House of Commons

European Scrutiny Committee

First Report of Session 2019–20

Documents considered by the Committee on 16 October 2019, including the following recommendations for debate:

Brexit: UK contributions to the EU budget in 2019 and 2020 in a 'no deal' scenario

Report, together with formal minutes

Ordered by the House of Commons to be printed 16 October 2019

HC 16-i
Published on 22 October 2019
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 Ravi Abhavarante (Office Support Assistant), Joanne Dee (Deputy Counsel for European Legislation), Alistair Dillon and Leigh Gibson (Clerk Adviser), Nat Ireton and Apostolos Kostoulas (Committee Assistants), Luanne Middleton (Second Clerk), Daniel Moeller (Senior Committee Assistant), Jessica Mulley (Clerk), Foeke Noppert (Clerk Adviser), Indira Rao (Counsel for European Legislation), Paula Saunderson (Office Support Assistant), Sibel Taner (Second Clerk), Emily Unwin (Deputy Counsel for European Legislation) George Wilson (Clerk Adviser), Beatrice Woods (Committee Assistant)

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's 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:

- Fishing quotas under a no-deal Brexit.
- Parliamentary scrutiny of fisheries negotiations post-Brexit.
- The Committee again considered the issue of the UK's potential financial obligations to the EU in a 'no deal' scenario. Following the latest refusal by the Chancellor to rule out continued UK budget payments to the EU until the end of 2020 even without a Withdrawal Agreement, the Committee has now asked the Treasury to clarify when a decision on any such payments would be taken and how Parliament would be involved.
- In light of recent European Commission proposals, the Committee has assessed the EU's new financial support measures for European businesses that could face a liquidity crunch in a 'no deal' Brexit if trade between the EU and the UK is severely disrupted. The €750 million would complement any national support provided by individual EU countries domestically. When the Committee considered the EU proposals on 16 October, the UK Government had yet to announce the details of its proposals to support British businesses affected by 'no deal'.
- The Committee has issued a report on the UK's access to the EU market for financial services after Brexit, focussing on a recent review by the European Commission of the EU's "equivalence" mechanism. This is a legal procedure that allows the EU to grant preferential treatment to non-EU financial services providers, if their home country—i.e. the UK—has a regulatory and supervisory system that delivers the same financial stability and consumer protection standards as the EU's own rules.

Summary

Whistleblowing and breaches of EU law

The proposed Directive has been scrutinised by the Committee on many previous occasions. The Government has now written to inform the Committee about the (then) imminent adoption of the proposed Directive on 7 October. This has subsequently been confirmed by a Council Press Release of that date.

The Government also answers most outstanding questions from the Committee, concerning the Government future policy on workers' rights, possible changes to the domestic whistleblowing framework and about how the any implementation of or alignment with the Directive would affect non-disclosure agreements.

As the adopted Directive would only have to be implemented by Member States in 2021, it would not have to be implemented by the UK either in a "no deal" scenario or during a transition period expiring on 31.12.20 (if not extended). Given this and the fact that the Government has addressed most of the Committee's outstanding questions, the Committee now clears the document from scrutiny.

However, the Committee notes the unhelpful lack of clarity from the Government concerning previous commitments given on workers' rights. The Government is also requested to answer properly the Committee's question about how any UK implementation of the Directive would affect Non-Disclosure Agreements.

Proposed Directive cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee

Annual fishing quotas

As is customary, the European Commission has consulted on its approach to setting fishing quotas for the forthcoming year, which—in this case—is 2020. The Minister has responded to a series of queries posed by the Committee. Of particular note is a clear indication that the UK would like to preserve the status quo for the remainder of 2019 in the event of a no-deal Brexit on 31 October. The Committee takes note of the Minister's non-committal comments regarding the negotiation of future EU-UK arrangements, as well as parliamentary scrutiny of them. The Committee says that post-Brexit parliamentary scrutiny of fisheries negotiations should be at least as comprehensive as the current arrangements involving scrutiny through the European Scrutiny Committee. In advance of the publication of formal proposals for the 2020 quotas, the Committee clears the document from scrutiny.

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

UK contributions to the EU budget after a 'no deal' Brexit

The Committee has again written to the Chancellor of the Exchequer about the UK's financial obligations to the EU in a 'no deal' Brexit scenario. The EU is currently considering a Regulation to ask the UK for billions in continued budget payments until the end of 2020, even if the UK leaves the EU without a deal. By letter received on 7 October the Chancellor again refused to rule out that the Government might agree to such contributions.

In light of the ambiguity of the Government's position, the Committee has asked the Treasury to clarify when a decision would be taken if it became clear the UK were to leave the EU without a deal, and how parliamentary approval for any such payments would be sought. It has also requested the Chancellor confirm the Government's voting intention on the EU's Brexit budget proposal, over which the UK retains a veto while still a Member State, and again recommended that the question of the UK's financial commitments to the EU post-Brexit should be debated on the floor of the House of Commons.

Not cleared from scrutiny; recommended for debate on the floor of the House; drawn to the attention of the Committee on Exiting the EU, the Public Accounts Committee and the Treasury Committee

EU financial support for businesses affected by a 'no deal' Brexit

The European Commission recently proposed to use a maximum of €750 million (£657 million) from the EU budget in 2020 to support European businesses that may struggle financial in the event of a 'no deal' Brexit, for example exporters who may be hit with new tariffs when selling their goods into the UK market after it leaves the Customs Union. The European Scrutiny Committee has set out the details of the Commission proposals in its Report published today, noting that the UK Government is yet to publish the details of its equivalent support fund for UK businesses—termed "Operation Kingfisher"—even though the UK's default date of departure from the EU could be only days away.

Not cleared from scrutiny; drawn to the attention of the Business, Energy & Industrial Strategy Committee and the Committee on Exiting the EU

UK access to the EU market for financial services after Brexit

The Committee has approved a report on the UK's potential access to the EU market for financial services after Brexit, under the mechanism known as "equivalence". Based on a recent review by the European Commission, the Committee concluded that the EU was likely to scrutinise any UK applications for equivalence—which in some cases can grant wide-ranging market access for non-EU financial services providers without the need for an EU-based subsidiary—very closely, given that the UK would be free to disapply EU financial services legislation after it leaves the Single Market. Although the Prime Minister has identified financial services as an area where regulatory divergence from the EU could be beneficial, changes to UK regulation away from the European model are likely to make 'equivalence' decisions more difficult to obtain. The Committee has therefore asked the Treasury to confirm whether the Government still intends to seek equivalence after Brexit, and if so in which areas.

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

Second mobility package: emission performance standards

The new emission performance standards Regulation was last considered by the Committee on 20 March 2019 and a conditional waiver granted in order for the Government to support formal adoption at Council at the end of the month. It has since been adopted—as Regulation (EU) 2019/631—and will become applicable in Member States on 1 January 2020. In terms of content, the Regulation sets more stringent emission performance targets for new passenger cars and light commercial vehicles from 2021–25 and 2025–30. Amongst other changes (versus the current system), the Regulation also rewards manufacturers—by way of reduced emission reduction targets—for the production of low and zero emission vehicles. On the basis that the file has been adopted, the Committee has agreed to clear it from scrutiny.

Cleared from scrutiny

Third mobility package: revision of the Road Safety Infrastructure Management Directive

The proposal under scrutiny would make minor changes to the Road Infrastructure Safety Management Directive. These changes include: adding a requirement for Member States to undertake mandatory transparency and follow-up of infrastructure safety management procedures; introducing a 'network-wide road assessment'; and the requirement for Member States to consider vulnerable road users in all road safety procedures. The Minister with charge over the proposal (Baroness Vere of Norbiton) now writes—30 September 2019—with an update on negotiations. The Minister informs the Committee that the proposal was not put for formal adoption in March and is now expected to be taken forwards by the Finnish Presidency. The Minister clarifies a number of points that the Committee raised in its previous Report chapter. These relate primarily to the scope of the proposal and the body that would be charged with setting relevant standards under its terms. The Committee retains the proposal under scrutiny and asks the Minister to write again to clarify which domestic roads would be covered by the Directive. In light of a commitment by the Minister to "provide the Committee with the final adopted text of the Directive", the Committee requests that, before this, if the Government wishes to support the adoption of the proposal, she should write again either requesting clearance of the file from scrutiny or a waiver. Likewise, if the Government does not wish to support the proposal, the Committee should be informed of the reasons as to why.

Not cleared from scrutiny; further information requested

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: No-Deal Brexit: financial support for European businesses from the EU budget [Proposed Regulations (NC)]; Whistleblowing and breaches of EU law [Proposed Directive (C)]

Committee on Exiting the European Union: UK access to the EU market for financial services after Brexit [Commission Communication(C)]; No-Deal Brexit: financial support for European businesses from the EU budget [Proposed Regulations (NC)]; Brexit: UK contributions to the EU budget in 2019 and 2020 in a 'no deal' scenario [Proposed Regulations (NC)]

Environment, Food and Rural Affairs Committee: Fishing Opportunities 2020 [Commission Communication (C)]

Home Affairs Committee: New international standards on Passenger Name Record (PNR) data [Proposed Decision (NC)]; EU/Belarus Readmission Agreement [Proposed Council Decision (NC)]

Public Accounts Committee: Brexit: UK contributions to the EU budget in 2019 and 2020 in a 'no deal' scenario [Proposed Regulations (NC)]

Treasury Committee: UK access to the EU market for financial services after Brexit [Commission Communication(C)]; Brexit: UK contributions to the EU budget in 2019 and 2020 in a 'no deal' scenario [Proposed Regulations (NC)]

1 Brexit: UK contributions to the EU budget in 2019 and 2020 in a 'no deal' scenario

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; recommended for debate on the floor of the House (decision reported on 3 April 2019); (b) Not cleared from scrutiny; further information requested; recommended for debate on the floor of the House; drawn to the attention of the Committee on Exiting the EU, the Public Accounts Committee and the Treasury Committee
Document details	(a) Proposal for a Council Regulation on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union; (b) Proposal for a Council Regulation on measures concerning the implementation and financing of the general budget of the Union in 2020 in relation to the withdrawal of the United Kingdom from the Union
Legal base	(a) and (b) Article 352 TFEU and Article 203 EURATOM; special legislative procedure; unanimity
Department	Treasury
Document Numbers	(a) (40348), 5933/19, COM(19) 64; (b) (40810), 11921/19, COM(19) 461

Summary and Committee's conclusions

1.1 The issue of the UK's net contributions to the EU budget, which totalled an estimated £6.5 billion in 2017,[1] was one of the key issues during the referendum that lead to the UK's notification of its withdrawal from the European Union, sent by the then-Prime Minister in March 2017. The subsequent Brexit negotiations under Article 50 TEU demonstrated that the question of those contributions has remained controversial, even as the UK prepares to leave the EU. As set out in more detail in 'Background' below, and in our various Reports on the EU budget over recent years,[2] the unique nature of the Union's

1 See HM Treasury, "European Union Finances 2018: statement on the 2018 EU Budget and measures to counter fraud and financial mismanagement" (June 2019), p. 15. The net contribution is calculated by taking the UK's gross contribution, which was €13.7 billion in 2017, and subtracting the rebate (€7.4 billion) and EU funding flowing into the UK (€6.3 billion).

2 See for example our Reports of 18 July 2018, 9 January 2019, and 10 July 2019.

approach to spending means that much of the expenditure committed from the EU budget prior to the UK's departure—still scheduled for 31 October 2019[3]—would still have to be paid *after* it has already left.

1.2 The Government announced on 13 July 2017 that, as a matter of international law, the UK "has [financial] obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal".[4] Under the terms of the financial settlement subsequently set out in the draft Brexit Withdrawal Agreement, the UK would pay into the EU budget as if still a Member State until 31 December 2020. Afterwards, it would contribute towards EU spending commitments made *before* that date, but which had not yet been paid by that point. In 2019 and 2020 alone, the EU's annual budgets foresee a gross UK contribution, minus the rebate, of roughly €36 billion (£32 billion).[5] However, given the rejection of that Withdrawal Agreement, and therefore the settlement, by the House of Commons on three occasions, minds have inevitably turned to how the financial question would be dealt with in a 'no deal' scenario.

1.3 On the EU's side, it has been clear for some time that the other Member States will continue to press the UK for a financial settlement of any residual obligations to the EU budget even after a 'no deal' Brexit. The European Commission said the UK would have to agree to settle the "financial commitments made as a Member State", calling it a "precondition" for negotiations on a new UK-EU relationship.[6]

1.4 More importantly, as we discussed in our Reports of 13 March and 3 April 2019, the 27 remaining EU countries have already adopted a detailed contingency budgetary framework—Regulation 2019/1197—in the event the UK leaves the EU without a financial settlement in place. Under this legislation, UK-based entities would mostly remain eligible to receive EU funding from 'exit day' until the 31 December 2019, *provided the Treasury agreed to keep paying into the EU budget during that period*. Despite the UK paying its full contribution under these proposals, UK-based entities would be barred from accessing certain types of EU funding after a 'no deal' Brexit. These include money for security-sensitive projects related to defence,[7] as well as the EU's new €750 million (£668 million) emergency support programme for businesses affected by a 'no deal' Brexit.[8]

1.5 In September 2019, the European Commission published a supplementary legislative proposal that would extend the EU's favoured 'no deal' budget arrangement until the end of 2020, again provided the Treasury settles the UK's full gross contribution for that year

3 See European Council Decision 2019/584 of 11 April 2019, which extended the UK's EU membership until 31 October 2019 and to which the UK Government signified its agreement by letter dated the same day. The definition of the UK's 'exit day' from the EU under the European Union (Withdrawal) Act 2018 was amended accordingly by the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 (S.I. 2019/859).

4 Written Ministerial Statement HCWS43 by Rt Hon. David Davis MP, then Secretary of State for Exiting the EU.

5 The EU budget for 2019 foresees a total gross UK contribution of €17.5 billion, much of which will already have been paid if the UK leaves the EU as scheduled on 31 October 2019. The draft EU budget for 2020 as presented by the European Commission, which can still be amended by the European Parliament and the Member States, foresees a total gross UK contribution of €18.5 billion. The eventual net cost to the UK taxpayer after receipts from the EU budget are taken into account can only be calculated ex-post.

6 European Commission document COM(2019) 195, "Addressing the impact of a withdrawal of the United Kingdom from the Union without an agreement: the Union's coordinated approach" (10 April 2019), p. 1.

7 Principally, UK-based organisations would be barred from accessing funding under the European Defence Industrial Development Programme (EDIDP) and the Galileo satellite navigation programme.

8 This support would be provided from the EU Solidarity Fund and the European Globalisation Adjustment Fund. Proposals to that effect remain under scrutiny and we intend to publish a Report on them in the near future.

(currently estimated to be approximately €18.5 billion, or £16.5 billion). This proposal is now being considered by the Member States in the Council and by the European Parliament (which must both approve of the legal text before it can become law).[9] Indeed, as the draft measure has a legal basis which requires adoption by unanimity within the Council,[10] the UK technically retains a veto right until it ceases to be a Member State.

1.6 We have set out the context and substance of the EU's budgetary proposals in a 'no deal' scenario, and the Government's response to date, in more detail in "Background" below.

1.7 The UK Government, under both the current and previous Prime Minister, have so far refused to confirm explicitly where consideration is being given to the EU's request for continued contributions even in a 'no deal' Brexit scenario. The Chancellor of the Exchequer did so again in a letter to us dated 30 September 2019 (but not received by our staff until 7 October) in which he said that—in such a scenario—the Government would "have to determine what financial obligations the UK has to the EU" and "any decision" on whether the UK would accept the EU's request for continued budget payments would "be taken, if necessary, in this context". Given the potential financial implications of an affirmative decision, we have repeatedly asked for a debate on this matter to take place on the floor of the House of Commons, but the Government has to date refused to make time for this. We have also yet to receive a detailed Explanatory Memorandum from the Treasury on the substance of the latest Commission proposal.

1.8 In his letter, the Chancellor also referred to the possibility of the UK blocking adoption of the proposed EU Regulation asking for UK 'no deal' contributions for all of 2020. The Government retains a right of veto over the proposal while the UK remains a Member State, but according to the Chancellor this is not relevant, because a vote would not be taken "until the end of the year, after the UK's exit from the European Union". We were also told this previously in relation to the Brexit Budget Regulation for 2019. In fact however, that vote was brought forward and taken in July, while the UK was still a Member State. Notably, the Government did not block its adoption (despite having the power to do so). The Chancellor's letter also does not appear to take into account the possibility of a further extension of the UK's EU membership into 2020, as approved by Parliament under the European Union (Withdrawal) (No 2) Act 2019.

Our conclusions

1.9 **The issue of the UK's contributions to the EU budget has been a vexing matter for almost as long as the UK has been a Member State of the Union.**

1.10 **The EU's financial demands of the Treasury in the context of the UK's withdrawal, while extremely contentious, are at least clear. Whether under a Withdrawal Agreement or a 'no deal' scenario, it insists the UK has financial obligations related to the EU budget agreed during its membership, which it would have to meet as a "precondition" for talks on a future trade agreement. Whether the EU's position—to reject any trade**

9 In early October 2019, the remaining Member States in the Council agreed on the finalised legal text of the Regulation, and submitted it for approval to the European Parliament. MEPs can only accept or reject the proposal, not make any amendments.

10 The proposal for a Regulation is based on Article 352 TFEU, a 'last resort' mechanism allowing the EU to legislate in areas where the Treaties do not otherwise confer competence for it to do so. To prevent abuse of this power, each Article 352 measure must be approved by unanimity among all Member State governments.

talks with the UK until there is a financial settlement—can be sustained in the event of a 'no deal' Brexit is a matter of debate and disagreement. However, it is incontrovertible that the EU's position on its view of the UK's commitments is clear. It has put in place detailed legislation—with the Government's consent—to establish how it would seek British contributions in a 'no deal' scenario, and what the UK taxpayer might expect in return.

1.11 **Such clarity of position is sadly lacking when it comes to the UK Government. The Treasury's view under the new Prime Minister still appears to be that there are some financial "obligations" to the EU that would "survive" the UK's withdrawal irrespective of the circumstances of Brexit, since statements made under Prime Minister Theresa May to that effect made repeatedly since 2017 have not been explicitly rescinded. On 7 October,[11] the Chancellor again refused to deny outright the possibility that the Government may make continued contributions to the EU budget even in a 'no deal' scenario.**

1.12 **The Prime Minister himself has argued repeatedly that any further extension of the UK's membership of the EU under Article 50 TEU should be avoided, because it would cost the UK "more than £1 billion a month" in contributions to the EU budget.[12] Given that these payments would also have to be made under the financial settlement set out in the draft Withdrawal Agreement, the only scenario in which they could conceivably *not* be due is the 'no deal' eventuality. It is extremely disappointing therefore that the Government is unable to say explicitly and clearly, six months after we first made inquiries, whether it may make continued payments into the EU budget even in a 'no deal' scenario in line with the proposals made by the EU.**

1.13 **The Government's silence about the EU's request for continued contributions also has implications for our scrutiny of Ministers' actions in Brussels. As noted, the EU Regulation extending the proposed 'no deal' financial arrangement until the end of 2020 still has to be approved unanimously by the Member States in the Council. While the UK is represented there, the Prime Minister could exercise the UK's veto to stop the proposal from being adopted, for example to send a political signal about the Government's intentions not to pay in the event of 'no deal'. This would of course be a symbolic act only, since the EU Regulation itself could not force the UK to make contributions after it has left the EU.[13]**

1.14 **In his letter of 30 September, the Chancellor told us that the UK's right of veto was effectively irrelevant because a vote on the 2020 'no deal' budget proposal would only be taken in the Council of Ministers at "the end of the year, after the UK's exit". We have had our concerns about the UK's voting intention on this issue dismissed previously for the same reason, in relation to the EU's 'no deal' budget Regulation for 2019. That vote was eventually taken while the UK was still part of the EU, with the Government abstaining and in the process overriding our scrutiny reserve on such a crucial proposal. Given that Parliament has already instructed the Prime Minister to seek a further extension of the UK's EU membership into early 2020 to avoid a 'no deal' scenario, it is clearly a distinct possibility this second EU proposal asking for 'no deal'**

11 The Chancellor's letter was dated 30 September 2019 but was not sent to Committee staff until 7 October 2019.

12 HC Deb (25 September 2019), vol. 664, col. 780.

13 As noted, any decision to make payments to the EU beyond Brexit would be for the Government to take, if necessary with the appropriate parliamentary authority.

contributions from the UK will be voted on while the Government still has a seat in Council. We therefore again ask the Minister to clarify how the UK would vote on this Regulation if it were to be presented to the Council for approval while the UK is still a Member State, and to seek scrutiny clearance if necessary prior to the vote.[14]

1.15 **Overall, it is clear the Treasury feels unable to categorically reject the EU's demand for continued contributions even if the Withdrawal Agreement is not ratified. This in turn can only serve to fuel suspicion that such payments—amounting to many billions of pounds—are, indeed, under consideration. More broadly, whether or not the UK agrees to a financial settlement after a 'no deal' withdrawal is likely to have a significant impact on our future relations with the European Union. To further inform parliamentary debate on this matter, we have set out some relevant considerations of the UK's options, and their potential consequences, below.**

A cessation of UK contributions to the EU immediately after a 'no deal' Brexit

1.16 **The default legal position is that following a 'no deal' Brexit, the UK immediately ceases to make payments into the EU budget. Indeed, we presume that the European Communities Act 1972, which authorises the Treasury to make EU budget contributions from the Consolidated Fund, would have been repealed as of 1 November 2019 to ensure EU legislation no longer supersedes UK law. A new form of statutory authority, approved by Parliament, would be necessary for the Treasury to make any further EU contributions beyond that date.**

1.17 **Politically, the case has been made—including by the Prime Minister—that withholding money at least initially could provide the UK with significant leverage in future trade negotiations with the EU on a post-Brexit economic partnership.**[15] **Indeed, the Prime Minister himself has repeatedly said that an extension of the UK's EU membership under Article 50 would cost the Treasury "more than £1 billion a month" in contributions to the EU, implying that this expenditure would be avoided in a 'no deal' scenario (since the financial settlement under the Withdrawal Agreement would also require the UK to make its budget contributions). Others have argued that the EU budget constitutes only a relatively small part of the remaining Member States' total public expenditure, meaning the political leverage it could yield in trade talks would be limited.**[16]

1.18 **Either way, should the UK stop making its payments immediately after a 'no deal' Brexit, it is clear that the EU would have to radically adjust its budget for 2020 to take into account the loss of a substantial net contribution (estimated to be £6.5 billion in 2017). The Commission would have to ask the remaining Member States for significant additional payments, and make cuts to EU funding programmes to ensure the Union's expenditure and revenue remain in balance. By contrast, the UK could**

14 The parliamentary scrutiny reserve would not apply in instances where the EU requires unanimity only if the UK votes against.

15 On 9 June 2019, the Prime Minister (then a backbencher) told the Sunday Times: "*I think our friends and partners [in the EU] need to understand that the money is going to be retained until such time as we have greater clarity about the way forward. I always thought it was extraordinary that we should agree to write that entire cheque before having a final deal. In getting a good deal, money is a great solvent and a great lubricant*".

16 The 2014–2020 Multiannual Financial Framework limits the maximum 'own resources'—revenue—the EU can raise from Member States to 1.2 per cent of the EU's total GNI.

redirect its former net contribution towards domestic investment. We note, however, that if the Prime Minister's policy is to use the leverage provided by withholding the UK's payments to facilitate a new trade deal, implicitly those payments *would still need to be made to the EU at a later stage if such a deal is agreed*. The overall net benefit to the Exchequer would therefore be temporary.

1.19 **Moreover, any leverage the withholding of UK contributions might grant in trade negotiations with the EU-27 is being gradually eroded by the repeated extensions of the UK's EU membership under Article 50. This is because the financial settlement contained in the draft Withdrawal Agreement sets 31 December 2020—the end of the EU's current Multiannual Financial Framework—as a turning point: broadly speaking, for any EU spending decisions taken *before* that date, the UK should contribute what it would have done as a Member State; for those taken *afterwards*, from 1 January 2021, the EU-27 themselves are fully responsible.**

1.20 **It follows from the above that the extension of the Article 50 period from 29 March to 31 October 2019 already cut the amount the EU will need to request from the UK towards its 2019 and 2020 budgets significantly, because the UK has remained a Member State with full legal obligations to contribute to the EU budget for longer than originally anticipated. As a result of the extension, the Treasury has been making continued payments to the European Commission (which would now be deducted from any post-Brexit financial settlement). The possible further extension of the UK's EU membership until January 2020, as envisaged by the European Union (Withdrawal) (No 2) Act 2019, would whittle down the amount the EU needs from the UK after Brexit even more. The closer the UK's withdrawal falls to the end of the Multiannual Financial Framework in December 2020, the easier it will become for the EU to mitigate any shortfall in revenues owing to a lack of UK contributions.**[17]

1.21 **Without continued UK contributions, there will also be immediate practical consequences: the EU would cease to pay out most types of pre-agreed funding commitments to British recipients (such as research grants or regional development funds).**[18] **To mitigate the impact of this, the Government has unilaterally agreed to compensate British recipients for most types of EU funding to which they would lose access immediately after Brexit in the absence of a financial settlement with the EU. The Treasury announced on 30 September that this 'EU Guarantee' would be allocated £4.3 billion of taxpayer support for the period from 1 November 2019 to 31 March 2020 in a 'no deal' scenario.**[19] **However, the guarantee is apparently not comprehensive: the**

17 Already, the EU's spending plans from 1 January 2021 do not envisage any UK contribution at all, so reductions to mitigate for a lack of British payments for funding commitments made before that date are easier to accommodate. However, they might still require painful cuts. In particular, the EU would still need to pay for any expenditure commitments taken before the UK's exit but which remain outstanding after the date of its withdrawal (the "Reste a Liquider" or RAL). The Treasury's estimate for the cost of the Brexit financial settlement indicated the UK's contribution towards the RAL outstanding as of 31 December 2020 would amount to €21 to €23 billion.

18 The EU has adopted specific Brexit Regulations which mean that the PEACE Programme on the island of Ireland, and on-going student exchange visits undertaken by British residents, would continue to be funded in a 'no deal' scenario even if the UK did not pay any further EU budget contributions.

19 Written Statement HCWS1834, 30 September 2019.

Refugee Council has reported that the Home Office will not compensate UK charities for the lack of access to money from the EU's Asylum, Migration & Integration Fund (AMIF), used to support refugees in Britain.[20]

1.22 **Moreover, in the longer term, a lack of an agreement on the financial issue between the UK and the EU would stymie any efforts to secure UK participation in EU in funding programmes of mutual interest, including the new generation of EU initiatives under its next Multiannual Financial Framework (2021–2027). In particular, without a financial settlement, there is no prospect of British organisations from participating fully within the Creative Europe Programme for investment in the creative industries; the Framework Programme for Research ('Horizon Europe'); or the Erasmus+ student exchange programme.**

Continued UK contributions to the EU even after a 'no deal' Brexit

1.23 **The situation we have considered above is the default scenario, namely one where the Government itself decides not to meet the EU's demand for further contributions after a 'no deal' Brexit or where it lacks the necessary parliamentary authority to make such payments. However, the Government—including the new Prime Minister and his Chancellor—have so far refused to explicitly reject the EU's offer for continued payments into the 2019 and 2020 EU budgets outright. It is therefore still a possibility the Government may seek to make such payments, either for legal or political reasons (or both).**

1.24 **As we have said consistently since the publication of the original Commission proposal on UK budget payments after 'no deal' earlier this year, should the Government eventually agree to make continued contributions to the EU budget even in the absence of a treaty obligation to that effect, it would be extremely controversial. A number of important financial, legal and political considerations would need to be addressed:**

- **what would be the total gross and net cost to the British taxpayer of such contributions, and what they would receive in return? In particular, Parliament would need to decide whether the exclusion of British entities from being beneficiaries of particular EU programmes while the UK still part-funds those would be acceptable;**

- **how would the Government secure the necessary statutory authority for any such payments, in absence of the current authorisation to contribute to the EU budget under the European Communities Act 1972? Although the *Daily Telegraph* reported in February 2019 that a statutory instrument conferring**

20 Refugee Council, "Government breaks vital commitment to supporting thousands of vulnerable refugees" (4 October 2019).

such authority had been drawn up under the European Union (Withdrawal) Act 2018, to be laid under the negative procedure, this has never been officially confirmed;[21]

- **how would the Government seek to effectively influence the substance of the EU budget for 2020, which it would part-fund in this scenario (but which can be adopted under Qualified Majority without the UK's agreement even while we remain a Member State), especially given that UK officials have been withdrawn from most EU meetings? and**

- **To what extent would any UK acceptance of the EU's request for continued contributions into the EU budget until the end of 2020 also set a political precedent for future financial arrangements with the EU on the other components of the financial settlement under the Withdrawal Agreement, which would not be covered by those budget payments in 2019 and 2020?**[22] **The Treasury estimated that these other elements of the settlement, to be paid from 2021 onwards, would represent a net cost to the UK ranging between €23 billion to €27 billion (£20 billion to 24 billion).**[23] **Agreeing to pay the first part of the financial settlement could make it politically more difficult to resist paying the other components too.**

Our recommendation

1.25 **Given the importance of the unanswered questions above should the Government decide to continue paying into the EU budget even in a 'no deal' scenario, we have put them to the Treasury before on a number of occasions. We have yet to receive a clear and unambiguous response showing how the Prime Minister intends to address the financial issue in the event of a Brexit without a Withdrawal Agreement. Nevertheless, we do still believe that this matter is of significant interest to both Parliament and the wider public. As such, we maintain our recommendation for a debate on the floor of the House on the EU's requests for continued UK contributions until the end of 2020, even if the UK leaves the EU without a ratified Withdrawal Agreement. We urge the Government to make time for such a debate without delay.**

21 On 25 February 2019, the Daily Telegraph reported that the Cabinet had signed off on a draft Statutory Instrument enabling the Treasury to continue making payments to the EU in a 'no deal' scenario. Such a legal instrument would be necessary because the Government's current statutory authority to make payments to the EU out of the Consolidated Fund under the European Communities Act 1972 would have fallen away, and without being replaced by new powers under an Act of Parliament to implement the Withdrawal Agreement. The press reported that the Statutory Instrument for payments in a 'no deal' scenario would be made under the European Union (Withdrawal) Act 2018, potentially even under the negative—rather than affirmative—procedure.

22 As noted, the Withdrawal Agreement contained a financial settlement, the main part of which—relating to the MFF—broadly speaking consisted of three elements: contributions to the EU budget until the end of the current MFF in December 2020; a UK contribution towards the EU's diminishing expenditure commitments that remain outstanding as of 1 January 2021 (the 'Reste a Liquider' or RAL); and a share of other EU liabilities accrued during the period of the UK's EU membership, such as staff pensions and any pre-existing contingent liabilities on the EU's books that may crystallise in the future. Accepting the first of those components by continuing to pay into the EU budget until the end of 2020 could also strengthen the EU's hand when asking for a legal arrangement settling the other two components in the future.

23 The National Audit Office in its Report on "Exiting the EU: the financial settlement" (20 April 2018) stated that the Treasury estimated the net cost of settling the RAL would fall between €21 and €23 billion, while the other liabilities were likely to cost the UK €2 to €4 billion. See figure 5 of the NAO report (page 18).

1.26 **Furthermore, we have separately written on 16 October 2019 to the Chancellor of the Exchequer again asking him:**

- **what the deadline would be for the UK to notify its agreement to the EU's request for continued contributions in case of a 'no deal' Brexit on 31 October 2019;**
- **in light of that deadline, and barring any further extensions to Article 50, when the Government intends to inform Parliament whether or not the Government may accept the EU's request for continued financial contributions as set out in Regulation 2019/1197 even in a 'no deal' scenario;**
- **to clarify how the Government intends to vote on the Commission proposal extending Regulation 2019/1197 until the end of the 2020 EU budget, if it is presented to the Council for adoption while the UK is still a Member State (and could thus exercise its veto as a marker of its intentions in a 'no deal' scenario); and**
- **to provide us with the Treasury's revised estimates of the total net cost of the financial settlement under the terms of the Withdrawal Agreement, if the UK were to leave the EU on 31 October 2019 or 31 January 2020 respectively, based on the draft EU budget for 2020.**

1.27 **We look forward to receiving his reply by 24 October 2019. We also draw these developments and our conclusions to the attention of the Committee on Exiting the EU, the Public Accounts Committee and the Treasury Committee.**

Full details of the documents

(a) Proposal for a Council Regulation on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union: (40348), 5933/19, COM(19) 64; (b) Proposal for a Council Regulation on measures concerning the implementation and financing of the general budget of the Union in 2020 in relation to the withdrawal of the United Kingdom from the Union: (40810), 11921/19, COM(19) 461.

Background

1.28 The UK's contribution to the EU budget was one of the major points of contention in the referendum leading to Brexit. Figures released by the Treasury show that the UK's net public sector contribution[24] to the EU budget from 2012 to 2018 averaged £9.6 billion per year,[25] money which could be redirected elsewhere domestically as and when the Government is no longer under a legal obligation to make payments to the EU.

24 The Treasury's figures for the UK net contribution to the EU budget, i.e. contributions minus EU funding paid to UK-based recipients, only takes into account money provided by the EU to UK public authorities for disbursement to the final recipients (like Common Agricultural Policy subsidies, which are managed by the Rural Payments Agency), as well as the UK rebate. It does not include EU funds provided directly to private sector recipients, such as research grants for universities or charities. The European Commission's estimate for the UK's average net contribution from 2012 to 2016 (£7.87 billion) does take receipts by private sector into account.

25 HM Treasury, "European Union Finances 2018: statement on the 2018 EU Budget and measures to counter fraud and financial mismanagement" (June 2019). See for information on the UK's net contribution the tables on pages 14 and 15.

1.29 Given the UK's status as a significant net contributor to the EU budget, the question of a Brexit financial settlement has featured prominently in the negotiations on a Withdrawal Agreement governing the terms of the UK's departure from the Union under Article 50 TEU. The remaining Member States, as well as the European Commission and the European Parliament, have consistently insisted that the UK is due further contributions to the EU budget beyond its formal withdrawal. This is primarily the case because of the long-term nature of the EU's financial planning, under which expenditure is 'programmed' over seven-year periods under a "Multiannual Financial Framework" (MFF), the current version of which runs from 2014 until 31 December 2020 and which was approved by the UK in May 2014.[26] The separate EU legislation governing how Member States contribute to the EU budget during this MFF, the "Own Resources Decision" (ORD), was approved by Parliament under the European Union (Finances) Act 2015.

1.30 The UK's original departure date, 29 March 2019, would have fallen three-quarters of the way through the current MFF. In addition, the EU operates a 'differentiated' approach to much of its spending, where financial commitments made in one year—for example structural funds for infrastructure investment—are often not fully paid out until subsequent years (with expenditure committed towards the end of one MFF having to be paid during a subsequent budgetary period). In the context of Brexit, the overall effect of the EU's unusual approach to its public expenditure is that many of the spending decisions taken by the Union *during* the UK's membership will still need to be paid for *after* we are scheduled to leave the Union, a date currently fixed for 31 October 2019.[27] These expenditure commitments made before the UK's decision to leave were predicated on the overall budgetary limits set out in the current MFF for the entire 2014–2020 period, including the UK's full contributions during that period.

1.31 The UK's withdrawal, and the cessation of its legal obligation under the EU Treaties to make its significant net contribution to the EU budget in the absence of a new financial agreement, would therefore necessitate significant reductions in planned EU spending for the last 14 months of the current Financial Framework, and also most likely require the remaining Member States—particularly Germany and France—to contribute more to cover any shortfall. In light of this, the remaining Member States have consistently called for the UK to contribute its full share of committed and planned EU expenditure under the entire 2014–2020 MFF, even if it exits the Union before the end of that budgetary period (on 31 December 2020).[28]

1.32 The previous Prime Minister (Rt Hon. Theresa May MP) said in her Florence speech in September 2017 that she did not want the other Member States "to fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave", adding that the UK would "honour commitments we have made

26 See the vote on the MFF Regulation as recorded in Council document 10239/14.

27 Without prejudice to the provisions of the European Union (Withdrawal) (No 2) Act 2019, the legal default date for the UK's departure from the EU—barring a mutual agreement with the European Council to the contrary—remains 31 October.

28 The Brexit guidelines issued by the remaining Member States meeting in the European Council in April 2017 called for "a single financial settlement [to] ensure that the Union and the United Kingdom both respect the obligations resulting from the whole period of the UK membership in the Union. The settlement should cover all commitments as well as liabilities, including contingent liabilities". The European Commission subsequently issued a more detailed position paper setting out the EU's position in June 2017, the first such paper published by the Commission's Brexit task force.

during the period of our membership".[29] The draft Withdrawal Agreement of November 2018 therefore contained a financial settlement—famously estimated by the Treasury to represent a net cost to the British taxpayer of £39 billion had we left on 29 March 2019[30]—to that effect, including a requirement on the UK to pay into the EU budget as if still a Member State until the end of the current MFF in December 2020.[31]

1.33 However, in the absence of a ratified Withdrawal Agreement, the so-called 'no deal' Brexit scenario, there would be no binding bilateral financial settlement between the UK and the EU from the date of exit to resolve any outstanding "obligations". The UK and EU's financial commitments to one another in such an eventuality remain unclear. As the House of Lords EU Committee concluded in March 2017, while the "UK would be subject to no enforceable obligation to make any [EU] financial contribution at all" in the absence of a treaty otherwise, any agreement on post-Brexit "future market access on favourable terms […] is likely to prove impossible to do so without also reaching agreement on the issue of the budget".[32]

1.34 The UK Government's own position has been that "the UK has [financial] obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal", and that these need to be resolved "in accordance with the law".[33] That would seem to apply even in a 'no deal' scenario. The new Prime Minister (Rt Hon. Boris Johnson MP) alluded to these 'survivable obligations' even in a no-deal scenario in August 2019, when he said that in that case "the *£39 billion* is no longer strictly speaking owed" (emphasis added).[34] In any event, without a binding Withdrawal Agreement implemented in UK law, there would be no clear legal basis for further UK payments into the EU budget. Indeed, the Treasury has already introduced legislation to remove EU budgetary law from the UK statute book in a 'no deal' scenario.

1.35 Given the importance of this matter to the EU side, which would be faced with a significant budgetary shortfall without UK contributions, the issue of any 'no deal' payments by the Treasury is as much political as it is legal.

29 Speech by the Rt Hon. Theresa May MP, "A new era of cooperation and partnership between the UK and the EU" (22 September 2017).

30 This estimate will have decreased in size since, because of the extension of the Article 50 period until 31 October 2019 (during which the UK continues to make payments as a Member State, rather than as an ex-Member State under the terms of the financial settlement).

31 The financial settlement contained in the draft Withdrawal Agreement would also require the UK to pay for a share of the 'Reste a Liquider', the EU's outstanding spending commitments made under the 2014–2020 MFF which would have not yet been paid by 31 December 2020, and to contribute towards other liabilities taken on during the UK's EU membership (such as EU staff pensions).

32 House of Lords European Union Committee, Brexit and the EU budget, 15th Report of Session 2016–17 (4 March 2017).

33 The first Secretary of State for Exiting the EU (Rt Hon. David Davis MP) said in a Written Ministerial Statement on 13 July 2017 that "the Government recognises that the UK has [financial] obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal—and that these need to be resolved". In addition, in evidence to the House of Lords EU Committee on 29 August 2018, the then-Secretary of State for Exiting the EU (Rt Hon. Dominic Raab MP) said there was still a "question around quite what the shape of [the UK's] financial obligations were" if the Withdrawal Agreement was not ratified, adding that the UK "always pays its dues". On 6 February 2019, the Government again told Parliament that "even if the UK leaves without a deal, the Government have always been clear that the UK has obligations to the EU […] that will survive its withdrawal, and that these obligations would need to be resolved".

34 ITV News, "£39 billion divorce bill not 'strictly speaking owed' in event of no-deal Brexit, Boris Johnson claims" (25 August 2019).

The EU proposal for continued UK contributions to the EU budget in a 'no deal' scenario

1.36 As noted, the European Commission (as well as politicians in the 27 remaining Member States) has consistently said they would expect the UK to agree to a financial settlement even if the Withdrawal Agreement is not ratified, as a precondition for talks on a new UK-EU trade agreement. On the EU side, it has therefore been clear that the other Member States intend to press for continued UK payments into the 2019 and 2020 EU budgets—i.e. until the end of the current Multiannual Financial Framework—even in a 'no deal' scenario.

1.37 In late January 2019, the European Commission therefore issued an emergency legislative proposal in the form of a Council Regulation that effectively invites the UK to continue making payments for the remainder of 2019, even as a non-Member State. The essence of the proposed Regulation is that, rather than amending the 2019 EU budget to reduce planned expenditure to take into account the potential lack of a UK contribution from 'exit day' onwards, the Treasury would make its planned gross contribution for all of 2019—set at €17.4 billion (£14.9 billion)—even if the Withdrawal Agreement is not ratified by the time the UK left the EU.

1.38 Given the exceptional circumstances that have led the Commission to make this proposal, the legal basis for the draft Regulation was Article 352 of the Treaty on the Functioning of the European Union. This is a fall-back mechanism that allows the EU to take exceptional measures for which no explicit legal basis is provided elsewhere in the Treaties. Because of this, the proposal requires unanimous agreement of the Member States in the Council, and the consent of the European Parliament. As a consequence, the UK Government also needed to vote in favour of—or abstain on—the Regulation for it to be adopted while the UK is still a Member State. The proposal, like the Withdrawal Agreement, would only take effect from the date the Treaties cease to apply to the UK (initially planned for 29 March 2019, but now scheduled for 31 October following the extension of the Brexit negotiation period under Article 50 of the EU Treaty).

1.39 The Commission proposal for a Brexit Budget Regulation for 2019 was approved by the European Parliament on 17 April and subsequently formally adopted by the Member States in the Council on 9 July. The UK Government abstained during the vote, enabling it to be passed. It overrode our scrutiny reserve in the process, after having first assured us that any vote would only be taken after the UK had already left the EU. The legislation was subsequently published in the Official Journal on 15 July 2019 as Regulation 2019/1197. Because the dates in the Regulation—for example the deadline for the UK to certify its agreement to continue making payments into the EU budget after a 'no deal' Brexit—were drafted before the extension of the Article 50 period, the European Commission circulated a Delegated Act in September 2019 to bring the deadlines in the legislation in line with the UK's new scheduled date of withdrawal on 31 October.[35]

35 Even though the Regulation was formally adopted in July, well after the UK agreed to an extension of the Article 50 period until 31 October, from a legal perspective the Council had to pass the Regulation in the exact form approved by the European Parliament on 17 April. As the Parliament had risen by that point for the 2019 EU elections, the substance of the legislation could not be altered except by Delegated Act after publication in the Official Journal.

UK eligibility to receive EU funding

1.40 Although the Commission proposal, if accepted by the UK, would notably prevent acrimonious negotiations with Member States about increasing their contributions to the EU by keeping the UK's payments in place, its offer is, however, not *entirely* one-sided. In return for UK contributions to the EU budget for the remainder of 2019 even as a non-Member State, the Commission has proposed that:

- the UK Government, as well as public and private sector entities, would remain eligible to receive EU funding until 31 December 2019 for "legal commitments entered into before the withdrawal date" if they would otherwise have become ineligible for such funding when the UK ceases to be a Member State (i.e. when there is no legal avenue for the funding in question to be provided to the UK as a 'third country') (**article 2**); and

- the UK Government, public and private entities would be able to bid for new funding from EU programmes before the end of 2019 as if the UK were still a Member State (**article 4**).

1.41 Continued flows of EU funding to the UK in 2019 as if it were still a Member State would be conditional on payments being made in a timely way, and the UK accepting the "controls and audits" which apply to EU spending programmes (including oversight by the European Commission, the European Court of Auditors and the EU's anti-fraud body OLAF). The EU could suspend payments to UK recipients if the Government did not make the agreed payments or if "significant deficiencies" were observed in the way the funding was implemented (especially in areas of 'shared management', like Structural Funds, where EU funding is allocated to a public authority which then disburses it to the final recipients). The exceptions to this would be the provision of EU funding for UK students on an Erasmus exchange programme on 'exit day', and the continuation of the EU's cross-border cooperation programmes involving Northern Ireland. For those funding commitments, the Commission has proposed separate 'no deal' contingency measures that are not directly dependent on the Government's agreement to pay into the 2019 EU budget, although they are built on an expectation that it will.

1.42 For other EU funding programmes, the precise scope of what UK entities could receive in return for the Treasury making the full payments for the 2019 financial year is limited. Under article 2 of the Regulation, UK persons or entities "shall continue to be eligible [for EU funding] *in 2019*" (emphasis added). That means that any payments due from 1 January 2020 would not be covered, even though much of EU funding awarded in 2019—for example for research projects or regional development—may not be due for disbursement until 2020 or later. That would limit the benefit the UK would derive from its continued eligibility unless it also agreed to pay into the 2020 EU budget (see below). Moreover, UK entities would be barred from EU funding related to programmes with a 'security' component, including notably the European Defence Industrial Development Programme and the Galileo satellite navigation programme. Similarly, the UK would only qualify for investment by the European Investment Bank as a 'third country', which translates into a far smaller share of investment.

1.43 As noted, in terms of the financial cost of this arrangement, Article 2 of the Regulation stipulates that the UK's payments in return for continued eligibility for EU funding in 2019 would be based on the UK's share of the EU's planned budget for this year. In December 2018, this was set at €148.2 billion in payment appropriations. The gross UK contribution for 2019 would be €17.4 billion (£14.9 billion). That figure includes the estimated rebate the UK would have received in 2019. The actual *net* contribution the Treasury would make to the EU until the end of 2019 would be less than this, after funding flowing back to the UK over the year as a whole is also taken into account. According to a report in the Daily Telegraph on 25 February 2019, the estimated net UK contribution for 2019 under the proposal would amount to roughly €7 billion (£6 billion).

1.44 To date, in response to our enquiries, the Government has refused to explicitly state whether it would accept or reject the EU's request for continued payments into the EU budget even in a 'no deal' scenario.

The Commission proposal for UK contributions to the 2020 EU budget in a 'no deal' scenario

1.45 On 4 September 2019, the European Commission produced a second proposal for a Brexit Budget Regulation, this time in relation to the 2020 EU budget. If accepted by the Member States, again by unanimity under Article 352 TFEU, it would essentially replicate the provisions of Regulation 2019/1197 for next year's EU budget. As such, there is no need for us to repeat the detailed legal and political assessment of the Commission proposals set out above and in our Reports of 13 March and 3 April 2019.

1.46 The amount to be paid by the UK in 2020 under the Commission proposal would again be its full gross contribution.[36] Negotiations between the European Parliament and the Member States on the size of the EU budget for 2020—and by extension the UK's putative contribution to it—are still on-going, and could well last until December 2019. In anticipation of the finalised figure, the draft EU budget for 2020—presented by the Commission in June 2019—estimates a gross UK payment of approximately €18.5 billion (£16.5 billion). If the 2020 budget has not yet been definitively approved by the Parliament and Council on the date of the UK's withdrawal from the EU or 1 January 2020 (whichever is later), the UK would be asked to contribute the amount originally estimated by the Commission in the draft budget. It is unclear if the EU would reduce the contributions requested from the UK if the finalised budget adopted subsequently foresees lower expenditure than originally anticipated.

1.47 [As of 16 October 2019, the Chief Secretary to the Treasury (Rt Hon. Rishi Sunak MP) has not yet submitted the customary Explanatory Memorandum on the Commission

36 Article 2(2) of the proposal for a Regulation establishes the UK contribution in 2020 would be calculated by taking the estimated gross contribution under the draft EU budget for 2020, and adjusting it to take into account the Union's final spending plans under the adopted 2020 budget. More specifically, it involves the UK's total estimated own resources contribution under the draft EU budget for 2020 ("UK OR DB2020") as set out in table 7 of the of the revenue section, plus the UK's GNI-based own resource contribution ("UK GNI key DB2020") as set out in that same table divided by the total GNI own resource contribution of all Member States and multiplied by the difference between the EU's payment appropriations under the finalised 2020 budget ("PA B2020") as and when adopted, minus the EU's payment appropriations under the draft 2020 budget ("PA DB2020") originally proposed by the Commission. Although the final budget for 2020 has not yet been adopted, the Member States in the Council are seeking total payment appropriations amounting to €153,111,908,373 compared to the original Commission proposal of €153,620,722,889. Provisionally, using that Council proposal, the formula proposed by the Commission to calculate the UK's total gross contribution in 2020 would therefore yield: €18,539,395,059 (estimated total UK contribution under the draft budget)—€77,339,806 (adjustment to take into account spending cuts proposed by the Council) = €18.46 billion (£16.5 billion).

proposal.] However, the Chancellor of the Exchequer wrote to us on 30 September to explain that—in the event of a 'no deal' Brexit—the Government would "have to determine what financial obligations the UK has to the EU" and "any decision" on whether the UK would accept the EU's request for continued budget payments would "be taken, if necessary, in this context". The UK again retains a right of veto over the proposal while it remains a Member State, since its requires unanimous agreement in the Council. The Chancellor dismissed this as irrelevant because the proposal would only be voted on at "the end of the year, after the UK's exit". We are not reassured by that assumption, given that the European Union (Withdrawal) (No 2) Act 2019 requires the Government, in the event that certain conditions are not met, to seek an extension of the UK's membership of the EU into 2020 to avoid a 'no deal' scenario at the end of October. It is therefore a distinct possibility that the Government will still have its veto right when the Regulation is presented to Ministers for formal approval.

1.48 In light of the Government's ambiguity about the UK's financial commitments to the EU after Brexit, we have again set out a number of questions to the Treasury in the above "Summary and conclusions" section of this Report above. We have also recommended the latest Commission proposal for debate on the floor of the House of Commons.

Previous Committee Reports

Fifty-ninth Report HC 301–lvii (2017–19), chapter 6 (13 March 2019) and Sixty-second Report HC 301–lx (2017–19), chapter 1 (3 April 2019).

2 Public Employment Services Network

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2014/EU on enhanced cooperation between Public Employment Services (PES)
Legal base	Article 149 TFEU; ordinary legislative procedure; QMV
Department	Education AND Work and Pensions
Document Number	(40818), 12137/19 + ADDs 1–2, COM(19) 620

Summary and Committee's conclusions

2.1 The proposal under scrutiny would amend Decision No 573/2014/EU in order to continue the 'public employment services' (PES) network beyond 2020 (when its current mandate expires).[37]

2.2 The PES network was established to facilitate cooperation between Member States on the practice and reform of public employment services. The network has been in operation—in various guises—since 1997 and was formalised in 2013 (Decision 573/14 was adopted the following year).

2.3 The network serves as a forum for Member States to exchange information and best practice on the provision of public employment services. It is also utilised as a way of contributing towards the implementation of certain EU employment policy initiatives, for example, the EU's Youth Guarantee.

2.4 A recent evaluation of PES found it to be effective,[38] its outputs efficient, that it evidences a high degree of coherence with related policies and demonstrates considerable added value. On the back of these findings and specific calls from Member States, the Commission recommends the continuation of the network until 2027 (with some minor technical changes).

2.5 In her Explanatory Memorandum of 23 September 2019, Minister for Employment, Mims Davies MP, "notes" the Commission proposal for the extension of PES but does not provide a view on its content nor an indication as to whether the Government will support its adoption.

2.6 **Given that the Government has expressed a preference to leave the EU on 31 October 2019 with an agreement (which is likely either to be on the terms of the draft Withdrawal Agreement or a very similar text), the proposal under scrutiny would apply to the UK during any 'transitionary period' (which would provide for**

37 Decision No 573/2014/EU of the European Parliament and of the Council of 15 May 2014 on enhanced cooperation between Public Employment Services (PES) Text with EEA relevance.
38 As described in the EU's explanatory memorandum on the proposal.

the continuing supremacy of EU law). This would also be the case if an extension of the UK's membership beyond 31 October is unanimously decided by the European Council, in agreement with the UK, as provided in Article 50(3) TEU.

2.7 **As such, we request further information on whether the Government supports or opposes the proposal under scrutiny and would—in the circumstances outlined above—formally vote in favour of its adoption (and is thus seeking its clearance from scrutiny or a scrutiny waiver).**

2.8 **We remind the Minister that irrespective of the status of negotiations on the UK's withdrawal from the EU, it is incumbent on the Government to furnish the Committee with the information that it requires in order to undertake effective scrutiny of European documents. We expect the Minister to ensure that such a situation does not occur again.**

2.9 **We retain the proposal under scrutiny and ask that the information requested above is provided by no later than 23 October 2019.**

Full details of the documents

Proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2014/EU on enhanced cooperation between Public Employment Services (PES): (40818), 12137/19 + ADDs 1–2, COM(19) 620.

Previous Committee Reports

None.

3 Third mobility package: revision of the Road Infrastructure Safety Management Directive

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/96/EC on road infrastructure safety management
Legal base	Article 91(1)(c) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39722), 9040/18 + ADDs 1–4, COM(18) 274

Summary and Committee's conclusions

3.1 The Road Infrastructure Safety Management Directive (RISM)—Directive 2008/96/EC—was adopted in November 2008.[39] The Directive seeks to ensure that road safety—and its improvement—is considered during the planning, design and operation of road infrastructure.

3.2 In light of stalled progress in reducing the number of fatalities on EU roads in recent years, the Commission has suggested amending the Directive to clarify existing—and provide for additional—road safety management procedures. These are related, in particular, to road safety impact assessments, road safety audits, road safety inspections and network-wide road safety assessments.

3.3 In our last Report chapter on the proposal,[40] the Committee granted the Government a conditional scrutiny waiver in order for it to support formal adoption at Council at the end of March 2019. This waiver was conditional as, in previous correspondence,[41] the Government had not clearly explained a number of the proposal's key points to the Committee and, as such, its views on these were unknown.

3.4 The Minister with charge over the proposal, Baroness Vere of Norbiton, now writes—30 September 2019—with an update on negotiations.[42] The Minister informs the Committee that the proposal was not put for formal adoption in March and is now expected to be taken forwards by the Finnish Presidency.

3.5 The Minister provides further information on two points previously highlighted by the Committee as warranting attention: (1) the scope of the draft Directive; and (2) the ability of the Commission to set future performance standards for road markings and

39 Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management.

40 See Sixtieth report HC 301–lviii (2017–19), chapter 3 (20 March 2019).

41 Letter from Jesse Norman MP to Sir William Cash MP, 12 March 2019.

42 Letter from Baroness Vere of Norbiton to Sir William Cash MP, 30 September 2019.

road signs. On the first point, the Committee was concerned that—as per the provisional agreement on the proposal reached between the Romanian Presidency and European Parliament of 27 February 2019—Member States would be limited in their ability to define what constitutes their own primary road network. Such a limitation would mean that Member States would not have full control over the roads that fall under the purview of the Directive.

3.6 In response to this concern, the Minister explains that a recent amendment to the Trilogue text includes a new definition of 'primary road' at Article 1(2)(2b). This reads:

> 'Primary road' means a road outside urban areas that connects major cities or regions, or both, belonging to the highest category of road below the category 'motorway' in the national road classification…

3.7 The Minister argues that as this new definition is based around national road classification (which would continue to be determined by Member States), authorities would have discretion to decide which roads are covered by the Directive.

3.8 It is worth noting that the majority of Member States classify roads against similar criteria—the Directive would not mandate the creation of a new system—and, as such, if a Member State did not want a primary road to be covered by the Directive, they could choose to recategorise it.[43] The Committee questions the practicality of this approach and, furthermore, whether such action would be in keeping with the Commission's rational for legislative action: namely to improve road safety.[44]

3.9 The Minister also addresses some confusion over the role of the Commission in setting future performance standards for road markings and road signs. On the basis of previous correspondence form the former Minister, the Committee understood that the Commission's role in setting standards had been reconsidered and removed.

3.10 The Minister now informs us, however, that the text of the draft Directive has been amended—on the back of Trilogue negotiations—to include a similar role for a 'Member State group of experts'. The new text reads:

> A group of experts established by the Commission shall, at the latest by June 2021, assess the opportunity to establish common specifications including different elements aiming at ensuring the operational use of their road markings and signs in order to foster the effective readability and detectability of road signs and markings for human drivers and automated driver assistance systems. This group shall be formed by experts designated by the Member State. The assessment shall include a consultation of UNECE.

The Minister believes this change—notwithstanding the greater involvement afforded to Member States—will allow for easier alignment with the work of the UNECE (the most authoritative international standard-setting body in this area).

43 This is not withstanding the exemptions provided for by the Directive e.g. where primary roads can be excluded on safety grounds.

44 Re-categorising roads in the UK in this way would inevitably lead to fragmentation of the primary road network; with roads omitted on grounds relating to the Directive that should otherwise be included when compared to other similar roads.

3.11 **We thank the Minister for her letter of 30 September and the comprehensive way in which she has addressed the Committee's enquiries.**

3.12 **In light of recent changes to the scope of the draft Directive, we request further information on the roads that the Minister believes would be captured by new Article 1(2)(2b). The Committee is interested in whether this would be a category of road in its entirety—such as all 'A' roads—or would be more specific, for example, covering only certain A roads and trunk roads. Owing to the operation of a slightly different system of road classification, we request the same information for Northern Ireland. For both the UK and Northern Ireland, an illustrative list of covered roads should be provided.**

3.13 **We note the Minister's commitment to provide the Committee "with the final adopted text [of the proposal] as soon as it is available". We remind the Minister that if the Government intends to support the formal adoption of the proposal, we expect her to write to the Committee either requesting clearance of the file from scrutiny or a waiver. If the Government does not intend to support adoption, we expect the Minister to inform the Committee, in good time before the relevant Council, fully outlining the reasons why.**

3.14 **We ask for the information requested above by 13 November 2019 and we retain the proposal under scrutiny.**

Full details of the documents

3.15 Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/96/EC on road infrastructure safety management (39722), 9040/18 + ADDs 1–4, COM(18) 274.

Previous Committee Report

Thirty-seventh report HC 301–xxxvi (2017–19), chapter 10 (5 September 2018); Forty-sixth report HC 301–xlv (2017–19), chapter 9 (28 November 2018); and Sixtieth report HC 301–lviii (2017–19), chapter 3 (20 March 2019).

4 No-Deal Brexit: financial support for European businesses from the EU budget

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 Committee on Exiting the EU
Document details	(a) Proposal for a Regulation amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States to cover serious financial burden inflicted on them following a withdrawal of the United Kingdom from the Union without an agreement; (b) Proposal for a Regulation amending Regulation (EU) No 1309/2013 on the European Globalisation Adjustment Fund (2014–2020)
Legal base	(a) and (b) Article 175 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Numbers	(a) (40806), 11919/19, COM(19) 399; (b) (40805), 11920/19, COM(19) 397

Summary and Committee's conclusions

4.1 As a matter of European law, the UK is due to leave the European Union on 31 October 2019. The draft Withdrawal Agreement, which would preserve the status quo for trade between the UK and the EU, has not been ratified. However, both the EU and the UK Government acknowledge that a 'no deal' Brexit could cause significant economic disruption, and have therefore made preparations to mitigate that impact where considered desirable and possible.

4.2 As part of these preparations, in September 2019 the European Commission tabled draft legislation that would allow the EU budget to be used to provide financial support to any of the remaining 27 EU Member States—and their businesses—severely affected by a disorderly UK withdrawal. In total, roughly €750 million (£668 million) would be available from the EU budget to support Member States and businesses adjust to post-Brexit disruption, to be drawn from the European Globalisation Adjustment Fund (EGAF) and the European Union Solidarity Fund (EUSF). Member States could use any support granted from the EU budget to provide financial lifelines to companies that might otherwise go insolvent when trade with the UK is disrupted, or to fund public functions related to trade with the UK (including the operation of "border, customs, sanitary and phytosanitary controls, including additional personnel and infrastructure"). Individual EU countries could apply for funding if they could demonstrate a direct link between the UK's withdrawal and any resulting adverse economic impact or costs incurred.

4.3 Financial support to Member States from the EGAF and EUSF would be in addition to other Brexit-related funding from the EU budget already available for certain specific sectors, such as farming and fisheries, and any grants or loans provided by the EU's national governments themselves to their domestic businesses (such as Ireland's €1.2 billion (£1.1 billion) 'no deal' support package announced in October 2019).[45] The remaining Member States and the European Parliament must jointly approve the proposals for the €750 million support package before the money can be formally committed.[46] Such agreement is expected later this autumn, with any funds to be paid out in 2020 if a 'no deal' Brexit has in fact taken place.

4.4 We have described the contents of the Commission proposals, in the context of the EU's wider Brexit preparations, in more detail in "Background" below. [As of 16 October, the Treasury—as the Government department responsible for EU budgetary issues—has failed to produce the customary Explanatory Memoranda setting out the UK's position on these EU proposals. The Chief Secretary to the Treasury (Rt Hon. Rishi Sunak MP) has not provided an explanation for this delay.]

4.5 The UK Government is also preparing its own financial support mechanism for British businesses experiencing liquidity problems as a result of a 'no deal' Brexit, termed "Operation Kingfisher". The existence of this scheme was first acknowledged publicly by the Chancellor of the Duchy of Lancaster (Rt Hon. Michael Gove MP) in August 2019,[47] but the Government has yet to make any formal announcements about its funding, scale and functioning. According to press reports, it is targeted primarily at larger businesses which are "otherwise fundamentally viable" but could be "tip[ped] into administration" by a disorderly Brexit.[48] Although further details are reported to be due for publication in October 2019,[49] it is not currently possible to compare the Government's efforts in this area with the European Commission's detailed formal proposals.

4.6 The Commission's decision to mobilise the EU budget to provide Brexit-related financial support to businesses also present a particular problem for the Treasury in the context of the wider "financial settlement" between the UK and the EU. In the event of a 'no deal' withdrawal, the multi-billion pound "Brexit bill"—under which the Government would pay into the EU budget as if still a Member State until the end of 2020—would not be legally binding. As noted in a separate chapter of this Report, in such an eventuality the EU has asked the Treasury to continue making its contributions until the end of 2020 even in a 'no deal' scenario.[50] On 7 October, the Chancellor again refused to explicitly rule out such continued contributions are being considered as a way of facilitating negotiations

45 Government of Ireland, "Government provides in excess of €1 billion in Budget 2020 to respond to a No Deal Brexit" (8 October 2019).

46 While it remains a Member State, the UK has a vote over the proposals in the Council of the EU. However, the draft legislation is subject to a Qualified Majority vote, meaning in practice the Government cannot veto the proposals before 'exit day'.

47 The Times, "Bailout fund to prop up businesses after Brexit" (10 August 2019).

48 Idem.

49 The Times, "Brexit group draws up no-deal danger list to lean on Ireland" (7 October 2019).

50 The European Commission has described an agreement on a financial settlement, including continued UK contributions into the EU budget until the end of the 2014–2020 budgetary period, has a "precondition" for talks on the future UK-EU relationship. The EU has already put in place a contingency Regulation requesting such payments from the UK in a 'no deal' scenario until the end of 2019, with a proposal to extend this arrangement until the end of 2020 currently under consideration (as we describe in a separate chapter of this Report). The European Scrutiny Committee wrote to the Chancellor on 4 September 2019 to ask if the Government could rule out making any 'no deal' payments, but as of 16 October no reply to this letter has been received.

on a new trade agreement with the EU.[51] However, even *if* the UK made further payments into the EU budget following 'no deal', the Commission has proposed that British firms should be explicitly barred from accessing the Brexit-related schemes. This creates the possibility that the Treasury could be part-funding financial support for European businesses affected by a 'no deal' Brexit, without the UK being able to benefit from such measures directly.

Our conclusions

4.7 **Like the UK Government, the EU clearly takes the potential disruptive effect of a 'no deal' Brexit seriously. The European Commission has now proposed to use some €750 million from the EU budget to help EU Member States—in particular Ireland—to address disruption in trade and to meet the costs of new customs and regulatory infrastructure needed for trade with the UK. The sum, while in itself not insubstantial, represents only 0.5 per cent of planned EU spending for 2020.[52] However, it would form only one part of the overall package of financial support from which European businesses could avail themselves in a 'no deal' scenario, complemented for example by Brexit-related grants and loans provided by national governments in the EU themselves.**

4.8 **Our scrutiny of the EU's proposals for use of the EU budget in the context of a 'no deal' Brexit have highlighted several shortcomings in the Government's approach to transparency and accountability to Parliament and the general public.**

4.9 **Firstly, while the UK remains an EU Member State, the Government is required to submit Explanatory Memoranda to this Committee setting out the UK's position on new proposals put forward by the European Commission. Despite the clear relevance of the draft legislation to use the EU budget to cushion the impact of a 'no deal' Brexit for European businesses, we have not yet received such Memoranda more than a month after the proposals were published. We again ask the Chief Secretary to the Treasury to submit them without delay, accompanied by information on the analogous UK support schemes under "Operation Kingfisher".**

4.10 **Secondly, as we have noted previously, the EU is requesting continued UK budget payments even in the absence of a legally-binding financial settlement. We have asked the Government repeatedly whether it would accept or reject the EU's demand for continued budget payments even if the Withdrawal Agreement is not ratified, but as recently as 7 October the Chancellor again refused to rule out making EU contributions in a 'no deal' scenario. Consequently, we have devoted an entire chapter of this Report to precisely this matter, and have called again for a debate on this issue on the floor of the House of Commons. We note that these latest EU proposals raise a specific issue in this context: British firms would be barred from seeking Brexit-related support from**

51 Letter from the Chancellor of the Exchequer to Sir William Cash, dated 30 September 2019 but not sent to Committee staff until 7 October. In this letter, the Chancellor stated that—in the event of a 'no deal' Brexit—the Government would "have to determine what financial obligations the UK has to the EU" and "any decision" on whether the UK would accept the EU's request for continued budget payments would "be taken, if necessary, in this context". Any such payments would most likely require fresh parliamentary approval.

52 In the draft EU budget for 2020, the European Commission has proposed €153.7 billion in payment appropriations. The draft budget is still subject to negotiations between the Member States and the European Parliament.

the EGAF and EUSF, *even if those schemes were part-funded by the UK taxpayer*. We therefore again request the Minister to confirm if the UK would immediately cease its contributions to the EU budget in a 'no deal' scenario.

4.11 **Lastly, the clarity of the EU's proposals to use the Globalisation Adjustment Fund and the Solidarity Fund after Brexit serves to underline the complete lack of clarity about the kind of Government support available to UK businesses facing economic headwinds following a 'no deal' withdrawal from the EU. Details about "Operation Kingfisher" remain scarce. [As of mid-October, with two weeks until the putative withdrawal date, it is not known what budget the Government will give to the "Kingfisher" scheme; who would be eligible; and how businesses would apply for it. We hope the Government will publicise the details and budget of its Brexit support scheme for businesses urgently, so that those who already anticipate needing to make use of it can begin the application process and avoid liquidity issues in the immediate aftermath of the UK's withdrawal.]**

4.12 **Given the lack of Explanatory Memoranda received from the Treasury on the EU's proposals for Brexit-related financial support, we retain both documents under scrutiny. We draw these developments to the attention of Business, Energy and Industrial Strategy Committee and the Committee on Exiting the European Union.**

Full details of the documents

(a) Proposal for a Regulation amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States to cover serious financial burden inflicted on them following a withdrawal of the United Kingdom from the Union without an agreement: (40806), 11919/19, COM(19) 399; (b) Proposal for a Regulation amending Regulation (EU) No 1309/2013 on the European Globalisation Adjustment Fund (2014–2020): (40805), 11920/19, COM(19) 397.

Background

4.13 The UK's exit day from the EU under European law is currently 31 October 2019.[53] If the UK leaves the EU without a Withdrawal Agreement in place, the so-called 'no deal' scenario, new barriers would immediately apply to trade between the UK and the EU from 1 November onwards. This means, for example, that tariffs would be imposed on UK exports into the EU (and vice versa), and customs and regulatory controls mandated by EU law for 'third country' goods would need to take place not only at continental ports like Calais, but also—somehow—at the UK-Ireland border.[54]

4.14 Although an Act of Parliament requires the Prime Minister to seek a further three-month extension of the Article 50 notice period if the Withdrawal Agreement is either not concluded and approved by Parliament or if "no deal" has not been approved by

53 European Council Decision 2019/584 of 11 April 2019, to which the UK Government signified its agreement by letter dated the same day. The definition of the UK's 'exit day' from the EU under the European Union (Withdrawal) Act 2018 was amended accordingly by the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 (S.I. 2019/859).

54 The Withdrawal Agreement on the UK's withdrawal from the EU, if ratified, would provide for a transitional period during which the UK would temporarily stay in the Single Market and Customs Union. The current absence of border controls on goods moving between the UK and the EU would persist during that period.

Parliament by 19 October,[55] this extension has not yet been secured in law because it also requires the consent of the European Council (excluding the UK) acting unanimously. The legal default therefore remains a 'no deal' Brexit on 31 October. In recognition of this possibility for economic disruption in such an event, both the Government and the EU have implemented significant Brexit preparation measures in advance of the UK's planned withdrawal. Of especial interest to this Committee have been the mitigating measures related to the 'no deal' scenario specifically. As set out in more detail in our Report of 10 July 2019, these include temporary permissions for UK hauliers and airlines to continue operating to and from the EU under certain conditions; a visa-waiver for British citizens visiting the EU for short periods; and continued EU funding for the PEACE Programme on the island of Ireland.

4.15 The Commission also noted in its June 2019 Communication on Brexit that it stood "ready to propose financial support measures" from the EU budget "to mitigate the impact in the most affected areas and sectors" after a disorderly UK withdrawal, and Member States—especially Ireland—could use "flexible solutions for national measures", provided they are in accordance with EU State aid rules.

EU financial support programmes linked to Brexit

4.16 Existing EU funding programmes already provide for some capacity to support Member States and sectors most affected by the UK's withdrawal, for example by deploying "market measures" under the Common Agricultural Policy if there is a sudden drop in exports of agri-food products to the British market. In addition, in March 2019 the remaining Member States and European Parliament agreed on further assistance for European fishermen from the European Maritime and Fisheries Fund, if they are banned from operating in British waters after the UK's exit from the Common Fisheries Policy.

4.17 In early September 2019, the European Commission tabled two further proposals to provide *additional* 'no deal' financial support to the remaining 27 Member States. The specific purpose of these proposals is to create a dedicated legal basis for the use of the EU budget in 2019 and 2020 to support Member States' public administrations, as well as individual businesses, most affected by a UK withdrawal from the EU, if the Withdrawal Agreement is not ratified. The two proposals would allow for Brexit-related financial support for affected Member States from two existing EU funding programmes until the end of 2020, namely:

- the European Union Solidarity Fund (EUSF), a Fund created in 2002 to provide financial assistance "in the event of major disasters" to the public authorities of Member States or EU accession countries. It has an annual budget of approximately €600 million;[56] and

55 See the European Union (Withdrawal) (No 2) Act 2019.

56 The legal basis for the EUSF is Regulation 2012/2002. Its budget is set out in Article 10 of the 2014–2020 Multiannual Financial Framework, which stipulates that its maximum annual endowment is €500m in 2011 prices (or €585m as of 2019), plus any unused amount of the previous year's budget.

- the European Globalisation Adjustment Fund (EGAF), an assistance mechanism for communities and sectors in the EU hit by redundancies linked to structural changes in global trade patterns.[57] It has an annual budget of roughly €175 million.[58]

4.18 The substance of the proposals is summarised in more detail below. They can still be amended by the Member States in the Council and by the European Parliament, which have to agree on the final legal texts jointly under the EU's ordinary legislative procedure.[59] [As of 16 October, the Government has failed to submit the customary Explanatory Memoranda on the proposals, which would set out the UK's position on the draft legislation. The Chief Secretary to the Treasury (Rt Hon. Rishi Sunak MP), the Minister responsible for the Government's policy in this area, has failed to provide an explanation for this unacceptable delay. As such, we have made a further assessment of the proposals below without the benefit of any of the Government's own analysis.]

Brexit and the EU Solidarity Fund

4.19 Under the Commission proposal for the Solidarity Fund, the definition of a "major disaster"—the prerequisite before any eligible country[60] can ask for assistance—would be amended to cover not only "natural disasters" but also "situations where a serious financial burden is inflicted on a Member State as a direct consequence" of a 'no deal' Brexit.[61]

4.20 To apply for Brexit-related support from the EUSF, a country would have to submit detailed evidence that the total, unavoidable "financial burden" triggered by the UK's disorderly withdrawal exceeded either €1.5 billion in 2011 prices (approximately €1.76 billion, or £1.6 billion, in 2019 prices),[62] or 0.3 per cent of its Gross National Income. The effect of the proportional threshold is that smaller Member States would qualify for funding sooner: for example, Ireland—with a GNI of €234.2 billion[63]—would be able to call on the Solidarity Fund if it took a Brexit-related hit of €700 million (£624 million). Member States could use any support granted to provide financial lifelines to companies that might otherwise go insolvent when trade with the UK is disrupted, or to fund public functions such as the operation of "border, customs, sanitary and phytosanitary controls, including additional personnel and infrastructure".

4.21 Based on the scheduled date of the UK's withdrawal on 31 October 2019, each Member State could lodge a single, total claim for financial assistance with the Commission by 30 April 2020. If judged favourably, the Commission would submit a formal proposal to use—"mobilise"—the Solidarity Fund to the European Parliament and the Council, who would

57 The UK did not support the use of the EU budget for the Globalisation Adjustment Fund and the Government does not apply for assistance from the Fund for British businesses or communities. A proposal for a revamped EGAF under the 2021–2027 long-term EU budget is currently being negotiated, and remains under scrutiny.

58 Article 12 of the Multiannual Financial Framework 2014–2020 (Regulation 1311/2013) sets the EGAF's annual budget at €150 million per year, in 2011 prices. Applying a 2 per cent annual deflator yields a 2019 comparable value of €175 million.

59 Within the Parliament, the proposal relating to the EUSF is being looked at by the Regional Development Committee (REGI), while the EGAF proposal falls within the remit of the Employment and Social Affairs Committee (EMPL).

60 While EU accession countries are normally able to apply for assistance from the EU Solidarity Fund, under the terms of the Commission proposal the Brexit-related support would be available to EU Member States only.

61 Article 1(2) of Commission proposal COM(2019) 399.

62 The EU uses an annual deflator of 2 per cent to readjust prices set at historical levels. Applied to the €1.5bn threshold in 2011 prices, that yields a current value of €1.76bn.

63 Central Statistics Office of Ireland, "National Income and Expenditure 2017" (accessed 6 September 2019).

ultimately decide on whether to provide the requested support. To limit the potential cost of the assistance to EU taxpayers and maintain leeway to use the Solidarity Fund for its original purpose, the Commission proposal limits the available Solidarity Fund support related to a 'no deal' Brexit to 50 per cent of its total budget for 2019 and 2020. That would yield a total maximum assistance package via the EUSF of €591 million (£526 million) during that period.[64] In addition, the support actually provided to a specific Member State would be capped at a maximum of 5 per cent of the "financial burden" caused by Brexit.

4.22 The proposal is not accompanied by an impact assessment, so it is unclear how the Commission believes the funding will be distributed geographically across Member States in practice. The scheme's €591 million budget results in a theoretical average of €22 million for each the remaining 27 EU countries. However, in practice, the threshold for the qualifying Brexit-related "financial burden" of 0.3 per cent of GNI or €1.5 billion may not be met by all Member States. In turn, this means the support is likely to be focused on Ireland and the continental Member States closest to the UK, where disruption is likely to be more economically significant.

Brexit and the European Globalisation Adjustment Fund

4.23 The Commission's second proposal for support from the EU budget to cushion the impact of a 'no deal' Brexit related to the EU's Globalisation Adjustment Fund (EGAF).

4.24 This Fund, established in 2007, provides support for workers "losing their jobs as a result of major structural changes in world trade patterns due to globalisation", for example "when a large company shuts down or production is moved outside the EU".[65] It works on a co-financing basis, meaning it can provide a Member State which has successfully applied for assistance with up to 60 per cent of the cost of projects "designed to help workers made redundant find another job or set up their own business". It has a broad definition of 'worker', allowing support to be used as well to help those on fixed-term contracts, temporary agency workers, owner-managers of micro enterprises and self-employed workers, as well as young people not in education, employment or training (NEETs) under certain conditions.

4.25 Under the Commission's proposal to deploy the EGAF in the context of the UK's withdrawal, the list of possible triggers for compensation from the Fund for job losses—which currently include indicators such as a rapid increase in imports of a certain good to the detriment of European producers, or a serious decline of the EU's market share in a given sector overseas—would be expanded to include instances of "workers made redundant and self-employed persons whose activity has ceased as a result of […] as a result of the withdrawal of the United Kingdom" without a Withdrawal Agreement.

4.26 The Commission proposal does not alter the EGAF's total budget—currently set at approximately €175 million per year—or limit how much of it could be spent on Brexit-related support. However, support provided in relation to job losses linked to the UK's withdrawal would have to contend with Member States' applications relating to the Fund's existing core function (although it has not so far been called on by any Member State in

64 According to the Commission proposal, the EUSF has a budget of €585.8 million in 2019 and €597.5 million in 2020. It expects more than half of the 2019 allocation—i.e. the maximum that could be spent on Brexit-related support—to be carried over into 2020.

65 European Commission, "European Globalisation Adjustment Fund (EGF)" (accessed 5 September 2019).

2019). The other criteria for support from the Fund, such as the requirement for at least 500 workers in a particular company, sector or region to be affected, would also remain in place.[66]

4.27 With respect to both the EUSF and EGAF, the European Commission would not itself select any companies to receive financial support. That would be the job of the Member States' national governments, with the intended recipients identified in the applications to the Commission to access the funds and subject to the approval of the European Parliament and the Member States in the Council. Similarly, under both programmes, the proposed Brexit-related support would *only* become available if the UK leaves the EU without a Withdrawal Agreement.

Possible UK financial contributions to the EU's Brexit support programmes

4.28 If the UK leaves the European Union without a deal, it will by default stop being covered by EU law and the Treasury would no longer be under an obligation to make payments into the EU budget. However, given the UK's status as a significant net contributor to that budget, the remaining Member States have been insistent from the start of the Brexit process that they want the Government to contribute towards EU spending plans agreed while the UK was still a Member State.[67] Both the current and previous Prime Minister have indicated that they accept the UK would have residual financial obligations to the EU beyond its withdrawal, although they have refused to clarify the sums involved. In light of this, a detailed financial settlement was set out in the draft Withdrawal Agreement (estimated to represent a net cost to the British taxpayer of £39 billion, if the UK had left the EU on 29 March 2019 as originally planned).[68]

4.29 In the absence of a ratified Withdrawal Agreement, there would be no bilateral arrangement between the UK and the EU on the resolution of any outstanding financial obligations. For this eventuality, as we have set out in a different chapter of this Report, the remaining Member States have agreed to effectively ask the UK to continue making payments into the EU budget until the end of 2020 anyway, in return for which UK-based entities such as universities, charities and local authorities would, by and large,[69] remain eligible to receive EU funding on current terms (i.e. as if the UK were still a Member State). However, under the Commission's proposal for the 'no deal' budget legislation, the UK would be explicitly barred from accessing Brexit-related financial assistance under

66 The EGAF Regulation allows for financial support even where this threshold is not met if "the redundancies have a serious impact on employment and the local, regional or national economy". See article 4(2) of Regulation 1309/2013.

67 See for example the Brexit guidelines of the European Council, adopted by the 27 remaining Member States on 29 April 2017, which called for a "a single financial settlement [to] ensure that the Union and the United Kingdom both respect the obligations resulting from the whole period of the UK membership in the Union". The EU's demands were set out in more detail the European Commission's 'financial settlement' position paper of 12 June 2017.

68 Some of the original £39 billion estimated net cost of the Brexit financial settlement related to UK contributions to be paid into the EU budget for 2019 after the original 'exit day' of 29 March 2019. As the UK's membership of the EU was subsequently extended until 31 October, some of those contributions have now already been made pre-exit. This means the total post-exit bill would be reduced correspondingly, even if the total cost to the UK has not changed.

69 There are a few exceptions to this rule. For example, UK entities could not bid for funding for EU programmes that are 'security sensitive', such as parts of the Galileo satellite navigation programme. The European Investment Bank would also treat the UK as a 'third country', rather than a Member State, for investment purposes.

the EU Solidarity Fund and the European Globalisation Adjustment Fund in 2020.[70] That means that, if the Government were to agree to pay into the EU budget beyond a 'no deal' withdrawal—which the Chancellor explicitly refused to rule out in a letter to us dated 7 October 2019—British taxpayers would be part-financing the efforts of other European countries to adjust to the economic realities of a 'no deal' Brexit without being able to access those funds themselves.[71]

4.30 We note in this respect that the UK Government is also preparing its own financial support mechanism for businesses experiencing liquidity problems as a result of a 'no deal' Brexit, termed "Operation Kingfisher". The existence of this scheme was first acknowledged publicly by the Chancellor of the Duchy of Lancaster (Rt Hon. Michael Gove MP) in August 2019,[72] but the Government has yet to make any formal announcements about its funding, scale and functioning. According to press reports at the time, it would be targeted primarily at larger businesses which are "otherwise fundamentally viable" but could be "tip[ped] into administration" by a disorderly Brexit.[73] On 7 October, the Times reported that more details of the scheme would be announced shortly.[74] However, given the lack of information currently available, it is not possible to compare the Government's efforts in this area with the European Commission's detailed proposals.

4.31 We have set out our views on the EU's proposals to provide financial support to businesses affected by a 'no deal' Brexit in the "Summary and conclusions" section above.

Previous Committee Reports

None.

70 See the proposal for a Regulation contained in Commission document COM(2019) 461, on the possibility of continued UK contributions to the EU budget in 2020 even in a 'no deal' scenario. Under article 4(2) of that proposal, even if the UK continued to make its payments to the EU, "United Kingdom persons or entities […] shall not be eligible" for Brexit-related support under Regulation 1309/2013 (the Globalisation Adjustment Fund) or Regulation 2012/2002 (the EU Solidarity Fund).

71 We have raised concerns of similar issues in the past, for example the possibility of the UK part-funding the establishment of the European External Action Service's delegation in London. See for example our Reports of 9 January and 10 July 2019 on the 2019 and 2020 EU budgets.

72 The Times, "Bailout fund to prop up businesses after Brexit" (10 August 2019).

73 Idem.

74 The Times, "Brexit group draws up no-deal danger list to lean on Ireland" (7 October 2019).

5 EU/Belarus Readmission Agreement

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	(a) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation (b) Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation
Legal base	(a) Articles 79(3) and 218(5) TFEU, QMV (b) Articles 79(3) and 218(6)(a) TFEU, QMV, EP consent
Department	Home Office
Document Numbers	(a) (40801), 11846/19, COM(19) 404 (b) (40802), 11848/19 + ADD 1, COM(19) 401

Summary and Committee's conclusions

5.1 The proposed Council Decisions are the culmination of eight years of negotiation between the European Union and Belarus to simplify procedures for issuing short-stay visas in return for binding commitments to take back (readmit) individuals whose entry or stay is not authorised. The aim is to facilitate mobility between Belarus and the EU whilst also ensuring that practical arrangements and procedures are in place to return individuals whose presence is not (or is no longer) lawful. The proposed Decisions would authorise the EU to sign and conclude a readmission agreement with Belarus. The agreement would take effect at the same time as a separate visa facilitation agreement with Belarus. The UK is not entitled to participate in the EU/Belarus visa facilitation agreement as it builds on parts of the Schengen rule book dealing with visas and border control which do not apply to the UK. By contrast, the UK is entitled to participate in the EU/Belarus readmission agreement as it forms part of measures to prevent illegal immigration.

5.2 In her Explanatory Memorandum of 7 October 2019, the Parliamentary Under-Secretary of State at the Home Office (Seema Kennedy MP) notes that the proposed Council Decisions are subject to the UK's Title V (justice and home affairs) opt-in. The three-month deadline in which to decide whether to opt in will expire on 4 December 2019. As the Government's policy is for the UK to leave the EU "whatever the circumstances on 31 October 2019", it will reach a decision before the end of October. The Minister explains that all opt-in decisions are taken "on a case-by-case basis, putting the national interest at the heart of the decision-making process". The factors informing the Government's decision include:

- the implications of not opting in for the UK's broader relationship with the EU and with Member States bilaterally;
- the ability to take "an identifiable UK position both within the EU and the UN to secure cooperation and support from other Member States on immigration and wider areas of justice and home affairs";
- the result of the June 2016 referendum on the UK's membership of the EU; and
- the impact on negotiations on the UK's exit from the EU.

5.3 The Minister notes that the UK did not opt into an earlier Council Decision establishing the mandate for the European Commission to negotiate the terms of the readmission agreement with Belarus. If the UK were to opt into the proposed Council Decisions authorising the EU to sign and conclude the readmission agreement with Belarus before leaving the EU, it would be bound by them during a post-exit transition period under the terms of the November 2018 EU/UK Withdrawal Agreement. If the UK were to leave the EU without an Article 50 Withdrawal Agreement, it would not be bound by the proposals (once adopted).

5.4 Whilst still committed to "the duty of sincere cooperation" to ensure the proper functioning of the EU, the Minister says that the UK will only attend EU meetings from 1 September 2019 until exit day "if and when it is in our interests, with particular regard to meetings on UK exit, sovereignty, international relations, security or finance", with decisions on attendance taken "on a case-by-case basis". The EU Presidency is keen to secure the adoption of the proposed Council Decisions so that the EU/Belarus readmission agreement can be implemented "by early next year".

Our Conclusions

5.5 **The Minister does not provide any assessment of the potential benefits or costs of participating in the proposed EU readmission agreement with Belarus. We ask her to explain:**

- **whether the UK has its own bilateral readmission agreement with Belarus;**
- **if it does, how successfully it operates;**
- **if it does not, how great a priority the Government attaches to securing such an agreement with Belarus; and**
- **whether a bilateral agreement would broadly replicate the EU/Belarus readmission agreement or differ from it in any material respects.**

5.6 **We note that the proposed Council Decisions and the readmission agreement itself would bind the UK if it were to opt in before exit day and then leave the EU on the basis of an Article 50 withdrawal agreement which includes a post-exit transition period. We ask the Minister what assessment she has made of the risk that the UK would be bound only by the obligations created by the EU readmission agreement, not the rights, meaning that the UK might be required to re-admit individuals returned by Belarus but would be unable to require Belarus to re-admit individuals returned by the UK.**

5.7 **We also ask the Minister to explain whether the proposed Council Decisions and the readmission agreement itself would bind the UK as a matter of domestic law under the EU (Withdrawal) Act 2018 if the Government were to opt in before exit day and then leave the EU without an Article 50 withdrawal agreement.**

5.8 **The Minister does not tell us whether the proposed Council Decisions meet the Government's criteria for attendance at EU meetings where they are being discussed. We ask her to do so and to indicate whether the UK supports the Presidency's goal of securing adoption and implementation by early 2020.**

5.9 **Pending further information, the proposed Council Decisions remain under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

(a) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation: (40801), 11846/19, COM(19) 404; (b) Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation: (40802), 11848/19 + ADD 1, COM(19) 401.

Previous Committee Reports

None.

6 New international standards on Passenger Name Record (PNR) data

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposed Council Decision on the EU's position within the Council of the International Civil Aviation Organisation with regard to standards and recommended practices on passenger name record data
Legal base	Articles 16(2), 87(2)(a) and 218(9) TFEU, QMV
Department	Home Office
Document Number	(40822), 12197/19 + ADD 1, COM(19) 416

Summary and Committee's conclusions

6.1 Access to the passenger information held in air carriers' flight reservation and departure control systems is increasingly viewed as an important tool to identify individuals who may present a terrorist or other serious criminal threat. The UK has been at the forefront of efforts to promote the sharing of Passenger Name Record (PNR) data within the EU (a new EU PNR Directive took effect in May 2018)[75] and externally through the negotiation of EU PNR agreements with third countries. EU data protection law prohibits the transfer of personal data to third countries unless they ensure a level of protection which is "essentially equivalent" to that guaranteed within the EU. A legal framework establishing the terms on which PNR data may be shared with the third countries is necessary to provide legal certainty for air carriers that PNR transfers are lawful.

6.2 The Convention on International Civil Aviation ('the Chicago Convention') includes a set of Standards and Recommended Practices ('SARPs') on PNR data.[76] All EU Member States are parties to the Chicago Convention and seven are currently represented in the Council of the International Civil Aviation Organisation, the body empowered to adopt and amend the ICAO's SARPs. In December 2017, the United Nations Security Council adopted Resolution 2396 ("UNSCR 2396") requiring all UN member states to "develop the capability to collect, process and analyse" PNR data and urging the ICAO to "to work with its Member States to establish a standard for the collection, use, processing and protection of PNR data". The ICAO has set up a Task Force to review the existing SARPS on PNR data and consider whether they need to be updated. Any changes to the ICAO's standards and

75 See Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Member States were required to implement the Directive no later than 25 May 2018.

76 See Annex 9 ('Facilitation'), chapter 9 on PNR data.

recommended practices would be binding on all ICAO members.[77] The ICAO Assembly establishes the political direction for the ICAO and is expected to consider new SARPs on PNR data at its meeting in Montreal from 24 September to 4 October 2019.

6.3 The EU has established its own protocols and data formats for the transfer of PNR data under the EU PNR Directive.[78] It has also concluded agreements on the processing and transfer of PNR data with Australia and the United States of America (both are in force) and renegotiated the terms of a PNR agreement with Canada to ensure it is compatible with fundamental rights.

6.4 The proposed Council Decision would establish the position to be taken by EU Member States represented in the ICAO Council on possible changes to the ICAO's SARPS on PNR data. The aim is to ensure that the EU's own "core principles" governing the processing, transfer and protection of PNR data are embedded in any new ICAO standards. According to the European Commission:

> It is essential to steer the discussions on such new PNR standards within ICAO in a manner that is compatible with the EU regulatory framework and the relevant case law of the Court of Justice, in particular concerning the fundamental rights to privacy and data protection.[79]

6.5 A difference in the standards applicable at international and EU level could, in the words of the European Commission, "compromise the effectiveness of the EU PNR mechanism". It says some third countries have refused to transfer PNR data to EU Member States as EU law does not allow reciprocal exchanges in the absence of an agreement ensuring an equivalent level of data protection. The Commission considers that the EU has exclusive competence to determine the position to be taken by Member States within the ICAO Council on changes to ICAO's SARPS on PNR data as these changes "will be capable of decisively influencing the content of Union law" enshrined in the EU PNR Directive and in existing and future PNR agreements concluded with third countries.[80] An Annex to the proposed Council Decision sets out the general principles and orientations on which the EU position should be based.

6.6 In his Explanatory Memorandum of 27 September 2019, the Minister for Security and Deputy for EU Exit and No Deal Preparation at the Home Office (Rt Hon. Brandon Lewis MP) says that the part of UNSCR 2396 calling on the ICAO to establish an international standard for the collection, use, processing and protection of PNR data was a UK initiative:

77 Article 38 of the Chicago Convention provides: "Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State".

78 See Commission Implementing Decision (EU) 2017/759 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units established under the 2016 EU PNR Directive.

79 Se p.4 of the European Commission's explanatory memorandum accompanying the proposed Council Decision.

80 See recital (13) of the proposed Council Decision.

> Aware that the Resolution would mean that more States would require PNR data from UK and other European airlines, the intention was to help mitigate potential conflicts of national law where airlines would be required by one law to disclose PNR data and by another to protect the same data.[81]

6.7 The Minister confirms that the proposed Council Decision is subject to the UK's Title V (justice and home affairs) opt-in and that the three-month deadline for deciding whether to opt in will expire on 15 December 2019. He continues:

> The Government's position is that the UK will be leaving the EU on 31 October. If the UK leaves without a deal, the UK will not be bound by this Council Decision when adopted.
>
> If the UK leaves with a deal containing an Implementation Period in line with that proposed in the original draft Withdrawal Agreement, the UK would only be bound by this Council Decision if the UK chose to opt-in before 31 October as this is not an amending or replacing measure and the JHA opt-in would therefore not apply in an Implementation Period, on the basis of the terms of the existing draft Withdrawal Agreement.
>
> The Government will therefore take and communicate a decision on UK participation in this Council Decision before 31 October.

6.8 In reaching a decision on UK participation in the proposed Council Decision, the Government will consider any changes to the EU position resulting from Council Working Group discussions, particularly the emphasis placed on the deletion of PNR data "in accordance with the legal requirements of the source country".

6.9 The Minister notes that "from 1 September until exit day, the UK will no longer attend most EU meetings", adding:

> The UK will continue to attend if and when it is in our interests, with particular regard to meetings on UK exit, sovereignty, international relations, security, or finance. The Government will make these decisions on a case by case basis.[82]

Our Conclusions

6.10 **We ask the Minister whether he agrees with the European Commission that:**

- **changes to the ICAO's Standards and Recommended Practices (SARPS) on PNR data "are capable of decisively influencing the content" of existing EU rules and international agreements on the use of PNR data and their future development; and**

- **that the EU therefore has exclusive competence to determine the position to be taken by EU Member States within the ICAO Council.**

81 See paragraph 3 of the Minister's Explanatory Memorandum.
82 See paragraph 12 of the Minister's Explanatory Memorandum.

6.11 **We would also welcome his views on the substance of the EU position proposed by the European Commission and how influential it is likely to be within the ICAO. We ask the Minister to:**

- **identify any areas of concern;**
- **indicate whether the EU is regarded as a global regulatory leader in establishing rules and standards for the transfer, processing and use of PNR data; and**
- **explain how, if the Government were to decide not to opt into the proposed Council Decision, the UK position on the ICAO's SARPS on PNR data would differ from that proposed by the EU.**

6.12 **We note the Government's intention to decide whether to opt into the proposed Council Decision "before 31 October", taking into account any changes to the EU position resulting from discussions within Council Working Groups. We infer from this that the Government does intend to attend relevant Council Working Group meetings to ensure that the UK can influence these discussions and the eventual position agreed by the EU. We ask the Minister to confirm that this is indeed his intention.**

6.13 **The Minister will recall that we continue to hold under scrutiny a proposal for a Council Decision authorising the EU to re-open negotiations with Canada on the terms of an EU/Canada PNR agreement, following an adverse judgment by the Court of Justice. We understand that negotiations have now concluded but we have not received the progress reports we requested when we last considered the proposal in February 2018, even though the outcome will clearly be relevant to any future PNR agreement between the EU and the UK post-exit. We ask the Minister to respond to the questions which we raised with his predecessor in our Report agreed on 7 February 2018.**[83]

6.14 **Finally, we ask the Minister to explain what arrangements the Government has put in place to preserve the effects of the EU's PNR Agreements with Australia and the United States of America following the UK's exit from the EU.**

6.15 **We look forward to receiving prompt notification of the Government's opt-in decision as well as a full response to the questions we have raised. Meanwhile, the proposed Council Decision remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposed Council Decision on the position to be taken on behalf of the European Union in the Council of the International Civil Aviation Organisation in respect of the revision of Chapter 9 of Annex 9 ('Facilitation') to the Convention on International Civil Aviation with regard to standards and recommended practices on passenger name record data: (40822), 12197/19 + ADD 1, COM(19) 416.

Previous Committee Reports

None.

83 Thirteenth Report HC 301–xiii (2017–19), chapter 2 (7 February 2019).

7 Whistleblowing and breaches of EU law

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive of the European Parliament and the Council on the protection of persons reporting on breaches of Union law
Legal base	Articles 16, 43, 50, 53(1), 91, 100, 114, 168, 169, 192 and 325(4) TFEU and Article 31 of the Euratom Treaty (in the final text for adoption)
Department	Business, Energy and Industrial Strategy
Document Number	(39695), 8713/18 + ADDs 1–3, COM(18) 218

Summary and Committee's conclusions

7.1 "Whistleblowing" is commonly understood to be the act of speaking out and disclosing serious wrongdoing, usually by employees. EU law on whistleblowing already applies in some areas such as financial services, transport safety and environmental protection. The Cambridge Analytica,[84] Lux Leaks,[85] Dieselgate[86] and Paradise/Panama Papers[87] scandals have all highlighted the importance but also the vulnerability of whistleblowers. In their wake, the Commission originally proposed this text of a Directive (document (a)) to strengthen and extend protection for whistleblowers across the EU who report breaches of a wide range of EU legislation.

7.2 We set out a full account of the proposal and the Government's view of it set against the current UK domestic legislation in our first Report on this proposal of 20 June 2018.[88]

84 Facebook and data analytics firm Cambridge Analytica have been accused of harvesting and using personal data to influence the outcome of the US 2016 presidential election and the UK's referendum on EU exit. See the oral evidence session, Christopher Wylie, 28 March 2018 held as part of the DCMS Committee's inquiry into "Fake News".

85 See BBC website, 11 January 2018. In 2014 two whistleblower employees leaked confidential information concerning PricewaterhouseCoopers dealings with multinational companies in relation to tax rulings in Luxembourg between 2002 and 2010. They were originally both convicted by the Luxembourg courts, but one had his conviction overturned in January 2018.

86 See BBC website, 10 December 2015. The German car manufacturer Volkswagen has since admitted cheating diesel emissions tests in the US.

87 A House of Common Debate Briefing paper explains that Paradise papers consisted of "material …leaked from two offshore service providers and 19 tax havens' company registries" and reported by some of the UK press "reiterating public concerns as to the scale of tax avoidance and evasion, and the ability of offshore jurisdictions to facilitate these activities". This followed the publication in the previous year of the 'Panama Papers'—a leak of financial records from Mossack Fonseca, a law firm that had provided advice on establishing offshore companies to a wide variety of politicians, celebrities and wealthy people.

88 Thirty-second Report HC 301–xxxi (2017–19), chapter 1 (20 June 2018).

We also set out a summary of our most recent scrutiny of the proposal in our Report of 27 February and Report of 17 July 2019. Those summaries highlight the most important issues concerning the proposal as identified by the Government and separately by ourselves.

Parliamentary interest in whistleblowing reform

7.3 We note again that there has been considerable interest in Parliament in the reform of the current UK legislation on whistleblowing, particularly in the context of the NHS. Over the past year there has been a Westminster Hall debate on “NHS Whistleblowers” on 18 July 2018 and a general debate on the floor of the House on 3 July 2019. In that latter debate, the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP), who has responsibility for this proposal, commented:

> Hon. Members will be aware that the EU has developed a whistleblowing directive that we expect to be approved this summer. It is very wide-ranging and comprehensive, and we will have to consider how we take it into UK law. It could fall within the implementation period agreed under the terms of the withdrawal agreement, but, as we know, there are questions marks over that. The hon. Member for Ellesmere Port and Neston (Justin Madders) mentioned workers’ rights. As colleagues knows, the Government were clear throughout the EU negotiations that we would not reduce workers’ rights when we left the EU. Whistleblowing and how we proceed in that regard is covered by the overall provision for the protection of workers in employment. I hope that Members will take that as some kind of commitment from me, at least.[89]

Minister’s letter of 4 October 2019

7.4 In her letter of 4 October 2019, the Minister updates the Committee as follows:

- The proposal was likely to be approved at the EU’s Justice and Home Affairs Council on 7 October.
- The Government would be abstaining in the vote despite concerns about the proportionality of the Directive because it would not have to implement the Directive as an exiting Member State.

7.5 The Minister next responds to questions we asked in our last Report.

Legal bases

7.6 In relation to our questions about the inclusion of tax elements in proposals with a non-tax legal base and the issue of multiple legal bases, the Government says that it remains opposed. However, the Government does not plan to challenge the Directive before the Court of Justice before EU exit. As a departing Member State, the Government considers that concerns about EU legislation are for the EU27 to address.

89 HC Deb, 3 July 2019, Col 1306.

Workers' rights

7.7 The Minister next gives a response of sorts to our questions about whether the Government remains committed to workers' rights and what plans it has for the UK whistleblowing framework, in default of having to implement the Directive. Given the political importance of these questions, we reproduce the Minister's answer here

> After the UK leaves the EU it will be for the UK to decide which rights and protections to introduce or enhance in law. UK already exceeds EU minimums in a number of areas of worker rights, and we will continue to lead the way on these important issues. Future changes to labour standards and protections will be subject to the appropriate parliamentary scrutiny, with Parliament and the electorate continuing to hold the Government to account.
>
> In relation to whistleblowing, I would like to assure the committee that this Government is not complacent. It is right and proper that Government reviews the whistleblowing framework and we have committed to carrying out a review once the recent reforms have built the necessary evidence of their impact. As part of this we will look at the protections offered in other countries.

Whistleblowing and Non-Disclosure Agreements

7.8 Addressing the issue of Non-Disclosure Agreements, the Minister tells us first that the Government consulted on the misuse of confidentiality clauses (non-disclosure agreements) in March and April 2019, receiving over 500 responses. When responding to the consultation on 21 July, the Government committed to legislating to ensure that:

- a confidentiality clause cannot prevent an individual disclosing to the police, regulated health and care professionals or legal professionals;
- the limitations of a confidentiality clause are clear to those signing them; and
- independent legal advice is available to an individual.
- The Government would also:
    - produce guidance on drafting requirements for confidentiality clauses; and
    - introduce new enforcement measures for confidentiality clauses that do not comply with legal requirements.

7.9 The Minister believes that the new legislation will make sure that:

> those entering into non-disclosure agreements are more aware of their rights than before, including that the NDA cannot be used to prevent them from whistleblowing. If an NDA in a settlement agreement does not follow new legislative requirements, the confidentiality clause itself will be void. The Government will also be legislating to introduce a requirement to be clear on the limits of non-disclosure agreements within the written statement of employment particulars.

7.10 The Minister does not however address the specific question we asked which concerned the effect on Non-Disclosure Agreements in the event of any implementation of the Directive.

Our conclusions

7.11 **We thank the Minister for her letter. We note that the Directive was indeed adopted[90] on 7 October and is due to be implemented by Member States two years after it will come into force.**

7.12 **We note the Government has not addressed some of the specific questions we asked about future workers' rights policy. So we draw to the attention of the House that the Minister's response (paragraphs 0.7 of this Report) makes no reference to the Government's commitments outlined in the Command Paper[91] published under Theresa May's premiership. We are no clearer whether the Government under the current Prime Minister is still subject to those commitments and if so, whether they would apply:**

- **only where a draft Withdrawal Agreement has been ratified; and**
- **to this Directive.**

This lack of clarity from the Government is unhelpful.

7.13 **We note that the Government has not fully answered the question we asked about how the Directive (if it had to be implemented in an extended transition period) would affect Non-Disclosure Agreements. We ask for a further, specific response to that question.**

7.14 **However, we are now content to clear the document from scrutiny, given that:**

- **the Government has answered the rest of the Committee's outstanding questions;**
- **the Directive has been adopted; and**
- **it is now clear that the UK will only have to implement the Directive in national law under an extended transition period (beyond 31.12.20).**

7.15 **We draw this document and chapter to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the document

Proposal for a Directive of the European Parliament and the Council on the protection of persons reporting on breaches of Union law: (39695), 8713/18 + ADDs 1–3, COM (18) 218.

90 Council Press Release, 7 October 2019 "Better protection of whistle-blowers: new EU-wide rules to kick in in 2021".

91 "Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union, 6 March 2019.

Previous Committee Reports

Seventy-second Report HC 301–1xx (2017–19), chapter 1 (17 July 2019); Fifty-sixth Report HC 301–lv (2017–19), chapter 1 (27 February 2019); Fifty-first Report HC 301–l (2017–19), chapter 2 (16 January 2019); Thirty-second Report HC 301–xxxi (2017–19), chapter 1 (20 June 2018).

8 Fishing Opportunities 2020

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Commission Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020.
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40673), 10186/19 + ADD 1, COM(19) 274

Summary and Committee's conclusions

8.1 Each year, the European Commission sets out its assessment of the state of the EU's fish stocks and its intended approach to setting fishing opportunities—Total Allowable Catches (TACs)—for the following year. The Commission has presented its latest assessment and its intentions for the 2020 TACs, noting that the timing and nature of the UK's withdrawal from the EU will be an important factor when the TACs come to be set for 2020.

8.2 The Committee last considered the document at its meeting of 4 September 2019, raising a series of questions relating largely to post-Brexit fisheries arrangements.[92] The Minister of State (George Eustice MP) responded on 30 September.

8.3 Concerning the timetable for the negotiation of a fisheries agreement with the EU and how the Government intends to engage with Parliament on that negotiation, the Minister does not respond directly. Instead, he indicates that the UK will be seeking to agree the arrangements for access to waters and TACs for 2020 with the EU at the end of this year (2019). He does not confirm that this will be on the basis of a UK-EU fisheries agreement. In terms of Parliament's engagement, the Minister indicates that the Government "will explore opportunities" for discussion, such as the annual fisheries debate.[93] He adds that, in the future, the UK will be able to negotiate directly with other coastal States and be held accountable by Parliament for the outcomes.

8.4 In a separate letter[94] to the Environment, Food and Rural Affairs Committee, the then Secretary of State (Rt Hon. Michael Gove MP) said in July that the Government's intention was to negotiate a fisheries agreement with the EU in time to set the framework for annual fisheries negotiations for 2021 and beyond.

92 Seventy-third Report HC 301–lxxi (2017–19), chapter 2 (4 September 2019).
93 This is a discretionary debate that normally takes place in the House of Commons each December, requested by a backbencher and lasting around two hours. The last such debate took place in December 2017. No application for a debate was made in 2018 as the issues were under discussion in scrutiny of the Fisheries Bill.
94 Letter from Rt Hon. Michael Gove MP to Neil Parish MP, dated 23 July 2019.

8.5 Regarding the arrangements for the remainder of 2019 in the event of a non-negotiated withdrawal from the EU on 31 October 2019, the Minister confirms that the UK remains committed to managing shared stocks with other coastal States cooperatively, and envisages continuing to respect quota set for 2019 for the last two months of the year.

8.6 Turning to the overfishing of mackerel due to disagreements among coastal States as to their respective shares, the Minister says that it remains an objective of the UK to work closely with other coastal States to reach a fair and equitable solution on shares. There is a possibility, he observes, that autumn negotiations which determine fishing opportunities for mackerel extend beyond the UK's departure from the EU on 31 October. The UK reserves the right to renegotiate any agreement which does not respect UK interests once it becomes an independent coastal State.

8.7 Concerning the negotiations for the 2020 TACs, the Minister explains that UK views relating to the UK's central matters of concern were conveyed to the Commission by his predecessor (Rt Hon. Robert Goodwill MP) at the June Fisheries Council. The UK, he says, is continuing to develop its detailed objectives in relation to the upcoming negotiations regarding TAC-setting for 2020. This will be informed by the recent advice from the International Council for the Exploration of the Sea (ICES) as well as proposals from the Commission as they arise.

8.8 **We take note of the Minister's comments regarding the negotiation of future arrangements, as well as parliamentary scrutiny of them. The Minister says that the Government is exploring opportunities for discussion with Parliament and highlights the annual fisheries debate as an example. We note that the last example of the latter lasted little over two hours and took place in December 2017. Looking to the future, we believe that post-Brexit parliamentary scrutiny of fisheries negotiations should be at least as comprehensive as the current arrangements involving scrutiny through this Committee as well as any debates in the House and scrutiny processes in the House of Lords.**

8.9 **We welcome the Minister's clear indication that the UK would like to preserve the status quo for the remainder of 2019 in the event of a no deal exit on 31 October.**

8.10 **We note that the Government is continuing to develop its detailed objectives in relation to the upcoming negotiations regarding the setting of TACs for 2020. As the Commission's proposal for those TACs is imminent, we look forward to receipt of the Government's Explanatory Memorandum (EM) on the proposal and clear this document from scrutiny. We ask that the EM be set in the context of the various scenarios for the UK's withdrawal from the EU as applicable at the time of drafting the EM. This chapter is copied to the Environment, Food and Rural Affairs Committee.**

Full details of the documents

Commission Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020: (40673), 10186/19 + ADD 1, COM(19) 274.

Previous Committee Reports

Seventy-third Report HC 301–lxxi (2017–19), chapter 2 (4 September 2019); Seventieth Report HC 301–lxviii (2017–19), chapter 1 (3 July 2019)

9 Second mobility package: emissions performance standards

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast)
Legal base	Article 192(1) TFEU, ordinary legislative procedure, QMV
Department	Transport
Document Number	(39203), 14217/17 + ADDs 1–4, COM(17) 676

Summary and Committee's conclusions

9.1 The proposal under scrutiny was last considered by the Committee on 20 March 2019 and a conditional waiver granted in order for the Government to support formal adoption at Council at the end of the month.

9.2 The proposal has since been adopted—as Regulation (EU) 2019/631—and the Minister with charge over the proposal, Michael Ellis MP, now writes to update the Committee on the outcome of the Council at which the proposal was put forwards for adoption and to request clearance of the file from scrutiny.[95]

9.3 By way of background, as adopted, the Regulation will:

- from 2025, set revised emission performance targets that will require new passenger cars and new light commercial vehicles (LCVs) to have reduced their CO2 emissions by 15% compared to 2021, and 37.5% for cars and 31% for LCVs by 2030;
- set in place a scheme to credit manufactures—by way of reducing their CO2 emission targets by up to 5%—if more than 15% of their overall sales are of low or zero emission vehicles (ZLEV) by 2025, and 35% for cars and 30% for LCVs by 2030;[96]
- mandate an excess emissions premium levy on manufacturers that exceed their CO2 targets;

95 Letter from Michael Ellis MP to Sir William Cash MP, 25 June 2019.

96 A 'low or zero emission vehicle' is defined in Article 3(1)(a) of the Regulation as "… a passenger car or a light commercial vehicle with tailpipe emissions from zero up to 50 g CO2/km, as determined in accordance with Regulation (EU) 2017/1151".

- allow small volume manufacturers—those registering between 10,000 and 300,00 cars per year—to apply for a derogation from the standards set by the Regulation. This will end in 2029 (and a 15% lower derogation target will be set from 2025 to 2028). Very small manufacturers—producing fewer than 1,000 vehicles—will be considered out of scope;
- provide manufacturers who utilise technological innovations, and are unable to demonstrate their CO2 reducing benefits under test conditions, up to a 7g CO2/km reduction in their emission targets;
- empower the Commission to monitor, assess and publish the real-world effectiveness of vehicle CO2 emissions; and
- introduce a requirement for the Commission to review the effectiveness of the proposed Regulation by the end of 2023.

9.4 **We thank the Minister for his letter of 25 June 2019.**

9.5 **The Minister explains that the Regulation entered into force on 15 May 2019 and will become applicable in Member States on 1 January 2020. As explained in previous correspondence to the Committee, the Minister states that whether the Regulation will apply to the UK will depend on the terms of the UK's withdrawal from the EU. It would be expected that should the UK exit on the terms of the draft Withdrawal Agreement, the Regulation would become applicable in the UK on 1 January 2020 (falling before the end of the proposed transitionary period).**

9.6 **On the fate of the Regulation in the event of a no-deal exit, given the geographical proximity of the UK and the EU-27—and the interconnections in supply, manufacturing and marketing of cars and LCVs—it is expected that some mirroring of its terms would be almost inevitable.**

9.7 **On the basis that the file has been adopted, we clear it from scrutiny.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast): (39203), 14217/17 + ADDs 1–4, COM(17) 676.

Previous Committee Reports

Twenty-first report HC 301–xx (2017–19), chapter 4 (21 March 2018); Thirty-eighth report HC 301–xxxvii (2017–19), chapter 10 (12 September 2018); and Sixtieth report HC 301–lviii (2017–19), chapter 2 (20 March 2019).

10 UK access to the EU market for financial services after Brexit

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Treasury Committee and the Committee on Exiting the EU
Document details	Communication from the Commission: Equivalence in the area of financial services.
Legal base	—
Department	Treasury
Document Number	(40782), 11595/19 + ADD1, COM(19) 349

Summary and Committee's conclusions

10.1 After the UK leaves the EU's Single Market, its financial industry will face a number of substantial legal and regulatory hurdles in providing services to EU-based customers. The current, automatic right of market access for banks, insurers and investment firms based on their UK-issued licence—known as 'passporting'—will automatically fall away when EU law ceases to apply to and in the UK. That could be as early as 1 November 2019, if a 'no deal' Brexit takes place the day before.[97] When that happens, these firms will need to comply with local regulations to access any of the EU's 27 national markets for financial services.

10.2 As set out in more detail in "Background" below, one way for the UK to secure new preferential trading arrangements with the EU for financial services after Brexit is to apply for equivalence. Specific pieces of EU law allow the European Commission to decide that the regulatory and supervisory approach of a non-EU country is 'equivalent' to the EU's, for example by providing for the same level of consumer protection and financial stability. Where an 'equivalence decision' is adopted, firms from that country can do business with EU-based customers more easily, and in some cases even obtain limited 'passporting'-like rights to provide services into the EU on a cross-border basis.

10.3 However, seeking to use 'equivalence decisions' to access the EU market for financial services after Brexit carries significant risks for the UK. It would mean staying aligned with EU financial services law in the areas covered by any such decisions, as well as other EU rules related to tax evasion and money-laundering, while future changes to these rules would be decided by the remaining EU Member States without the UK in the room. While the UK would be free, legally, to diverge from EU rules, this could have political and economic consequences. In the most extreme cases, UK divergence from EU rules would lead to a loss of preferential trading arrangements, since equivalence can be withdrawn by the EU unilaterally and at short notice.[98] Moreover, a recent review by the European Commission of the way equivalence has been used to date makes clear that the EU would

97 Under the draft Withdrawal Agreement, EU law would continue to apply to and in the UK until at least 31 December 2020 and potentially until 31 December 2022. If that arrangement is ratified by both the UK and the EU, 'passporting' would continue for UK financial services providers for its duration.

98 See for more information the EU's approach to Switzerland's equivalence with respect to stock exchanges in the "Background" section.

be wary of granting the UK equivalence in the most economically-important sectors—especially investment services—without safeguards that it will not substantially diverge from EU regulations. The EU recently adopted changes to its legislation on both investment services and derivatives trading that make clear any cross-border market access would be very closely monitored.

10.4 Equivalence therefore appears to offer little by way of long-term stability for cross-border trade in financial services after Brexit. However, a decision by the UK *not* to seek 'equivalence decisions' could result in a transfer of economic activity from the UK to the EU if British firms could no longer provide certain financial services to EU customers for legal reasons. In addition, EU law does not contain equivalence mechanisms for all sectors of the financial services industry. Industry body UK Finance has argued that, to preserve smooth trade flows, "the scope of current equivalence regimes […] would need to be expanded to include core products and services currently not covered", in particular with respect to banking services.

10.5 In recognition of these political and legal difficulties, the previous Chancellor (Rt Hon. Philip Hammond MP) initially offered the EU a new financial services agreement based on mutual recognition rather than equivalence. This would provide a stable basis for cross-border market access, but allowing the UK and EU to set their own regulations autonomously. This was rejected by the EU however, and the Political Declaration on the future UK-EU relationship annexed to the draft Withdrawal agreement—negotiated under the previous Prime Minister—explicitly refers to equivalence as the basis for future preferential UK-EU trade in financial services. The Treasury even went so far as to introduce a Bill in November 2018 that would make it easier for the Government to remain aligned with EU financial services legislation after Brexit by means of Statutory Instruments.[99]

10.6 The current Prime Minister has said he is seeking to renegotiate parts of the Political Declaration, but his Chancellor has not expressly rejected the notion of using equivalence as the basis for a new UK-EU arrangement on financial services. The choices and trade-offs involved in the debate about the UK seeking equivalence decisions from the EU post-Brexit therefore remain extremely pertinent. It is disappointing that the Government's Explanatory Memorandum on the Commission's review of equivalence, submitted by the Economic Secretary to the Treasury (John Glen MP) in August 2019, failed to provide any substantive assessment of these issues, and the costs and benefits of seeking equivalence in specific financial sectors post-Brexit.

Our conclusions

10.7 **The UK's withdrawal from the EU, and from the Single Market in particular, will represent a significant change in the way the British financial industry exports its services to customers based in the European Union.**

10.8 **When the UK leaves the Single Market, either immediately after withdrawal in a 'no deal' scenario or at the end of a post-Brexit transition period if the Withdrawal Agreement is ratified, it will lose its 'passporting' rights. At that point, equivalence would be the most readily-accessible way of building up preferential access for the**

99 The Financial Services (Implementation of Legislation) Bill 2019. It has been awaiting its Report stage in the House of Commons since February 2019.

export of financial services to the EU sector-by-sector. However, that will inevitably present trade-offs where regulatory divergence by the UK would make equivalence—and therefore market access—more difficult to maintain. Conversely, maintaining equivalence might require the UK to follow new EU financial regulations over which it had no say. Therefore, whether to accept particular equivalence decisions given conditions attached by the EU will be a political decision for the Government—and Parliament—to make on a case-by-case basis.

10.9 **We note that the Political Declaration on the future UK-EU relationship, negotiated by the previous Prime Minister, indeed foresees the UK accessing the EU's market for financial services on the basis of equivalence. The European Commission's recent review of this area of EU law shows no indications that the EU is considering making the process easier for the UK in light of its importance as a financial centre. Indeed, if anything, the barriers to the UK obtaining and maintaining equivalence are being raised, precisely *because* Brexit means substantial volumes of financial services into the EU could take place outside the scope of EU law if the UK were to obtain equivalence. Recent amendments to EU financial services legislation—notably EMIR 2.2 and the Investment Firm Review—have already been adopted to make equivalence for the UK in those areas more difficult.**[100]

10.10 **Given the economic importance of the financial services industry, and the volume of their exports likely to be affected by the UK's withdrawal from the EU, we are disappointed with the paucity of the Minister's recent Explanatory Memorandum on equivalence. This notes only that the EU's approach in this area "will have implications for the UK after exit". It fails to make even the most cursory attempt to place the EU's approach in a more concrete post-Brexit context, or confirm whether the section of the Political Declaration on using equivalence for financial services still has the Government's support under the new Prime Minister.**

10.11 **The Government withdrew UK officials from EU meetings as of 1 September 2019 for the specific purpose of allowing them to focus on the future relationship with the EU, including in the area of financial services. We would therefore expect significant work to have already been undertaken by the Treasury, Bank of England and Financial Conduct Authority to identify in which areas equivalence may be sought from the EU in the future, and what the consequences of that would be for the UK's regulatory autonomy.**

10.12 **Therefore, we ask the Minister to clarify by 31 October 2019 if the Government is seeking any changes to the sections of the Political Declaration on the future UK-EU relationship related to financial services; to confirm if the Government is considering seeking equivalence under EU law post-Brexit; and, if so, under which specific pieces of EU legislation such equivalence is being prioritised. In anticipation of the Minister's response, we are content to now clear the Commission review of equivalence from scrutiny. We also draw these developments to the attention of the Treasury Committee, in the context of its inquiry into the "future of the UK's financial services".**[101]

100 Refer to reports.

101 Treasury Committee, "The future of the UK's financial services inquiry" (launched 25 January 2019).

Full details of the documents

Communication from the Commission: Equivalence in the area of financial services: (40782), 11595/19 + ADD1, COM(19) 349.

Background

10.13 Within the European Economic Area (EEA), EU Single Market legislation has led to the mandatory removal of many barriers to trade in services between its Member States (including the UK). In the area of financial services, this means that banks, investment firms, insurers and other types of providers from one Member State are allowed to conduct their business in any other EEA country, mostly without the need to establish a physical presence there, or seek authorisation from the local regulator. This statutory form of cross-border market access is known as 'passporting'. It is built on the fact that all EU countries apply the same legislation in the sectors concerned, and are subject to oversight by the European Commission and the Court of Justice if their application of EU financial services law is considered deficient.[102]

10.14 For companies established outside the Single Market, the conditions for providing financial services into the EU are very different. They have no default legal right to provide services into the Single Market as a whole, unless they establish a fully-authorised and capitalised subsidiarity within an EU Member State (which then gains 'passporting' rights, but has to apply all relevant EU and national legislation). So-called 'third country' firms may be able to access the market of a specific EU Member State on a cross-border basis, but subject to any applicable national regulations in that country; that means, to operate in all 28 EU Member States, a non-EU firm would need to follow 28 different sets of national regulations (where an EU-based firm with passporting rights would typically only have to comply with one, in their home Member State).

10.15 However, given the importance of smooth flows of capital for European and global markets, the EU has put in place a mechanism called 'equivalence' to facilitate the provision of services between EU and non-EU financial sectors. Equivalence effectively allows the European Commission, with the support of a qualified majority of EU countries, to formally acknowledge the regulatory and supervisory regime in non-EU countries for specific types of financial services to meet the EU's standards. Such a determination—known as an 'equivalence decision' typically has one of two effects:

- it makes it easier for EU-based financial institutions to deal with counterparts from the 'equivalent' third country (e.g. by not imposing the higher capital requirements that would otherwise apply for dealings with 'non-equivalent' third-country firms); or
- it can give non-EU firms the ability to provide specific services to EU-based customers without a physical presence within the EU (i.e. a limited form of 'passporting').

102 Member States' domestic regulators also cooperate closely through the European Supervisory Authorities (ESAs) for the financial sector, whose centralised regulatory responsibilities within the Single Market are limited but growing. See for more information our Report on the European System of Financial Supervision (ESFS).

10.16 Equivalence is not available by default for any kind of financial service. It must be specifically legislated for at European level for the specific sector concerned, with the agreement of the Member States in the Council and of the European Parliament. At present, the European Commission lists 26 instances where sectoral EU financial services legislation contains such provisions.[103] As noted above, the exact effect of conferring equivalent status on a specific non-EU country is different depending on the underlying EU legislation. The most expansive form, where gaining equivalence effectively grants 'passporting' rights, is fairly limited.[104] As of July 2019, the Commission had taken "over 280 equivalence decisions for more than 30 countries".[105]

10.17 Equivalence aims to facilitate trade in financial services, but it does not constitute a formal trade agreement between the EU and the non-EU country concerned. It is granted at the EU's sole discretion (at the initiative of the Commission, with the support of a qualified majority of Member States).[106] They are not permanent: these decisions can be unilaterally—and immediately—withdrawn by the EU for any reason. The process can be politicised, as shown by the EU's decision to withdraw equivalence for Swiss stock exchanges in summer 2019, after Switzerland's refusal to ratify a new economic partnership agreement with the EU. There is no legal appeal by a 'third country' to the European Court of Justice or any other body if the EU refuses to grant equivalence, or withdraws it.

10.18 An alternative to preferential market access based on equivalence would be to anchor such arrangements in legally-binding bilateral trade agreements. However, to date, the EU has shown little appetite to conclude such financial services agreements with other countries, with the most prominent examples being limited arrangements on provision of certain insurance services with the United States and Switzerland. The EU's most recent comprehensive free trade agreements—such as the trade treaty with Canada—do cover financial services, but fall far short of offering 'passporting'.[107] The fall-back option under WTO rules, the General Agreement on Trade in Services (GATS), similarly provides very limited market access for the cross-border provision of financial services.[108]

103 European Commission, "Recognition of non-EU financial frameworks (equivalence decisions)" (accessed 1 October 2019).

104 Passport-like market access right for non-EU providers are allowed, for example, for certain investment services under the Markets in Financial Instruments Regulation (MiFIR). However, this type of equivalence has not yet been granted.

105 European Commission document COM(2019) 349, " Equivalence in the area of financial services" (29 July 2019).

106 Votes on equivalence decisions are taken in the relevant Comitology Committee.

107 Centre for European Reform, "UK + EU = Canada+?" (accessed 27 September 2019): "CETA's provisions on financial services do not go much beyond the WTO's General Agreement on Trade and Services (GATS), of which the EU and Canada are already signatories. CETA provides for trade in financial services by repeating the WTO principles, which include 'national treatment', meaning that financial firms from the other territory must be treated equally to domestic ones. But GATS has a number of important exclusions, including financial stability rules and consumer protection. GATS does not allow cross-border provision of financial services to consumers, or passporting. So in reality, trade in services under GATS and CETA would offer significantly less market access than EU membership. Such a framework would have serious consequences for the UK's service industries".

108 Institute for Government, "Brexit and financial services" (accessed 27 September 2019): "Trading on WTO terms entails significant limitations on cross-border trade compared to passporting, and stricter regulatory requirements and supervisory oversight of the EU branches of UK banks. Both sides are also able to impose measures for 'prudential reasons' such as ensuring the stability of the financial system, which can lead to further restrictions".

The European Commission's review of the EU's equivalence regimes

10.19 In July 2019, the European Commission published a review of the existing equivalence systems under EU financial services law (Commission document COM(2019) 349). Although it does not say so explicitly, it is clearly linked to the UK's withdrawal from the EU as this means a significant increase in financial services that might fall within the ambit of equivalence once the UK has left the Single Market (see below). Overall, the review concludes:

> The EU equivalence policy emerges today as a flexible regulatory instrument capable of building bridges across jurisdictional fault-lines. The EU equivalence approach, including both its initial assessment mechanisms and its ex-post monitoring, will continue to deliver genuine added value to the regulatory and supervisory architecture and to safe and efficient financial markets both in the EU and globally.
>
> In the context of bilateral relationships, equivalence will bring tangible benefits for the EU and third-country jurisdictions in terms of narrowing cross-border divergences and incompatibilities and will contribute to reducing global market fragmentation. Equivalence decisions will best do so by ensuring strong standards of financial stability, market integrity and investor protection, supporting and enhancing regulatory and supervisory cooperation between the EU and third-country authorities in a meaningful way, while at the same time maintaining open and globally integrated EU financial markets.

10.20 With respect to its priorities for the coming months and years, the Commission says it is focussed on sector-specific equivalence assessments, especially in the fields of statutory audit and financial benchmarks (indices). Referring obliquely to the UK as a major financial centre about to leave the EU's regulatory system, the Commission also noted it would concentrate on assessments of "high-impact areas or third countries" which, if equivalence were granted, could have a "high impact on the EU in terms of financial stability, market activity and investor protection".

10.21 Overall, the Commission review does indicate there are no plans for any substantial overhaul of the way equivalence works, or to give 'third countries'—like the UK post-Brexit—more rights to challenge the way the EU makes decisions relating to equivalence. We have considered the EU's approach to equivalence, and the findings of the Commission review, in more detail below in the context of the UK's withdrawal from the EU.

Equivalence in the context of Brexit

10.22 The UK's withdrawal from the EU automatically entails its exit from the Single Market. The draft Withdrawal Agreement negotiated by the previous Prime Minister foresees a transition period after the UK's actual exit, during which it would stay in the Single Market temporarily (and therefore bound by EU legislation). For the duration of any such period, UK financial services firms would retain their 'passporting' rights. However, at the end of the transition[109]—or on 'exit day' itself, if the Withdrawal Agreement is

109 The draft Withdrawal Agreement foresees an initial transition period from 'exit day' until 31 December 2020, with a possible extension until no later than 31 December 2022.

not ratified and a 'no deal' Brexit occurs—British firms will by definition become 'third country' entities. In practice, that means they will lose their 'passporting rights' to provide services throughout the EU on the basis of their UK licence.[110] Instead, to offer services cross-border into the EU-27, they would have to rely on the limited opportunities offered by GATS, as implemented domestically by each individual EU Member State.

10.23 There are some unilateral mitigations available to the UK to compensate for this loss of market access under passporting. Some analysts have argued that a lack of formalised cross-border access into the Single Market could be mitigated under so-called "reverse solicitation" provisions, which allow EU-based customers to seek out non-EU financial services providers directly. However, UK Finance expects this to only offer limited opportunities as it cannot be used where a non-EU firm advertises in the EU to inform clients about the services it offers, and at Member State level national legislation restricts its use.[111] In addition, EU-based firms could outsource or delegate particular services or operations—such as portfolio management for investments—to UK-based providers. However, this has been a particular point of concern for the EU. As early as May 2017, the European Securities & Markets Authority (ESMA) warned that it wants national regulators to be vigilant that EU-based firms do not become "letterbox entities " (with all material activities carried out from the UK outside the jurisdiction of EU law).[112]

10.24 Given the restrictions British firms will face when offering financial services into the EU after the UK's withdrawal from the Single Market, the industry has made clear it is seeking a new mechanism for preferential access. Both the previous Chancellor, and industry body UK Finance, called for a UK-EU "framework for trade in banking and capital markets services based on mutual recognition" of regulatory and supervisory standards.[113] Indeed, the Government under the previous Prime Minister (Rt Hon. Theresa May MP) was initially insistent that the post-Brexit trading arrangement for financial services between the UK and the EU *could not* rely on equivalence as set out in European law because it "would be wholly inadequate for the scale and complexity of UK-EU financial services trade", not least because "the EU regime is unilateral and access can be withdrawn with little to no notice".[114]

10.25 Instead, the then-Chancellor (Rt Hon. Philip Hammond MP) in March 2018 called for a new arrangement based on the "principle of mutual recognition and reciprocal regulatory equivalence" with "proper governance structures, dispute resolution mechanisms, and sensible notice periods to market participants clearly could provide an

110 Although UK law at the point of exit will be more or less identical to the relevant EU legislation on financial services, there would be no automatic alignment with future European legislative developments and the UK would also not be subject to the common enforcement structures of the Commission, Court and Supervisory Authorities.

111 See https://www.ukfinance.org.uk/wp-content/uploads/2017/11/EU27-report-ONLINE-FINAL.pdf. Although the paper focuses on reverse solicitation for the banking sector, its overall conclusion is that "the combination of outright prohibition, legal uncertainty and regulatory hostility does not provide a sound foundation on which to base a business model for banking".

112 ESMA, "General principles to support supervisory convergence in the context of the United Kingdom withdrawing from the European Union" (31 May 2017).

113 UK Finance, "Towards a framework for financial services in an EU—UK trade agreement" (accessed 1 October 2019).

114 Speech by then-Chancellor Philip Hammond, "Financial services" (7 March 2018).

effective basis for such a partnership”.[115] The Government argued in its July 2018 Chequers White Paper that this would mean an ‘enhanced’ form of equivalence, under which EU law would need to be modified to provide for:[116]

- a “mediated solution” where equivalence between the UK and EU is “threatened by a divergence of rules or supervisory practices”, i.e. limits or restrictions on the EU’s (and UK’s) ability to withdraw equivalence decisions;
- the introduction of “phased adjustments and careful management” of changes to equivalence arrangements between the UK and the EU, to ensure businesses have a “predicable environment” (for example by providing mandatory transitional periods where equivalence is withdrawn or its conditions are altered);[117] and
- an extension of equivalence to areas where EU law does not currently provide for it, but where the UK’s Single Market membership has enabled “clients in the UK and the EU [to] benefit from integrated markets and cross-border business models” (for example banking).

10.26 However, this approach was rejected by the EU almost immediately given the UK Single Market-style access to EU customers without the need to apply EU legislation.[118] In the absence of an overarching trade agreement between the UK and the EU which liberalises trade in financial services—which, as noted, are extremely rare—equivalence would be the most straightforward way of seeking preferential access, since EU law already explicitly provides for the possibility. Given the EU’s unwillingness to move closer to the UK position, the draft Political Declaration on the future UK-EU relationship states:

> Noting that both [the UK and the EU] will have equivalence frameworks in place that allow them to declare a third country’s regulatory and supervisory regimes equivalent for relevant purposes, the Parties should start assessing equivalence with respect to each other under these frameworks as soon as possible after the United Kingdom’s withdrawal from the Union, endeavouring to conclude these assessments before the end of June 2020. The Parties will keep their respective equivalence frameworks under review.

10.27 The only commitment made by the EU in the Declaration is therefore to keep its approach to equivalence “under review” (as it has done, by means of the European Commission policy paper described above). The position of the new Prime Minister (Rt Hon. Boris Johnson MP) and his Government on the use of equivalence to underpin a

115 Idem.

116 Department for Exiting the EU, “The future relationship between the United Kingdom and the EU“ (July 2018).

117 The Chequers White Paper called for “Structured withdrawal process” for equivalence. In circumstances that cause either party to wish to withdraw equivalence, the Government said, “there should be an initial period of consultation on possible solutions to maintain equivalence [and] clear timelines and notice periods, which are appropriate for the scale of the change before it takes effect”. The European Commission can already introduce transitional periods or other mitigating measures to withdrawal of equivalence, but at its own discretion and not as a legal obligation vis-à-vis the third country in question.

118 Speech by EU Brexit Negotiator Michel Barnier (26 April 2018): “The EU cannot accept mutual market access without the common safeguards that underpin it”, namely “EU rules [and] common EU supervision and enforcement tools”. Instead, Mr. Barnier said the UK could seek ‘equivalence’ decisions under EU financial services legislation.

future UK-EU trading arrangement in financial services is unknown. However, the Prime Minister recently referred to financial services as an area where the UK may want to diverge from the EU's regulatory approach.[119]

The implications of 'equivalence' for the UK

10.28 While equivalence might appear to be the most straightforward route to maintain a close trading relationship in financial services with the EU after Brexit, especially in a 'no deal' scenario, the approach is not without its risks. UK Finance still warns that while equivalence "provide[s] a potential starting point for a future EU-UK trade relationship in financial services", its application "would need to be transformed in some key respects to be more appropriate" for the scale of trade flows between the two and the size of the UK's financial industry. As noted, the previous Chancellor also called equivalence "wholly inadequate" because of this.

10.29 This Committee has also consistently raised serious questions about the implications of relying on equivalence to underpin the future UK-EU trading partnership for financial services. In particular, we have expressed concern that this could entail significant restrictions on the UK's regulatory flexibility to diverge from EU financial rules post-Brexit. While the Treasury would be free to regulate the sector differently once no longer bound by Treaty to implement EU Directive and Regulations, under equivalence any regulatory divergence would be closely monitored by the European Commission. Continued equivalence would rely not only on functional alignment with EU financial services legislation, but also—in the Commission's own words—on the EU's relationship with the UK in other areas "such as international sanctions, the fight against money laundering and terrorist financing, tax good governance on a global level or other relevant external policy priorities".

10.30 Ultimately, divergence from EU rules could result in partial or full revocation of equivalence decisions—bringing with it limits on market access, fragmentation and potential financial instability. Indeed, the Commission's recent review says "there is a general consensus on the need to put in place arrangements to monitor the ongoing fulfilment by the third countries of the conditions underlying any positive equivalence decision" after it has been granted. As such, it does not provide a stable, long-term regulatory framework for cross-border trade in financial services between the UK and the EU.

10.31 Naturally, the EU also stands to lose from an overly restrictive approach to UK access to its market for financial services. In anticipation of a possible 'no deal' Brexit, the European Commission has already adopted two pre-emptive equivalence decisions for the UK—on derivatives clearing and central securities depositories—in recognition of the fact that the necessary infrastructure to provide certain types of crucial services for the financial sector simply are not available within the EU-27. These are strictly time-limited, expiring in March 2020 and March 2021 respectively, to give EU firms time to switch to alternative providers based in the European Union. Moreover, in other areas obtaining equivalence is unlikely to be so easy. Recent legislative reforms adopted by the EU to

119 On 23 September 2019, Mr. Johnson was reported as having said that financial services was an area where "where we want to do things different" after Brexit. However, he did not cite any specific policies.

specific pieces of financial services legislation show that the remaining Member States are wary of the possibility of the UK obtaining wide-ranging market access rights under equivalence, and would watch any developments in its domestic regulatory approach very closely. There is also the possibility that equivalence could be deployed to gradually force the transfer of economic activity from the UK to the EU.

10.32 For example, both the Markets in Financial Instruments Regulation (MiFIR) and the European Markets Infrastructure Regulation (EMIR)—which govern access to the EU's Single Market for investment services and derivatives clearing respectively—have recently been amended to impose stricter conditions on countries seeking equivalence for those types of financial services. Indeed, the changes to EMIR explicitly include a 'location policy'—unsuccessfully opposed by the UK Government—that could be invoked as a last resort to force the relocation of overseas "systemically important" clearing houses to the EU or shut them out of the EU market.

10.33 The Commission review in fact refers—obliquely—to the scale of the UK's financial sector as a specific *risk* to be taken into account when deciding whether to grant it equivalence:

> Examined jurisdictions may involve different risk exposures for EU financial markets, depending among other things, on the interconnectedness of the assessed market with EU financial markets and thus also the market share of the relevant third country. The focus on risks in this process implies that, as a rule, "high-impact" third countries, for which an equivalence decision is likely be used intensively by market participants, will represent a more significant set of risks which the Commission will need to address in its assessment of the equivalence criteria and in the exercise of its discretion. If there were to be shortcomings or gaps in the equivalence assessment of such third countries, these would likely have a negative impact on financial stability or market integrity in the EU.
>
> [...]
>
> In that respect, the risk-sensitive approach may lead the Commission to consider specific issues of third countries under assessment, for instance the fact that EU firms extensively rely on operators regulated and supervised in a third country under assessment. Proportionality in the application of the criteria may result in the EU expecting stronger assurances from high-impact countries that they are able to deliver the required outcome. These elements taken together contribute to an effective and secure equivalence framework that supports from the EU side cross-border activity in the financial markets.

10.34 Lastly, the question of equivalence will never be purely regulatory and technical. The UK's relationship with the EU will be fundamentally altered by the process of Brexit, and especially in a 'no deal' scenario good-will on both sides to come to a new trade agreement may be lacking despite the economic consequences. Clearly, the state of the overall political relationship between the UK and the EU will also plainly be relevant, in addition to any economic and financial considerations and the impact of fragmenting UK and EU markets by withholding or withdrawing equivalence.

10.35 Instructive in this respect is the recent stance of the EU towards Switzerland. After the Swiss Government failed to submit a new framework agreement on EU-Switzerland economic relations to the Federal Parliament for ratification, the European Commission—with the support of the Member States—allowed an equivalence decision enabling EU shares to be traded on Swiss stock exchanges to lapse. While the effects on the market of that decision appear to have been limited, it nonetheless shows that decisions relating to equivalence will be coloured by the overall relationship between the EU and the third country in question. In a 'no deal' Brexit scenario in particular, withholding of equivalence could be deployed as leverage by either side. Given that the UK at the point of exit from the EU would be broadly equivalent with all existing EU financial services legislation, the Commission specifically emphasises that "equivalence empowerments do not confer a right on third countries for their framework to be assessed or to receive an equivalence determination, even if those third countries are able to demonstrate that their framework fulfils the relevant criteria".

10.36 Overall therefore, equivalence—especially in economically-important sectors—may not be easy for the UK to obtain and maintain. It could require significant continued alignment with EU financial services legislation, and potentially be deployed by the Commission and remaining Member States as a way of putting pressure on the UK in other areas of its bilateral relationship with the EU. This implicit message in the Commission review was recognised by trade press when it was published. Global Capital said it showed "equivalence after Brexit won't be easy",[120] while Insurance Day took it as "confirmation the EU will take a stringent approach to equivalence designations after Brexit" which had "poured cold water on the hopes of British [financial services providers]".[121] Bloomberg said the Commission document showed that its focus on "closer scrutiny […] of nations seeking equivalence whose impact on the EU markets is high" had to be targeted at the UK "given its deep and complex interactions with the EU".[122]

The UK Government's position

10.37 Despite the myriad of concerns that are apparent from the recent Commission review of equivalence, the Explanatory Memorandum on this matter submitted by the Economic Secretary to the Treasury (John Glen MP) on 30 August 2019 omits any substantive analysis of the questions facing the Government.

10.38 The implicit warning from the Commission to the UK that is clear throughout the entire document is simply ignored. Under a section on the "policy implications", including those related to Brexit, the Minister notes only that equivalence is the "main basis on which the EU manages cross-border relationships in financial services" and therefore the Commission's approach "will have implications for the UK after exit". The EU's clear intent to make the cost for the UK to obtain equivalence higher than for other countries is not addressed. By extension, there is no assessment of the implications for the UK's financial services industry—especially those sectors with substantial operations in the EU on the basis of passporting, of the political choice of seeking equivalence or not.

120 Global Capital, "Equivalence after Brexit won't be easy, Commission warns" (25 July 2019).
121 Insurance Day, "European Commission stands firm on equivalence as Brexit nears" (7 August 2019).
122 Bloomberg, "Boris Johnson Rolls the Dice on City's Future" (29 August 2019).

10.39 In light of this, we have put a number of questions to the Minister, as set out in "Summary and conclusions" above. The Committee will retain the issue of equivalence and the possibility of continued UK alignment with EU financial services legislation post-Brexit under review.

Previous Committee Reports

None. However, we have discussed the implications of reliance on equivalence in the UK-EU trade relationship in financial services in some detail in our Reports on the Investment Firm Review and the revision of the European Markets Infrastructure Regulation.

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

Department for Business, Energy and Industrial Strategy

Other

(40819) 12205/19 COM(19) 412	Communication from the Commission to the European Parliament and the Council on the 2019 Climate Action Summit hosted by the United Nations Secretary General in New York.

Department for Environment, Food and Rural Affairs

(40815) 12048/19 +ADD 1 COM(19) 407	Recommendation for a Council Decision authorising the opening of negotiations on behalf of the EU for the conclusion of an Agreement between the EU and the Republic of the Seychelles on access for fishing vessels flying the flag of the Seychelles in the waters of Mayotte.
(40823) 12274/19 COM(19) 414	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the third meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of a Decision on the phasing-out of dental amalgam and amending Annex A to this Convention.
(40824) 12273/19 COM(19) 413	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the third meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of a Decision establishing thresholds for mercury waste, in accordance with Article 11, paragraph 2, of that Convention.
(40836) 12502/19 COM(19) 422	12th Financial Report from the Commission on the European Agricultural Fund for Rural Development for the 2018 Financial Year.

Department for Transport

(40694) — —	Court of Auditors Special Report No.11: The EU's regulation for the modernisation of air traffic management has added value—but the funding was largely unnecessary.
(40798) 11815/19 +ADD1 COM(2019) 378	Recommendation for a Council Decision authorising the opening of negotiations on behalf of the European Union at the Thirty-First Meeting of the Contracting Parties on the amendments to the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('Bonn Agreement') with regard to the accession of the Kingdom of Spain to the Agreement and with regard to the extension of the scope of application of the Agreement.
(40799) 11809/19 +ADD1 COM(2019) 379	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the Second Ministerial Meeting of the Bonn Agreement with regard to the Bonn Agreement Strategic Action Plan (BASAP) 2019—2025 annexed to the Ministerial Declaration and with regard to the Ministerial Declaration.

Foreign and Commonwealth Office

(40724) — —	EU Action Plan on Women, Peace and Security (WPS) 2019–2024.
(40787) — —	Proposal for a Council Decision on the signing and provisional application of a Framework Agreement between the EU and the Palestinian Authority on the general principles for its participation in Union programmes.
(40788) — —	Proposal for a Council Decision on the conclusion of a Framework Agreement between the EU and the Palestinian Authority on the general principles for its participation in Union programmes.
(40790) — —	Council Decision (CFSP) 2019/1341 updating the list of persons, groups and entities subject to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism.
(40791) — —	Council Implementing Regulation (EU) 2019/1337 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2019/24.
(40829) — —	Council Decision (CFSP) 2019/XXX of XX September 2019 amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya.

(40830) 12005/19 —	Council Decision (CFSP) 2019/XXX of XX September 2019 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA).
(40831) — —	Council Decision (CFSP)…. Amending Council Decision (CFSP) 2018/1544 concerning restrictive measures against the proliferation and use of chemical weapons.
(40832) — —	Council Decision (CFSP) 2019/….concerning restrictive measures in view of the situation in Nicaragua.
(40833) — —	Council Regulation (EU) 2019/…concerning restrictive measures in view of the situation in Nicaragua.

HM Revenue and Customs

(40783) 11597/19 COM(19) 359	Proposal for a Council Decision amending Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union with respect to the Registered Exporter Database.

HM Treasury

(40764) 11454/19 + ADD 1 COM(19) 342	Report from the Commission to the European Parliament and the Council on the joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program.

Home Office

(40808) 11857/19 COM(2019) 405	Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas.
(40812) 11858/19 + ADD1 COM(2019) 403	Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas.

Office for National Statistics

(40792) 11737/19 COM(19) 368	Report from the Commission on implementation of Regulation (EC) No 453/2008 of the European Parliament and of the Council on quarterly statistics on Community job vacancies.

Formal Minutes

Wednesday 16 October 2019

Members present:

Sir William Cash, in the Chair

Martyn Day
Mr Marcus Fysh
Kelvin Hopkins
Darren Jones
Mr David Jones
Stephen Kinnock
Dr Philippa Whitford

Scrutiny Report

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

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

Paragraphs 1.1 to 11 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

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

[Adjourned till Wednesday 23 October at 1.45 p.m.

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*)