court, mandatory electronic transmission of requests to take evidence, a presumption that a request has been received if unanswered for 30 days, more use of evidence by videoconferencing, enabling evidence to be taken by diplomatic officials, clarifying the definition of a "court" and mutual recognition of digital evidence. A more detailed account of the proposal is set out at paragraph 8.13.

8.4 In an Explanatory Memorandum on the taking of evidence proposal (document (a)) dated 19 June, the Lord Chancellor and Secretary of State for Justice (David Gauke) broadly supports the updating of the existing Regulation in line with modern communication technology. He recognises that overall the existing Regulation has worked well. But he identifies certain concerns about the new proposal. These include: fundamental rights questions raised by the compulsion to give direct evidence (Article 47 on the "right to an effective remedy i.e. fair trial is engaged); the necessity and allocation of costs[58] of the dedicated IT systems; restrictions on a court's discretion to require attendance in person to give evidence; the "after 30 days" presumption of receipt; the costs of interpreting services in relation to evidence by videoconference; the taking of evidence by diplomatic officers; the impact on mutual trust of the potential breadth of the definition of "court"; the potential risk to judicial discretion from too restrictive an obligation to mutually recognise digital evidence without regard to standard of proof or evidentiary value of digital evidence in any particular case; and the lack of clarity about the role of Member States in a monitoring system.

8.5 The proposed Regulation on service on documents throughout the EU (document (b)) aims to make it easier for judicial documents (created in the course of court proceedings) and extrajudicial documents (created in out-of-court proceedings e.g. family cases before a public authority) to be served in cross-border cases. Measures include a centralised transmission system, supported by national systems to be funded by Member States (with some EU funding available); options for national assistance with finding addresses; permitted refusal of documents on language grounds; specific acknowledgment of service forms for postal providers; direct service by competent persons in the Member State where service is being effected; direct electronic service subject to certain conditions and safeguards for defendants in relation to default judgments. A more detailed account of the proposal's provisions is outlined at paragraph 8.14.

8.6 In a separate Explanatory Memorandum of the same date as document (b), the Minister broadly welcomes the aims of the service of documents proposal and recognises the value of the existing Regulation. But as with the "taking of evidence" proposal (a) he identifies areas of concern. These include: the necessity of a bespoke electronic transmission system to be funded by Member States and the costs on receiving agencies on printing out requests even if there are overall postage savings. He highlights that Scotland may have to change its existing system for the service of documents (based around sheriff officers

57 Protocol 21 to the EU Treaties.

58 Unlike the Service of Documents Regulation there is no clarity on whom the burdens of costs shall fall.

and messengers at arms) to accommodate a single agency for transmitting and receiving requests. In terms of assisting with finding addresses for people to be served, the UK does not have domicile register and judicial assistance is not available for domestic cases, so the Minister considers that providing practical guidance will be the preferable option. Also, the Government will need to assess the implications of direct service by postal providers since this is not currently permitted in England and Northern Ireland under the current EU Service Regulation. Regarding electronic service, the Government will need to assess how the proposals differ from existing UK legislation.

8.7 However, the Government specifically supports the following clarifications provided by the proposal: that addressees can refuse service on language grounds (backed up by court verification) and that documents can be served on other adults at the home address concerned. The Government also approves of the suggested strengthening of safeguards for defendants in relation to default judgments.

8.8 **We thank the Justice Secretary for his Explanatory Memoranda on these proposed Regulations. We found them helpful on the substance of the proposals and in identifying areas of concern, but deficient in identifying Brexit implications. There is little effort made to relate the impending opt-in decisions to UK aspirations for a future partnership with the EU on civil and commercial justice cooperation. That may be because the Government's aspirations, set out in the UK-EU Future Partnership Paper on civil judicial cooperation[59] and technical slides, remain unclear and articulated only at a high level. We explore this further below, but acknowledge the efforts of the Minister and his officials to engage with us already on these issues more generally.[60]**

8.9 **It would be helpful if the Government could give us an early indication before 16 July of the likely opt-in decisions and any corresponding reasoning. This would enable further consideration by us before the Summer recess. We do not express a view on whether the Government should opt-in to either proposal. But we anticipate that decisions to opt-in could be likely because that way the Government could influence the negotiations of these proposals while it still has a vote before the transition/implementation period commences on 30 March 2019. Opting-in could also protect the UK's position in relation to both the existing Regulations and current proposals. The estimated negotiation timetable makes any "wait and see" approach of a post-adoption opt-in out of the question.**

8.10 **We note that there are no provisions for cooperation with third countries in these proposals nor in the existing Regulations which they will amend. However, there might be some degree of precedence provided by the 2005 international agreement between the EU and Denmark which extends the provisions of the original service of documents Regulation to Denmark — there is no equivalent agreement for taking of evidence.[61] This legal framework for cooperation was necessary because Denmark has an opt-out from the entire area of EU Justice and Home Affairs.[62] However, the agreement**

59 Department for Exiting the European Union, Providing a cross-border civil judicial cooperation framework — a future partnership paper, 22 August 2017.

60 The Minister's letter of 13 June to Sir William Cash (Chairman of European Scrutiny Committee) on the publication of the UK's technical slides and offering a technical briefing by officials to the Committee.

61 Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters, Official Journal L300, 17/11/2005 P. 0055 — 0060. Also, see Council Decisions on signature and conclusion of that agreement by the EU.

62 See Protocol 22 to the EU Treaties.

subjects Denmark to CJEU jurisdiction not only in terms of the interpretation of the agreements but also in requiring Danish courts to "take due account of the rulings contained in the case law of the Court of Justice" on the Regulation (Article 6 of the agreement). Denmark is also susceptible to infringement proceedings (Article 7 of the agreement). Could the Minister please confirm:

- **Whether this model of cooperation would be unacceptable to the UK as it does not want to accept CJEU jurisdiction in relation to any aspect of its future relationship with the EU;**
- **Whether the Government instead favours a model along the lines of the Lugano Convention[63] which extends the EU's Brussels regime on the recognition and enforcement of judgments to EFTA members and potentially other third countries? We note that a protocol[64] to the Convention provides that any EFTA state court applying and interpreting the convention shall pay due account to the principles laid down by any relevant decision rendered by the courts of the other contracting parties (including the CJEU). It also establishes information-sharing systems to facilitate this homogeneity of approach.**

8.11 **Should cooperation after the expected transition/implementation period, on the above basis not prove possible then we remind the Government of what it said in its Future Partnership Paper last August:**

> **"The Government does not consider that existing international conventions would be sufficient, on their own, to deal with civil judicial cooperation post-Brexit:**
>
> **Existing international conventions can provide for rules in some areas, but they would not generally provide the more sophisticated and effective interaction, based on mutual trust between legal systems, that currently benefits both EU and UK business, families and individual litigants"[65]**

Could the Minister please confirm therefore that the Government would not be satisfied with relying on the 1970 Convention on the Taking of Evidence and the 1965 Convention on Service Abroad of Judicial and Extrajudicial documents?

8.12 **On the substance of the proposals themselves, we share some of the Government's concerns from a legal perspective in relation to proposal (a). We would welcome further legal analysis from the Government as to whether Article 47 of the Charter (and its ECHR equivalent Article 6) could be breached if an individual is compelled to give evidence directly to a court in another Member State. In the same vein, we are also concerned about the potential for undermining court discretion in assessing the evidentiary value and relevance of digital evidence in any particular case and as to whether evidence should be given in person. We note the potential impact on the existing system for service of documents in Scotland and ask to be keep updated on consultations with the Scottish Executive on this issue. On proposal (b), we would be**

63 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
64 Protocol N° 2 on the uniform interpretation of the Convention.
65 Department for Exiting the European Union, Providing a cross-border civil judicial cooperation framework — a future partnership paper, 22 August 2017.

grateful if the Minister would share in due course the Government's assessment of the differences between the current UK legislation on electronic service and these proposed new EU rules. On both proposals, we would be interested in further information on the likely costs to Member States of the new centralised and national IT systems that will be required. Will the Government be preparing an Impact Checklist?

8.13 **Finally, we ask the Minister to keep us updated on the progress of the negotiations and the likely timing of adoption in the light of Brexit and transition. In the meantime, we retain the proposals under scrutiny. We draw them and this chapter to the attention of the Justice Committee and the Joint Committee on Human Rights.**

Full details of the documents

(a) Proposed Regulation of the European Parliament and of the Council amending Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters : (39870), 9620/18, COM(18) 378; (b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters: (39869), 9622/18+ ADD 1–3, COM(18) 379.

The "Taking of Evidence" proposal in more detail (document a)

8.14 The proposed Regulation would:

- introduce mandatory electronic transmissions of requests and communications pursuant to the Regulation (new Article 6, paragraph 1), with other means of transmission only being permitted where the system is interrupted or not suitable for the transmission in question e.g. in the case of DNA samples (new Article 6, paragraph 4);
- apply a presumption that where no response to a request has been received by a requesting Member State from a requested Member State within 30 days of sending it, the request has been accepted (new Article 17(4));
- enable more frequent use of videoconferencing facilities for witnesses, parties or experts, where available and when appropriate, though this must be undertaken in court premises and with interpreter assistance where requested (new Article 17 and 17(a));
- permit diplomatic officials and consular agents to take evidence directly from their own home nationals without compulsion in the context of proceedings in the home State (Article 17(b)), (mirroring a provision from the 1970 Hague Convention);
- provide a definition of court to prevent divergent national interpretation (Article 1(4);
- ensure that digital evidence taken in one jurisdiction cannot be rejected in others solely because it is digital in nature (new Article 18a);

- enable amendment of standard forms by Commission delegated acts[66] (new Articles 19 and 20); and
- establish monitoring by the Commission of the impact of the proposal, based on submission of relevant data by Member States and working towards a five-year evaluation of the Regulation (new Articles 22 and 23).

The "Service of documents" proposal in more detail (document b)

8.15 In particular, the proposed Regulation:

- requires the electronic communication and exchange of documents between sending and receiving authorities, through a centralised IT system made up of interconnected national IT systems, unless there is unforeseen and exceptional disruption of the decentralised IT system (new Article 3(a));
- provides that documents transmitted in this way should not be denied legal effect or admissibility as evidence (New Article 4(3));
- makes Member States responsible for bearing the costs of both the installation of the IT system and of establishing and adjusting its national IT systems to make them interoperable, as well as the costs of administering, operating and maintaining these systems (New Article 3(b));
- enables Member States to apply for EU funding to help meet these costs (New Article 3(b));
- requires Member States to assist where the address of the person to be served in another Member State is unknown, either through judicial assistance, access to public databases or guidance on the mechanisms available in each Member State publicised through the European Judicial Network (new Article 3(c));
- recognises existing laws and practices in some Member States which require parties to litigation who are domiciled in another Member State to appoint a representative for service in the Member State of the court hearing the claim (new Article 7(a));
- clarifies an existing provision that an addressee will have up to two weeks, rather than one, to return a request on the basis of the language of the document, subject to subsequent court determination if the refusal was well-grounded, considering the language skills of the person concerned (new Article 8);
- requires a specific acknowledgement of receipt form for postal service, rather than the methods used currently by the postal companies and irrespective of the law of the Member State of origin postal service will also be considered valid if the document is delivered to another adult living or employed at the addressee's home address (new Article 14);

66 In line with Article 290 TFEU.

- requires Member States to accept direct service through judicial officers, officials or other competent persons of the Member State where service is to be effected (new Article 15);
- permits direct electronic service under certain circumstances where registered delivery services are used or where the addressee has given express consent (new Article 15 (a));
- clarifies protection for defendants against the effects of default judgment, including that in the absence of confirmation of service reasonable efforts should be made to inform the defendant via any available channels of communication, including social media, where particular addresses or accounts are known[67] (new Article 19);
- enables both standard forms and the decentralised IT system to be established through Commission implementing acts;
- requires the Commission to establish a detailed programme for monitoring the outputs, results and impacts of the Regulation, which would involve the Member States providing necessary data and other evidence; and
- suggests an evaluation of the Regulation five years after the date of application of the Regulation.

Previous Committee Reports

None.

67 Also, where there is an application by the defendant for a review for relief against the effects of the expiry of the time limit for an appeal that application should be made no more than two years following the date of the judgment. Under the current Regulation the equivalent deadline is expressed as no less than one year following the date of the judgment.

9 Agriculture and Sustainable Water Management

Committee's assessment	Politically important
Committee's decision	Document (a) Cleared from scrutiny (decision reported on 29/11/2017); Document (b) Cleared from scrutiny; Drawn to the attention of the Environmental Audit Committee
Document details	(a) Commission Staff Working Document: Agriculture and Sustainable Water Management in the EU; (b) Report from the Commission on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2012–15
Legal base	—
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (38704), 8705/17, SWD(17) 153; (b) (39692), 8693/18 + ADDs 1–9, COM (18) 257

Summary and Committee's conclusions

9.1 The quantity and quality of water are affected by agriculture through both abstraction and pollution from nutrients and pesticides. A particular issue derived from agriculture is that of nitrate pollution in water.

9.2 The Commission set out the challenges of tackling the impacts of agriculture in water in a paper (document(a)) published in Spring 2017. Since then, it has also published a report assessing the implementation of the "Nitrates Directive"[68] based on Member State reports for the period 2012–15. It found that the nitrates concentrations for surface water and groundwater have improved in general across Member States.

9.3 The UK's performance reflects a slow and steady decrease in nitrate levels in surface water and groundwater. That said, the UK has one of the highest annual average nitrate concentrations in the EU. Furthermore, performance varies substantially across the UK. For example, the percentage of groundwater monitoring stations with average values equal to or exceeding 25 milligrams of nitrates per litre over the period 2012–15 was: 41% in England; 39.5% in Scotland; 16.2% in Wales; and 1.8% in Northern Ireland. These figures represent marginal changes compared to the period 2008–11.[69]

9.4 The Minister for Farming and Fisheries (George Eustice) summarises the nitrates pollution situation across the UK in his EM, explaining that the Government's 25 Year Environment Plan sets out key actions for continuing to tackle pollution from agriculture, including:

68 Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources.

69 8693/18 ADD 9, pages 205–217.

- working with a team of soil scientists to discuss how we can develop soil health metrics — this will be an important tool for farmers to help them manage their nitrate resources better;
- working with land managers and others to consider the role of a universally accessible environmental land management scheme that encourages broad participation and secures environmental improvements countrywide;
- putting in place a robust framework to limit inputs of nitrogen rich fertilisers such as manures, slurries and chemicals to economically efficient levels, and make sure they are stored and applied safely;
- introducing clear rules, advice and, if appropriate, financial support on fertiliser management; and
- working with industry to encourage the use of low emissions fertiliser, and reviewing the levels of take up using data from the British Fertiliser Practice Survey.

9.5 In his response[70] to the queries that we raised on the Commission's earlier Report, the Minister observes that the Government has since published its "Health and Harmony" consultation on future agricultural policy.[71] As part of that policy, the Government proposes that payments be awarded for the provision of public goods, including water quality. This, he says, includes: protecting the supply of clean drinking water; improving public health; providing increased recreation opportunities; underpinning sustainable food production; and preventing loss of, or damage to, habitats and species that rely on the water environment.

9.6 **The issues raised in both of these documents are of critical importance. We note that water quality was included as one of the public goods for which farmers may be able to claim payment under the emerging new agricultural policy on which the Government is consulting.**

9.7 **We note that nitrate concentrations in the UK remain high, demonstrating how important further action is. The Environmental Audit Committee is undertaking an inquiry into nitrates policy and will no doubt be interested in the details of the Report on the Nitrates Directive. We draw it to the attention of that Committee and now clear both the Report and the Staff Working Document from scrutiny.**

Full details of the documents

(a) Commission Staff Working Document: Agriculture and Sustainable Water Management in the EU: (38704), 8705/17, SWD(17) 153; (b) Report from the Commission on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2012–2015: (39692), 8693/18 + ADDs 1–9, COM (18) 257.

Previous Committee Reports

Third Report HC 301–iii (2017–19), chapter 26 (29 November 2017).

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

71 Cm 9577, "Health and Harmony: the future for food, farming and the environment in a Green Brexit", Department for Environment Food and Rural Affairs, February 2018.

10 Operation Atalanta: relocation of Operational HQ away from the UK

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Defence and Foreign Affairs Committees
Document details	Council Decision amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast
Legal base	Articles 28, 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document Number	(39939), 10567/18

Summary and Committee's conclusions

10.1 In December 2008, in response to Somali-based piracy and armed robbery at sea, the EU launched Operation Atalanta, within the framework of the EU's Common Security and Defence Policy (CSDP). The Operation aims to "deter and disrupt piracy in the Western Indian Ocean and protect vulnerable vessels from potential robbery or hijacking". The area it covers is important as a trade route, with around 65 per cent of the UK's oil and natural gas imports passing by the Horn of Africa and through the Suez Canal.[72]

10.2 The UK has strongly supported Atalanta, providing both its Operational Headquarters (at the Ministry of Defence headquarters in Northwood) and the Operational Commander — currently Major General Charlie Strickland RM — since its inception in 2008. The Operation has been active ever since; its mandate was last extended by EU Foreign Affairs Ministers in November 2016 (to run until the end of 2018).[73]

10.3 The UK's decision to leave the EU will inevitably have implications for the UK's involvement in the Operation — given that it will leave the Common Foreign & Security Policy when it ceases to a Member State — and by extension the in-kind support it provides as Operational HQ. In December 2016, just after the Operation was last extended, the Government said that "it is not yet possible to ascertain what the shape of the operation, its viability, or that of UK participation, would look like in the future. In the meantime, […] the UK remains committed to the continued success of Operation ATALANTA and the use of the OHQ facilities at Northwood". The Operational Commander gave evidence to the House of Lords in February 2018, when he said that "the contribution that [the UK] as the framework nation have made to Atalanta is key".

72 In April 2010 the EU further intensified its efforts to provide stability in the region by launching a military training Mission for Somali defence forces (EUTM Somalia). Its purpose is to strengthen the Transitional Federal Government (TFG) and the institutions of Somalia by providing strategic advice to the Somali Ministry of Defence and National Armed Forces on security sector development, including on personnel management, strategic planning and defence-related laws.

73 See Council Decision 2016/2082/CFSP.

10.4 When the draft Withdrawal Agreement was published on 19 March 2018 it was confirmed that the UK would be relinquishing the Operational HQ function when it leaves the EU. Article 124(7) of the provisional Agreement — which is shaded in green, indicating the Government's acceptance — provides that after 29 March 2019 "the United Kingdom shall not provide commanders of civilian operations, heads of mission, operation commanders or force commanders for missions or operations […], nor shall it provide the operational headquarters for such missions or operations".

10.5 In June 2018, the European External Action Service (EEAS) circulated a draft Council Decision to give effect to this change. The legal act would result in the move of the OHQ from Northwood to the Spanish Naval Headquarters in Rota; the appointment of a new (as yet to be designated) Operational Commander, since the incumbent in British; and the move of the EU's Maritime Security Centre for the Horn of Africa[74] from Northwood to the French Naval Headquarters in Brest. This new structure was chosen over a rival bid by Italy to host both the Operational HQ and the Maritime Security Centre. The draft Decision also confirms an extension of the mission's mandate until at least December 2020.

10.6 The Minister for Europe (Sir Alan Duncan) submitted an Explanatory Memorandum on the proposal to prepare Operation Atalanta for Brexit on 28 June 2018. This reiterates that the Government accepted the requirement for the Operational Headquarters to be moved away from the UK, which the Minister says he does "not expect this [….] to have any impact on the operation". With respect to continued UK participation in the Operation — and the Common Security & Defence Policy more generally — the Memorandum states:

> "The UK remains committed to European security and will remain so after we leave the EU. Operation Atalanta has been a tangible demonstration of the UK's commitment to the Common Security & Defence Policy (CSDP); UK leadership and command of the operation has been instrumental in its success. The UK will be able to contribute to the mission during the Implementation Period for the 20 months from 29 March 2019 as we will still be considered a Member State for the purposes of the CSDP. But the terms of any UK participation during the Implementation Period would require negotiation. Participation in [Operation Atalanta], and other CSDP missions, thereafter would require the negotiation of a Framework Participation Agreement with the EU."

10.7 **The proposed Council Decision now shows that the EU is formally preparing to move the Operational Headquarters for the Operation from the UK to Spain and France by March 2019. As such, we consider this proposal politically important and draw it to the attention of the Defence and Foreign Affairs Committees, which may wish to consider it further in the context of any future inquiries into the parameters of UK involvement in the Common Foreign & Security Policy after Brexit (including during the post-Brexit transitional period).**

10.8 **We now clear the proposal from scrutiny, to enable it to be adopted by EU Foreign Affairs Ministers on 16 July 2018. The Committee will continue to follow closely the**

74 The Maritime Security Centre provides 24-hour monitoring of vessels transiting through the Gulf of Aden, working in close cooperation with the UK's Maritime Trade Organisation, the Royal Navy's Dubai-based 24-hour reporting centre.

discussions with the EU on a future security and defence agreement, and how this might affect the operation of the UK's foreign policy once it is no longer formally part of the Common Foreign & Security Policy.

Full details of the documents

Council Decision amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast: (39939), 10567/18.

Previous Committee Reports

None.

11 EU sanctions against the Maldives

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Foreign Affairs and International Development Committees
Document details	(a) Council Decision (CFSP) concerning restrictive measures in view of the situation in the Maldives; (b) Council Regulation concerning restrictive measures in view of the situation in the Republic of Maldives.
Legal base	(a) Article 29 TEU; unanimity; (b) Article 215 TFEU; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(a) (39943), —; (b) (39944), —

Summary and Committee's conclusions

11.1 The Maldives have faced political and social unrest for a number of years. The country left the Commonwealth in 2016 following concerns being expressed over the erosion of its parliamentary democracy and the increasing frequency of human rights abuses against political dissenters.[75] According to the Foreign Office, the situation has "subsequently deteriorated, with all opposition leaders now either in jail or in exile".[76] The independence of the country's judicial bodies has also been severely undermined, after a Supreme Court order for the release of several political prisoners was quashed by President Abdulla Yameen in early 2018.

11.2 On 26 February 2018, EU Foreign Affairs Ministers adopted conclusions agreeing that the EU would "consider imposing targeted measures against Maldives if the situation did not improve". The following month, the UK Government issued a statement on behalf of over 40 countries[77] at the United Nations' Human Rights Council, condemning the situation. This noted with concern that "under the state of emergency declared and prolonged by President Yameen a large number of human rights and fundamental freedoms enshrined in the Constitution were suspended, including rights of peaceful assembly, privacy, and freedom from unlawful arrest and detention".

11.3 In July 2018, the European External Action Service (EEAS) circulated draft legal acts to establish an EU framework for targeted sanctions against the Maldives. It would impose asset freezes and travel bans on "persons and entities responsible for undermining the rule of law or obstructing an inclusive political solution in the Maldives as well as persons and entities responsible for serious human rights violations or abuses". Specific persons to be

75 BBC News, "Maldives leaves Commonwealth amid democracy row" (13 October 2016).
76 Explanatory Memorandum submitted by the Foreign and Commonwealth Office (3 July 2018).
77 The statement was issued on behalf of all EU Member States, as well as 12 other countries.

targeted would be added by the Member States at a later date, once the overarching legal framework was in place.[78] The sanctions regime requires the unanimous agreement of all EU countries, and is due to be adopted by the Foreign Affairs Council on 16 July 2018.

11.4 The Minister for Europe (Sir Alan Duncan) submitted an Explanatory Memorandum on the proposals on 3 July 2018. Referring to the Maldives as an "FCO human rights priority country", he notes the Government's support for the new sanctions regime which he argues would "complement our strategy of galvanising international action to effect respect for human rights, democracy and the independence of the judiciary in the Maldives" as well as "a strong political signal to the Maldives Government ahead of the Presidential elections in September".

11.5 **We thank the Minister for the information provided on the proposals allowing for EU sanctions to be applied to those persons held responsible for the deterioration of the human rights situation in the Maldives. As this is a new European sanctions regime, we consider it politically important. Accordingly, we draw it to the attention of the House and of the Foreign Affairs and international Development Committees in particular. We now clear the proposals from scrutiny.**

Full details of the documents

(a) Council Decision (CFSP) concerning restrictive measures in view of the situation in the Maldives: (39443), —; (b) Council Regulation concerning restrictive measures in view of the situation in the Republic of Maldives: (39444), —.

Previous Committee Reports

None.

78 It is not unusual for the Member States to establish the legal framework for sanctions without applying it to specific individuals straightaway. This applies pressure to the targeted country and allows actual sanctions to be applied rapidly when necessary. The EU recently did the same with respect to Venezuela (see our Report of 6 December 2017).

12 Proceeds of crime: mutual recognition of freezing and confiscation orders

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee and the Committee on Exiting the European Union
Document details	Proposal for a Regulation on the mutual recognition of freezing and confiscation orders
Legal base	Article 82(1)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(38429), 15816/16 + ADD 1, COM(16) 819

Summary and Committee's conclusions

12.1 The Commission estimates that only around 1% of the proceeds of crime generated within the European Union are confiscated. The proposed Regulation is intended to improve the cross-border enforcement of court orders authorising the freezing and confiscation of the proceeds of crime and is part of a wider package of measures to disrupt and cut off funding for organised crime and terrorism which often has a transnational dimension. It would ensure that an order to freeze or confiscate the proceeds of crime made by a court in one Member State would be recognised and enforced in another Member State as if it were a domestic order.

12.2 The proposed Regulation would replace two EU Framework Decisions (adopted in 2003 and 2006) in which the UK currently participates and is subject to the UK's Title V (justice and home affairs) opt-in, meaning that it will only apply if the UK opts in.[79] The Minister for Security and Economic Crime (Mr Ben Wallace) wrote in April 2017 to inform our predecessor Committee that the Government was minded to opt in, even though he recognised that the proposed Regulation was "highly unlikely to take effect" until the UK left the EU. He nonetheless considered that UK participation would "signal our commitment to cooperate in this important area" and would bring "operational benefits through strengthening the ability for our operational agencies to have our asset recovery orders recognised and executed within certain deadlines".[80] The Minister wrote to confirm the Government's opt-in decision in July 2017.[81]

12.3 The Justice and Home Affairs Council agreed a general approach in December 2017. The UK abstained as the proposed Regulation had not been cleared from scrutiny. In

79 Council Framework Decision 2003/577/JHA and Council Framework Decision 2006/783/JHA. The 2003 Framework Decision has been partially superseded by Directive 2014/41/EU on the European Investigation Order which establishes procedures for the freezing and transfer of evidence. The UK opted into the Directive and had to implement its provisions by 22 May 2017.

80 See the letter of 21 April 2017 from the Minister for Security and Economic Crime (Mr Ben Wallace) to the Chair of the European Scrutiny Committee.

81 See the Minister's letter of 19 July 2017 to the Chair of the European Scrutiny Committee.

subsequent correspondence, the Minister reported that good progress had been made in trilogue negotiations with the European Parliament, but that an impasse had been reached on the inclusion of a specific provision allowing a Member State to refuse to recognise or execute a freezing or confiscation order on human rights grounds. We granted a scrutiny waiver on 20 June 2018 in anticipation of a compromise text being brought to the Council for agreement before the end of the Bulgarian Presidency.

12.4 In his latest letter of 4 July 2018, the Minister informs us that a compromise text has been agreed which was endorsed by COREPER on 20 June and should be formally adopted by the Council after the summer recess.[82] The Government is content with the outcome as "the text does not give rise to any new legal obligations on the UK given the overriding obligation to act in accordance with the [EU] Charter's provisions in any event".

12.5 The Minister also responds to questions we raised in our Report agreed on 20 June concerning:

- the agreed time limits for recognising and executing freezing and confiscation orders;
- the date on which the Regulation will become operational in the UK;
- whether prior changes will need to be made to domestic law; and
- how the application of the Regulation in the UK will be affected by the UK's exit from the EU (both during and after the expiry of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement).

12.6 On time limits, the Minister explains that decisions on the recognition and execution of freezing orders must be taken "without delay" and given the same priority as a similar domestic case. In urgent cases, there is a 48-hour deadline to recognise the freezing order and a further 48 hours in which to execute it. Decisions on the recognition and execution of confiscation orders must also be taken "without delay" (and no later than 45 days from receipt of the order) and be given the same priority as a comparable domestic confiscation order.

12.7 The Regulation will become operational in the UK 24 months after it enters into force. If, as the Minister anticipates, the Regulation is formally adopted and enters into force in late summer or early autumn, this means it would most likely take effect and apply in the UK towards the end of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement. UK asset recovery orders would therefore continue to be recognised and enforced in other EU Member States until the transition/implementation period ends on 31 December 2020. The Minister confirms that changes to domestic law will be necessary to ensure that it is compatible with the Regulation. This is also likely to be the case in the event of a "no deal" exit (and therefore no transition/implementation period) to the extent needed to address any deficiencies in retained EU law incorporated by the European Union (Withdrawal) Act 2018.

82 The agreed text provides that a national authority may decide not to recognise and execute an order "in exceptional circumstances", if there are "substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence".

12.8 The Minister reiterates the Government's goal of securing "a comprehensive new treaty on internal security cooperation" to take effect immediately after the end of the transition/implementation period. The treaty should preserve "mutually important operational capabilities whilst allowing the UK and EU to continue to work together to combat fast evolving security threats".

Our Conclusions

12.9 **We welcome the compromise reached with the European Parliament on the insertion of a specific provision allowing a competent Member State authority to refuse to recognise or execute a freezing or confiscation order where there is a substantial risk of human rights violations.**

12.10 **We note that the Regulation is likely to be "binding upon and in the UK" before exit day and to take effect during the post-exit transition/implementation envisaged in the draft EU/UK Withdrawal Agreement. This would mean that UK freezing and confiscation orders would continue to be recognised and enforced in other Member States under simplified EU procedures until 31 December 2020.[83] The position from 2021 remains uncertain. To avoid an operational gap, it will be necessary not only to negotiate an "ambitious and comprehensive" treaty on internal security with the EU, but for that treaty to be ratified and take effect immediately after the end of the transition/implementation period. We ask the Minister to report back to us on the progress being made in discussions with the EU on a post-exit EU/UK internal security treaty. Meanwhile, we are content to clear the proposed Regulation from scrutiny ahead of its formal adoption later this year. We draw this chapter to the attention of the Home Affairs Committee, Justice Committee and Committee on Exiting the European Union.**

Full details of the documents

Proposal for a Regulation on the mutual recognition of freezing and confiscation orders: (38429), 15816/16 + ADD 1, COM(16) 819.

Background

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

12.12 The Commission considers that the existing EU regime for freezing and confiscating the proceeds of crime is "out of date" and unworkable in practice, containing loopholes that criminals can exploit. It anticipates that the proposed Regulation would improve cross-border enforcement by:

- establishing a comprehensive framework covering both the freezing and confiscation of proceeds of crime based on directly applicable rules (reducing the risk of incorrect or late implementation by Member States);
- providing for the mutual recognition of all types of freezing and confiscation orders covered by the 2014 EU Confiscation Directive as well as other non-conviction based confiscation orders issued as part of criminal proceedings;[84]

83 See Article 122 of the draft EU/UK Withdrawal Agreement.

84 The UK does not participate in the EU Confiscation Directive.

- setting clear deadlines for recognising and executing freezing and confiscation orders issued by another Member State;
- simplifying the mutual recognition procedure by establishing a standard form for freezing orders and a standard certificate for confiscation orders;
- improving communication between the national authorities responsible for issuing and executing freezing and confiscation orders; and
- giving priority to the right of a victim of crime to compensation and restitution.

Previous Committee Reports

Thirty-second Report HC 301–xxxi (2017–19), chapter 6 (20 June 2018), Fifth Report HC 301–v (2017–19), chapter 12 (13 December 2017), First Report HC 302–i (2017–19), chapter 24 (13 November 2017), Fortieth Report HC 71–xxxvii (2016–17), chapter 1 (25 April 2017), Thirty-fourth Report HC 71–xxxii (2016–17), chapter 1 (8 March 2017) and Thirtieth Report HC 71–xxviii (2016–17), chapter 2 (1 February 2017). See also see our earlier Reports on Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU: Tenth Report HC 342–x (2015–16), chapter 21 (25 November 2015); Twenty-eighth Report HC 83–xxv (2013–14), chapter 13 (18 December 2013); Twenty-second Report HC 86–xxii (2012–13), chapter 9 (5 December 2012); Twelfth Report HC 86–xii (2012–13), chapter 5 (12 September 2012); Sixth Report HC 86–vi (2012–13), chapter 4 (27 June 2012); and Sixty-third Report HC 428–lvii (2010–12), chapter 1 (18 April 2012).

13 Europol: exchanging personal data with third countries

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

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

Summary and Committee's conclusions

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

13.2 Under the Europol Regulation, the transfer of personal data agreed after 1 May 2017 (when the Regulation took effect) must be based either on a so-called "adequacy decision" establishing that a third country (or processing sector within it) ensures an adequate level of protection of personal data or on an international agreement concluded by the EU which "adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals".[85] Negotiating directives setting out the objectives to be achieved in the negotiations are annexed to each of the proposed Council Decisions. If approved, further Council Decisions will be needed once the negotiations have been completed to authorise the EU to sign the agreements. The Council will need to obtain the approval (consent) of the European Parliament before it can conclude the agreements.

13.3 In his Explanatory Memorandum of 26 January, the Minister for Policing and the Fire Service (Mr Nick Hurd) told us that he expected the Council to insist on the inclusion of a substantive justice and home affairs legal base to complement the procedural legal bases cited in the Commission proposals. This would bring the proposed Council Decisions within the scope of the UK's Title V (justice and home affairs) opt-in Protocol, meaning that each Council Decision would only apply to the UK if the Government decided to opt in. In deciding whether to opt in, he made clear that the Government would need to be "fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights".

85 See Article 25 of Regulation (EU) 2016/794.

13.4 Although reluctant to clear the proposals from scrutiny without having a much clearer understanding of the human rights safeguards that the EU would be seeking in its negotiations with each country, we recognised that Brexit cast the proposals in a different light. As the agreements would be the first to be negotiated and concluded under the Europol Regulation, they were likely to establish the framework for future agreements on the exchange of personal data between Europol and third country law enforcement authorities. Given the possibility that the Government may yet have to fall back on the third country provisions set out in the Europol Regulation if it is unable to secure a "bespoke" relationship with Europol post-exit,[86] we considered that the UK should have some involvement in overseeing the negotiations (through a specially constituted Council committee) and that the Government should be able to participate in the vote in Council if it decided to opt into some or all of the proposed Council Decisions. We therefore agreed to clear the proposals from scrutiny.

13.5 In his letter of 30 May 2018, the Minister informed us that the Government had decided to opt into all eight proposed Council Decisions,[87] noting that UK participation would "provide an opportunity for us to influence the negotiation of these agreements" and "continue to press for appropriate human rights and data protection safeguards".

13.6 In our Report chapter agreed on 13 June, we reminded the Minister that we had requested further information on:

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

13.7 We also asked him:

- whether the Council had agreed to amend the Commission proposal to include a substantive justice and home affairs legal base and a recital stating that the UK's Title V (justice and home affairs) opt-in Protocol applied;
- whether the Commission and/or Council contested the application of the UK's Title V opt-in Protocol and, if so, to provide details of any statement entered in the Council minutes by the UK;
- whether he agreed with the recommendations made by the European Data Protection Supervisor (EDPS) on the need for impact assessments to "better assess the risks posed by transfers of data to these third countries for individuals' right to privacy and data protection, but also for other fundamental rights and freedoms protected by the [EU] Charter [of Fundamental Rights], in order to define the precise safeguards necessary"; and
- whether he would press for these assessments to be carried out before the Council agreed negotiating mandates for each country or (if too late) at an early stage in negotiations.

86 See the Government's future partnership paper on *Security, law enforcement and criminal justice* published in September 2017.

87 See also the Minister's Written Ministerial Statement of 24 May 2018 on *Europol: Personal Data*.

13.8 We noted that the European Data Protection Supervisor had also identified the "appropriate safeguards" that would need to be included in an international agreement authorising the transfer of personal data between Europol and other third countries. We asked the Minister whether he accepted that these were "appropriate safeguards" for any future agreement enabling Europol and the UK to exchange personal data and whether he considered that the UK met the criteria set by the EDPS.

13.9 In his letter of 21 June 2018, the Minister tells us that the Council Decisions were adopted by the Justice and Home Affairs Council on 4–5 June and that the Government abstained "as the agreements had not cleared parliamentary scrutiny" in both Houses. As anticipated, the Council added two new substantive legal bases (on data protection and on Europol).[88] Despite the inclusion of a Title V (justice and home affairs) legal base, the Council disagreed with the Government's view that the UK's Title V opt-in Protocol applies:

> "As the UK is bound by the Europol Regulation, which allows for these third country agreements to be negotiated, the Council considers that the UK is automatically bound by these negotiating mandates to ensure the coherence of EU law."

13.10 The Minister tells us that "the Government did not submit a minute statement in relation to these proposals". He explains that the human rights clause proposed by the Presidency would allow for each agreement to be terminated "where the third country no longer effectively ensures the high level of protection of fundamental rights and freedoms required" but accepts that "it is not yet clear how it would operate in practice and will require discussion with each country during negotiations". He says that the Government will aim to "feed into" Council deliberations on the need for a country by country impact assessment, as recommended by the European Data Protection Supervisor, adding that "this would help to clarify which country specific safeguards are necessary".

13.11 Turning to the wider implications of the European Data Protection Supervisor's recommendations on the safeguards to be included in EU data-sharing agreements with third countries, the Minister draws attention to the Government's future partnership papers which call for "an ambitious and comprehensive security relationship which preserves mutually important operational capabilities whilst allowing the UK and EU to continue to work together to combat fast evolving security threats". He highlights the UK's "exceptionally high standards of data protection" and the Government's goal of ensuring "the continued protection and exchange of personal data between the EU and the UK" under a future partnership agreement.

Our Conclusions

13.12 **We welcome and support the inclusion of a Title V (justice and home affairs) legal base. As the Minister makes no mention of a recital stating that the UK's Title V opt-in Protocol applies, we infer that the Government was unable to secure one and that the Commission and Council's view that the UK is bound to participate in the proposed Council Decisions has prevailed. We are disappointed that the Government has chosen to make no statement in the Council minutes to contradict this view and substantiate its own position that the UK's Title V opt-in is engaged and does apply.**

88 Articles 16(2) and 88 of the Treaty on the Functioning of the European Union (TFEU).

13.13 **We share the view of the European Data Protection Supervisor that an in-depth assessment of the situation in each of the eight countries is necessary to take account of "the reality on the ground", the risks posed by the transfer of personal data, and the specific safeguards needed. We urge the Government to use its influence within the Council committee overseeing negotiations to make the case for "country by country impact assessments" to inform discussions on the necessary safeguards. We will wish to consider the adequacy of these safeguards, and the practical operation of the proposed human rights clause, when the negotiations have been completed and the Council is invited to sign and conclude the agreements.**

13.14 **The proposed Council Decisions have already been cleared from scrutiny. We have no further questions to raise at this stage. We draw this chapter to the attention of the Home Affairs Committee and the Joint Committee on Human Rights.**

Full details of the documents

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

European Union and the People's Democratic Republic of Algeria on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Algerian authorities competent for fighting serious crime and terrorism: (39418), 5040/18 + ADD 1, COM(17) 811.

Background

13.15 Our earlier Reports (listed at the end of this chapter) provide further information on the proposed Council Decisions and negotiating directives.

The Minister's letter of 21 June 2018

Legal base

13.16 The Minister responds to our request for an update on the progress made in securing the addition of a substantive justice and home affairs legal base:

> "The standard Council approach is to include substantive legal bases into any negotiating mandate, in contrast to the Commission approach of including only a procedural legal base. On this occasion, the Council added Articles 16(2) and 88 of the Treaty on the Functioning of the European Union as substantive legal bases. The Government supports the inclusion of these legal bases, in line with the approach taken by the Court of Justice of the European Union in relation to the *Opinion 1–15* on the EU-Canada PNR agreement."

Application of the UK's Title V (justice and home affairs) opt-in

13.17 We asked whether the Commission and/or Council accepted that the UK's Title V (justice and home affairs) opt-in was engaged, highlighting the absence of a recital making clear that the opt-in applied and the possibility that the Commission might consider that the UK was automatically bound by the Decisions by virtue of its participation in the Europol Regulation. The Minister responds:

> "As the UK is bound by the Europol Regulation, which allows for these third country agreements to be negotiated, the Council considers that the UK is automatically bound by these negotiating mandates to ensure the coherence of EU law. The Government on the other hand considers consider that any measure that cites a legal base from the JHA section of the TFEU triggers a new opt-in decision."

13.18 He says that the UK did not enter a statement in the Council minutes as "the three-month period allowed for in Protocol (No. 21) to the Treaties was respected and the Government had already written to the Presidency formally indicating our decision to opt in to in these measures on 27 April".

Human rights clause

13.19 The Minister explains that "the Presidency proposed a clause to terminate the agreement where the third country no longer effectively ensures the high level of protection

of fundamental rights and freedoms required under the Agreement", but adds that "it is not yet clear how it would operate in practice and will require discussion with each country during negotiations".

13.20 Responding to our request for details of the country specific safeguards that the Government would seek to include in each of the agreements, either before negotiations began or once they were underway, he observes:

> "As per the European Data Protection Supervisor's recommendations, the Council will consider whether it is necessary to undertake a country by country impact assessment, which the Government will aim to feed into. This would help to clarify which country specific safeguards are necessary."

Brexit implications

13.21 We noted the wider relevance of the European Data Protection Supervisor's recommendations in the context of Brexit, given the possibility that the UK's future cooperation with Europol may have to be based on existing third country mechanisms. We asked the Minister whether he accepted that the safeguards identified by the EDPS were appropriate for any future agreement enabling Europol and the UK to exchange personal data and whether he considered that the UK met the criteria set by the EDPS. The Minister responds:

> "The UK is seeking an ambitious and comprehensive security relationship which preserves mutually important operational capabilities whilst allowing the UK and EU to continue to work together to combat fast evolving security threats. Our Security, Law Enforcement and Criminal Justice Future Partnership paper, published in September last year — as well as the recently published presentation on the 'Framework for the UK-EU Security Partnership' — sets out our ambition for our future relationship with the EU; one which provides for practical operational cooperation, facilitates data-driven law enforcement, and allows multilateral cooperation through EU agencies, including Europol.
>
> "On your questions about data protection, the UK will be in a unique position as a former Member State of the EU. The UK has exceptionally high standards of data protection. Through the Data Protection Act, we implemented the new EU Data Protection package (comprising the GDPR and the Data Protection Directive). As such when we leave, we will have the same data protection standards as our EU partners.
>
> "On 24 August, the Government published a future partnership paper on how to ensure the continued protection and exchange of personal data between the EU and the UK in light of the UK's withdrawal from, and new partnership with, the EU. We want to secure an agreement with the EU that provides stability and confidence for EU and UK business, public bodies and individuals to achieve our aims in maintaining and developing the UK's strong trading, economic and security links with the EU."

Previous Committee Reports

Thirty-first Report HC 301–xxx (2017–19), chapter 10 (13 June 2018), Twenty-second Report HC 301–xxi (2017–19), chapter 9 (28 March 2018) and Thirteenth Report HC 301–xiii (2017–19), chapter 3 (7 February 2018).

14 European Defence Industrial Development Programme

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; Minister invited to give evidence; further information requested; drawn to the attention of the Defence Committee
Document details	Proposal for a Regulation establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the EU defence industry
Legal base	Article 173 TFEU; ordinary legislative procedure; QMV
Department	Ministry of Defence
Document Number	(38831), 10589/17 + ADD 1, COM(17) 294

Summary and Committee's conclusions

14.1 In June 2018, we last considered the proposal for the 2019–2020 European Defence Industrial Development Programme (EDIDP). This is the precursor to a fully-fledged European Defence Fund, which is due to become operational in early 2021. The EDIDP, and subsequently the Fund, will co-finance the industrial development stages of new military technology, especially prototypes, from the EU budget. The European Parliament and the Member States reached agreement on the legal framework for the Programme in May 2018, and it only awaits formal adoption by the Council before it can become operational. Ministerial approval is due to be granted by the Council on 16 July 2018.[89]

14.2 The UK is due to leave the EU in March 2019, before the Programme is fully up and running. However, under the terms of the draft Withdrawal Agreement (WA) the UK would have a transitional period until 31 December 2020, during which it would contribute financially to the EU budget (and therefore the EDIDP), and in return UK researchers and companies would, in principle, be eligible to bid for funding from the Programme. However, we also understand that there are concerns in the defence industry about the intellectual property restrictions that limit the transfer of the "results" of EDIDP-funded projects to outside the EU, meaning industry uptake of funding for projects with the highest potential-added value is not yet guaranteed.[90]

14.3 While the Government has consistently supported the creation of the EDIDP in view of the perceived growth opportunities and economies of scale it offers for the UK's defence industry,[91] we were unwilling to clear the proposal from scrutiny in June. In particular, we were concerned about the potential impact of Article 122(7)(b) of the draft Withdrawal Agreement, under which the EU can unilaterally exclude UK entities from eligibility under EU funding programmes where they run beyond the end of the proposed transitional

89 The Regulation was endorsed by the European Parliament at its Plenary Session on 3 July 2018.

90 Articles 7 and 12 of the proposed EDIDP Regulation.

91 See for more information the Ministry of Defence's Explanatory Memorandum on the proposal, and also our previous Reports on the EDF and the EDIDP.

period *and* involve access to "sensitive security-related information". The UK's imminent change to a 'third country' vis-à-vis the EU has already led the Commission to exclude UK entities from bidding for the most sensitive contracts under the Galileo satellite navigation programme, and we felt we were not yet in a position to assess whether the same exclusion might be applied to the UK under the EDIDP. If it did, that would effectively mean the UK would be paying into the EDIDP while UK entities would be *ex ante* limited in their ability to secure direct funding from the Programme.[92]

14.4 Following a specific request by the Committee for more information, by letter of 13 June 2018, the Minister for Defence Procurement (Guto Bebb) acknowledged that Article 122(7)(b) could be used to exclude the UK from specific projects funded by the EDIDP on a case-by-case basis, but adding that that the Government "has received no notification from the European Commission that it intends to apply the [article 122(7)] derogation to any EDIDP […] projects" during the transitional period.[93] By that point, it was also clear that the EDIDP Regulation was due to be formally adopted by Ministers at the General Affairs Council on 16 July.

14.5 As we did not feel the Minister's letter offered adequate reassurance about the ability of UK industry to benefit from the Programme, we wrote back to the Minister on 27 June to clarify in particular:

- Why UK industry should not be eligible for all EDIDP projects given that the Programme ends on the same date as the proposed post-Brexit transitional period (31 December 2020), or alternatively—if the exclusion applies to cases where funding granted before that date but not paid out until after[94]—what proportion of individual projects were expected to 'continue after the end of the transition period' (and thus be potentially within the scope of Article 122(7)(b)); and

- What additional eligibility requirements might apply where an EDIDP grant is made towards a project linked to Permanent Structured Cooperation (PESCO) on defence, a parallel initiative by 25 Member States (not including the UK) to improve the EU's collective military capabilities.

14.6 The Minister provided a further update ahead of the Council vote by letter dated 2 July 2018. He argues that the Committee's concerns about potential exclusion of the UK are unfounded, and the Government is confident that the UK will be an involved participant in the EDIDP for a number of reasons:

- Firstly, "whilst EDIDP projects may form part of a wider programme of capability development […], the EDIDP funding is constrained by the life of the Regulation", thus presumably limiting the possibility that projects run beyond the end of the proposed transitional period (which is a requirement for the exclusion under Article 122(7)(b) to be applied);

92 Non-EU entities are excluded from receiving funding directly from the EDIDP, unless it is for an EU-based independent subsidiary. We set out the conditions for 'third country' participation in more detail in our previous Reports on the EDIDP.

93 The European Commission, however, has noted that "UK undertakings can be eligible [during the transition] unless, for security-related reasons, there would be a need to exclude UK undertakings on an *ad hoc* basis".

94 The EU's budgetary system of commitments and payments means that grant funding could be awarded in 2020 but not fully paid to recipients until 2021 or 2022.

- Secondly, although the European Commission has previously stated UK eligibility could be removed on an *ad hoc* basis during transition, "there has been no formal statement that UK firms would be excluded from EDIDP specifically" and the Minister "[does] not see any reason why this would occur";[95]

- Thirdly, "the Commission recognises it has limited experience in defence and looks to the experts in Member States to ensure the EDIDP [Work Programme] is suitable". We can infer that the UK—as Europe's largest military power alongside France—would offer its expertise in return for the fullest possible participation;

- Fourthly, the Minister argues that the process for setting up of EDIDP projects "backs up [the] view" that Article 122(7)(b) "is not a significant risk to UK defence industry". In support of this, he cites the fact that the EDIDP Work Programme will be adopted in September 2018 (when the UK will still have a vote on the relevant Committee of Member States), allowing the Government to "[propose] some UK-led collaborative projects";[96] and

- Lastly, the Minister notes that the EDIDP will usually only co-finance a project, with additional capital to be provided by Member States themselves. In practice, he says, this means that the success of the Programme in delivering capability improvements will require funding decisions to "fit the capability needs of the Member States which will also be making a significant investment". By extension, larger countries like the UK will often be better placed to provide sufficient alternative financing to make EDIDP projects viable.

14.7 The Minister also referred to our question on EDIDP funding for specific projects related to the EU's Permanent Structured Cooperation on defence (of which the UK is not a member).[97] However, he is unable to clarify whether eligibility of UK industry to bid for EDIDP money related to a PESCO project would require the UK to be a formal participant in the relevant PESCO workstream. He notes that this will depend on "arrangements for third state participation in PESCO" (which the twenty-five participating Member States are due to adopt by means of a Council Decision before the end of 2018).[98]

14.8 Overall, therefore, the Government takes the view that there are not any "significant potential implications" of Article 122(7)(b) of the Withdrawal Agreement (WA) for UK

95 The Minister's letter notes that the Commission presentation "does not consider that EDIDP is a time and finance limited regulation". However, the Commission — having proposed the EDIDP — would clearly be aware that the Programme and the transitional period are due to end on the same day. It nevertheless felt compelled to state explicitly that UK entities could be excluded from meeting the eligibility criteria for funding on an ad hoc basis, which presumably means it remains an option even if no formal notification to that effect has been made.

96 The Minister's letter also says that "it is also not clear what power the Programme Committee will have beyond setting the [Work Programme] by December 2018", although we understand the finalised legal text requires funding decisions to be awarded by the Commission by means of Implementing Acts. Those must be approved by a qualified majority of Member States on that Committee. The UK will lose its voting rights on that Committee on 29 March 2019, meaning its influence over the actual award decisions will be limited after that point will be limited. This is not, however, a consequence of a UK-specific exclusion under the draft Withdrawal Agreement, but rather the general position of any 'third country' which participate in EU programmes. For example, Switzerland and Norway act as observers on the Programming Committee for the civilian Framework Programme for Research, but have no voting rights over work programmes.

97 All Member States except Malta, Denmark and the UK are participants in PESCO. An initial list of 17 PESCO projects has been agreed, but it is not yet clear how the EDIDP will be used in practice to finance PESCO-related projects.

98 See for more information on PESCO our Report of 28 March 2018.

participation in EDIDP. This, in the Minister's view, justifies his Department's decision not to pro-actively inform Parliament of the potential interplay between the EDIDP and the draft Withdrawal Agreement (until explicitly requested to do so on 9 May by this Committee). It is noteworthy in this respect that we were told by Ministry of Defence officials on 5 June, nearly a month after that request, that questions about the Programme, Article 122(7)(b) and transition were "wider points about the EDIDP and where it sits within the overall system, some of which is yet to be fully determined particularly relating to the draft Withdrawal Agreement". More recently, on 26 June, the Minister appeared before the Science & Technology Committee and was asked specifically about the potential exclusion of the UK from certain EDIDP projects. He responded that "nobody from the MOD or from the Government is claiming that this is easy, but these are things that we should resolve, and need to resolve. The good will that we are showing in relation to these defence projects [such as the EDIDP] shows that we want to be involved".[99]

14.9 In light of the additional information provided in his letter of 2 July, the Minister urges the Committee to release the file from scrutiny because he considers the risks to UK industry to be limited, while the potential gains of constructive UK engagement in the EDIDP—and by extension the full European Defence Fund from 2021—are larger:

> "I urge you to consider that the best way for the UK to gain some benefit from this is with willing and enthusiastic engagement with the EDIDP. This will put us in a strong position to set the agenda for the capability development landscape in Europe and clearly demonstrate the innovation and strength of the UK defence industry. […] I fear that an abstention in that vote will send a message that the UK is not an enthusiastic participant, will undermine the interest already shown by other Member States in working with us in EDIDP and undermine our stated commitment to European security and defence."

14.10 The Minister then indicates that, should the Committee not release the file from scrutiny before the Council vote, the Government intends to override scrutiny to support its adoption for the above reasons.

14.11 **The Minister's latest letter provides a number of detailed reasons to underpin the Government's view that the possible risks of UK industry exclusion from the EDIDP during the transition are very limited. We agree, as we have done consistently, that the Government can reasonably support this Programme, in terms of its potential benefits for UK defence industry over the limited lifespan of the EDIDP during the post-Brexit transition (and potentially in the longer term, when the UK's participation may be carried over into the full European Defence Fund).**

14.12 **However, we find the way that parliamentary scrutiny has been handled by the Ministry of Defence on this file in recent months to be extremely regrettable. There is a disconnect between the information we received from the Ministry of Defence in early June, when we were told that the impact the Withdrawal Agreement could have on UK participation in the EDIDP was "yet to be fully determined", and the Minister's letter of 2 July, which implies that the concerns we have raised were already considered by the Department earlier this year and subsequently dismissed as unfounded for the reasons outlined in paragraph 14.6 above. However, we were clearly right to raise concerns: the**

99 Oral evidence by Guto Bebb MP (26 June 2018), Q70.

Minister himself told the Science & Technology in late June 2018 that "nobody from the MOD or from the Government is claiming that this is easy, but these are things that we should resolve, and need to resolve".

14.13 **We would note that our concern is not, and has never been, the fact that UK contributions to the EDIDP during the transition would also, to a greater or lesser extent, benefit the defence industries of other EU Member States. The very nature of the EU budget means that UK contributions, both before, during and after transition, will be pooled and the UK will not always be a net beneficiary of every EU programme in which it participates. This delivers economies of scale and cross-border collaboration which the UK (or other Member States) could not achieve by itself. As we have said, the Government is entitled to take the view that UK participation — especially where it lays the groundwork for involvement in the post-2020 European Defence Fund — is on the whole beneficial (although others may disagree).**

14.14 **Rather, our concern was specifically that UK industry could be unilaterally excluded from meeting the eligibility criteria for EDIDP funding in an unknown proportion of calls for proposals, under Article 122(7)(b) of the draft Withdrawal Agreement. This possibility, which the Minister does not dispute (but argues will not arise in practice for political and legal reasons) was clearly a material factor that Parliament should consider when scrutinising the proposal and the Government's negotiating position in Brussels.**

14.15 **While the Government may have internally reached the conclusion that this risk of exclusion was too limited to seriously jeopardise full UK participation in the EDIDP during the transition, those issues should nevertheless have been proactively raised by the Department as part of the scrutiny process when the draft Withdrawal Agreement was published. In the Minister's own words, there remains a "need to resolve" the question of UK participation once the Programme is actually operational. We remain of the view that, while the overall UK financial contribution to the EDIDP (an estimated £55 million towards grants in 2019 and 2020) may be relatively small, the purpose of that funding — and the very specific additional conditions that the WA allows the EU to attach to UK participation — clearly merited being brought to Parliament's attention. It remains unclear to us why this was not done earlier.**

14.16 **Without the context provided by the Minister's latest letter—which it took considerable efforts to extract—we could only reasonably form the conclusion that UK industry faced the risk of being excluded from meeting the eligibility criteria for an unknown proportion of EDIDP projects in 2019 and 2020, while the Government would still make a full financial contribution. This would undeniably put British industry in a worse position than companies in any of the EU-27 countries also participating in the Programme.**[100]

14.17 **However, the Minister's letter of 2 July has at last provided the basis for the Government's confidence about the negligible practical impact of article 122 WA on UK participation in the EDIDP. This argues the actual risk of exclusion is very low—but not eliminated—due to the limited lifespan and financial endowment of the EDIDP, coinciding fully with the proposed post-Brexit transition period; the likely value of**

100 We should also take into account that the UK, uniquely among contributing nations, will lose its vote on the EDIDP Programming Committee— and therefore over individual funding decisions — in March next year).

the UK's contribution to the Programme as a major military player and investor in defence technology; and the timing of the adoption of the EDIDP Work Programme, which allows for UK input.

14.18 **In light of these assurances, and our concerns about the Ministry of Defence's approach to parliamentary scrutiny notwithstanding, we now clear the proposal from scrutiny to enable the Government to support its adoption at Council on 16 July.**

14.19 **However, we ask the Minister to give oral evidence to our Committee as soon as practicable after the 2018 summer recess in light of:**

- **The assurances and information we have now received about the interplay between the Withdrawal Agreement and UK participation in the EDIDP during transition;**
- **The outstanding issues related to UK eligibility during that transition for EDIDP funding channelled towards projects linked to Permanent Structured Cooperation on Defence; and**
- **The Government's ambition to be a participant in the post-2020 European Defence Fund, which raises many of the same issues of UK financial contributions and governance arrangements as the EDIDP proposal.**

14.20 **We also ask that the Minister to write to us before the summer recess in reply to the following questions:**

- **Does the Government have any concerns about the intellectual property restrictions in the EDIDP Regulation, especially in relation to limitations on the transfer of the results of projects which relied (partially) on EDIDP funding to a non-EU entity? Could these provision inhibit the retention by, or transfer to, UK entities of intellectual property generated by to some degree by an EDIDP project after the transitional period ends?**
- **Can he give an undertaking that Parliament will be informed whenever the derogation under Article 122(7)(b) is invoked against the UK, whether in relation to the EDIDP or any other EU information exchange, procedure or programme?**
- **Can he commit to sharing the European Commission's draft EDIDP Work Programme will be shared with the European Scrutiny and Defence Committees before it is endorsed by the Member States in September 2018?**

14.21 **We draw these developments to the attention of the Defence Committee and other interested parties across the House.**

Full details of the documents

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

Previous Committee Reports

First Report HC 301–i (2017–19), chapter 30 (13 November 2017); Twelfth Report HC 301–xii (2017–19), chapter 10 (31 January 2018); Twenty-Seventh Report HC 301–xxvi (2017–19), chapter 7 (9 May 2018); and Thirty-Second Report HC 301–xxxi (2017–19), chapter 8 (20 June 2018).

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

Department for Education

(39762)
9292/18
+ ADD 1–2
COM(18) 270

Proposal for a Council Recommendation on promoting automatic mutual recognition of higher education and upper secondary education diplomas and the outcomes of learning periods abroad.

(39764)
9246/18
+ADD 1–2
COM(18) 271

Proposal for a Council Recommendation on High Quality Early Childhood Education and Care Systems.

(39767)
9229/18
+ ADD 1–3
COM(18) 272

Proposal for a Council Recommendation on a comprehensive approach to the teaching and learning of languages.

Department for International Trade

(39700)
—
C(18) 2197

Commission Recommendation of 17.4.2018 on immediate steps to improve security of export, import and transit measures for firearms, their parts and essential components and ammunition.

Foreign and Commonwealth Office

(39935)
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Special report no: 15 Strengthening the capacity of the internal security forces in Niger and Mali: only limited and slow progress.

(39947)
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Council Decision (CFSP) 2018/901 of 25 June 2018 amending Decision (CFSP) 2017/2074 concerning restrictive measures in view of the situation in Venezuela.

(39948)	Council Implementing Regulation (EU) 2018/899 of 25 June 2018 implementing Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela.
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(39950)	Council Decision (CFSP) 2018/900 of 25 June 2018 amending Decision 2013/184/CFSP concerning restrictive measures against Myanmar/ Burma.
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(39951)	Council Implementing Regulation (EU) 2018/898 of 25 June 2018 implementing Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma.
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HM Treasury

(39781)	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the Flexibility Instrument to finance immediate budgetary measures to address the on-going challenges of migration, refugee inflows and security threats as well as the extension of the Structural Reform Support Programme.
9149/18	
COM (18) 280	
(39782)	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the EU Solidarity Fund to provide for the payment of advances in the general budget of the Union for 2019.
9148/18	
COM (18) 281	

Department for Work and Pensions

(39797)	Report from the Commission to the European Parliament and the Council on the implementation of the Union authorisation of biocidal products in accordance with Article 42(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (Text with EEA relevance).
9421/18	
COM(18) 342	

Formal Minutes

Wednesday 11 July 2018

Members present:

Sir William Cash, in the Chair

Mr Marcus Fysh	Mr David Jones
Kate Green	Andrew Lewer
Darren Jones	Michael Tomlinson

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 15 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 18 July at 9.15am.

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)

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

Martyn Day MP (*Scottish National Party, Linlithgow and East Falkirk*)

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*)