House of Commons

European Scrutiny Committee

Fortieth Report of Session 2017–19

Documents considered by the Committee on 17 October 2018

Report, together with formal minutes

Ordered by The House of Commons
to be printed 17 October 2018

HC 301-xxxix
Published on 23 October 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/.

Staff

The staff of the Committee are Jessica Mulley (Clerk), Kilian Bourke, Alistair Dillon, Leigh Gibson, Foeke Noppert, Sibel Taner and George Wilson (Clerk Advisers), Arnold Ridout (Counsel for European Legislation), Joanne Dee (Deputy Counsel for European Legislation), Jeanne Delebarre (Second Clerk), Daniel Moeller (Senior Committee Assistant), Sue Beeby, Nat Ireton and Beatrice Woods (Committee Assistants), Ravi Abhayaratne and Paula Saunderson (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5467. The Committee's email address is escom@parliament.uk.

Contents

Meeting Summary

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

Brexit-related issues

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

- Government acknowledges for the first time the potential basis for the calculation of UK contributions to EU spending programmes post-Brexit
- EU proposal on seafood imports demonstrates why the UK processing industry will need access post-Brexit to duty-free or reduced-duty raw seafood material
- New EU rules on plastic packaging may apply to the UK post-Brexit
- European Commission's policy paper on the remaining hurdles to a Brexit agreement, in particular the Irish 'backstop'.

Summary

Brexit 'no deal' preparedness

The Committee published a report on the 'no deal' preparedness of both the UK and the EU, drawing on the Government's technical notices and the European Commission's recent policy paper on the remaining hurdles to an agreement (in particular the Irish 'backstop'). The Committee concludes that the Government presumes a level of bilateral contingency planning to avoid serious disruption to trade and transport with the EU (and the wider world) which may not materialise in practice and presses the Department for Exiting the EU to communicate more clearly what support the Government would offer affected businesses and consumers.

Cleared from scrutiny; drawn to the attention of the Exiting the EU Committee

Qualified majority voting in the Common Foreign & Security Policy

The Committee has issued a report on the recommendation that the EU should begin making some decisions relating to its Common Foreign & Security Policy (CFSP) by qualified majority, rather than by unanimity as is currently the case. The European Commission wants to introduce 'qualified majority voting' for the deployment of civilian security missions, like its advisory missions in Niger and Mali. The remaining 27 Member States are due to discuss whether to authorise such a change in voting procedure at a summit in May 2019, after the UK has left the EU. However, the Committee concluded the introduction of QMV could impact on the direction of the EU's foreign policy and therefore on the UK's cooperation with the EU in this area.

Cleared from scrutiny; drawn to the attention of the Defence and Foreign Affairs Committees

Joint Undertaking for ITER

ITER is an international nuclear fusion project, in which the UK participates through the EU. The Minister confirms that the UK will seek association with ITER post-Brexit and specifies that this will be in a similar manner to the EU-Swiss research association agreement. He also specifies—for the first time—that the starting point for considering how a UK contribution might be calculated would be the "standard GDP ratio-based mechanism, as used in the Swiss association agreement". As there are slight differences between the Swiss calculation for different elements of the research association agreement, the Committee seeks clarification on which approach is the starting point for the UK's analysis.

Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Science and Technology Committee

EU assessments of air and sea quality

These non-legislative reports on the implementation of EU air quality and marine protection laws re-iterate well-known weaknesses in implementation across the EU (including the UK) of such laws. The Committee reports them to the House given political interest in environmental governance post-Brexit and in air quality specifically.

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

Tariff quotas for EU imports of fishery products

As the EU catches less than 50% of the seafood that it consumes, its processing industry depends on a reliable supply of raw material from third countries at reduced, or zero, duty. A system of autonomous tariff quotas (ATQs) is in place to provide this supply, balancing the needs of the catching and processing sectors. The Commission has proposed a revised set of ATQs for the period 2019–20. The Government supports the system of ATQs, but (in common with other Member States) would like to see a number of changes. The Committee notes that the proposal demonstrates why it is imperative that, post-Brexit, the UK processing industry has access to duty-free or reduced-duty raw seafood material. The Committee retains the proposal under scrutiny pending a further update on the negotiations.

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

Reduction in the impact of single-use plastic items

The Minister says that the UK is negotiating ambitiously on this proposal, aiming to ensure as little divergence as possible between the respective UK and EU directions of

travel. She acknowledges that these rules may fall within the proposed common rulebook but notes that this is subject to the outcome of the Brexit negotiations. The Committee retains the proposal under scrutiny.

Not cleared from scrutiny; further information requested; drawn to the attention of the Environmental Audit Committee

Import from the US of beef not treated with growth-promoting hormones

Beef treated with growth-promoting hormones is banned in the EU and may not be imported, but the import ban has been the cause of a long-running trade dispute between the EU and the US. This proposal is the latest attempt to mitigate the impact of the ban. In return for no US retaliatory actions against the EU's import ban, the EU has already introduced a zero-tariff quota of 45,000 tonnes for high quality beef. This is not currently US-specific, but the Commission will propose a country-specific allocation for the US without increasing the overall quota. No arrangements are yet proposed for any specific allocations for other interested countries. The Committee clears the proposal from scrutiny in advance of imminent Council agreement to launch the negotiations but presses the Minister for a position on engagement with other interested countries.

Cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee and the International Trade Committee

The Rule of Law and EU values: Poland and Hungary

The European Parliament (EP) has launched the Article 7(1) TEU process for determining a clear risk of a serious breach of Union values by Hungary—the so-called "preventative mechanism". The Commission triggered the same process against Poland in December 2017.

The timing of consideration of the two proposed Decisions relating to Hungary and Poland in the Council is unclear. So far, the process against Poland has not been forced to a vote in the Council. Even if either of the proposed Decisions were forced to a vote, voting thresholds in both the Council/EP and political sensitivities and alliances mean that it is far from certain that there would be a negative outcome for either country. In any event, further steps would need to be taken for Hungary or Poland to be sanctioned, for instance by losing voting rights in the Council. This would involve the separate triggering of a two stage "sanctions mechanism" set out in Articles 7(2) and (3) TEU.

The Government provides a neutral view on the newly proposed Council Decision relating to Hungary. It considers that Member States should respect the rule of law, but that constitutional arrangements are a matter for national governments. It intends to pursue the same policy with Hungary as for Poland: to voice any UK concerns about rule of law known to Hungary on a bilateral basis. It also says that it does not want to pre-empt the Article 7(1) process which affords Hungary the right to make representations to the other Member States before the matter is put to a vote in Council.

Our chapter also touches on related matters. Principally, Hungary's challenge in the CJEU of the EP's vote. Also, the Commission's launch of infringement proceedings against Hungary relating to restrictions on foreign donations to NGOs and the freedom

to provide services/establishment of universities. The Commission has already launched infringement proceedings against Poland for its law lowering the retirement age of its Supreme Court judges which would force about 1/3 of the exiting judges to retire and open the way for Government-friendly appointments.

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

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: Joint Undertaking for ITER (Fusion for Energy) [Proposed Decision (NC)]

Defence Committee: Common Foreign & Security Policy: decision-making by Qualified Majority Voting [Communication (C)]

Environment, Food and Rural Affairs Committee: EU assessments of air and sea quality [(a)-(b), (d) Commission Reports; (c) European Court of Auditors Special Report (C)]; Tariff quotas for EU imports of fishery products 2019–20 [Proposed Regulation (NC)]; Import from the US of beef not treated with growth-promoting hormones [Recommended Decision (C)]

Environmental Audit Committee: EU assessments of air and sea quality [(a)-(b), (d) Commission Reports; (c) European Court of Auditors Special Report (C)]; Reduction in the impact of single-use plastic items [Proposed Directive (NC)]

Committee on Exiting the European Union: Rule of Law in the EU: Hungary and Poland [Proposed Council Decisions (NC)]; Brexit: UK and EU preparedness for "no deal" [Communication (C)]; Law enforcement access to electronic evidence [(a) Proposed Regulation; (b) Proposed Directive (C)]

Foreign Affairs Committee: Rule of Law in the EU: Hungary and Poland [Proposed Council Decisions (NC)]; Common Foreign & Security Policy: decision-making by Qualified Majority Voting [Communication (C)]

Health and Social Care Committee: EU assessments of air and sea quality [(a)-(b), (d) Commission Reports; (c) European Court of Auditors Special Report (C)]

Home Affairs Committee: Law enforcement access to electronic evidence [(a) Proposed Regulation; (b) Proposed Directive (C)]

International Trade Committee: Import from the US of beef not treated with growth-promoting hormones [Recommended Decision (C)]

Joint Committee on Huan Rights: Rule of Law in the EU: Hungary and Poland [Proposed Council Decisions (NC)]

Justice Committee: Rule of Law in the EU: Hungary and Poland [Proposed Council Decisions (NC)]; Law enforcement access to electronic evidence [(a) Proposed Regulation; (b) Proposed Directive (C)]

Northern Ireland Affairs Committee: European Territorial Cooperation (Interreg) [Proposed Regulations (NC)]

Science and Technology Committee: Joint Undertaking for ITER (Fusion for Energy) [Proposed Decision (N)]

Transport Committee: EU assessments of air and sea quality [(a)-(b), (d) Commission Reports; (c) European Court of Auditors Special Report (C)]

1 European Territorial Cooperation (Interreg)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Northern Ireland Affairs Committee
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context; (b) Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments
Legal base	(a) Article 175 TFEU, Ordinary legislative procedure, QMV (b) Articles 178, 209(1), 212(2) and 349 TFEU, Ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39809), 9555/18, COM(18) 373; (b) (39811), 9536/18 + ADD 1, COM(18) 374

Summary and Committee's conclusions

1.1 The European Territorial Cooperation (ETC) goal of the EU structural funds (otherwise known as "Interreg"—inter-regional cooperation) is a long-established strand of the EU structural funds, designed to promote regional cooperation across borders within the EU. It includes the PEACE Programme, specifically designed to support cooperation across the Irish border.

1.2 The European Commission has proposed a new framework for the period 2021–27 (document (b)) as well as a voluntary mechanism (document (a)) to help resolve obstacles created by conflicting legal and administrative rules affecting a cross-border region.

1.3 We first considered these documents at our meeting of 5 September 2018,[1] noting that the Interreg proposal is of particular significance to Northern Ireland. We sought greater clarity concerning future UK participation. We also welcomed further analysis from the Government on the proposed arrangement for third country involvement and what amendments, if any, the UK might propose. On the proposed mechanism to resolve legal and administrative obstacles in a cross-border context, we asked whether it could in principle apply to the Irish border and whether it could indeed be helpful.

1 Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 3 (5 September 2018).

1.4 The Parliamentary Under Secretary of State (Lord Henley) has responded[2] to the Committee's queries. He says that negotiations are progressing well and that the Government is confident of a deal on these proposals during the autumn.

1.5 The Minister draws attention to the further commitment made to the future PEACE PLUS programme in paragraph 24 of the White Paper on the future relationship between the UK and the EU.[3] It stated that the UK remains committed to delivering a future PEACE programme to sustain vital work on reconciliation and a shared future in Northern Ireland. The White Paper also set out the UK's commitment to finalising the framework for this programme jointly over the coming months. Officials will be working with Northern Ireland, Ireland and the European Commission on the detail of the proposed programme over the coming months. This includes clarification on arrangements for third country participation.

1.6 The Minister adds that it is important that the unique arrangements governing the PEACE and Interreg programmes, set out in the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 and the British-Irish Agreement Act 1999 respectively, are respected. This includes the process for agreeing the priorities for the new programmes. It is also important, he says, to ensure that the roles afforded to the North South Ministerial Council and relevant departments in Northern Ireland and Ireland are respected.

1.7 On the proposed new mechanism to resolve legal and administrative obstacles in a cross-border context (document (a)), the Minister confirms that it could, in principle, apply to the Irish border, for example in the context of PEACE PLUS. He notes that the mechanism does not exclude Member States from using existing methods to resolving legal obstacles. Further work is required, says the Minister, to assess the impact of this proposal on the UK, particularly from the perspective of EU Exit. More information and clarity on this proposal should become available as EU-wide negotiations over proposals develop.

1.8 **We welcome the clarification provided by the Minister and note both that the Government is engaging positively in the negotiations on both of these proposals and that a deal on the proposals is expected soon. With that in mind, we ask for an update as soon as there is greater clarity on the emerging shape of a deal, and well in advance of agreement in Council. The proposals remain under scrutiny and we draw this chapter to the attention of the Northern Ireland Affairs Committee.**

Full details of the documents:

(a) Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context: (39809), 9555/18, COM(18) 373;

2 Letter from Lord Henley to Sir William Cash, dated 13 September 2018.

3 "The future relationship between the United Kingdom and the European Union", Department for Exiting the European Union, 12 July 2018.

(b) Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments: (39811), 9536/18 + ADD 1, COM(18) 374.

Previous Committee Reports

Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 3 (5 September 2018).

2 Joint Undertaking for ITER (Fusion for Energy)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Science and Technology Committee
Document details	Proposal for a Council Decision amending Decision 2007/198/ Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it
Legal base	Articles 47 and 48 (third and fourth paragraphs) Euratom Treaty; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39881), 9868/18 + ADDs 1–2, COM(18) 445

Summary and Committee's conclusions

2.1 Launched in 2005 and now involving seven global partners (Euratom,[4] the USA, Russia, Japan, China, South Korea and India), ITER (International Thermonuclear Experimental Reactor) is a project to build and operate an experimental facility to demonstrate the scientific viability of fusion as a future sustainable energy source.

2.2 Each partner to the agreement is required to provide its contribution to ITER through an agency. For the EU and Euratom, this obligation is delivered by the Fusion for Energy (F4E) Joint Undertaking, the current members of which are: the EU Member States; Euratom (represented by the European Commission); and Switzerland.[5] The Commission proposed an extension of financing under the next Multi-Annual Financial Framework (2021–27) so that the EU can meet its commitments under the ITER agreement.

2.3 The Committee first considered the Commission's proposal at its meeting of 5 September 2018,[6] raising queries regarding future UK participation. The Minister of State for Universities, Science, Research and Innovation (Sam Gyimah) has responded,[7] making the following points:

- the UK wishes to explore association to the Euratom Research and Training Programme, including continued membership of F4E, on a similar basis to that of Switzerland so that UK researchers, industry and institutions would have continued access to ITER post-Brexit;

4 The European Atomic Energy Community, comprising all members of the EU as well as Switzerland which participates in some of the research activities, including ITER.
5 Switzerland participates in ITER through an association to the Euratom Research and Training Programme.
6 Thirty-seventh Report, HC 301–xxxvi (2017–19), chapter 5 (5 September 2018).
7 Letter from Sam Gyimah to Sir William Cash, dated 25 September 2018.

- any UK financial commitments post-2020 will be determined as part of future discussions on the UK-EU science and innovation relationship;
- in calculating a possible UK contribution, the Government is assessing the potential impact of different funding scenarios, but considers that a standard GDP ratio-based mechanism, as used in the Swiss association agreement, is the starting point for that analysis; and
- under a "no deal" scenario, the Government is willing to explore options for UK researchers, companies and institutions to continue to collaborate with ITER, either as a full independent member or through a cooperation agreement.

2.4 **We welcome the Minister's responses and acknowledge the considerable uncertainty while negotiations on the UK's future relationship with the EU continue.**

2.5 **It is particularly helpful that the Minister has acknowledged that the Government envisages that UK association with ITER in the future would be based on the Swiss research association agreement,[8] and that the Swiss model of financial contribution is the starting point for assessing potential funding scenarios. The standard GDP ratio-based mechanism[9] was the basis for our earlier calculation that the potential gross annual UK contribution to ITER is in the region of £120 million, although this figure remains highly speculative.[10]**

2.6 **We note that there are subtle differences between the GDP-based calculation of the Swiss contribution to Horizon 2020 and non-fusion elements of the Euratom Research and Training Programme on the one hand and the Swiss contribution to F4E (including ITER) and other Euratom fusion research on the other hand.[11] While the fusion research calculation is based on Swiss GDP as a proportion of the combined Swiss and EU GDP, the non-fusion research calculation is based on Swiss GDP as a proportion of EU GDP only. We ask the Minister to clarify why these differences exist, which of these calculations is the starting point for the UK's analysis of different funding scenarios and whether these two alternative GDP-based models are under consideration by the Government.**

2.7 **We look forward to a response to the above query and an update on the negotiation of this proposal within ten working days. We retain the document under scrutiny and draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee and the Science and Technology Committee.**

8 Agreement for scientific and technological cooperation between the European Union and European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020—the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community complementing Horizon 2020, and regulating the Swiss Confederation's participation in the ITER activities carried out by Fusion for Energy (OJ L370, p 3–18, 30 December 2014).

9 The contribution by third countries for participation in EU programmes is typically calculated by taking their share of GDP of the total GDP of the EU and the third country in question combined (i.e. the EU-27 and UK), and multiplying it by the annual EU budget for the programme in question as decided by the Member States and the European Parliament in any given year. The proposed total ITER budget for 2021–27 is €867 million, and the UK's proportion of the combined GDP is 16%, thus producing an annual figure of €139 million.

10 Thirty-fourth Report HC 301–xxxiii (2017–19), chapter 6 (4 July 2018).

11 Article 4 of the EU-Switzerland research association Agreement.

Full details of the documents:

Proposal for a Council Decision amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it: (39881), 9868/18 + ADDs 1–2, COM(18) 445 .

Previous Committee Reports

Thirty-seventh Report, HC 301–xxxvi (2017–19), chapter 5 (5 September 2018).

3 Reduction in the impact of single-use plastic items

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environmental Audit Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment
Legal base	Article 192(1), Ordinary legislative procedure; QMV
Department	Environment, Food and Rural Affairs
Document Number	(39794), 9465/18 + ADDs 1–7, COM(18) 340

Summary and Committee's conclusions

3.1 The Parliamentary Under Secretary of State for the Environment (Dr Thérèse Coffey) has written[12] to us, updating us on the progress of negotiating this new EU Directive designed to reduce the impact of certain plastic products on the environment. We first considered the proposal at our meeting of 5 September 2018.[13]

3.2 The Minister says that the UK is "making a conscious effort to be very ambitious on this proposal". The UK is seeking to ensure that any differences between the EU and UK direction of travel are either realigned or regulated appropriately to ensure that UK national interests are not damaged by the Directive. Areas where the UK has engaged include:

- the definition of single use plastics, suggesting that a temporal element be included;
- a suggestion that gel pouches be included in the list of products that have caps and lids with a significant amount of plastic; and
- a suggestion to change references to "awareness raising measures" instead to wording focussed around "behaviour change campaigns".

3.3 On Extended Producer Responsibility (EPR), the UK has supported the Commission's ambition whilst seeking clarity on a number of contentious points raised by the draft text, such as the scope and meaning of "separate collection" for single use plastics waste. The UK is also negotiating to expand the text to include options for alternative, equivalent measures that can still help achieve the main objectives of the Directive, recognising that ERP may not always be the best method of driving the desired outcomes for particular products.

12 Letter to Sir William Cash from Dr Thérèse Coffey, dated 26 September 2018.
13 Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 7 (5 September 2018).

3.4 Regarding Brexit, the Minister acknowledges that some of the manufactured goods covered in the proposed common rulebook as set out in the White Paper on the future relationship between the EU and the UK may be considered to be single use plastic products and therefore affected by the Directive. Ultimately, though, this remains a matter for the Brexit negotiations.

3.5 **We are pleased to note that the UK is engaging positively in this negotiation. We note too that, should the Government's proposal for a post-Brexit common rulebook on manufactured goods come to fruition, elements of this Directive may be included and would therefore apply to the UK. While uncertainty exists over the nature of the future relationship, we consider it appropriate to negotiate on the basis that some, or all, of the Directive will apply to the UK.**

3.6 **The document remains under scrutiny. We look forward to an update on the progress of negotiations in due course and draw this chapter to the attention of the Environmental Audit Committee.**

Full details of the documents:

Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment: (39794), 9465/18 + ADDs 1–7, COM(18) 340 .

Previous Committee Reports

Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 7 (5 September 2018).

4 Tariff quotas for EU imports of fishery products 2019–20

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Council Regulation opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019–2020
Legal base	Article 31 TFEU. QMV
Department	Environment, Food and Rural Affairs
Document Number	(40073), 12082/18 + ADD 1, COM(18) 625

Summary and Committee's conclusions

4.1 Because its own production covers only 46% of its needs, the EU relies heavily on imports of fishery products. Autonomous tariff quotas (ATQs) are applied to those products in short supply, with the objective of ensuring a steady supply of raw material from third countries for the EU's processing sector at reduced duties or duty-free.

4.2 This proposal for a Council Regulation addresses the arrangements for the period 2019–20, and follows previous proposals in seeking to strike a balance between the interests of the catching and processing sectors.

4.3 The Minister for Agriculture, Fisheries and Food (George Eustice) notes in his Explanatory Memorandum that the species of most interest to the UK processing sector are cod (headed, gutted, frozen), cold and warm water prawns, tuna, Alaska pollack, and haddock. Of those, cod is the most important species for UK processors and frozen sales.

4.4 The Minister expresses particular concern about the Commission's proposal to remove the "20% safeguard measure" applicable to cod and Alaska pollack. Under this measure, the quota is automatically increased by an additional 20% should uptake reach 80% by the end of September each year. It has been triggered for headed and gutted (H&G) cod in both 2016 and 2017 and will probably be triggered again in 2018. The Minister says that it plays an important role in providing certainty for processors that adequate supplies of raw material will be available and avoids market turbulence arising as quotas near the point of full uptake.

4.5 The UK proposes that the cod ATQ be increased from 75,000 tonnes to 80,000 tonnes if the safeguard measure is in place or to 90,000 tonnes if the safeguard measure is removed. While the Government would like to see the safeguard measure retained for Alaska pollack (of which the entire EU supply is imported) with the ATQ remaining at 300,000 tonnes, the UK could accept an ATQ of 350,00 tonnes should the safeguard measure be removed.

4.6 With regard to the other ATQs utilised by the UK, the Minister believes that the proposed quotas should be based not only on historic uptake of previous ATQs, but also on industry projections of likely market growth, availability of raw material and the overall world market demand for seafood. The Commission appears, says the Minister, to have proposed quotas at levels close to historic use. He considers that this is not appropriate as processors need flexibility to source raw material from wherever it is available. This can fluctuate according to many factors, such as fish stock levels and demand on the world market. The Government's position on the specific species is:

- haddock—retain current ATQ of 5,000 tonnes (at a tariff rate of 2.6%) rather than the Commission's proposal for 2,500 tonnes;
- cooked and peeled *pandalus* (cold water prawns) for processing—UK proposes an ATQ of 15,000 tonnes rather than the proposed 10,000 tonnes;
- fresh, chilled and frozen *pandalus*—UK can support the Commission's proposal to maintain the status quo;
- *penaeus* (warm water prawns) for processing—UK proposes an ATQ of 45,000 tonnes rather than the proposed 30,000 tonnes; and
- tuna for processing—UK proposes an ATQ of 30,000 tonnes rather than the proposed 25,000 tonnes.

4.7 On leaving the EU, or after any transition period, the UK—says the Minister—will consider setting its own independent ATQs for fisheries products to ensure that UK processors continue to have access to the fish they need to meet consumer demand.

4.8 The Commission proposes a clause allowing it to reduce the ATQs by delegated act in the event of no Brexit deal. Such a reduction would reflect the UK's share of the quota during the years preceding its withdrawal from the EU.

4.9 **The proposal delegating the power to the Commission to amend the ATQs in the event that there is no Brexit deal strikes us as sensible. We would welcome confirmation from the Minister that he is content with the suggestion.**

4.10 **This proposal demonstrates the key role of imports for the UK processing industry and why it is imperative that, post-Brexit, the UK processing industry has access to duty-free or reduced-duty raw seafood material. Any post-Brexit independent UK ATQs on fisheries products may need to take into account EU trade too, depending on the outcome of negotiations on the future relationship between the UK and the EU.**

4.11 **There are clearly considerable differences of opinion between the UK and the Commission on various elements of this proposal. We would welcome an update from the Government on the progress of negotiations in advance of Council agreement.**

4.12 **The proposal remains under scrutiny. We draw it to the attention of the Environment, Food and Rural Affairs Committee, which has considered the implications of Brexit for the catching and processing sectors.**

Full details of the documents:

Proposal for a Council Regulation opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019–2020: (40073), 12082/18 + ADD 1, COM(18) 625.

Previous Committee Reports

None.

5 Rule of Law in the EU: Hungary and Poland

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Joint Committee on Human Rights, the Justice Committee, the Exiting the EU Committee and the Foreign Affairs Committee
Document details	Proposed Council Decisions pursuant to Article 7(1) TEU on the determination of a clear risk of a serious breach of (a) Union values in the case of Hungary; and (b) the rule of law in the case of Poland
Legal base	Article 7(1) TEU; majority (four fifths); EP consent
Department	Exiting the European Union AND Foreign and Commonwealth Office
Document Numbers	(a) (40077), 12266/18 + ADD 1,—; (b) (39401), 16007/17, COM(17) 835

Summary and Committee's conclusions

5.1 On 12 September, the European Parliament (EP) voted in favour of a resolution stating that there exists in Hungary a "systematic threat" to the EU's values set out in Article 2 TEU. The resolution invites the Council of the EU to determine, under Article 7(1) TEU, whether there is a clear risk of a serious breach by Hungary of the values on which the Union was founded, and to address appropriate recommendations to Hungary. This is the first time the EP has voted in favour of triggering such action.

5.2 The background to the Article 7(1) TEU process has already been set out in our previous chapter of 21 February of this year.[14] This concerned the initiation of that process for the first time in the EU's history against Poland in December 2017. The Government has provided no further update on that dossier and consideration of the Council Decision does not seem to have been progressed.

5.3 To recap, Article 7(1) TEU provides that following a reasoned proposal by one third of Member States[15] or the EP or the Commission, the Council, acting by four-fifths majority[16] and after obtaining the consent of the EP,[17] may determine that there is a clear risk of a

14 See our Fourteenth Report HC 301–xiv (2017–19), chapter 5 (21 February 2018).

15 Hungary, as the Member State to whom the proposed Decision is addressed, will not participate in any votes under the Article 7 TEU procedures.

16 The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of Article 7 are laid down in Article 354 TFEU.

17 Parliament's consent requires a two-thirds majority of the votes cast, representing an absolute majority of all MEPs (Article 354(4) TFEU).

serious breach by a Member State of EU values referred to in Article 2 TEU.[18] Those values include respect for the rule of law. Before making such a determination, the Council must hear from the Member State in question and may make recommendations.

5.4 There is no automatic escalation from such a determination under what is known as the "preventative mechanism" to the imposition of sanctions on a Member State, such as losing its right to vote in the Council (the sanctions mechanism).[19] For that to happen:

- The European Council,[20] after obtaining the consent of the EP,[21] would have to unanimously determine a serious and persistent breach by a Member State of the Article 2 values (Article 7(2) TEU);[22] and
- The Council would then have to decide,[23] by QMV to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including voting rights in the Council (Article 7(3) TEU).

5.5 The Hungarian Government has condemned the allegations as politically motivated and argues that abstentions of MEPs should have been counted in the votes cast (if they had been, the resolution would have failed to obtain the necessary two-thirds majority of MEPs present). Therefore, the Hungarian Government is challenging the EP vote in the Court of Justice (CJEU).[24]

5.6 The resolution states that concerns of the EP relate to the functioning of Hungary's constitutional and electoral system, the independence of the judiciary, corruption and conflicts of interest, privacy and data protection, freedom of expression, academic freedom; freedom of religion, freedom of association, the right to equal treatment, minority rights, the fundamental rights of migrants, asylum seekers and refugees and economic and social rights. The resolution also annexes a reasoned proposal, based on a report on the situation in Hungary drafted by Dutch Green MEP Judith Sargentini, which provides facts and background on which the EP's concerns are based.

5.7 Alongside the EP vote, the Commission has launched infringement proceedings on some of the issues highlighted in the reasoned proposal. For example, the Commission claims Hungary's amendments to their Higher Education Act is not compatible with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU[25] and that Hungary's legislation on NGO transparency interferes

18 The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

19 Nor is the Article 7(2) and (3) TEU two-stage sanctions mechanism dependent on an Article 7(1) TEU determination. The two mechanisms are independent of each other.

20 Acting on a proposal from one third of Member States or the Commission, but not by the EP.

21 By a two-thirds majority of the votes cast and absolute majority of MEPs.

22 The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations".

23 Without any involvement of the EP.

24 See Politico, 13 September 2018. Also the EP states on its website "The request was approved by 448 votes to 197, with 48 abstentions. To be adopted, the proposal required an absolute majority of members (376) and two thirds of the votes cast—excluding the abstentions".

25 See Commission Press Release of 7 December 2017 "Infringements—European Commission refers Hungary to the Court of Justice over the Higher Education law".

with the right to freedom of association and the free movement of capital.[26] Similarly, the Commission has also taken infringement action against Poland for its laws on lowering the retirement ages of its Supreme Court judges from 70 to 65[27] which, putting " 27 out of 72 sitting Supreme Court judges at risk of being forced to retire" including the First President whose six-year constitutional mandate would be prematurely terminated.

5.8 In an Explanatory Memorandum of 2 October 2018, the Minister for Europe and the Americas (Sir Alan Duncan) comments:

> The UK places great importance on, and has a proud history in respecting, the rule of law and international values. All Member States have a responsibility to uphold a set of common values and should respect the rule of law and cultivate a society where it thrives. However, the Government believes that constitutional arrangements are primarily a matter for national governments.
>
> The Government notes the EP's vote to refer Hungary to the Council under the Article 7 process. Article 7 provides for the Hungarian Government to present its views. The Government does not want to prejudge this process and wishes to consider the Hungarian Government's response. The Government also wishes to consider the result of Hungary's challenge in the CJEU against the voting procedure in the EP.
>
> The Government believes that the best resolution to such issues is one that is resolved through substantive, sustained and constructive dialogue with the aim of reaching a common understanding.

5.9 Concerning the timing of the future consideration of the proposed Council Decision, the Minister adds that:

- The matter should now pass to the Council. However, it is possible the process could be delayed considering Hungary's challenge on the legality of the vote. Article 7 is clear that the Council must hear from Hungary before deciding what to do. The EU Presidency (currently Austria, changing to Romania from January 2019) will decide how to approach this.
- Following the hearing from Hungary, the Council may issue recommendations, before voting to determine whether there is a clear risk of a serious breach of EU values. Poland has said it will oppose this and any subsequent sanctions against Hungary.

5.10 He also says that the Government's policy will be the same as on the Article 7 process in respect of Poland and on rule of law matters across the EU: to raise concerns in private with Hungarian counterparts.

5.11 **We thank the Minister for his Explanatory Memorandum.**

26 See Commission Press Release of 7 December 2017 "Infringements—European Commission refers Hungary to the Court of Justice for its NGO Law".

27 See Commission Press Release of 28 September 2018 " Rule of Law: European Commission refers Poland to the European Court of Justice to protect the independence of the Polish Supreme Court".

5.12 **As with the proposed Council Decision relating to Poland, whilst we do not think it is for us to express any views about Hungary's compliance with Article 2 TEU values, we would of course need to be given advance warning of the UK's voting intention should the process progress to that stage. We would also be interested to learn the reasons for the UK's voting intention which would also be of wider interest to the House. We are mindful that the UK may not wish to alienate any Member States during the exit process and ongoing negotiations on a UK-EU Future Relationship.**

5.13 **We draw the Government's attention that the questions set out in paragraph 0.11 of the conclusions to our chapter of 21 February 2018 remain unanswered. We would appreciate an answer in due course and at least some response when the Government next updates on these documents.**

5.14 **In the meantime, we retain these documents under scrutiny and draw them and this chapter to the attention of the Joint Committee on Human Rights, the Exiting the EU Committee, the Justice Committee and the Foreign Affairs Committee.**

Full details of the documents:

(a) Proposal for a Council Decision determining, pursuant to Article 7 of the Treaty on the European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded: (40077), 12266/18 + ADD 1,—; (b) Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law: (39401), 16007/17, COM(17) 835.

Previous Committee Reports

(a) None; (b) Fourteenth Report, HC 301–xvi (2017–19), chapter 5 (21 February 2018).

6 Third mobility package: General Safety Regulation

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/... and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39712), 9006/18 + ADDs 1–3, COM(18) 286

Summary and Committee's conclusions

6.1 The proposal under scrutiny is part of the Commission's 'third mobility package' of legislative initiatives and non-binding actions (which is focussed on ensuring Europe's future mobility system is "safe, clean and efficient for all EU citizens"). Under the heading 'safe mobility', the proposed General Safety Regulation is accompanied by a proposal for the revision of the Road Infrastructure Safety Management Directive (which was considered in chapter 10 of the Committee's Thirty-seventh Report of Session 2017–19). In the context of connected and automated mobility, there is considerable cross-over between both proposals, in particular, where vehicle technology relies on road infrastructure (e.g. road markings that support vehicle lane assistance-keeping systems).

6.2 The proposed General Safety Regulation (GSR) would repeal and replace the current General Vehicle Safety Regulation, Pedestrian Safety Regulation and Hydrogen Safety Regulation. These instruments form part of the Union's type-approval framework and set uniform standards pertaining to active and passive vehicle safety and are aimed, respectively, at preventing collisions with other vehicles, pedestrians and cyclists, and, when collisions do occur, mitigating their consequences. Examples of safety standards include lane-keeping technology, seatbelt warning lights and car crumple zones. New vehicles, systems and components must be manufactured according to such standards before they can be placed on the market.

6.3 The current EU-level vehicle safety framework is considered to be largely out-of-date and in need of replacement with technical requirements comparable to United Nations standards, in particular, those set by the United Nations Economic Commission for

Europe. The EU Commission sees the revision of the Union's framework—long with rules governing road infrastructure—as integral to addressing the stall in falling road fatalities seen in recent years.

6.4 The GSR would update EU standards in light of technological advancements and introduce a simplified regulatory framework (with all standards held under a single Regulation). Proposed amendments and new types worthy of note include:

- The current requirement for passenger cars to be fitted with a tyre pressure monitoring system to be extended to all vehicle categories;
- The introduction of a range of new advanced vehicle safety features for all vehicles (including, for example, intelligent speed assistance, driver drowsiness and attention monitoring/distraction recognition systems, reversing detection and alcohol interlock installation facilitation);
- Specific requirements for cars and vans to be fitted with advanced emergency braking systems and accident data recorders;
- Rules on frontal protection systems for passenger cars and light commercial vehicles; and
- New requirements specific to buses and trucks (these include systems that are capable of detecting vulnerable road users in close proximity to the front or nearside of vehicles).

6.5 The fine details of these standards—as with all others—are set out in annexes to the Regulation. These are amended at regular intervals by the Commission—via delegated acts—in light of technological advancements.

6.6 The proposed new standards are to be adopted in three tranches:

i) The bulk will apply from the date of application of the Regulation for new types and 24 months after this date for newly produced vehicles;

ii) A limited number will apply from 24 months after the date of application of the Regulation for new types and 48 months after the date of application to all new vehicles; and

iii) For buses and trucks, improved direct visibility standards will apply from 48 months after the date of application of the Regulation for new types and from 84 months after the application date to all new trucks and buses.

6.7 A number of these measures—such as those aimed at driver drowsiness and attention monitoring/recognition—are based upon next generation technologies which are either currently in development or new to the market. The Commission's Explanatory Memorandum notes the potential implications of such technologies for individual rights, for example, the collection and processing of data recorded by attention monitoring systems could contain personal information relating to an identified or identifiable natural person. An identifiable natural person is a person who can be identified, directly or indirectly, by an identifier such as a name, an identification number, location data or one or more factors specific to the physical, physiological, genetic, mental, economic,

cultural or social identity of a natural person. In the EU, the storage and processing of personal information must be undertaken in accordance with data protection legislation, in particular, the General Data Protection Regulation.

6.8 The introduction and, in this case, regulation of new technologies, also raises questions regarding the normative orientation of type approval standards. In other words, are standards on, for example, driver drowsiness and attention monitoring/recognition, to be technology neutral, open and facilitative of interoperability between systems developed by different manufacturers or, alternatively, will they favour one system over another (such as those manufactured by EU-based companies versus those from third countries). This issue is especially important given the reliance of future connected and autonomous vehicles on new technologies that are yet to be mass marketed.

6.9 The proposal would also empower the Commission to bring forward delegated acts to make provision for future advancements in safety technology and to lay down detailed rules concerning technical requirements and test procedures for the approval of automated vehicles. Future delegated acts foreseen in the proposal include rules for systems that replace a drivers' control of a vehicle, including steering, accelerating and breaking.

6.10 The scope of the current framework would be extended to cover exempt vehicles such as 'SUVs' (sports utility vehicles) and vans. Unlike recent legislative proposals on emission performance standards, exemptions are not proposed for small-scale manufactures.

6.11 As part of its Impact Assessment, the Commission has considered the potential implications of the proposal for industry. It suggests that its preferred option—outlined above—can be expected to cost vehicle manufacturers around €57 billion between 2021–37. Where these costs are not fully absorbed, vehicle prices can be expected to rise, depending upon their type, from between €500–€1000. Placing the majority of the costs for implementation at the door of industry is seen as spur to innovation and costs are expected to fall as manufacturers adopt complementary production processes and uniform technical standards.

6.12 In his Explanatory Memorandum of 26 June 2018, Parliamentary Under Secretary of State at the Department of Transport, Jesse Norman, provides an overview of the proposed Regulation. In terms of its potential policy implications for UK transport law and policy, the Minister welcomes the proposal and its "moves to further embed global harmonisation into the development of technical standards". The Minister does note, however, that the Government is yet to consider the evidence and analysis presented in the Commission's Impact Assessment.

6.13 **We thank the Minister for his Explanatory Memorandum. Failing significant, unexpected, delays, the proposed Regulation is likely to come into effect during the post-exit implementation period. After speaking with officials at the Department for Transport, we understand that the proposal has been discussed in working groups and that the Austrian Presidency will seek to put the proposal before the November Competitiveness Council. With a view to these negotiations, we seek the Government's views on:**

- **The strength of the Commission's case for amending the existing vehicle and pedestrian safety framework and, in particular, if the changes proposed would lead to a reduction in road fatalities;**
- **Whether the timelines suggested for the entry into force of amended and new standards—which are to be introduced in three tranches—are appropriate or, alternatively, could be brought forward;**
- **The potential fundamental rights implications of technologies for which types are yet to be set and whether it is content that—given such standards will be adopted by way of Commission delegated act—it is sufficiently clear in the proposed Regulation that fundamental rights must be protected. If it is not content, would it support the introduction of explicit safeguards and, if so, what would these look like;**
- **If it is comfortable with allowing the Commission to adopt delegated acts setting safety standards for connected and autonomous vehicles in light of the infancy of such technologies and the current lack of regulation;**
- **The absence of a commitment in the proposed Regulation to ensure technological neutrality and open access in standard setting; and**
- **The estimated costs of the proposal for industry.**

6.14 **We retain the proposal under scrutiny pending satisfactory provision of the information requested. We request this by 14 November 2018.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/... and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009: (39712), 9006/18, COM(18) 286.

Previous Committee Reports

None.

7 Third mobility package: Proposal for a Regulation on the labelling of tyres

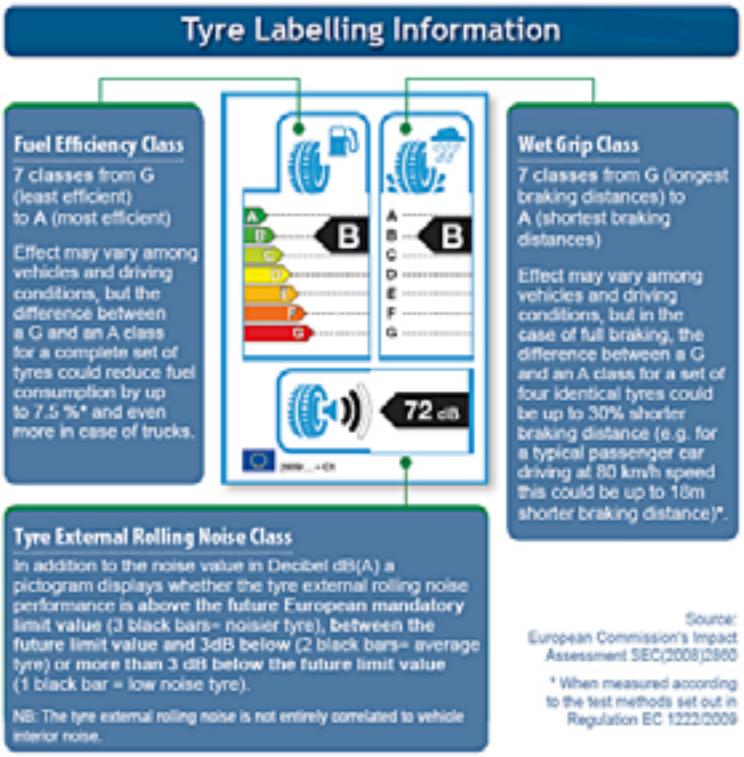
Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other essential parameters and repealing Regulation (EC) No 1222/2009
Legal base	Articles 114 and 194(2) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39740), 9185/18 + ADDs 1–5, COM(18) 296

Summary and Committee's conclusions

7.1 The proposal under scrutiny would repeal and replace Regulation (EC) No 1222/2009 on the labelling of vehicle tyres (The Tyre Labelling Regulation or TLR). The proposal would maintain and reinforce most of the TLR's existing provisions as well as introducing new tyre labelling requirements—including on safety and noise reduction—with the aim of improving the EU's current scheme to ensure cleaner, safer and quieter vehicles. A further objective is to improve the accuracy, relevancy and ease with which consumers can compare tyres. The proposal falls under the 'clean mobility' heading of the Commission's 'third mobility package' of legislative initiatives and non-binding actions (which is focussed on ensuring Europe's future mobility system is "safe, clean and efficient for all EU citizens").

7.2 The Tyre Labelling Regulation mandates and harmonises how EU standards on tyres is displayed to consumers in Europe. The TLR is complemented by the General Safety Regulation (GSR) which sets common safety requirements for vehicles, systems and components. Standards covering tyres include those on wet grip performance, fuel efficiency and external rolling noise. Tyres must meet these standards before they can be placed on the market. The parameters set by the GSR on wet grip performance, fuel efficiency and external rolling nose are the same as those displayed on tyre labels under the TLR. Retreaded and studded tyres are not covered by the TLR nor is information on abrasion or mileage.

7.3 Pictogram of the EU tyre label



Source: Europe Tyre & Rubber Manufacturers Association

7.4 Important synergies exist between the proposal and the EU's 'energy union strategy' and its commitments to reduce greenhouse gas (GHG) emissions. In November 2016, the Commission proposed a binding 30% improvement in energy efficiency in Europe as part of its proposal to revise the Energy Efficiency Directive. The transport sector is key to achieving this objective; accounting for almost one-third of EU energy consumption.[28] At the same time, the Union is seeking to reduce GHG emissions by 40% by 2020 (versus 1990 levels).[29] In 2015, it was estimated that Europe's transport sector was responsible for roughly 20% of yearly GHG emissions.[30]

7.5 The TLR covers three different types of tyre: C1 (passenger cars); C2 (light commercial vehicles); and C3 (heavy commercial vehicles). For C1 and C2 tyres, performance parameters for wet grip, fuel efficiency and external rolling noise must be displayed on a label in the form of sticker. For C3 tyres, labels are not required but information on performance parameters must be provided in technical promotional material. These parameters are assessed by way of a 'self-declaration' process undertaken by manufacturers (without any form of third-party certification).

7.6 The current proposal is a response to a Commission assessment of the TLR published in 2017 (this was heavily influenced by a 2016 external review). The review found that the TLR delivered fuel savings of about 1% per annum, together with increased safety performance and a slight decrease in external rolling noise. It also found that there was

28 European Parliament Research Service, "New rules on EU labelling of tyres" (September 2018) pp 2.
29 European Parliament Research Service, "New rules on EU labelling of tyres" (September 2018) pp 2.
30 European Parliament Research Service, "New rules on EU labelling of tyres" (September 2018) pp 2.

relatively low awareness of the labelling scheme amongst consumers and that enforcement by market surveillance authorities in Member States was poor (leading to high levels of non-compliance).

7.7 This point—on stronger market surveillance arrangements—and that on independent, third-party verification of label testing, has been raised by stakeholders who argue that specific provision must be made to ensure effective compliance and, thus, benefit for consumers. In response, in its Regulatory Fitness and Performance Assessment (REFIT), the Commission suggests that the inclusion of tyre labels in a forthcoming product registration database—discussed below—will improve market surveillance (as information will be more readily available to national authorities).

7.8 Under the Commission's proposal, the next TLR will have a dual legal basis: Article 194 (2) TFEU (energy) would be added alongside Article 114 TFEU (internal market). The main changes suggested by the proposal are:

- Requiring labels to be displayed in all situations where tyres are sold, for example, in-store, online and for distance sales;
- Including information on snow and ice performance on labels with appropriate pictures;
- Extending the requirement for labelling to C3 tyres (heavy duty vehicles);
- Empowering the Commission to introduce changes to the content and format of labels to include information on mileage, abrasion and retreaded tyres;
- Readjusting the parameters on rolling resistance, wet grip and external rolling noise—by way of delegated acts—to account for technical developments; and
- The inclusion of tyre labels in the forthcoming product registration database to be established as part of the EU framework on energy labelling.

7.9 These changes are part of a two-pronged approach to revising the existing tyre labelling system: (1) targeted amendments to the TLR.; and (2) non-regulatory actions (such as information campaigns and online display requirements). The Commission estimates that this approach will have limited cost implications for industry (the main obligation for manufacturers will be to display labels on qualifying tyres and in associated literature). The Commission states that there are no small or medium sized tyre manufacturers in Europe and, as such, additional financial and regulatory burden for this part of the sector is not expected.

7.10 In his Explanatory Memorandum of 26 June 2018, Parliamentary Under Secretary of State at the Department for Transport, Jesse Norman, states that the Government "… generally supports the Commission's proposals". The Minister does not raise any specific objections with the proposal and, moreover, suggests that—irrespective of the UK's withdrawal from the EU—UK-based tyre manufactures are likely to comply with the Regulation once it enters into force. This is presumably because tyres are manufactured for a Europe-wide market.

7.11 **We thank the Minister for his Explanatory Memorandum and seek the Government's views on the following points:**

- **The proposal to add an Article 194(2) TFEU legal base to the TLR;**
- **The extension of the existing delegation of power to the Commission so that it can adopt acts covering changes to the content and format of tyre labelling to include information on mileage, abrasion and retreaded tyres and, furthermore, whether this delegation is sufficiently clear in its objectives, scope and content; and**
- **The omission from the proposal of a requirement for third-party verification of label testing.**

7.12 **We also request information on whether the Government has undertaken an assessment of the potential cost implications of the proposal for small and medium sized business and, if it has, we request a summary of its findings.**

7.13 **We retain the proposal under scrutiny and ask for the above information by 17 November 2018.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other essential parameters and repealing Regulation (EC) No 1222/2009: (39740), 9185/18 + ADDs 1–5, COM(18) 296.

Previous Committee Reports

None.

8 EU assessments of air and sea quality

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Environment, Food and Rural Affairs Committee, Environmental Audit Committee, Transport Committee and Health Committee
Document details	(a) Commission Communication—A Europe that protects: Clean air for all; (b) Commission Report: The First Clean Air Outlook; (c) European Court of Auditors Special Report 23/2018—Air pollution: Our health still insufficiently protected; (d) Commission Report assessing Member States' programme of measures and exceptions under the Marine Strategy Framework Directive
Legal base	—
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (39721), 9048/18, COM(18) 330; (b) (39929), 10360/18, COM(18) 446; (c) (40075),—; (d) (40016), 11561/18 + ADD 1, COM(18) 562

Summary and Committee's conclusions

8.1 EU environmental legislation includes laws on air quality and on marine protection. These Reports from the European Commission and the European Court of Auditors highlight serious weaknesses in Member States' implementation of those laws. We report them to the House as politically important in the light of interest in the broad issue of environmental governance post-Brexit and following the joint Report on air quality from four Select Committees.

8.2 The Commission has a role in reporting on Member States' implementation of EU law, making recommendations on improvements and taking enforcement action if required. It is the role of the European Court of Auditors (ECA) to audit the performance of the institutions—including the Commission—and the Member States. These documents include three reports on air quality and one on implementation of the Marine Strategy Framework Directive.

Air quality

8.3 The Commission concludes (document(a)) that there is an urgent need to improve air quality across the EU through the full implementation of air quality standards agreed by the Member States and the European Parliament over ten years ago. This, says the Commission, requires action at all and across different sectors, including transport, energy and local planning.

8.4 In its "First Clean Air Outlook" (document (b)), the Commission focuses on full implementation of the National Emissions Ceilings Directive (NECD), including the need

for robust National Air Pollution Control Programmes to deliver commitments under the NECD. The need for effective engagement with the agriculture sector in particular is highlighted with a view to reducing ammonia emissions.

8.5 The ECA is also critical of progress in tackling air pollution (document (c)), noting that the European Commission needs to take more effective action as well as the Member States. It also recommends that: the Ambient Air Quality Directive should be updated; air quality policy should be prioritised and mainstreamed into other EU policies; and public awareness and information should be improved.

8.6 In their respective Explanatory Memoranda (EMs),[31] the Parliamentary Under Secretaries of State (David Rutley and Dr Thérèse Coffey) indicate that reducing emissions from transport has been the focus of UK action to date but also draw attention to the Government's consultation on a wide-ranging Clean Air Strategy. This spans across all sectors, including industry, agriculture and transport as well as reduction of emissions in the home.

8.7 Recently, the Government also responded to a joint Report[32] from four House of Commons Select Committees regarding air quality. A similarly ambitious approach was set out in that response.[33] An area of interest explored by the Committees was that of post-Brexit environmental governance, to which the Government responded by pointing to its consultation on a new, independent, statutory body to hold government to account on environmental standards post-Brexit. The Government has committed to bringing forward an Environment Principles and Governance Bill to deliver on these proposals.

Marine protection

8.8 The EU's Marine Strategy Framework Directive requires Member States to ensure that measures are taken to achieve or maintain "Good Environmental Status" (GES) in their seas by 2020. This involves protecting the marine environment, preventing its deterioration and restoring it, where practical, while using marine resources sustainably.

8.9 The Commission concludes that achieving GES by 2020 across the various marine regions and for all 11 descriptors of the Directive is unlikely. While the UK compares favourably to most of the other Member States, the Commission concludes that the UK should better address seabed habitats, water column habitats, eutrophication and underwater noise and energy as well as making improvements to implementation and monitoring. There is a general conclusion applicable to all Member States that a lack of regional or EU coordination potentially leads to a fragmented and ineffective approach.

8.10 In her Explanatory Memorandum (EM), the Parliamentary Under Secretary of State (Dr Thérèse Coffey) considers the Commission's assessment of UK measures to be "reasonably balanced" and the Government will consider the Commission's

31 Document (a): Explanatory Memorandum from David Rutley; Document (b): Explanatory Memorandum from Dr Thérèse Coffey; Document (c): Explanatory Memorandum from Dr Thérèse Coffey.

32 "Improving air quality", Fourth Report of the Environment, Food and Rural Affairs Committee, Fourth Report of the Environmental Audit Committee, Third Report of the Health and Social Care Committee, and Second Report of the Transport Committee of Session 2017–19, HC 433 (15 March 2018).

33 "Improving air quality: Government response", Tenth Special Report of the Environment, Food and Rural Affairs Committee, Seventh Special Report of the Environmental Audit Committee, Second Special Report of the Health and Social Care Committee and Third Special Report of the Transport Committee of Session 2017–19, HC 1149 (20 June 2018).

recommendations. The Minister agrees with the need for greater regional consistency and coherence and indicates that the Government is working within the UK, and with regional seas partners via OSPAR,[34] to better understand the ecosystem and to ensure that appropriate strategies are in place at the UK and regional seas levels.

Conclusions

8.11 **We note with interest the view of the Commission and of the European Court of Auditors that Member State action—including the UK—in both of these areas has been weaker than necessary to achieve the objectives agreed by Member States. These reports provide good examples of why strong environmental governance is required post-Brexit in order that the UK Government is accountable not only for its policy ambition but for its effective delivery of that ambition.**

8.12 **As the need to improve air quality and the need to ensure effective environmental governance post-Brexit are both matters of political importance to the House, we report all of these documents to the House and drawn them to the attention of the following interested Select Committees: Environment, Food and Rural Affairs; Environmental Audit; Health; and Transport. The documents are cleared from scrutiny.**

Full details of the documents:

(a) Commission Communication—A Europe that protects: Clean air for all: (39721), 9048/18, COM(18) 330; (b) Commission Report: The First Clean Air Outlook: (39929), 10360/18, COM(18) 446; (c) European Court of Auditors Special Report 23/2018—Air pollution: Our health still insufficiently protected: (40075),—; (d) Commission Report assessing Member States' programme of measures and exceptions under the Marine Strategy Framework Directive: (40016), 11561/18 + ADD 1, COM(18) 562.

Previous Committee Reports

None.

34 The Convention for the Protection of the Marine Environment of the North-East Atlantic.

9 Import from the US of beef not treated with growth-promoting hormones

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee and the International Trade Committee
Document details	Recommendation for a Council Decision authorising the opening of negotiations on an agreement with the United States of America Regarding the Importation of High Quality Beef from animals not treated with certain growth-promoting hormones
Legal base	Articles 207, 218(3) and 218(4) TFEU, QMV
Department	Environment, Food and Rural Affairs
Document Number	(40041), 11801/18 + ADD 1, COM(18) 332

Summary and Committee's conclusions

9.1 Since 1981,[35] [36] the EU has banned the use of growth-promoting hormones[37] in farm animals. The ban applies both to domestic production and to imports, but has caused an ongoing trade dispute between the EU and the USA (see below). Growth-promoting hormones are widely used in livestock production in the USA and elsewhere, but have been considered by the EU as posing a potential health risk to consumers.[38]

9.2 The EU and US agreed in 2013 on arrangements for EU imports of high-quality USA beef (from cattle not treated with growth-promoting hormones) at zero duty. It is now proposed to modify those arrangements following the decision of the USA, in December 2016, to reinstate increased duties on certain European Union products after the USA beef industry raised concerns that the EU may be violating the revised Memorandum of Understanding (MoU) of 21 October 2013. The USA industry felt that it had been prevented from gaining the intended benefits from the MoU because of increased imports under the duty-free quota from non-USA suppliers.

9.3 In an attempt to ease growing trade tensions between the EU and the USA,[39] the Commission is now seeking agreement to open negotiations on the tariff quota for the importation of high-quality, hormone-free beef from the USA, with a view to a specific

35 Council Directive 81/602/EEC, of 31 July 1981,which was further amended in 1988 and then replaced by Council Directive 96/22/EC (subsequently amended in 2003 and 2008).

36 "The US-EU Beef Hormone Dispute", Congressional Research Service, 14 January 2015.

37 Examples for these kind of growth promoters are oestradiol 17ß, testosterone, progesterone, zeranol, trenbolone acetate and melengestrol acetate (MGA).

38 "Hormones in Meat", European Commission

39 "EU-US Trade: European Commission recommends settling longstanding WTO dispute", European Commission, 3 September 2018.

country allocation. Although the Commission will seek to reach agreement on a specific USA country allocation with other supplier countries, it will not seek to negotiate an increase of the annual quantity of the quota (45,000 tonnes).

9.4 Regarding other supplier countries, the Commission notes that it received a number of non-EU contributions to its consultation. The 13 non-EU contributions came mostly from Argentinian companies and professional organisations that advocate Argentina's recognition as a party in the negotiations. A New Zealand meat organisation, supported by its government, stressed that while being a small supplier within the quota these exports are important for New Zealand economy and requested that New Zealand be consulted. The last two submissions were from the Australian and Uruguayan government, advocating participation in the negotiations.

9.5 The Minister of State for Agriculture, Fisheries and Food (George Eustice) says in his Explanatory Memorandum (EM) that the Government can support these negotiations as they will not affect the EU's ban on hormone-treated beef and should not lead to any overall increase in market access into the European Union. It also has no bearing, he says, on the technical exercise to apportion the tariff-rate quotas in the EU's WTO schedule between the UK and the EU-27. It is expected that the Council will adopt the Decision by the end of October 2018.

9.6 **As demonstrated by the continuing trade wrangles between the USA and the EU in this area, the trade in beef treated with growth-promoting hormones is highly politically contentious. It is an area of interest in the Brexit context as the USA may push in the future for access for such products to the UK market.**

9.7 **We restrict our analysis, however, to this proposal to open negotiations on the import of beef not treated with growth-promoting hormones. We note that the latest crisis was triggered by USA concern that non-USA suppliers were being granted more access to the tariff quota than had been intended. It is for this reason that an exclusive allocation for the USA is proposed, but it also demonstrates the importance of balancing both USA and non-USA interests. While the Commission makes reference to possible engagement with other countries, and other countries have made representations to the effect that they would expect to be involved, the Minister's EM offers no UK position on any such involvement.**

9.8 **We would welcome clarity from the Minister on:**

- **Whether the EU needs to obtain the agreement of other supplying countries with a substantial interest (such as Australia), and what the expected outcome or next steps would be if such agreement was not gained;**
- **Whether the Government considers a higher exclusive allocation for the USA to be WTO-consistent, and not in conflict with the WTO's principle of non-discrimination;[40] and**
- **What the expected outcome would be if negotiations with the USA failed and the USA cancelled the MoU.**

40 Non-discriminatory administration of quantitative restrictions, Analytical Index of the GATT, World Trade Organisation

9.9 **We consider it likely that this proposal will be of particular interest to the Environment, Food and Rural Affairs Committee and the International Trade Committee and we therefore draw it to their attention. We look forward to the Minister's response to the issue raised above and clear the document from scrutiny in advance of Council agreement.**

Full details of the documents:

Recommendation for a Council Decision authorising the opening of negotiations on an agreement with the United States of America Regarding the Importation of High Quality Beef from animals not treated with certain growth-promoting hormones: (40041), 11801/18 + ADD 1, COM(18) 332.

Background: World trade dispute

9.10 The United States and Canada contested the EU's prohibition—from1981—of the use of hormones as growth-promoters in food-producing animals. In retaliation,[41] the USA suspended trade concessions with the EU by imposing higher import tariffs on EU products. The first USA action in 1989 imposed retaliatory tariffs of 100% *ad valorem* duty on selected food products, and remained in effect until 1996.

9.11 In 1997, a panel of the World Trade Organisation (WTO) ruled that the EU measure was not in line with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The EU appealed against this ruling and, in 1998, the WTO Appellate Body reversed most of the findings of the panel. The WTO Appellate Body only upheld the finding that prohibition of imports of meat from hormone-treated animals to the EU did not comply with the requirement that such a measure should be based on a relevant assessment of the risks to human health.

9.12 In reaction to these findings, the EU mandated a new assessment of the risks to human health from hormone residues in bovine meat and meat products treated with six hormones used for growth promotion. Subsequently the EU amended Directive 96/22/EC by adoption of Directive 2003/74/EC and thus implemented its international obligations in the context of the WTO.

9.13 The USA and Canada considered the EU's actions insufficient and, in 1999, imposed a 100% *ad valorem* duty on selected foods from EU countries.

9.14 In May 2009, following a series of negotiations, the United States of America and the EU signed a memorandum of understanding (MoU) in an attempt to resolve this long-standing dispute by further opening up the EU market to non-hormone treated beef. The terms of this agreement were to be phased in over the next few years. There is a separate MoU with Canada

9.15 As part of Phase 1 of the EU-US MoU, the EU adopted regulations opening a tariff quota for 20,000 tonnes of "high-quality beef" (HQB) imports from August 2009. The United States of America agreed not to implement its January 2009 revised sanctions,

41 "The US-EU Beef Hormone Dispute", Congressional Research Service, 14 January 2015.

which would have resulted in higher retaliatory duties on selected EU exports to the United States of America. Trade sanctions would remain in effect on certain EU exports until the final phase of the agreement.

9.16 Under Phase 2, from 1 August 2012 to 1 August 2013, the EU opened a larger quota for 45,000 tonnes of HQB, and the US suspended all trade sanctions on EU products resulting from the Hormones dispute. The tariff quota can be accessed by all countries recognised by the EU as eligible as of 2018: USA, Canada, New Zealand, Australia, Uruguay, and Argentina.

9.17 In October 2013, the EU approved a revision of the EU-US MoU, allowing for access of USA beef raised without the use of growth-promoting hormones in exchange for continued USA suspension of retaliatory import duties on some EU food products. In December 2016, the USA reinstated duties on certain EU products.

Previous Committee Reports

None.

10 Brexit: UK and EU preparedness for "no deal"

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Exiting the EU Committee
Document details	Commission Communication: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019
Legal base	
Department	Exiting the European Union
Document Number	(40004), 11169/18 + ADD 1, COM(18) 556

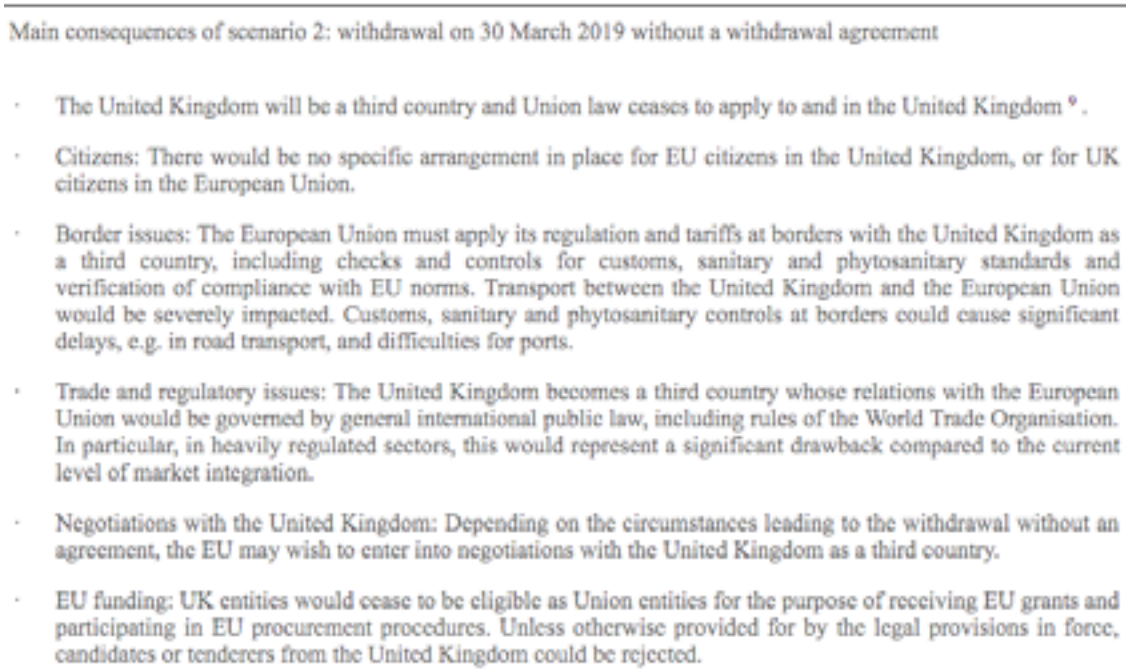
Summary and Committee's conclusions

10.1 The UK notified the European Council of its intention to withdraw from the European Union on 29 March 2017. As a result, by operation of Article 50 of the Treaty on European Union, on 29 March 2019 the UK is scheduled to cease to be a Member State. At that moment, bar a legal agreement with the EU to the contrary, the EU Treaties will cease to apply to the UK. This includes the rights and obligations arising under the Treaties including the abolition of tariff and non-tariff barriers when accessing the markets of the 27 other Member States.

10.2 While both the UK and the EU have been engaged in negotiations for an orderly withdrawal under Article 50, there is no guarantee that a formal Withdrawal Agreement can be signed and ratified by both sides before the expiry of the two-year period in March next year. Although provisional agreement has been reached on two of the 'key' separation issues identified by the EU—the settlement of the UK's financial commitments vis-à-vis the EU budget and the rights of UK and EU nationals who have exercised their free movement rights before 'exit day'—progress has remained elusive on the 'backstop' for Ireland (the legal mechanism that would avoid the need for any controls, fiscal or regulatory, at the border with Ireland under any circumstances). The UK negotiators are, reportedly, engaging in renewed discussions on the substance of the backstop with their EU counterparts ahead of a special Brexit meeting of the European Council on 17–18 November 2018.

The Commission Communication

10.3 On 19 July 2018, the European Commission published a policy paper on "preparing for the withdrawal of the United Kingdom from the European Union". It outlines its view on the (then) state of play in the negotiations with the UK Government at that point, and notably calls on the EU institutions and the 27 remaining Member States to prepare for the possibility of the "'no deal' or 'cliff edge' scenario". It summarises the consequences of that as shown below:



Main consequences of scenario 2: withdrawal on 30 March 2019 without a withdrawal agreement

- The United Kingdom will be a third country and Union law ceases to apply to and in the United Kingdom [9].
- Citizens: There would be no specific arrangement in place for EU citizens in the United Kingdom, or for UK citizens in the European Union.
- Border issues: The European Union must apply its regulation and tariffs at borders with the United Kingdom as a third country, including checks and controls for customs, sanitary and phytosanitary standards and verification of compliance with EU norms. Transport between the United Kingdom and the European Union would be severely impacted. Customs, sanitary and phytosanitary controls at borders could cause significant delays, e.g. in road transport, and difficulties for ports.
- Trade and regulatory issues: The United Kingdom becomes a third country whose relations with the European Union would be governed by general international public law, including rules of the World Trade Organisation. In particular, in heavily regulated sectors, this would represent a significant drawback compared to the current level of market integration.
- Negotiations with the United Kingdom: Depending on the circumstances leading to the withdrawal without an agreement, the EU may wish to enter into negotiations with the United Kingdom as a third country.
- EU funding: UK entities would cease to be eligible as Union entities for the purpose of receiving EU grants and participating in EU procurement procedures. Unless otherwise provided for by the legal provisions in force, candidates or tenderers from the United Kingdom could be rejected.

Figure 1: Consequences of a 'no deal' scenario (European Commission)

10.4 We have set out the practical implications of these 'no deal' consequences in different areas—including trade, foreign affairs and judicial cooperation—in some detail in numerous Reports that we have published since the referendum as part of our on-going scrutiny work of EU legislation and policy, with a new focus on the implications of EU law for the UK as a 'third country'. In these Reports, we have also referred extensively to a number of 'Brexit preparedness notices' published by the Commission for different policy areas over the past year.

10.5 The full gamut of 'no deal' implications for both the UK and the EU are too extensive to list in this Report. From the EU's perspective, some of the main consequences of the UK becoming a 'third country' in March 2019 would be:

- A requirement under World Trade Organization rules to impose fiscal barriers on trade in goods between the UK and the EU, which typically require border controls that are absent on intra-EU trade, including customs controls and the levying of import VAT;
- The imposition of regulatory controls on goods moving between the UK and the EU, which in some cases—especially in the area of food safety and animal health—must normally take place at ports and borders;
- The loss of mutual recognition of the regulatory licences of UK service providers, including haulage firms, airlines, banks and broadcasters, meaning they will be unable to operate automatically throughout the Single Market on the basis of their UK-issued regulatory licences; and
- The UK being shut out from a range of cooperative mechanisms and systems in the area of Justice & Home Affairs, including the European Arrest Warrant and Europol until new legal agreements to that effect can be concluded.

10.6 The Commission's July 2018 paper, being a formal Communication to the Council and the European Parliament, fell within the remit of our Standing Orders and as such was deposited for scrutiny by the Department for Exiting the European Union. The Parliamentary Under Secretary of State for Exiting the European Union (Chris Heaton Harris) submitted an Explanatory Memorandum on the Commission Communication on 23 August 2018.

10.7 The Minister emphasises the importance of reaching an orderly EU exit for the UK via a Withdrawal Agreement, but adds that the Government "has been implementing a significant programme of work" to ensure the UK would also be ready if it leaves the EU without such an Agreement. He refers to the technical notices on preparations for a 'no deal' Brexit which have been published by various Government Departments starting in August 2018. Since then, there has been no public indication of discernible progress towards resolution of the remaining issues of contention in the Withdrawal Agreement and the accompanying declaration on the future relationship between the UK and the EU.

Our assessment

10.8 **The Committee has taken note of the Commission Communication on the EU's preparations for the UK's withdrawal, and the Government's range of "no deal" technical notices setting out the potential consequences of withdrawal without a negotiated agreement and transitional period.**

10.9 **The Prime Minister has consistently stated that "no deal is better than a bad deal". The substance of the Irish 'backstop' in particular has proven to be a political hurdle. The UK has insisted that its acceptance of the overall Agreement, backstop included, is conditional on the substance of the political declaration setting out the framework for the future UK-EU relationship. The latter, in the Government's eyes, should be comprehensive enough to obviate the need for the Irish backstop ever becoming operational. Following the informal European Council meeting in Salzburg on 20 September 2018, where the UK's current outline for the future UK-EU economic partnership ('Chequers') was dismissed, the Government stated that it had intensified no deal planning in recognition of what the Prime Minister herself called an "impasse"[42] in the negotiations.**

10.10 **Given that the two sides are yet to agree on the substance of this political declaration, a 'no deal' Brexit remains a distinct possibility. It is the default scenario in the absence of a Withdrawal Agreement or extension of the Article 50 period. Unlike in other international negotiations however, 'no deal' does not mean the status quo prevails: instead, the UK would abruptly crash out of the Single Market and the Customs Union, which would be extremely disruptive for many sectors of the economy. As such, as the Exiting the EU Committee recently concluded,[43] the implications of a 'no deal' Brexit on 30 March 2019 are far-reaching, varied and their impact difficult to predict. We are inclined to agree.**

42 Prime Minister's Brexit negotiations statement: 21 September 2018: "Yesterday Donald Tusk said our proposals would undermine the single market. He didn't explain how in any detail or make any counter-proposal. So we are at an impasse."

43 Exiting the EU Committee, "The progress of the UK's negotiations on EU withdrawal (June to September 2018)" (published 18 September 2018).

10.11 **Importantly, many—if not most—of the disruptive effects are not within the gift of either the UK or the EU to unilaterally mitigate. For example, while the UK can grant 'settled status' to EU nationals resident here, there may not be a uniform EU-wide approach to the residence status of UK nationals living in the EU-27. Similarly, while the UK can allow in food and pharmaceuticals from the EU without any new regulatory border controls, or waive import VAT on incoming goods (both contingency measures announced by the Secretary of State on 23 August), it cannot require the EU to reciprocate. The Government's own 'no deal' technical notices recognise—if only implicitly—the scale of the possible disruption, and as a result do presume some measure of reciprocal contingency planning between the UK and the EU[44] (or with individual Member States)[45] to mitigate the worst-case scenarios (especially in relation to cross-border transport and trade).**

10.12 **While we agree that it would be in both sides' interest to avoid the worst disruption in the event of an exit without a Withdrawal Agreement, we note that the Exiting the EU Committee has questioned the Government's approach of expecting there to be sufficient time and political goodwill to negotiate bilateral contingency measures.[46] We are inclined to agree, especially as the talks would take place in the context of a failure to agree a comprehensive Withdrawal Agreement on issues the EU had identified as key to an orderly withdrawal: citizens' rights, the financial settlement, and the Irish border question.**

10.13 **We note in this respect that Michel Barnier, the EU's Chief Brexit Negotiator, has explicitly stated that the EU is prepared to take unilateral contingency measures if the Article 50 negotiations breakdown. However, he has ruled out any "further discussions" with the UK about 'mini deals' in the absence of an overall Withdrawal Agreement.[47] This is also repeated in the Commission's Communication of July 2018, which states that "depending on the circumstances" of the 'no deal' Brexit, the EU may enter into negotiations with the UK "as a third country" (i.e. not until *after* 29 March 2019).**

10.14 **In those cases where the EU does take unilateral contingency measures before 29 March next year to avoid short-term disruption, it is unclear what they would consist of, which areas they would affect and how long they would remain in operation. There have been some reports in the press that the European Commission is due to present 'no deal' plans to the remaining Member States in October 2018, under which some limited air traffic rights for UK airlines would be preserved for a limited time. However, the Commission is apparently arguing for the full application of the EU's 'third country' customs and regulatory controls on UK goods entering the Single Market from 'day one' after Brexit.[48] As such, it cannot be taken for granted by the UK Government or businesses that those contingency measures will, however**

44 See for example the speech by Secretary of State Dominic Raab on "No deal planning", (23 August 2018): "Of course, given that we start from a position of common rules, we would also hope and I think expect, in good faith between close partners. That the EU would recognise medicines from this country with our regulatory approval."

45 The Secretary of State for Transport wrote to his 27 EU counterparts to ask for bilateral aviation agreements to be put in place in the event of a 'no deal' Brexit. The extent to which the remaining Member States could meaningfully respond to such a request, given the interplay of national and EU competence in the field of aviation, is highly questionable.

46 Exiting the EU Committee, "The progress of the UK's negotiations on EU withdrawal (June to September 2018)".

47 Oral evidence by Michel Barnier to the Exiting the EU Committee, 3 September 2018, Q. 2552.

48 Financial Times, "EU drafts tough contingency plans for no deal Brexit" (5 October 2018).

temporarily, preserve the *status quo* (especially in areas of market access). Overall, it remains unclear what specific restrictions on trade with and transport to the UK would be applied by the EU in a 'no deal' scenario.

10.15 **The lack of clarity about the immediate impact of a disorderly UK withdrawal is particularly problematic in relation to the border between Northern Ireland and Ireland. While the EU has insisted on its 'backstop' to prevent the need for a customs and regulatory border on the island of Ireland, its own logic means that in the absence of a Withdrawal Agreement—and therefore a legally-binding backstop—such a border will become necessary. From the UK side, the Prime Minister has also said it would be "wrong" for the UK to simply not impose any checks at the border after the UK leaves the Customs Union and Single Market.[49] In many of our Reports since the referendum we have highlighted particular areas of EU activity—principally customs, VAT and regulatory controls—that pose problems for the border with Ireland. The Government is yet to clarify how such controls would be carried out in the absence of any physical infrastructure on the border (although it has already announced that it will waive import VAT altogether, at all points of entry into the UK, and ask businesses to pay VAT on imported goods via their normal tax return, at unknown cost to the Exchequer).[50]**

10.16 **An additional complication in a 'no deal' scenario is that the UK would also abruptly cease to be covered by the EU's international agreements with third countries—which cover not only trade, but also many other areas including aviation, security and movements of nuclear materials. Without the Withdrawal Agreement, the EU will not notify its international partners that the UK should remain de facto covered by bilateral and multilateral treaties entered into by the EU. That would leave the UK with a considerable legal vacuum in its international (trade) relations, and the Government has admitted it will not be able to replicate all the EU's international agreements by 29 March 2019.[51]**

10.17 **Lastly, it should be borne in mind that a 'no deal' Brexit in March 2019 would not in fact preclude the need for further negotiations between the UK and the EU after the date of the UK's formal EU exit. A lack of Withdrawal Agreement would, as we have seen, leave a wide range of important issues unresolved which will, ultimately, require some form of legal settlement by means of a new treaty or treaties.**

10.18 **The context, however, for any post-Brexit negotiations would be fundamentally different: the UK would be a 'third country' rather than a departing Member State. From a legal perspective, the EU might not be able to use Article 50 TEU (which has been interpreted as granting the EU unusually wide exclusive competence to conclude what would otherwise be a 'mixed agreement' with the UK before it leaves the EU), as the basis for any new UK-EU agreement. If that is the case, the EU would have to negotiate on the basis of Article 218 TFEU, requiring a new negotiating mandate for the Commission and the need for national ratification where the resulting agreements are 'mixed'. We also consider it likely that the EU would insist on the UK accepting the**

49 Speech by Prime Minister Theresa May in Belfast, 20 July 2018.

50 See our Report of 5 September 2018 on VAT and Brexit for more information.

51 For example, the September 2018 National Audit Office report on Defra's Brexit preparations notes that the Department has admitted it cannot replicate mutual recognition of animal health certificates needed for export with 154 non-EU countries. The NAO goes on to say: "Defra has accepted the risk that firms that currently export to those countries where agreement is not reached may not be able to do so for a period after EU Exit".

citizens' rights and financial settlement chapters contained in the draft Withdrawal Agreement as a pre-condition for any substantive trade negotiations. The situation at the Irish border, and consequently how this would need to be addressed in any post-exit negotiations, is extremely difficult to predict (see paragraph 0.15 above).

10.19 **Overall therefore, and the Government's spate of 'no deal' technical notices notwithstanding, there remains considerable uncertainty about the practical implications of a Brexit without a Withdrawal Agreement for UK trade links with the EU and the wider world, especially exports of goods and services to the European Economic Area; our international transport connections; the implications for the border with Ireland; and how the resulting disruption could be resolved satisfactorily via any new agreements with the EU, and in what timeframe.**

10.20 **We now clear the Commission Communication on 'Brexit preparedness' from scrutiny, and draw it to the attention of the Exiting the EU Committee. We will continue to incorporate the implications of Brexit, including the possibility of a 'no deal', in our scrutiny of proposed new EU legislation.**

Full details of the documents:

Commission Communication: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: (40004), 11169/18 + ADD 1, COM(18) 556.

Previous Committee Reports

None. However, the European Scrutiny Committee has incorporated the likely consequences of a 'no deal' Brexit into its consideration of many pending EU legislative proposals in different policy areas.

11 Third mobility package: Commission Communication on automated mobility

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Communication from the Commission On the road to automated mobility: An EU strategy for mobility of the future
Legal base	-
Department	Transport
Document Number	(39736), 9140/18, COM(18) 283

Summary and Committee's conclusions

11.1 The Communication under scrutiny sets out the Union's strategy for connected and automated mobility. It outlines the Union's vision for connected and automated vehicles and identifies key actions required to support the development and deployment of related technologies, services and infrastructure.[52] The Communication forms part of the Commission's 'third mobility package' of legislative initiatives and non-binding actions (which is focussed on ensuring Europe's future mobility system is "safe, clean and efficient for all EU citizens").

11.2 Across 5 substantive chapters, the Communication details the Union's ambitions for connected and automated mobility (chapter 2); the current state of play with regard to key technologies and the strategies advanced nations have adopted to encourage development and deployment (chapter 3); the investment in key technologies and infrastructure required to support the successful deployment of connected and automated mobility in Europe (chapter 4); the steps that must be taken to ensure that the internal market is ready for the safe take-up of automated mobility (section 5); and the potential effects of automated mobility on society and the economy (section 6). Where appropriate, the Commission details key actions that it will take to support the realisation of its connected mobility agenda. These actions are directed at the Institutions, the Member States, industry, social partners and civic society.

11.3 On its ambitions for connected and automated mobility, the Commission outlines its aim for Europe to become a world-leader in connected and automated mobility. It argues that embracing automation will lead to significant reductions in road fatalities, harmful emissions from transport and congestion. The Communication highlights two likely uses of automated mobility in the next decade: (1) passenger cars and trucks on motorways or

52 Connected vehicles use communication technologies to communicate with the driver, other vehicles, road-side infrastructure and cloud-based services. Autonomous—or self-driving—vehicles are those in which operation of the vehicle occurs without direct driver input to control the steering, acceleration and braking, and are designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode.

at low speeds in cities; and (2) public transport at low speeds and over short distances. The Commission supports the use of connected and automated technologies in concert and expects all new cars to have access to the internet by 2022.

11.4 The Communication assesses the global state of play of connected and automated mobility and identifies the United States, Japan, China and Singapore as nations leading the development and deployment of new technologies. The Commission argues that for Europe to remain competitive, key technologies, services and infrastructure need to be developed and produced in the EU. It lists several EU-level initiatives that support its drive for Europe to remain competitive.

11.5 The Commission believes that significant investment is needed for Europe to become a world leader in connected and automated mobility. It suggests that much of this investment will come from the private sector with the Union acting to provide a stimulus for research and innovation and major infrastructure projects. It cites the 'Horizon2020' programme and the 'Connecting Europe Facility' as appropriate funding vehicles. Away from funding, it notes that a priority list for large scale vehicle tests will be developed with Member States in 2018 and that access to navigation services through Galileo will be offered for vehicles for free from 2019.

11.6 Chapter 5 of the Communication—on the internal market—outlines the steps that the Commission will take to ensure legal certainty, foster investment in connected and automated technologies and protect citizens against new risks brought about by driverless vehicles. These steps include:

- Allowing innovation (through overhauling the EU's type-approval framework and developing guidelines for national ad-hoc vehicle safety assessments);
- Making automated mobility safer (through the new type-approval framework, adopting a delegated act under the Intelligent Transport Systems Directive to ensure secure and interoperable communications between vehicles and infrastructure, and encouraging Member States to support convergence on international traffic rules);
- Addressing liability issues (primarily through existing EU rules but also by regulating crash data recorders for autonomous vehicles);
- Fostering vehicle connectivity for automation (with a focus on ensuring support for different types of connectivity technologies (e.g. 5G and WIFI)); and
- Ensuring cyber security, data protection and data access (through existing data protection rules and the potential introduction of rules on public authority access to in-vehicle data).

11.7 The Commission recognises that the potential long-term effects of automated mobility are still largely unknown and that more research is required. It draws attention, in particular, to the potential implications of the shift to automated mobility for the environment (increased congestion and emissions) and the workforce (loss of jobs). The Commission states that it will work with Member States to monitor and assess the medium and long-term implications of connected and automated driving, and explore how it can best support workers to acquire new skills and make transitions in the labour market.

11.8 In his Explanatory Memorandum of 26 June 2018, Parliamentary Under Secretary of State at the Department for Transport, Jesse Norman, welcomes the Commission's Communication and draws similarities between it and the Government's own approach to connected and automated mobility. The Minister provides further comment on the individual chapters of the Communication, specifically, on the Government's current activities in each area. The Minister does not raise any substantive legal or political concerns with the Communication.

11.9 **We thank the Minister for his Explanatory Memorandum and his thorough analysis of the Commission's Communication. As the Communication is not legally binding and does not raise any political concerns, we are happy to clear it from scrutiny.**

Full details of the documents:

Communication from the Commission On the road to automated mobility: An EU strategy for mobility of the future: (39736), 9140/18, COM(18) 283.

Previous Committee Reports

None.

12 EU-China aviation safety agreement Third mobility package

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	(a) Proposal for a Council Decision on the conclusion of an agreement between the European Union and the Government of the People's Republic of China on civil aviation safety; (b) Proposal for a Council Decision on the signature of an Agreement between the European Union and the Government of the People's Republic of China on civil aviation safety.
Legal base	(a)Article 100(2) in conjunction with Article 218(6)(a)(v) TFEU; EP consent; QMV (b) Article 100(2) in conjunction with Article 218(5) TFEU; QMV.
Department	Transport
Document Numbers	(a) (39812), 9527/18, COM(18) 308; (b) (39871), 9137/18, COM(18) 309.

Summary and Committee's conclusions

12.1 Following the adoption of the "Aviation Strategy for Europe"[53] in 2016, the Council of Ministers authorised the European Commission to open negotiations with China in view of concluding Bilateral Air Safety Agreements (BASA).[54]

12.2 BASAs permit simplified certification processes of products from each side, depending on how similar the two regulatory systems are. Typically, under the agreements both parties will identify those areas where there is a high degree of alignment of regulations and outcomes, and establish certification arrangements that do not require significant additional testing before the product can be placed on the EU market; however, greater additional checks and controls are generally deemed necessary where there is greater divergence or the tests exercised by the other party are not deemed sufficient for EU purposes. To date, the EU already has concluded BASAs with the US, Canada and Brazil.

12.3 Negotiations regarding the EU-China BASA have concluded, with the Commission proposing a Council Decision to the Member States which would authorise the signature of the agreement.

53 European Commission, An Aviation Strategy for Europe, COM/2015/0598 final

54 European Commission, Aviation: EU to launch negotiations with China and Japan for new safety agreements (8 March 2016).

12.4 The Agreement covers:

- The airworthiness Certificates and Monitoring of Civil Aeronautical Products (present);
- Environmental testing and Certificates of Civil Aeronautical Products (present);
- Monitoring design and production organisations (present);
- Monitoring maintenance organisations;
- Personnel licensing and training;
- Operation of aircraft;
- Air traffic services and air traffic management; and
- Other areas subject to Annexes to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

12.5 In the Government's Explanatory Memorandum,[55] submitted by the Parliamentary Under Secretary of State at the Department for Transport (Baroness Sugg), the Minister stated that the Government supported the proposed agreement, which would involve "the establishment of an effective cooperative relationship" and represent "a logical consequence of seeking efficiencies in the regulatory systems of both parties".

12.6 The Minister notes that there are "asymmetries in recognition" in the proposal. The agreement provides that the European Aviation Safety Agency shall exercise "special procedures and scrutiny during the first validation of a given product category", and that, "as far as the acceptance of certificates by each party is concerned, in order to reflect the relative maturity of the European as compared to the Chinese certification systems the certification role of the Civil Aviation Authority of China in validating European Aviation Safety Agency certificates is limited." Furthermore, with regard to the certification of Chinese aeronautical products for export to the European Union, the Minister notes that the European Aviation Safety Agency will produce a list of Chinese Production Certificate Holders whose production is accepted in the European Union, and that a European Aviation Safety Agency certificate will, under the draft Agreement, be capable of extension to include manufacturing sites in China. The Minister concludes that these asymmetries of recognition mean that the requirements of the draft Agreement "are not onerous on European manufacturers."

12.7 **We have taken note of the Government's views on the proposed EU-China Bilateral Aviation Safety Agreement (BASA), which the Minister judges to be a "logical consequence of seeking efficiencies in the regulatory systems of both parties". We note that the BASA is not one of full reciprocal recognition of European and Chinese certifications: differences between the two distinct regulatory systems and their relative maturity mean that the agreement offers the EU advantageous terms vis-à-vis China. On EU Exit, the Minister states that it is the Government's intention to "enter into an understanding with China to ensure that, after the UK's exit from the EU or after a post-exit Implementation Period, a bilateral UK-China agreement is considered".**

55 Explanatory Memorandum from the Department for Transport (11 June 2018).

12.8 **Regarding the implications of EU exit for aviation safety more generally, we note that if the Government does not succeed in its objective of securing continuing ongoing participation in EASA[56] (and this remains a distinct possibility, as the Commission has briefed that continued "UK membership of EASA is not possible"),[57] then the nature of future UK-EU aviation safety arrangements would presumably be resolved through a Bilateral Aviation Safety Agreement (BASA). Such agreements, which entail both parties operating independent regulatory regimes, but seeking to minimise certification requirements where possible, would represent a deterioration of market access to the EU market for the UK aerospace sector, as two sets of approvals would be required for the placing of products on the market, and the UK would cease to participate in wide-ranging intra-EU mutual recognition arrangements which apply in the field of aviation safety. This would be the case even if the UK were to replicate EU law in this area.[58]**

12.9 **In this scenario (UK non-participation in EASA), we anticipate that it will take some time for the UK to adapt and develop a fully functional independent aviation safety regime, given that EASA has assumed key operational responsibilities in a range of specific areas of aviation safety.[59] The need to radically increase the Civil Aviation Authority's operational capacity in these areas, combined with the asymmetries present in the EU-China BASA, which reflect the relative maturity of the EU and Chinese aviation safety regimes, suggest that the UK securing a best-in-class BASA would be unlikely to occur in the immediate aftermath of EU exit.**

12.10 **As the proposed Council Decisions were adopted on 26 June,[60] we now clear them from scrutiny.**

Full details of the documents:

(a) Proposal for a Council Decision on the conclusion of an agreement between the European Union and the Government of the People's Republic of China on civil aviation safety: (39812), 9527/18, COM(18) 308; (b) Proposal for a Council Decision on the signature of an Agreement between the European Union and the Government of the People's Republic of China on civil aviation safety: (39871), 9137/18, COM(18) 309.

Previous Committee Reports

None.

56 See HM Government, The future relationship between the United Kingdom and the European Union (July 2018), paragraph 30.

57 European Commission, Internal EU27 preparatory discussions on the framework for the future relationship: "Aviation" (17 January 2018), page 9.

58 See Gov.uk, Guidance: Aviation safety if there is no deal (24 September 2018).

59 The Government's No Deal notice on aviation safety states that " Whilst for the most part the EASA system works on the basis of mutual recognition, EASA itself directly provides: approvals to businesses established in EU countries designing aeronautical products, known as a design organisation approval; approvals to products such as aircraft, engines and propellers, known as a type certificate; safety certificates to organisations established in third countries (i.e. countries outside the EASA system) that want to provide goods and services into the EASA system."

60 See outcome of the Council Meeting (General Affairs) 26 June 2018 10519/18, page 15.

13 Common Foreign & Security Policy: decision-making by Qualified Majority Voting

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Defence and Foreign Affairs Committees
Document details	Communication from the Commission: A stronger global actor—a more efficient decision-making for EU Common Foreign and Security Policy
Legal base	Article 31(3) TEU
Department	Foreign and Commonwealth Office
Document Number	(40085), 12425/18, COM(2018) 647

Summary and Committee's conclusions

13.1 The EU's Common & Foreign Security Policy (CFSP) covers a wide range of foreign policy measures, such sanctions against third countries and the launch of advisory or executive military missions in other countries. The legal basis for such actions is Chapter 2, Title V of the Treaty on European Union (TEU), which normally gives each EU country in the Council a veto over decisions relating to the CFSP.[61]

13.2 Because of the inflexibility inherent in the unanimity requirement, the 2009 Lisbon Treaty provided for the possibility to introduce voting by Qualified Majority for measures under the CFSP without the need for another formal Treaty amendment. This so-called '*passerelle*' clause[62] is contained in Article 31(3) of the Treaty on European Union. It allows the European Council, that is to say the EU's Heads of State and Government, to unanimously adopt a legal decision extending the use of QMV to other areas of the CFSP. However, the passerelle cannot be used to remove the unanimity rule for any "decisions having military or defence implications".

13.3 In September 2018, the European Commission recommended that the passerelle should be used to introduce QMV in specific areas of the EU's foreign policy. Its reasoning for recommending such a change is that the unanimity rule "slows down progress and in

61 Article 24 TEU reads: "The common foreign and security policy […] shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise". In certain circumstances, decisions relating to the CFSP are taken by Qualified Majority voting (QMV) (see 'Background').

62 In EU jargon, 'passerelle'—French for 'little bridge'—refers specifically to a change in the decision-making procedure that must be used for the EU to take action in a certain policy area without the need for a formal Treaty amendment (i.e. one that requires full ratification by the Member States' national parliaments).

some cases prevents the EU from adjusting to changing realities",[63] while removing the national veto would "opens up more space for discussion and pragmatic outcomes that reflect the interests of all" Member States.

13.4 In particular, the Commission suggested QMV should be used for the imposition of sanctions like arms embargoes; the launch of civilian[64] Common Security & Defence Policy missions, like the EU's current advisory missions in Niger and Mali; and the EU's common positions in international human rights fora. This would remove each Member State's veto over such decisions (see 'Background' for more information). It has also called on EU countries to make greater use of QMV where this is already possible, but where current practice is to act by consensus.[65] Under Article 31(2) TEU, Member States would retain a statutory "emergency brake": the option of referring any foreign policy proposal subject to QMV to the European Council for a decision by unanimity, if the EU country in question is opposed "for vital and stated reasons of national policy".

13.5 The Commission's recommendations are non-binding, and it is not yet clear if the European Council will eventually formally make use of the passerelle under Article 31. Commission President Jean-Claude Juncker has asked the EU's leaders to discuss whether to do so at the informal European Council on 9 May 2019 in Sibiu, Romania.[66] The UK, as a departing Member State, will in any event lose its power to block use of the passerelle clause on 29 March 2019.

13.6 The Government's position, as articulated in an Explanatory Memorandum submitted by the Minister for Europe (Sir Alan Duncan) on 5 October, is to exercise caution: it states that the UK "recognise some of the frustrations highlighted by the Commission" but believes that "EU foreign policy decisions made by consensus carry considerable weight because all Member States agree them". The Minister also commits to "update the [Scrutiny] Committees following further discussions with the Commission and other Member States".

Our assessment

13.7 **It is clear that the Commission's decision to move forward with its recommendation on greater use of QMV in the Common Foreign & Security Policy is not unrelated to the UK's exit from the EU. Given the UK's long-standing concerns about the Union's encroachment on its sovereignty—especially in foreign affairs and defence matters—it is inconceivable that the proposals it has put forward would be viable had the UK remained a Member State.**

13.8 **As things stand, the implications of the initiative for both the EU-27 and the UK are unclear.**

63 In support of this contention, it cites a number of recent occasions where the unanimity rule led to "EU decisions on important Common Foreign and Security Policy issues, in particular on human rights, EU sanctions or key regions of EU interest, [being] blocked, taken too slowly or diluted". See the 'Background' section of this chapter for more information.

64 As noted, the passerelle cannot be used to impose QMV on "decisions having defence or military implications". This prevents its use in relation to the EU's military missions overseas, like those in Bosnia & Herzegovina (EUFOR Althea) or the anti-piracy mission off the Somali coast (Operation Atalanta).

65 See the 'Background' section for more information on the Commission's recommendations for greater use of QMV in the CFSP that do not involve use of the passerelle.

66 The informal European Council in Sibiu in May 2019 coincides with Europe Day and will have as theme 'the future of Europe'.

13.9 **Firstly, it is far from certain that the remaining Member States are amenable to the substance of what the Commission has suggested. There is some political impetus behind the idea: the joint Franco-German 'Meseberg Declaration'[67] of 19 June 2018 included a commitment to explore ways of "increasing the speed and effectiveness of the EU's decision making in our Common Foreign and Security Policy", including by "using majority voting in the field of the Common Foreign and Security Policy". However, given that each of the other Member States also has a veto over the expansion of QMV, the outcome of this process is unpredictable.**

13.10 **The impact any move towards expanded QMV voting in EU foreign policy could have for the UK is equally ambiguous. During the proposed post-Brexit transitional period, due to end on 31 December 2020, the UK would have no voting rights over CFSP measures. It *would*, however, in principle remain bound by any such decisions—like the imposition of new sanctions—adopted by the remaining Member States during that period (whether by QMV or consensus). The Government would also contribute financially to the CFSP via its continued payments into the EU budget, and via the 'Athena' mechanism which funds EU foreign policy operations with "military or defence implications".[68]**

13.11 **However, with respect to individual measures, Article 124(6) of the draft Withdrawal Agreement would allow the UK to "make a formal declaration […] indicating that, for vital and stated reasons of national policy, […] it will not apply" a decision taken under chapter 2, Title V TEU. As such, even if the new Qualified Majority voting rules were to take effect during the transitional period, the UK can opt-out of applying any measures adopted under the new rules. In addition, as is the case now, the UK could not be obliged to provide staff or equipment for EU military or security missions during the transitional period.**

13.12 **Nevertheless, we consider this Commission document politically important because it may, in the future, lead to an increased level of CFSP decision-making by Qualified Majority. That would likely have implications for the direction and speed of EU foreign policy—which is, after all, the reason the Commission is proposing invoking the passerelle clause—by making it quicker to act where the EU could currently be held back by the concerns of a single Member State. By extension, any changes to the scope or direction of the CFSP would have implications for the UK's cooperation as a non-Member State, especially if there was a notable divergence in foreign policy priorities, objectives or approach.**

13.13 **We also note that, under section 6 of the European Union Act 2011, the UK Government was prohibited from authorising any use of the passerelle clause in Article 31(3) TEU—either by voting in favour of its use, or by allowing unanimity to be reached by abstaining from the vote—without having received the approval of both Parliament (by Act) and the electorate (by referendum).[69] That requirement was abolished by regulations under the European Union (Withdrawal) Act 2018 in July**

67 See https://www.diplomatie.gouv.fr/en/country-files/germany/events/article/europe-franco-german-declaration-19–06–18.

68 The Athena Mechanism is based on Council Decision (CFSP) 2015/528, which will remain binding on the UK during the transitional period. The UK contribution is approximately 10–15 per cent of common EU expenditure for operations covered by the Mechanism. EU military operations are excluded from the passerelle and must always be decided by unanimity.

69 See sub-section 5(a) of section 6 of the European Union Act 2011.

this year. As a result, from a legal perspective, it is possible for the Government to support a Decision to authorise the use of Qualified Majority Voting in new areas of the Common Foreign & Security Policy if it came to a vote in the European Council before the UK ceases to be a Member State. This is, however, extremely unlikely.

13.14 **We are grateful for the Minister's commitment to keep us informed of discussions between Member States on the Commission's proposals and, if appropriate, about the drafting of any formal European Council Decision formally invoking the passerelle. We also ask him to write by 2 November 2018 to clarify if the UK, under the terms of the draft Withdrawal Agreement, would still have to contribute financially to the costs of CFSP measures charged to the EU budget or covered by the 'Athena' mechanism, even where it exercised its opt-out from a specific measure under Article 124 of the Agreement.**

13.15 **In light of the potential impact that the proposed changes could have for the conduct of the EU's foreign policy, and by extension for UK cooperation with the Union in this area after Brexit, we also draw these developments to the attention of the Foreign Affairs and Defence Committees.**

13.16 **The European Commission is expected to make similar recommendations about the extension of the use of QMV in other areas where unanimity voting is currently applied, including taxation—where it could affect EU law on VAT, excise duty and corporation tax—and employment law. Those recommendations will be subject to scrutiny by the Committee in their own right following their publication, which is scheduled for early 2019. We have included an overview of the different passerelle clauses contained in the EU Treaties in the Annex to this Report.**

Full details of the documents:

Communication from the Commission: A stronger global actor—a more efficient decision-making for EU Common Foreign and Security Policy: (40085), 12425/18, COM(2018) 647.

Background

13.17 The EU's Common & Foreign Security Policy (CFSP) covers a wide range of foreign policy measures, including the imposition of EU-wide sanctions against third countries; the establishment of both executive and non-executive security missions; and the adoption of common positions on foreign affairs issues to be taken in international organisations, like joint statements on human rights violations to be issued at the United Nations.

13.18 Since its formal inception under the 1991 Maastricht Treaty, CFSP decision-making has remained firmly in the hands of the Member States. Notably, its current legal base– Chapter 2, Title V of the Treaty on European Union (TEU), as amended by the 2009 Lisbon Treaty—unanimity voting remains the rule.[70] This normally gives each EU country in the Council a veto, for example over the deployment of the Union's anti-piracy mission off the Horn of Africa or the imposition of sanctions on Russia over its annexation of Crimea.

70 Article 24 TEU reads: "The common foreign and security policy […] shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise".

13.19 Abstention by a Member State does not prevent the adoption of a CFSP measure requiring unanimity.[71] However, under Article 31(1) TEU, a Member State can issue a 'qualified abstention': a formal declaration which means that the country in question does not have to apply the measure on which it has abstained, while accepting that it binds the EU and the other Member States. This procedure has only been used once, in relation to the EU's 2008 decision to set up a Civilian Common Security and Defence Policy mission for Kosovo (Eulex Kosovo).[72]

13.20 Moreover, in some strictly limited circumstances, decisions relating to the CFSP can be taken by Qualified Majority voting (QMV) rather than unanimity. This is notably the case for the appointment of EU Special Representatives, and when the Council adopts implementing decisions relating to an earlier CFSP measure that has already been approved unanimously.[73] In addition, QMV is the rule for other areas of the EU's external action (such as trade and development policy), which are not governed by Title 5 TEU, but instead have their legal basis in the Treaty on the Functioning of the European Union (TFEU).

13.21 In recognition of the procedural hurdle that the unanimity requirement could pose for flexible decision-making, the 2009 Lisbon Treaty provided for the possibility to introduce voting by Qualified Majority for measures under the CFSP without the need for another formal Treaty amendment. This so-called '*passerelle*' clause[74]—one of several in the EU Treaties[75]—is contained in Article 31(3) of the Treaty on European Union. It allows the European Council, that is to say the EU's Heads of State and Government, to unanimously adopt a legal decision extending the use of QMV to other areas of the CFSP. However, the passerelle cannot be used to remove the unanimity rule for any "decisions having military or defence implications". Under Article 31 TEU, there is no requirement for the use of this passerelle to be submitted to the Member States' national parliaments for approval (although individual EU countries can do so, as the UK previously did under the European Union Act 2011).[76]

The Commission proposal to invoke the passerelle clause

13.22 In his September 2017 'State of the Union' speech, European Commission President Jean-Claude Juncker announced that he wanted the Member State to take more

71 Given the need for unanimity, CFSP measures are not brought forward for formal adoption unless there is the necessary support for Member States. As CFSP measures are 'non-legislative acts' for the purposes of the Treaty, the outcome of the vote—i.e. which Member States have abstained—is not normally made public.

72 The 'qualified abstention' in the case of Eulex Kosovo was made by Cyprus.

73 For example, the Member States decided unanimously to adopt Decision 2015/1333 establishing an EU sanctions regime against certain Libyan officials under Article 29 TEU. As a result, Implementing Decision 2018/1086 amending the list of persons and entities subject to the sanctions could be adopted by QMV under Article 31(2) TEU. The decision to use QMCV in these cases is essentially one for the Council, and its use is not consistent.

74 In EU jargon, 'passerelle'—French for 'little bridge'—refers specifically to a change in the decision-making procedure that must be used for the EU to take action in a certain policy area without the need for a formal Treaty amendment (i.e. on that requires full ratification by the Member States' national parliaments).

75 Article 48 TEU contains a general passerelle clause to move away from unanimity in the EU's decision-making procedures, which can be vetoed by any national parliament or by the European Parliament.

76 See paragraph 0.13 for more information on the legal constraints placed on the UK Government in relation to Article 31(3) TEU under the European Union Act 2011.

foreign policy decisions by Qualified Majority.[77] This was fleshed out further in a formal Communication[78] published in September 2018, in which the Commission asked the European Council to take a formal decision under Article 31(2) TEU to move to QMV for the adoption of:

- EU sanctions regimes against third countries or entities, including their initial establishment and any decisions to modify or update them;
- The launch of civilian[79] Common Security & Defence Policy missions, like the EU's current advisory missions in Niger and Mali, or at the very least for decisions relating to the implementation of such missions when their launch has already been agreed by unanimity; and
- the Union's position on human rights in international settings like the UN Human Rights Council.

13.23 The Commission's reasoning for recommending a shift to QMV in these areas is that, given the Member States' "level of ambition" for the Common Foreign & Security Policy, the unanimity rule "slows down progress and in some cases prevents the EU from adjusting to changing realities", while removing the national veto would "opens up more space for discussion and pragmatic outcomes that reflect the interests of all". The national veto, it argues, 'discourages' Member States from seeking a "constructive compromise".

13.24 In support of this contention, it cites a number of recent occasions where the unanimity rule led to "EU decisions on important Common Foreign and Security Policy issues, in particular on human rights, EU sanctions or key regions of EU interest, [being] blocked, taken too slowly or diluted".[80] These included, for example, the removal of certain human rights priorities from the EU-Egypt 'Partnership Priorities';[81] the insertion of a specific derogation from the EU's arms embargo on Belarus;[82] and a delay in the adoption of the sanctions regime against Venezuela in 2017.[83]

13.25 In addition to the use of the passerelle clause, the Commission is urging the Member States to be more flexible using the 'tools' already available under the Treaties to ensure a more responsive EU foreign policy by:

- Making greater use of Article 31(2), which allows the Council to adopt certain CFSP measures by qualified majority if they give effect to broader strategic

77 In his speech, Mr. Juncker said: "In order to have more weight in the world, we must be able to take foreign policy decisions quicker. This is why I want Member States to look at which foreign policy decisions could be moved from unanimity to qualified majority voting. The Treaty already provides for this, if all Member States agree to do it. We need qualified majority decisions in foreign policy if we are to work efficiently." (European Commission, SPEECH 17/3165).

78 Commission document COM(2018) 647.

79 As noted, the passerelle cannot be used to impose QMV on "decisions having defence or military implications". This prevents its use in relation to the EU's military missions overseas, like Operation Atalanta off the Horn of Africa or the EU Training Mission in the Central African Republic.

80 See Commission document COM(18) 647, p. 5–6.

81 See for more information the Foreign Office's Explanatory Memorandum on the EU-Egypt Partnership Priorities (7 July 2017).

82 See Council Decision (CFSP) 2017/331 for the amendment to the EU's arms embargo against Belarus. The derogation relates to the supply of rifles used in biathlons.

83 See for more information on the EU's sanctions against Venezuela the Committee's Report of 6 December 2017.

directions issued by the European Council[84] or implement foreign policy decisions already adopted by unanimity. In the latter case, while QMV is permitted, the Member States in practice operate by unanimity;

- Using the legal bases found in the Treaty on the Functioning of the European Union for trade and development policy where possible instead of the Treaty provisions on the CFSP, allowing for QMV to be used;
- Making more use of the ability to record a 'qualified abstention', allowing a CFSP measure requiring unanimity to be adopted even if not all Member States are supportive; and
- Ending the practice of EU Foreign Ministers agreeing Council Conclusions (which are non-binding but an important tool in deciding the strategic direction of the EU's foreign policy) by 'common accord', a practice not foreseen by the Treaties but where the Member States have to unanimously agree on a text without the possibility of abstentions.

13.26 The Commission Communication calling for the use of the passerelle provision in Article 31 TEU is not a formal proposal, and there is no requirement for the European Council to consider it. The European Commission has asked for its proposals to be put on the agenda at the informal European Council in Sibiu, Romania, on 9 May 2019 (at which point the UK will have ceased to be an EU Member State).

Previous Committee Reports

None.

Annex: Passerelle clauses in the EU Treaties

13.27 The table below shows the different passerelle clauses contained in the EU Treaties following the entry into force of the Lisbon Treaty in 2009, including the one in Article 31 TEU described in this Report. All such clauses require the unanimous agreement of all Member States in either the European Council or the Council.

84 Article 31(2), as explained by the European Commission, "offers the European Council the possibility to adopt a unanimous Decision, setting out the EU's strategic interests and objectives in one or more specific area of Common Foreign and Security Policy. Once the European Council sets the strategic objectives and principles of the envisaged action or position, the Council would then adopt by qualified majority all decisions implementing the European Council's strategic decisions".

Article	Area	Scope	National parliament veto	European Parliament veto
Article 48(7) TEU	General	Can be used to move from unanimity to QMV for any instance where the TFEU or the Common Foreign & Security Policy requires the former, except those 'with military implications or those in the area of defence'.[85]	Yes	Yes
Article 333 TFEU	General	Allows Member States participating in an instance of "enhanced cooperation" to move from unanimity to QMV for any instance where Treaties require the former, except those 'defence or military implications'.	No	No
Article 31 TEU	Foreign policy	To apply QMV decision-making to CFSP measures, except those 'decisions having military or defence implications'.	No	No
Article 81 TFEU	Family law	Allows the Council to authorise the adoption of EU legislation on family law[86] to be adopted by QMV under the ordinary legislative procedure.[87]	Yes	No
Article 153 TFEU	Employment law	Allows the Council to move to QMV in the few areas of employment policy still subject to unanimity.[88]	No	No
Article 192 TFEU	Environment policy	Allows the Council to move to QMV in the few areas of environment policy still subject to unanimity.[89]	No	No

Article 312 TFEU		Allows the European Council to authorise the Council to adopt the Multiannual Financial Framework, the EU's long-term budget, by QMV	No	No

85 Article 48 TEU also allows the European Council to move from a 'special legislative procedure'—typically the consultation procedure, where the European Parliament can only issue a non-binding opinion or the consent procedure, where it can reject a proposal but has no right to make amendments—to the 'ordinary legislative procedure' (where the Council and the Parliament are co-legislators with equal rights). For example, the consent procedure applies to the conclusion of the UK's Withdrawal Agreement under Article 50 TEU.

86 Existing examples of EU legislation on family law include the Regulation on matrimonial property regimes.

87 At present, under Article 81 TFEU, legislation on family law must be adopted by the Council unanimously with only a consultative role for the European Parliament.

88 Under Article 153, the unanimity requirement still applies to EU legislation on social security and social protection of workers; protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers; and the conditions of employment for third-country nationals legally residing in within the EU.

89 Under Article 192, the unanimity requirement still applies to EU environmental proposals "primarily of a fiscal nature"; measures affecting town and country planning, quantitative management of water resources, and land use (except waste management); and measures that would 'significantly affect' a Member State's choice between "different energy sources and the general structure of its energy supply".

14 Law enforcement access to electronic evidence

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	(a) Proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (b) Proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings
Legal base	(a) Article 82(1) TFEU, ordinary legislative procedure, QMV (b) Articles 53 and 62 TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (39631), 8110/18 + ADDs 1–3, COM(18) 225; (b) (39630), 8115/18 + ADDs 1–2, COM(18) 226

Summary and Committee's conclusions

14.1 The European Commission's "e-evidence" proposals are intended to make it easier and quicker for law enforcement authorities to obtain electronic evidence (such as e-mails, text messages and photos) for a criminal investigation where the data or the service provider are in a different Member State. The proposed Regulation—document (a)—would introduce a new fast-track procedure to enable the judicial authorities in the Member State investigating criminal activity to serve a European Preservation Order and/or a European Production Order *directly* on a service provider (or legal representative) offering services within the EU but based in a different jurisdiction. The aim is to prevent information being altered or erased and to require its production within a time limit of 10 days (or 6 hours in an emergency). Other instruments for obtaining evidence within the EU (principally the European Investigation Order—"EIO") or from a third country (under mutual legal assistance mechanisms) require the involvement of judicial and law enforcement authorities in the investigating country *and* the country in which the service provider is based and so take longer to execute (up to 120 days for the EIO and even longer under other mutual legal assistance arrangements).[90] As the proposed Regulation is a criminal law measure, it is subject to the UK's Title V (justice and home affairs) opt-in Protocol, meaning that it will only apply to the UK if the Government decides to opt in. The three-month deadline for opting into the proposal expired on 10 September.

90 See the Commissions Factsheet—*Security Union: facilitating access to electronic evidence.*

14.2 The proposed Directive—document (b)—would require online service providers offering services within the EU to designate a legal representative in the EU responsible for ensuring compliance with European Preservation and Production Orders or other law enforcement requests for evidence needed for criminal proceedings. It is not a criminal law measure as its principal objective, according to the Commission, is to remove obstacles to the provision of services within the EU by establishing "a level playing field for all companies offering the same type of services in the EU, regardless of where they are established or act from".[91]

14.3 In his Explanatory Memorandum of 3 May 2018, the Minister for Policing and the Fire Service (Mr Nick Hurd) said the Government supported efforts to improve cross-border access to e-evidence but cautioned against further EU legislation, "given there are existing tools both within the EU and being developed internationally to tackle similar issues".[92] In his letter of 18 July 2018, he provided further information on the negotiation of a bilateral UK-US Data Access Agreement which "would allow companies storing data in one country to comply with lawful orders for electronic communications from the other country without any conflict of law, in tightly defined circumstances". He told us that the US Congress has passed domestic legislation—the Clarifying Lawful Overseas Use of Data (CLOUD) Act—to enable US Communication Service Providers to comply with UK law enforcement requests for data issued under the Agreement but recognised that there remained "much to do at both the technical level and in terms of securing congressional and parliamentary ratification of the Agreement before the Agreement can enter into force". He made clear that the Government's priority was "to sign and ratify the Agreement" and that the extent to which UK participation in the proposed Regulation might affect the operation of the Agreement would be an important factor in reaching an opt-in decision.

14.4 In his latest letter dated 28 September, the Minister informs us that the Government has decided *not* to opt into the proposed Regulation as:

> … it is not clear how new EU legislation will be a practical and effective way to address the global issue of providing lawful access to data held anywhere in the world, even outside of the EU's jurisdiction.

14.5 The Minister also responds to the questions raised in our Report agreed on 5 September concerning:

- the competence (EU or national) to negotiate data access agreements with third countries;
- how a bilateral UK/US data access agreement might affect the UK's prospects for securing a comprehensive data protection agreement with the EU post-exit; and
- the practical implications of being bound only by the proposed Directive, if the Government were to decide not to opt into the proposed Regulation.

14.6 On competence, the Commission and the Council Legal Service both consider that the EU has exclusive competence to negotiate a data access agreement with the United

91 See p.3 of the Commission's explanatory memorandum accompanying the proposed Directive.
92 See para 24 of the EM.

States and has urged Member States to refrain from bilateral negotiations.[93] We asked the Minister whether he accepted that this was an area of exclusive EU competence, or would become one with the adoption of the proposed Regulation, and whether a decision to opt into the proposed Regulation would impede or prevent the UK from negotiating and concluding its own bilateral UK-US Data Access Agreement. He responds:

> If and when it is adopted, the proposed Regulation will create a set of common rules which overlap significantly with the subject matter of the proposed agreement with the United States. I accept that for this reason, and had the United Kingdom opted in to the proposal and the proposal subsequently [been] adopted, the Court of Justice would likely have concluded that it was unlawful as a matter of EU law for the UK to conclude the agreement on the basis that it was capable of affecting those rules or altering their scope. A finding to this effect would have prevented the United Kingdom from concluding the agreement.

14.7 Turning to the risk that a bilateral UK-US Data Access Agreement might jeopardise the Government's goal of securing a comprehensive data protection agreement with the EU post-exit, the Minister observes:

> The UK/US Agreement will be fully compliant with EU law, but not reliant on it. The Agreement will be facilitative rather than compulsive. In other words, it will enable US authorities to make direct requests for communications content from UK telecommunications companies, but a company in the UK will not be obliged under UK law to comply with any order that is served; the Agreement will simply require the removal of certain legal obstacles which would otherwise prevent service providers from complying with orders. We therefore consider that any UK-US agreement should not pose a risk to a future agreement on data protection with the EU.

14.8 Finally, the Minister accepts that the UK will be under an obligation to implement the proposed Directive if it is adopted and has to be transposed into domestic law before the UK leaves the EU or during a post-exit transition/implementation period. The Government's decision not to participate in the proposed e-evidence Regulation will not affect the UK's ability to use other EU evidence-gathering tools, such as the European Investigation Order ("EIO"):

> A European Preservation Order and European Production Order can be distinguished from the EIO because of their direct applicability to compel a legal representative to preserve and/or produce the electronic evidence sought. The EIO however, is a broader power that seeks to streamline mutual legal assistance measures and is used for a number of different investigative or evidential uses. The two can operate separately. Therefore, not being party to the e-evidence proposals will not hinder our operability under the EIO.

93 See the Presidency note of 28 May 2018 (Council document 9418/18).

Our Conclusions

14.9 **Following the Government's decision not to opt into the proposed Regulation, we are content to clear both proposals from scrutiny. We note the Minister's assurance that the UK-US Data Access Agreement "will be fully compliant with EU law" and "should not pose a risk to a future agreement on data protection with the EU". We trust that this will be the case and ask the Minister to provide regular updates on the progress being made to secure an agreement with the EU which provides for "the continued exchange of personal data between the UK and the EU with strong privacy protections for citizens".[94] We draw this chapter to the attention of the Home Affairs Committee, the Justice Committee and the Committee on Exiting the European Union.**

Full details of the documents

(a) Proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters: (39631), 8110/18 + ADDs 1–3, COM(18) 225.

(b) Proposal for a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings: (39630), 8115/18 + ADDs 1–2, COM(18) 226.

Previous Committee Reports

Report HC 301– (2017–19), chapter (5 September 2018) and Twenty-eighth Report HC 301–xxvii (2017–19), chapter 3 (16 May 2018).

94 See chapter 3.2 of the Government's White Paper, *The Future Relationship Between the United Kingdom and the European Union*.

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

Department for Business, Energy and Industrial Strategy

Other

(40042)	Court of Auditors special report no: 21: Selection and monitoring for ERDF and ESF projects in the 2014–2020 period are still mainly outputs-oriented.
—	
—	
(40053)	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 as regards the adjustment of annual pre-financing for the years 2021 to 2023.
12025/18	
COM(18) 614	
(40072)	Court of Auditors Special Report No: 17/2018: Commission's and Member States' action in the last years of the 2007–2013 programmes tackled low absorption but had insufficient focus on results.
—	
—	

Department for Education

(40055)	Court of Auditors Special Report no 22: Mobility under Erasmus+: Millions of participants and multi-faceted European Added Value, however performance measurement needs to be further improved.
11940/18	
—	

Department for Environment, Food and Rural Affairs

(40066)	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Organisation for Vine and Wine (OIV).
12203/18	
+ ADD 1	
COM(18) 626	
(40067)	11th Financial Report from the Commission on the European Agricultural Guarantee Fund for the 2017 Financial Year.
12201/18	
COM(18) 628	

(40074) 12252/18 COM(18) 629	11th Financial Report from the Commission on the European Agricultural Fund for Rural Development for the 2017 Financial Year.

Department for International Trade

(39945) 10508/18 COM(18) 494	Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Council Regulation (EC)No 2271/96 of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

Department for Transport

(39634) 8071/18 +ADD 1 COM(18) 189	Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) 913/2010, in accordance to its Article 23.
(40018) 11565/18 +ADD1–2 COM(18) 564	Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council Mid-term evaluation of Regulation (EU) No 911/2014 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to marine pollution caused by ships and oil and gas installations.

Foreign and Commonwealth Office

(40034) 11695/18 COM(18) 575	Communication from the Commission to the Council and the European Parliament: Participation of the European Union as Permanent Observer in the Pacific Community (SPC).
(40088) — —	Council Decision (CFSP) 2018/1237 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the sovereignty of Ukraine
(40089) — —	Council Implementing Regulation (EU) 2018/1230 implementing Regulation (EU) No.269/2014 concerning restrictive measures in respect of actions undermining or threatening the sovereignty of Ukraine

HM Treasury

(40005) 11246/18 SWD(18) 362	Commission Staff Working Document Methodology for identifying high risk third countries under Directive (EU) 2015/849.
(40086) 12280/18 COM(18) 658	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the European Union Solidarity Fund to provide assistance to Latvia

Formal Minutes

Wednesday 17 October 2018

Members present:

Sir William Cash, in the Chair

Martyn Day	Darren Jones
Richard Drax	Mr David Jones
Kelvin Hopkins	David Warburton

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 Fortieth Report of the Committee to the House.

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

[Adjourned till Wednesday 24 October at 1.45pm

Standing Order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers—

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)
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*)