

HOUSE OF LORDS

European Union Committee

8th Report of Session 2019–21

**Report pursuant to section 29 of
the European Union (Withdrawal
Agreement) Act 2020: Council
Decision authorising the opening
of negotiations with the United
Kingdom of Great Britain and
Northern Ireland for a new
partnership agreement**

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The European Union Committee

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SUMMARY

This is the first report to be made under section 29 of the European Union (Withdrawal Agreement) Act 2020, which empowers scrutiny committees of either House to report on legislation that they consider raises matters of “vital national interest to the United Kingdom”. We have used this power to report on the Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, which was published in draft on 3 February 2020, and adopted by the General Affairs Council on 25 February.

The Council Decision sets out the European Union’s approach to the forthcoming negotiations on the UK-EU future relationship. It self-evidently raises matters of vital national interest, and we have compared it with the Government’s statement of the UK position, embodied in a Written Ministerial Statement published on 3 February, and a Command Paper published on 27 February. We have reviewed all these documents against the Political Declaration on the framework for future UK-EU relations, which was agreed by both sides in October 2019.

Our analysis underlines the extent to which two sides have diverged since last October’s agreement. While this may to an extent reflect the adoption by both sides of opening negotiating positions, the scale of the challenge ahead, if agreement is to be reached before the end of 2020, is clear.

It will be for the Government to conduct the negotiation on behalf of the United Kingdom. Parliament’s job is to scrutinise how the Government fulfils this task, and to provide a forum for informed public debate and challenge. We have approached this report in that spirit, in order to give the House of Lords an early opportunity to debate the many important issues that will arise in the negotiations.

We therefore propose the following motion, which, in accordance with the terms of section 29, will be moved by our Chair and debated within 14 sitting days of the publication of this report:

That this House agrees with the conclusion of the European Union Select Committee, that the Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, published in draft on 3 February 2020, and adopted in amended form by the General Affairs Council on 25 February 2020, raises matters of vital national interest to the United Kingdom.

Report pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020: Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement

CHAPTER 1: INTRODUCTION

This report

1. This report has been made by the European Union Select Committee, pursuant to the power introduced by section 29 of the European Union (Withdrawal Agreement) Act 2020.¹ Our understanding of the procedure under that section is set out below.
2. This is the first report to be made under section 29, which empowers scrutiny committees of either House to report on EU legislation that they consider raises matters of “vital national interest to the United Kingdom”. We have used this power to report on the Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland. The Commission’s draft of this Decision was published on 3 February 2020; an updated text of the Annex to that Decision, containing amended negotiating directives, was adopted and published by the General Affairs Council on 25 February.²
3. The Government’s approach to the negotiations was set out in summary form in a Written Ministerial Statement by the Prime Minister, also dated 3 February, and developed in greater detail in a Command Paper published on 27 February, entitled *The Future Relationship with the EU: The UK’s Approach to Negotiations*.³
4. The Government has not scheduled a formal debate on either the EU’s negotiating directives or on its own objectives for the future relationship negotiations. We nevertheless reiterate the conclusion contained in our first Brexit report, published less than one month after the 2016 referendum:

1 Section 29 of the 2020 Act inserted new section 13A of the European Union (Withdrawal) Act 2018. We refer to it as ‘section 29’.

2 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#); Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, [5870/20](#)

3 Written Ministerial Statement by the Prime Minister on ‘UK/EU relations’, HC Deb, 3 February 2020, [HCWS86](#) [Commons written ministerial statement]; HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

“Parliament has a duty to scrutinise and hold the Government to account for decisions that will profoundly affect the United Kingdom. It will also be a vital forum for public debate and challenge, on the many issues that will arise in the course of negotiations.”⁴

The European Union Committee has over the last three and a half years sought to promote informed parliamentary and public debate on negotiations that will, whatever their outcome, profoundly and permanently change the United Kingdom. We make this report to the House in the same spirit.

Section 29 of the European Union (Withdrawal Agreement) Act 2020

5. The United Kingdom ceased to be a Member State of the European Union on 31 January 2020 and entered a transition period. During the transition period, which will last until at least 31 December 2020,⁵ most EU laws, including new laws, will continue to apply to the UK.
6. Section 29 of the European Union (Withdrawal Agreement) Act 2020 introduced a procedure for the EU Select Committee of the House of Lords, or the European Scrutiny Committee of the House of Commons, to publish a report in respect of any EU legislation made, or which may be made, during the transition period. EU legislation is defined as any amendment to the EU Treaties; any EU Directive; or any EU Regulation or Decision which is not EU tertiary legislation.
7. A report made by the EU Committee pursuant to section 29 must:
 - State that, in the Committee’s opinion, the legislation concerned “raises a matter of vital national interest to the United Kingdom”. The term “vital national interest” is not defined.
 - Confirm that the Committee “has taken such evidence as it considers appropriate as to the effect of the EU legislation”.
 - Set out the wording of a motion to be moved in the House of Lords.

When these conditions are met, a Minister of the Crown must, within 14 sitting days of report publication, make arrangements for the report to be “debated and voted on” by the House of Lords.

8. The conditions set out in section 29 mean that any motion proposed by the Committee must be such that the House could, if it so wished, vote on it. In other words, it must be a ‘resolution’, as defined in the *Companion to the Standing Orders*.⁶ This does not mean that the House is required to vote, as Lord Callanan, then Minister of State in the Department for Exiting the EU, confirmed in a letter to our Chair:

“Clause 29 places no obligations on the committee or the House, rather it requires a Minister to make arrangements for a motion proposed by

4 European Union Committee, *Scrutinising Brexit: the role of Parliament* (1st Report, Session 2016–17, HL Paper 33), para 8

5 Under Article 126 of the Withdrawal Agreement the transition period “shall ... end on 31 December 2020”. Article 131 empowers the Joint Committee established under the Agreement to adopt a decision extending the transition period for up to one or two years, but section 33 of the European Union (Withdrawal Agreement) Act 2020 introduced a prohibition upon UK ministers agreeing to such an extension.

6 See *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017, paras 6.57–6.58

the Committee to be debated and voted on by the House of Lords. The Minister discharges this duty when he or she makes such arrangements. Clause 29 does not, therefore, require the House of Lords to vote on the motion.”⁷

9. As noted above, the present report considers the Commission’s Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland (‘the Decision’), which was published on 3 February. Alongside that document we consider the amended Annex to the Decision, adopted by the General Affairs Council on 25 February. As a Council Decision, which will be made during the transition period, it constitutes “EU legislation”, as defined in section 29. Given that the Decision will also define the European Union’s negotiating mandate for the forthcoming negotiations, we consider it self-evidently to raise matters of vital national interest to the United Kingdom. More detailed analysis of the content of the Decision is provided in Chapter 3.
10. The EU Decision is the focus of this report, as required under section 29, but we have reviewed it in light of the Written Ministerial Statement made by the Prime Minister on 3 February, and the Government’s Command Paper *The Future Relationship with the EU: The UK’s Approach to Negotiations*, published on 27 February. Both documents state that they “set out the Government’s proposed approach to the negotiations with the EU”, the first in high-level terms, the second in greater detail. Taken together, they correspond in status and function to the Decision.
11. We also compare the EU and UK Government documents with the Political Declaration that was agreed by the UK and EU negotiators on 19 October 2019. As a joint statement of intent for the future relationship negotiations, the Political Declaration is a key reference point in any attempt to track the development of both sides’ negotiating positions. We consider the relationship of the Commission and Government documents with the Political Declaration in Chapter 2.
12. We have published this report at the first possible opportunity, to enable a debate to take place, in accordance with the terms of section 29, before the House rises for the Easter recess. This has meant that we have had limited opportunity to seek additional evidence. We have, though, sought the views of committees of the devolved legislatures, and are grateful, particularly given the short time available, for the responses received, which will be published alongside this report. We also note that this Committee has published some 45 reports on Brexit-related themes since the 2016 referendum, including several that have directly touched on the future relationship negotiations. These reports and accompanying evidence are a wide-ranging source of analysis of the issues that will arise in the future relationship negotiations. We therefore confirm that we have taken what we consider to be appropriate evidence, in accordance with section 29(3)(b).
13. We also propose a motion, in accordance with section 29(3)(c). While this is a motion for resolution, as required by the Act, we have sought to frame

7 Letter dated 16 January 2020 from Lord Callanan, Minister of State for Exiting the European Union to the Chair of the European Union Committee: <https://committees.parliament.uk/download/file/?url=%2Fpublications%2F72%2Fdocuments%2F729&slug=callanankinnoullletterjanpdf> [accessed 2 March 2020]

it in broad and non-contentious terms. Our intention is to facilitate an informed debate, in the expectation, as we stated in a 2009 report on an analogous procedure, that “the Government, although not bound by the views expressed [in any debate], would take note of them”.⁸

14. **We propose the following motion, to be moved by the Chair of the European Union Select Committee, pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020:**

To move that this House agrees with the conclusion of the European Union Select Committee, that the Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, published in draft on 3 February 2020, and adopted in amended form by the General Affairs Council on 25 February 2020, raises matters of vital national interest to the United Kingdom.

8 European Union Committee, *Enhanced scrutiny of EU legislation with a United Kingdom opt-in* (2nd Report, Session 2008–09, HL Paper 25), para 8

CHAPTER 2: THE POLITICAL DECLARATION AND THE FUTURE RELATIONSHIP NEGOTIATIONS

Relationship to the Political Declaration

15. One of the most striking features of the Decision is its resemblance to the Political Declaration (PD), which was agreed by the UK and EU negotiators in October 2019 and laid before Parliament on 19 October.⁹ The PD was adopted pursuant to Article 50 of the Treaty on European Union, under which any withdrawal agreement concluded by the EU with a departing Member State is required to take account of “the framework for [that state’s] future relationship with the Union”.
16. Thus the PD was a statement of intent, rather than a legally binding agreement. Article 184 of the Withdrawal Agreement, however, requires both Parties (the UK as well as the EU) to “use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration”.
17. The Commission’s draft Decision accordingly cites Article 184 of the Withdrawal Agreement in the Preamble, thereby reaffirming the commitment of both sides to implementing the PD.¹⁰ Its negotiating directives adopt the same structure as the PD, using the same headings and sub-headings, and much of the text is copied and pasted verbatim. The Commission has of course elaborated the EU’s position in many areas, changing the emphasis, and prioritising the EU’s interests. There are also some omissions, which we highlight in Chapter 3, but taken as a whole the Decision is a development of, rather than a departure from, the PD.
18. The Government’s original intention seems to have been to give effect to Article 184 in domestic law by means of clause 31 of the October 2019 text of the European Union (Withdrawal Agreement) Bill. Clause 31, omitted from the text of the Bill that was ultimately enacted in January 2020, not only provided for parliamentary oversight of the negotiations on the future relationship, but stated, in clause 31(3), that any Government statement on objectives for the future relationship “must be consistent with the political declaration”.
19. Government statements during the passage of the revised EU (Withdrawal Agreement) Bill through Parliament in December and January also implied that even though clause 31(3) was no longer in the Bill, implementation of the PD remained the Government’s objective. Lord Keen of Elie, replying to the House of Lords second reading debate on 13 January 2020, said:

“The political declaration agreed by the Prime Minister as part of our exit negotiation sets out the framework for a comprehensive and ambitious free trade agreement with the EU. The general election result has clearly

9 Political Declaration setting out the framework for the future relationship between the European union and the United Kingdom (19 October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf [accessed 19 February 2020]

10 [Political Declaration](#) (19 October 2019), Preamble, para 6

shown that the public support that vision and we consider that we have been given the mandate to begin negotiations on that basis.”¹¹

And Lord Callanan, during Report stage on 20 January 2020, said:

“The Government’s vision for the future relationship with the EU is already set out in detail in the political declaration.”¹²

20. Against this backdrop, we note that Government’s WMS and Command Paper, setting out its negotiating objectives, are in structure and in some content markedly different from the PD. The headings (in particular, the division into ‘chapters’), rather than following the PD, appear to be based on those used in existing Free Trade Agreements, such as the EU-Canada and EU-Japan agreements. As a result, significant elements of the PD are omitted, including sections on overarching principles, on fundamental rights, and on potential cooperation in the international sphere. While we understand that the political context has changed, as a result of the general election, the Government’s approach makes it difficult either to conduct a line-by-line comparison with the PD, or to trace and explain the changes in Government policy since agreement was reached last October.
21. This has implications for transparency. The EU’s negotiating directives and the PD can be read side by side, and differences easily identified, which has in turn facilitated public debate on the EU side. On 11 February the European Parliament, following detailed consideration by committees, debated and adopted a substantial resolution on the EU’s negotiating mandate.¹³ No comparable debate has yet taken place at Westminster.
22. Finally, the difference of approach is also relevant to the forthcoming negotiations. While the Political Declaration, whatever its limitations and ambiguities, embodied a shared understanding of the future relationship, that shared understanding has now disappeared. This may in part reflect the adoption by the two sides of opening positions ahead of the negotiations, but it could also have implications for the likelihood that they will be able to reach agreement within the time available.
23. That time has already been reduced to just 10 months, by the Government’s decision not to seek an extension of the transition period. The Command Paper arguably reduces it still further, to just 4 months, stating the Government’s hope that by June “the broad outline of an agreement would be clear and be capable of being rapidly finalised by September”. It then states that if this is not the case in June, “the Government will need to decide whether the UK’s attention should move away from negotiations and focus solely on continuing domestic preparations to exit the transition period in an orderly fashion”.
24. **In October 2019 the European Union and United Kingdom negotiators agreed a Political Declaration, setting out the framework for future UK-EU relations. Article 184 of the Withdrawal Agreement then placed a legal obligation upon both the EU and UK to “use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously**

11 HL Deb, [col 553](#), [Lords Chamber]

12 HL Deb, [col 1004](#), [Lords Chamber]

13 European Parliament resolution on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, 11 February 2020: https://www.europarl.europa.eu/doceo/document/B-9-2020-0098_EN.html [accessed 20 February 2020]

the agreements governing their future relationship referred to in the Political Declaration”.

- 25. The European Commission, in preparing the draft Council Decision, while seeking to defend the EU’s interests, has broadly followed the structure and content of the Political Declaration.**
- 26. The Written Ministerial Statement published by the Government on 3 February, and the Command Paper published on 27 February, differ substantially from the Political Declaration in structure and content. It would be helpful if the Government, without prejudicing its negotiating position, could publish a comparative analysis of the Political Declaration and the Command Paper, explaining the changes in its approach.**
- 27. The Government has made it clear that it will not seek an extension to the transition period beyond 31 December 2020. That leaves just 10 months for the UK and EU to negotiate and conclude agreements on the future UK-EU relationship. The Government has now indicated, that if the “broad outline” of an agreement is not clear by June, it may “move away from the negotiations” and focus on domestic preparations for the end of the transition period.**
- 28. The marked differences between how the EU and the UK Government envisage the future UK-EU relationship may in part reflect both sides’ adoption of opening negotiating positions. But the timetable for reaching agreement was always challenging, and the Government’s truncating of the timetable, taken alongside this divergence of approach, further reduces the chances of a comprehensive agreement.**
- 29. We note that the European Parliament, on 11 February, following detailed consideration by committees, has adopted a substantial resolution on the Commission’s draft negotiating mandate. We regret that the United Kingdom Parliament has not been given an opportunity to play its proper role in debating, in Government time, matters of such vital national interest.**

CHAPTER 3: ANALYSIS OF THE COUNCIL DECISION

Introduction

30. This chapter reviews the EU Decision, comparing it to the Political Declaration (PD), agreed by both sides in October 2019, the Written Ministerial Statement (WMS) by the Prime Minister published on 3 February, and the Command Paper published on 27 February. The headings in this chapter reflect those in the Decision.
31. Our analysis is not intended to be exhaustive, but to assist debate. We flag up a few key issues in conclusions, but elsewhere our analysis speaks for itself. Both sides' positions are evolving rapidly, but our primary focus is on the draft Decision published by the Commission on 3 February and adopted in amended form by the General Affairs Council on 25 February, and the various matters of vital national interest raised therein.

Geographical scope

32. The Political Declaration did not define the geographical scope of the future partnership agreement, but the Commission's Explanatory Memorandum to the draft Decision, recalling the minutes of the European Council meeting on 25 November 2018, states that "Gibraltar will not be included in the territorial scope of the agreements to be concluded between the Union and the United Kingdom". This does not preclude separate agreements covering Gibraltar, but these would require the "prior agreement of the Kingdom of Spain". The WMS, in contrast, affirms that the Government "will be acting on behalf of the UK Crown Dependencies and Overseas Territories: the whole UK family". Paragraph 11 of the Command Paper confirms that "the Government will act in these negotiations on behalf of all the territories for whose international relations the UK is responsible." The Chief Minister of Gibraltar, Hon Fabian Picardo QC MP, has welcomed this commitment.¹⁴
33. This disagreement over the status of Gibraltar is not new. The day before the November 2018 European Council meeting, the UK's Permanent Representative, Sir Tim Barrow, confirmed in writing that Article 184 of the Withdrawal Agreement, on the future relationship negotiations, contained "no obligation or presumption" as to the territorial scope of those agreements. But he also stated that this interpretation was "without prejudice" to the Government's policy that "it will negotiate the future agreements ... on behalf of all territories for whose external relations the UK is responsible".¹⁵

Legal and institutional basis

34. The legal basis proposed for the draft Decision is Article 217 TFEU, in conjunction with Article 218(3) and (4). As the Commission's Explanatory Memorandum points out, Article 218 provides the "procedural legal basis"—Article 218(3) authorises the Commission to submit recommendations to the Council authorising the opening of negotiations, and Article 218(4)

14 HM Government of Gibraltar, 'United Kingdom Issues Negotiating Mandate for Future Relationship with the EU: Gibraltar Included' (27 February 2020): <https://www.gibraltar.gov.gi/press-releases/united-kingdom-issues-negotiating-mandate-for-future-relationship-with-the-eu-gibraltar-included-1262020-5630> [accessed 2 March 2020]

15 Letter dated 24 November 2018 from Sir Tim Barrow to Jeppe Tranholm-Mikkelsen: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759015/HMG_letter_to_the_Secretary-General_of_the_Council_of_the_European_Union_on_Article_184.pdf [accessed 20 February 2020]

authorises the Council to agree negotiating directives. Article 217, on the other hand, is provisionally suggested as the “substantive legal basis”. Article 217 states:

“The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.”

35. Thus the reference to Article 217 envisages the final UK-EU agreement taking the form of an ‘Association Agreement’. Such a model for UK-EU relations was first advocated by the European Parliament, which in a March 2018 resolution stated that it “provides a flexible framework allowing for varying degrees of cooperation across a wide variety of policy areas”.¹⁶ In our 2018 report on *UK-EU relations after Brexit* we noted that Association Agreements are “by their nature dynamic and evolutionary”.¹⁷
36. Paragraph 118 of the Political Declaration (PD) stated that “The future relationship should be based on an overarching institutional framework covering chapters and linked agreements relating to specific areas of cooperation”. While the PD acknowledged that the precise legal form of the future relationship remained to be determined, paragraph 120 stated: “The Parties note that the overarching institutional framework could take the form of an Association Agreement.”
37. These references are reflected not only in the Commission’s choice of legal basis, but in paragraph 142 of the Decision, which states that “the envisaged partnership should be embedded in an overall governance framework covering all areas of economic and security cooperation”.
38. The Government’s WMS, in contrast, proposes “a suite of agreements”, including a free trade agreement, an agreement on fisheries, and an agreement on internal security cooperation, together with “more technical agreements” in other areas. It also states that “future cooperation in other areas does not need to be managed through an international Treaty, still less through shared institutions”.
39. The Government’s approach is developed in the Command Paper, which acknowledges that “all the areas of policy set out in the Political Declaration will be relevant to the UK’s future cooperation with the EU”, but says that “the Government does not agree that that requires every area to be incorporated into a negotiated Treaty or similar arrangement”. Instead it envisages the UK Government determining policy in a number of areas, “within a framework of broader friendly dialogue and cooperation between the UK and the EU”.¹⁸ There is no reference in either of the Government’s documents to an Association Agreement or to an “overarching institutional framework” for future UK-EU relations.

16 European Parliament, *Guidelines on the framework of future EU-UK relations*, Preamble, para J (14 March 2018): https://www.europarl.europa.eu/doceo/document/TA-8-2018-0069_EN.pdf [accessed 20 February 2020]

17 See European Union Committee, *UK-EU relations after Brexit* (17th Report, Session 2017–19, HL Paper 149), para 105

18 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 4, para 8: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

40. **We note the Commission’s provisional citation of an Article 217 TFEU legal basis, which envisages a UK-EU Association Agreement, and also the reference to this possibility in the Political Declaration. We invite the Government to indicate whether an Association Agreement remains, in its view, a feasible or desirable structure for UK-EU relations.**

General context

41. As described in Chapter 2, the Decision reflects the incremental development of the EU’s policy towards the UK. It begins by describing the background to the forthcoming negotiation: the UK’s notification under Article 50; the Withdrawal Agreement; the European Council’s 2018 guidelines; the Political Declaration; and the transition period. It states: “The negotiations of the envisaged partnership should be premised on the effective implementation of the Withdrawal Agreement and its three Protocols.”¹⁹ It underlines the continuing importance of protecting the Belfast/Good Friday Agreement.
42. The Government’s Command Paper, while briefly outlining the background (the UK’s withdrawal from the EU on 31 January 2020, and its intention to leave the EU Single Market and Customs Union on 31 December 2020), explicitly distances itself from the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland: “This paper ... does not deal with issues relating to the implementation of the Withdrawal Agreement.” One consequence of this approach is that some of the language of the Command Paper is misleading. Paragraph 5, for instance, states that “we will not agree to any obligations for our laws to be aligned with the EU’s, or for the EU’s institutions, including the Court of Justice, to have any jurisdiction in the UK”. Yet such jurisdiction has already been conferred on the CJEU in respect of Northern Ireland, under the terms of the Protocol on Ireland/Northern Ireland.

General principles and basis for cooperation

43. The ‘general principles’ that frame the Decision largely follow the PD, highlighting both sides’ commitment to “the rules-based international order, defending individual rights and the rule of law, high standards of protection of workers and consumers’ rights and of the environment, the fight against climate change, and free and fair trade”. Against this backdrop, the Parties should commit to work together, but as part of this, in a departure from the PD, the Decision proposes that they should “ensure a balance of rights and obligations, and a level playing field”. The PD described the level playing field as underpinning only the future economic partnership: the Decision’s identification of the level playing field as one of the ‘general principles’ underpinning the whole future relationship is thus a significant change.²⁰
44. Paragraph 11 of the Decision, under the heading “core values and rights”, echoes paragraph 6 of the PD. It lists certain “shared values and commitments, which should be expressed in ... five binding political clauses”. These are “human rights, democracy and rule of law; non-proliferation of weapons of mass destruction; the fight against terrorism; prosecution of those accused of the most serious crimes of concern to the international community;

19 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 5

20 [Political Declaration](#) (19 October 2019), para 17. The ‘level playing field’ is discussed further in paragraphs 106–119 below.

small arms and light weapons”. The significance of these “binding political clauses” is underlined by the later section on law enforcement (for which see below, paragraphs 121–124).

45. The Government’s documents contain no text on general principles or core values.
46. **We invite the Government to explain how far it envisages that the general principles and shared core values embodied in the Political Declaration should be reflected in any future UK-EU agreement or agreements.**

Areas of shared interest

47. The Decision proposes that the new agreement should “establish general principles, terms and conditions for the United Kingdom’s participation in and contribution to” EU and Euratom programmes, when such participation is “in the Union’s interest”.²¹ The Government’s WMS states that the UK is “ready to consider participation in certain EU programmes ... taking into account the overall value to the UK of doing so”. The Command Paper proposes UK participation in EU programmes “where it is in the UK’s and the EU’s interest”, but in the specific case of the student exchange programme Erasmus+, it contemplates UK participation “on a time-limited basis, provided the terms are in the UK’s interests”.²² Neither the EU nor the UK Government has picked up the PD’s reference to exploring UK participation in European Research Infrastructure Consortia.
48. We have previously highlighted the abundant evidence showing that the UK’s participation in EU programmes, including in the spheres of education and research, brings benefits to both sides.²³
49. So far as Northern Ireland is concerned, we welcome the Government’s reiteration of its “specific ongoing commitment to delivering the PEACE PLUS programme”, as part of its “unwavering commitment to uphold the hard-won peace in Northern Ireland”, including working with the Commission and the Irish government to shape the programme and maintaining current funding proportions for the future programme.²⁴

Economic partnership

Objectives and principles

50. Paragraphs 16–17 of the Decision closely follow paragraphs 17–18 of the Political Declaration. The wording is in many places the same: the economic partnership should be “ambitious, wide-ranging and balanced”; it will embrace “wider sectoral cooperation”; it will be underpinned by provisions (or, in the Commission’s latest iteration, “robust commitments”) ensuring “a level playing field for open and fair competition”. It will ensure that both

21 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 13

22 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 23, paras 19–21: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

23 See for instance European Union Committee, *Brexit: the Erasmus and Horizon programmes* (28th Report, Session 2017–19, HL Paper 283), Chapter 2

24 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 23, para 23: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

Parties retain the autonomy needed to achieve “legitimate public policy objectives” in areas such as public health.

51. There is no directly analogous statement of objectives and principles in the Government’s documents. The WMS refers to “a balanced agreement that is in the interests of both sides”, noting that this agreement “must respect the sovereignty of both parties and the autonomy of our legal orders”. There is no reference to “open and fair competition”, or to the “level playing field”, to which the UK committed itself in the PD.²⁵ Instead the WMS states that the UK “will in future develop separate and independent policies in areas such as ... competition and subsidy policy, the environment, social policy, procurement, and data protection, maintaining high standards as we do so”.

Goods

52. Both the Decision and the Government’s documents advocate the removal of tariffs and quotas. But whereas the Decision (going further than the PD) states in terms that ‘level playing field’ commitments are a pre-condition for the removal of tariffs and quotas, the WMS simply proposes a “comprehensive free trade agreement covering substantially all trade”, which should be “at least as good as ... the EU’s recent trade agreements, such as those with Canada or Japan”. This point was developed by the Government’s chief negotiator, David Frost, in a speech on 17 February, and in which he described any Brussels-imposed level playing field rules as opposed to “the fundamentals of what it means to be an independent country”.²⁶
53. More generally, the Decision adds significant detail to the outline contained in the PD. On customs, it proposes that any future customs arrangements should be within the framework of the Union Customs Code (UCC), a set of EU standards and rules on customs introduced across the EU (including the UK) in 2016, with the objective of streamlining and simplifying the customs procedures applying to EU trade with third countries. It is notable that the Protocol on Ireland/Northern Ireland provides that the UCC will continue to apply to all goods entering Northern Ireland, and that Northern Ireland will also be obliged to apply the UCC to goods sent from Northern Ireland to Great Britain.
54. The WMS refers to “facilitative arrangements” to help ensure “smooth trade”. Similar language is used in the Command Paper, under the heading “Customs and Trade Facilitation”. This language echoes the Government’s advocacy of ‘maximum facilitation’ in 2018, but little detail is provided in the Command Paper. Instead it states that “the core provisions on CTF should be accompanied by annexes to provide for specific forms of cooperation and trade facilitation”. We note that the Chancellor of the Duchy of Lancaster

25 The Government’s ‘explainer’ on the 2019 Political Declaration stated that “the future relationship must encompass robust level playing field measures to uphold current high standards in areas including social and employment standards, environment and climate change”. *HM Government, Explainer for the new Ireland/Northern Ireland Protocol and the Political Declaration on the future relationship*, 18 October 2019, para 3: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840653/EXPLAINER_FOR_THE_NEW_IRELAND_NORTHERN_IRELAND_PROTOCOL_AND_THE_POLITICAL_DECLARATION_ON_THE_FUTURE_RELATIONSHIP.pdf [accessed 28 February 2020]

26 No 10 media blog, ‘David Frost lecture: reflections on the revolutions in Europe’ (17 February 2020): <https://no10media.blog.gov.uk/2020/02/17/david-frost-lecture-reflections-on-the-revolutions-in-europe/> [accessed 2 March 2020]

conceded as recently as 9 February that a UK ‘smart’ border with the EU would not be ready until 2025.²⁷

55. The Decision also calls for the mutual recognition of Authorised Economic Operators (AEOs) to facilitate the cross-border flow of goods. This reflects the agreement in the PD that both sides should “consider mutual recognition of trusted traders’ programmes”. In July 2018 the previous Government itself proposed that the two sides “agree a new trusted trader scheme”,²⁸ and witnesses giving evidence to our 2018 inquiry into *Brexit: the customs challenge* were clear on the benefits such a scheme would bring.²⁹ The WMS and Command Paper are silent on this.
56. In some areas the two sides are much closer. For instance, they agreed in the PD that “disciplines on ... sanitary and phytosanitary measures (SPS) should build on and go beyond the respective WTO agreements”, and paragraph 29 of the Decision develops this point. While the Government’s WMS merely stated that “the UK will maintain its own autonomous sanitary and phytosanitary (SPS) regime ... reflecting its existing high standards”, the Command Paper sketches out areas that a potential UK-EU agreement on SPS could cover, including mutual recognition of both Parties’ health and pest status, provisions on regionalisation in the event of disease outbreaks, and adherence to international standards.
57. On rules of origin, the PD acknowledged that there would be a need for “appropriate and modern...rules of origin”.³⁰ The Decision, however, offers only “appropriate rules of origin based on the standard preferential rules of origin of the Union”.³¹ This suggests no more than the EU’s standard offer to third countries, casting doubt on the possibility of a ‘trilateral’ or ‘diagonal’ approach to rules of origin and their cumulation. Such ‘trilateralisation’ would mean the EU recognising content from the UK as EU content, and vice versa, so that exports from either Party to countries with which they both have trade agreements can (with the consent of the partner country) be cumulated and continue to benefit from the relevant trade preferences. The UK has, in its roll-over trade agreements, already recognised EU content as UK content, at least in the short term,³² and the Command Paper similarly calls for “diagonal cumulation”.³³
58. **The UK and EU agreed in October 2019 that they would seek, through a Free Trade Agreement, to “ensure no tariffs, fees, charges**

27 ‘Prepare for Brexit trade costs and red tape, says Michael Gove’, *Financial Times* (10 February 2020): <https://www.ft.com/content/37379a1e-4c28-11ea-95a0-43d18ec715f5> [accessed 2 March 2020]

28 HM Government, The future relationship between the United Kingdom and the European Union, Cm 9593 July 2018, p 17 : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf [accessed 25 February 2020]

29 European Union Committee, *Brexit: the customs challenge* (20th Report, Session 2017–19, HL Paper 187), paras 131–139

30 *Political Declaration* (19 October 2019), para 22

31 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, COM(2020) 35 final, para 20

32 See for example the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Korea (with Exchange of Notes), CP 167, 2019: <https://www.gov.uk/government/collections/uk-south-korea-trade-agreement> [accessed 2 March 2020], scrutinised by the European Union Committee in *Scrutiny of international agreements: treaties considered on 21 October 2019* (1st Report, Session 2019, HL Paper 6), paras 27–32

33 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 6, para 6: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

or quantitative restrictions across all sectors with appropriate and modern accompanying rules of origin, and with ambitious customs arrangements”. There remains significant common ground between the two sides.

59. **At the same time, we note that the EU has added a new ‘level playing field’ condition to the goods element of the economic partnership. We also note that the Government has yet to bring forward a detailed and workable proposal for the operation of customs controls under any Free Trade Agreement.**
60. **We invite the Government to respond to the EU’s proposal for mutual recognition of Authorised Economic Operators, and in so doing to reflect on the substantial body of evidence supporting the benefits of trusted trader schemes.**

Services and investment

61. The Decision, using identical wording to the PD, calls for “ambitious, comprehensive and balanced arrangements on trade in services and investment in services and non-services sectors, respecting each Party’s right to regulate”.³⁴ The list of sectors to be covered is also the same as in the PD, but the Decision adds that audio-visual services should be “excluded from the provisions related to liberalisation”. The Command Paper, in contrast, makes no reference to tourism or environmental services; it suggests that a future agreement “could promote trade in audio-visual services”.³⁵
62. The Decision reaffirms that the UK and EU should seek to liberalise their trade in services beyond their WTO commitments, taking account of the EU’s existing trade agreements. The WMS also indicates that existing commitments in trade deals should be taken as a baseline, while raising the possibility of going beyond such commitments in areas of “key interest”, such as professional and business services. The Command Paper in addition proposes that, “as part of a balanced and reciprocal agreement”, each side should confer “most favoured nation” status on the other in respect of services trade. This could ensure that concessions made by the EU to other trading partners in its trade agreements would automatically extend to the UK (and vice versa).³⁶
63. The Decision echoes paragraph 30 of the PD in calling for arrangements to allow the temporary entry and stay of persons for business purposes (paragraph 35). The WMS includes a similar reference to “temporary entry

34 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 34; [Political Declaration](#) (19 October 2019) para 27

35 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 13, para 52: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

36 For comparison, the EU included most favoured nation provisions in its Free Trade Agreement with the Republic of Korea, Article 7.8: see <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=14662> [accessed 3 March 2020]. The UK has transitioned this provision into its ‘roll-over’ agreement with Korea, and the implications are discussed in our report [Scrutiny of international agreements: treaties considered on 21 October 2019](#) (1st Report, Session 2019, HL Paper 6), paras 44–45.

for business purposes (Mode 4)”,³⁷ and this is developed further in the Command Paper, which specifies several categories of persons who would be covered, including business visitors, intra-company transferees and self-employed persons. The two sides agree that any such arrangements will be subject to Member States’ national rules and the UK’s planned points-based immigration system.

64. The two sides also appear to agree in taking forward paragraph 34 of the PD, which proposes arrangements on the mutual recognition of professional qualifications in regulated sectors, though where paragraph 41 of the Decision calls for a “framework” for concluding sector-specific mutual recognition agreements, the Command Paper refers in broader terms to a “pathway” for mutual recognition. It also proposes a separate Chapter to cover this area.³⁸
65. Like the PD, the Decision proposes cross-cutting provisions aimed to promote transparent, efficient and—to the extent possible—compatible regulatory practices (paragraph 36). Reference is also made to sector-specific arrangements for preserving fair and equal access to public telecommunications networks and services and preventing anticompetitive conduct. None of these matters is discussed in the WMS, but the Command Paper proposes that any Agreement should “tackle bureaucracy and unnecessary regulatory measures”, so as to “reduce practical impediments to the ability of foreign service suppliers to compete on equal terms with their domestic counterparts”.³⁹

Cooperation on financial services

66. The two sides agreed in the PD on the need for “close and structured cooperation on regulatory and supervisory matters”, including by working together in international bodies.⁴⁰ The Decision and the Government’s WMS both echo this agreement, which is in line with our 2018 recommendation that the Government should “seek to secure continued participation for UK regulators at all levels of the supervisory architecture post-Brexit, to be imaginative in developing new forms of cooperation, and to continue to invest in international and bilateral relationships”.⁴¹
67. The key regulatory tool supporting trade in financial services will be the ability of each side to take equivalence decisions, deeming the other Party’s regulatory regime to be ‘equivalent’, thereby reducing the burden placed upon firms, which would otherwise have to demonstrate regulatory

37 Under the General Agreement on Trade in Services, Mode 4 (Presence of Natural Person) occurs when a service professional moves to another territory temporarily to deliver their service directly to a consumer—for instance, a management consultant moving between territories to deliver a presentation. See European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135), chapter 2.

38 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 12, paras 48–49: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

39 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 32, para 46–47: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

40 Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (October 2019) paras 35, 37: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf [accessed 25 February 2020]

41 European Union Committee, *Brexit: the future of financial regulation and supervision* (11th Report, Session 2017–19, HL Paper 66)

compliance in two jurisdictions. The Political Declaration accordingly underlined both Parties' "ability to take equivalence decisions in their own interest" (paragraph 35). It also sketched out a holistic approach to equivalence, calling for "transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions" (paragraph 37). It proposed that both sides should endeavour "to conclude these assessments before the end of June 2020".

68. The Decision recalls the PD in underlining "the Parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest", referring to "their respective unilateral equivalence frameworks". But the holistic approach has been weakened, and in its place there is reference to "informal exchange of information and bilateral discussions on regulatory initiatives and other issues of interest, for instance on equivalence". The reference to completing equivalence assessments by the end of June has also disappeared.
69. The Government has struck a different note. The EU's assessment processes on financial services equivalence are not envisaged as part of the Free Trade Agreement, but are described in the WMS, under the heading of "other areas of cooperation", as "technical and confirmatory of the reality that the UK will be operating exactly the same regulatory frameworks as the EU at the point of exit". The Government says that it will approach its technical assessments in the same spirit. The Command Paper adopts the same approach, and reflects the terms of the PD in arguing that there is "a strong basis for concluding comprehensive equivalence assessments before the end of June 2020".⁴²
70. In the Free Trade Agreement section of the WMS, in contrast, the Government proposes that, as part of wider regulatory cooperation, there should be provision for "the structured withdrawal of equivalence findings". This implies that while the initial finding of equivalence should be automatic, there could be restrictions upon the ability of either side to withdraw those findings subsequently. The Command Paper develops the point, by adding a proposal for "appropriate consultation" as part of the process for withdrawing equivalence findings. We note that the then Chancellor of the Exchequer, in an article published on 10 February, also called for a "durable relationship" supported by "a reliable equivalence process".⁴³
71. The Government's approach is likely to strike a chord in the financial sector: our Financial Affairs Sub-Committee has heard evidence in recent weeks from the International Regulatory Strategy Group and UK regulators on the potentially destabilising impact of a short-notice withdrawal of equivalence, as well as the chilling effect on markets of the possibility that an equivalence decision could be withdrawn at short notice. Sam Woods, Deputy Governor for Prudential Regulation, Bank of England, told the Sub-Committee: "If [equivalence] can be withdrawn with 30 days' notice, firms are going to be quite reluctant to put much weight on it."⁴⁴

42 HM Government, *The Future Relationship with the EU: The UK's Approach to Negotiations*, CP 211, 27 February 2020, p 30, para 63: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

43 Sajid Javid: 'I'll give the City the flexibility it needs to thrive outside the EU', *CityAM* (10 February 2020): <https://www.cityam.com/ill-give-the-city-the-flexibility-it-needs-to-thrive-outside-the-eu/> [accessed 25 February 2020]

44 Oral evidence taken before the EU Financial Affairs Sub-Committee, 12 February 2020 (Session 2019–21) [Q 30](#) (Andrew Bailey, Nausicaa Delfas, Sam Woods)

72. **Reconciling the Government’s desire for a durable and reliable equivalence regime for the financial services sector, with the Commission’s insistence on the right of both Parties to take unilateral equivalence decisions in their own interests, will be a significant challenge. The readiness of both sides to conclude their assessments of equivalence by the end of June 2020 will be an early test of whether a more durable agreement is possible.**

Digital trade

73. The Decision follows the PD in calling for provisions to facilitate digital trade, including “addressing unjustified barriers to trade by electronic means, and ensuring an open, secure and trustworthy online environment for businesses and consumers” (paragraph 44). There is also a new reference to consumer protection in the online environment and to unsolicited direct marketing communication. This may be a veiled reference to the ePrivacy Regulation,⁴⁵ which was opposed by the UK prior to its withdrawal from the EU. Our Internal Market Sub-Committee continues to scrutinise this Regulation.
74. The Government’s WMS refers to the need for “measures to support digital trade, building on the most recent precedents”, and more detail is given in the Command Paper. Both sides agree that the future partnership should address the issue of data flows, but the Government makes no reference to consumer protection in the digital sphere.

Capital movements and payments

75. The Decision states that the future relationship should include provisions to enable the movement of capital and payments related to transactions liberalised under the envisaged partnership, and that these should align with the provisions of the Treaty on the Functioning of the EU on the free movement of capital. The Command Paper uses similar language, but without any reference to the Treaty.

Intellectual property

76. The Decision, using the same wording as the Political Declaration, calls for the future partnership to “provide for the protection and enforcement of intellectual property rights to stimulate innovation, creativity and economic activity”. It states that the future UK-EU partnership should go beyond existing international standards that protect and enforce IP rights, preserving both Parties’ current high levels of protection, including in respect of copyright, trademarks, design rights, patents and plant variety rights. It also states that the partnership should ensure effective enforcement of rights and establish mechanisms for cooperation and exchange of information. The WMS makes no mention of IP, but the Command Paper, like the Decision, calls for high standards of protection, going further than international agreements.
77. The Decision goes further than the PD in outlining the EU’s approach to geographical indications (GIs). Article 54(2) of the Withdrawal Agreement requires, in outline, that any GIs recognised by the EU at the end of the

45 Proposal for a Regulation ... concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), [COM\(2017\) 10 final](#)

transition period should continue to apply in the UK post-transition. The Decision proposes that “the same level of protection” should be extended to any GIs that may be designated in the future.⁴⁶ It is unclear whether the intention is to require automatic recognition by the UK of future EU GIs, or whether reciprocal recognition by the EU of future UK GIs is also contemplated. We note, however, that recent EU trade agreements (including with Japan and Vietnam) provide that both Parties can agree on amendments to the list of GIs, and this would appear to be an appropriate outcome.

78. The Government’s WMS is silent on geographical indications, but the Command Paper offers the following inscrutable comment, which sits alongside a reiteration of the autonomy of both Parties:

“There are different ways of proceeding on Geographical Indications (GIs) and the UK will keep its approach under review as negotiations with the EU and other trading partners progress.”⁴⁷

Public procurement

79. Paragraphs 51–52 of the Decision build on the PD in calling for the future UK-EU partnership to open up the Parties’ public procurement markets beyond commitments in the WTO Government Procurement Agreement (GPA)—which the UK intends to join in its own right. Areas not covered by the GPA, such as procurement in the utilities sectors, should also be brought in scope. Common standards are also proposed to ensure transparency of market opportunities as well as public procurement rules, procedures and practices, and to “address the risk of arbitrary behaviour” in awarding contracts. Such standards should build on those contained in the GPA.
80. The Government’s WMS lists procurement among the areas in which the UK “will in future develop separate and independent policies”. It is not mentioned in the Command Paper.

Mobility

81. The section of the Political Declaration on mobility was ambitious, if generalised. It also merged two distinct areas of concern: the mobility of persons for a range of purposes (including visa-free travel for short-term visits, and conditions for entry and stay for purposes such as research or study, potentially supported by social security coordination), and civil justice cooperation in the sphere of family law. The mobility section of the Decision focuses on the first of these areas, and references to visa-free travel for short-term visits, to research and study, and to social security coordination survive. In the Commission’s original draft Decision, however, there was no mention of the Parties’ earlier commitment to the UK’s plans to join the 2007 Hague Maintenance Convention, or to judicial cooperation in matrimonial, parental responsibility or other related matters. This was rectified by the General Affairs Council, which on 25 February reinstated a paragraph advocating

46 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 48

47 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 16, para 72: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

“enhanced judicial cooperation in matrimonial, parental responsibility and other related matters”.⁴⁸

82. We heard compelling evidence as long ago as 2017 on the consequences for families of a failure to put in place adequate alternative arrangements, once EU Regulations in the field of family law ceased to apply, concluding that such a failure “would seriously undermine the family law rights of UK citizens and would, ultimately, be an act of self-harm”.⁴⁹ This was reinforced by the evidence submitted by Paul Givan MLA, Chair of the Justice Committee of the Northern Ireland Assembly, who identify mutual recognition and cross-border enforcement of civil and family justice decisions as an area of particular concern to Northern Ireland. We therefore welcome the acknowledgement by the General Affairs Council of the continuing importance of these matters.
83. The WMS makes no reference to mobility, or to visa-free travel for short-term visits. As we noted above (paragraph 63) the Command Paper, under the heading “Temporary Entry and Stay for Business Purposes”, proposes that any agreement should include commitments to “provide legal certainty to service suppliers and businesses who move employees between the UK and EU”.⁵⁰ There is no mention, however, of measures to facilitate entry and stay of persons engaged in research or study, and it is doubtful whether the term “business purposes” is broad enough to include these other types of professional exchange.
84. The WMS did not address family law, but the Command Paper, under the heading “Civil Judicial Cooperation”, proposes UK accession to the Lugano Convention 2007. This covers maintenance-related claims (Article 5(2)), but UK accession would require the EU’s consent.

Transport

85. The Political Declaration provided a high-level description of areas to be covered in future UK-EU negotiations on the four transport modes: aviation and road, rail and maritime transport. The Decision offers significantly more detail on the EU’s proposed approach to aviation and road transport in particular.
86. On aviation, the Decision highlights the need for comprehensive arrangements, covering traffic rights but also air safety and security and sector-specific provisions on competition—these would come on top of cross-cutting level playing field requirements. The Decision has, however, dropped the reference in the Political Declaration to a bespoke ‘Comprehensive Air Transport Agreement’, suggesting instead that aviation should fall under the umbrella of the wider economic partnership.
87. In relation to market access, the Decision emphasises that UK-based operators should not enjoy the same benefits as EU carriers, and should therefore only be afforded “certain traffic rights”. Fifth freedom rights—which would enable UK airlines to operate flights from the UK to a non-EU

48 Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, [5870/20](#), para 59

49 European Union Committee, *Brexit, justice for families, individuals and businesses?* (17th Report, Session 2016–17, HL Paper 134), para 93

50 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 12, para 42: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

country with stop-overs in the EU—may be considered. The Decision also leaves open the possibility of allowing operational and commercial flexibility arrangements.

88. The Decision gives examples of areas within aviation safety—from certification to environmental approval—where the EU and UK should aim to cooperate, with a view to facilitating trade and investment in aeronautical products. Regulatory cooperation is also envisaged, subject to each Party being satisfied as to the other’s aviation safety requirements and processes, and mechanisms being in place to monitor the “continued fitness and ability” of regulatory bodies.
89. The Government’s Command Paper differs from the Decision (and reflects the PD) in calling for a Comprehensive Air Transport Agreement, alongside a Bilateral Aviation Safety Agreement. Nonetheless, there is substantial common ground in the areas that would be covered.
90. In respect of road haulage, the Decision proposes unrestricted market access for point-to-point journeys (including unladen journeys) between the UK and EU, as well as transit arrangements. It indicates, however, that UK operators should not benefit from the additional rights granted to EU operators, namely cross-trade and cabotage rights.⁵¹ We have previously highlighted evidence underlining the importance of cross-trade for certain sectors and operators.⁵²
91. Like the Political Declaration, the Decision calls for non-regression from the protections provided to road transport operators and drivers at the end of the transition period.
92. In relation to passenger road transport, the Decision states that the future partnership should “take account” of the Interbus Agreement—an existing multilateral arrangement that enables certain bus and coach services between its Parties. The Government has previously signified the UK’s intention to join Interbus in its own right after the end of the transition period.
93. The Command Paper expresses a wish for “continued connectivity” and for “a liberalised market for road transport”, which would allow UK and EU road transport operators “to provide services to, from and through each other’s territories with no quantitative restrictions”. It is unclear whether this is a request for cabotage rights (the ability for a non-resident operator to transport goods or passengers between points in a third country). The Government emphasises, presumably in response to the EU’s demand for non-regression, that any arrangements on road transport should not constrain the UK’s ability to set its own domestic rules.
94. The Commission did not include a section on maritime transport in the draft Decision, though the General Affairs Council on 25 February added an open-ended suggestion that the future partnership “should address market access for the international maritime transport sector with appropriate level playing field requirements”. More striking is the lack of any reference to cooperation between the European Maritime Safety Authority and the UK’s

51 Cabotage refers to the transport of goods within a country by a non-resident haulier. The concept of cabotage can be applied across transport modes. Cross-trade is the transport of goods between two countries by a haulier resident in a different country.

52 European Union Committee, *Brexit: road, rail and maritime transport* (39th Report, Session 2017–19, HL Paper 355)

Maritime and Coastguard Agency—even though this was proposed in the PD (paragraph 63).

95. On rail transport, the Decision, as amended by the General Affairs Council, follows the PD in emphasising the importance of ensuring the continued operation of the Belfast-Dublin Enterprise Line and services through the Channel Tunnel, by way of bilateral arrangements. The WMS and Command Paper do not address rail transport.

Energy and raw materials

96. On electricity and gas, the Decision proposes that the future partnership should address trade and investment-related aspects of energy. It promotes the development of renewable energy and energy efficiency, and specifies the need for competitive markets, non-discriminatory access to networks, the unbundling of network operators, and effective carbon pricing. It notes that the UK will leave the Internal Energy Market (IEM), but advocates a framework to ensure security of supply and efficient trade over interconnectors.
97. The Command Paper states that the UK “is open to considering an agreement on energy if it reflects its interests, and as long as it respects the fact that the UK will make independent decisions on its energy policies”. Such an agreement could cover energy trading, technical cooperation, carbon pricing, the integration of renewable power and investment in decarbonisation projects, and climate change.⁵³ The Command Paper also states that the Protocol on Ireland/Northern Ireland provides the basis for the continued operation of the Single Electricity Market between Ireland and Northern Ireland.
98. The two sides are broadly aligned on civil nuclear energy. The Decision calls for cooperation on peaceful uses of nuclear energy, including the trade of nuclear materials, equipment and technology, the exchange of information, and the supply of medical radioisotopes. Such cooperation should be underpinned by a commitment to nuclear safety. The Government’s WMS states that the Government will seek rapid progress towards a Civil Nuclear Agreement, and also recognises the benefits of cooperation; this is developed further in the Command Paper.
99. The Decision omits any reference to the UK’s potential association with the Euratom research and training programmes, even though this was mentioned in the Political Declaration.⁵⁴ The Command Paper states, on the other hand, that any Nuclear Cooperation Agreement should provide “a long-term legal basis for future cooperation in civil nuclear research and development in both fission and fusion”.⁵⁵

Fisheries

100. While the PD held out the hope of a “new fisheries agreement”, it has long been clear that continuing access for EU-registered vessels to UK fisheries

53 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 22, para 9: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

54 *Political Declaration* (October 2019) para 67

55 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 24, para 25: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

was likely to be a sticking point. The Decision sets out the EU’s objectives in detail. It states that the future partnership should “uphold Union fishing activities”, and also “uphold”⁵⁶ existing reciprocal access and quota shares. Quota shares should be “stable”, implying they should be agreed for more than one year at a time. The Decision adds that quota shares should “only be adjusted with the consent of both Parties”. It also states that the terms on access to waters and quota shares will “guide the conditions set out in regard of the other aspects of the envisaged partnership”.

101. The Government’s WMS, on the other hand, states that “the UK will become an independent coastal state at the end of 2020 and any agreement must reflect this reality”. The Command Paper provides more detail, stating both that there should be “annual negotiations on access to the parties’ exclusive economic zones and fishing opportunities (total allowable catch and shares)”, and that in negotiating fishing opportunities annually the UK “will no longer accept the ‘relative stability’ mechanism”, and will instead base them on “the principle of zonal attachment, which better reflects where the fish live, and is the basis for the EU’s fisheries agreement with Norway”.
102. In our 2016 report *Brexit: fisheries* we noted the view of the fishing industry that “the current relative stability mechanism was unfair and disadvantaged the UK”, but highlighted “the historic reluctance of Member States to renegotiate the relative stability key”. We also warned that while the Government “could use access to fishing within the UK [exclusive economic zone] as a lever for achieving a better allocation of quotas”, it should also “bear in mind the need for co-operation in ensuring the long-term sustainability of stocks”.⁵⁷
103. The Decision reiterates the objective contained in the PD, that fisheries provisions should be agreed by 1 July 2020, so that quotas can be set for 2021. Given the stark difference between the two sides’ negotiating positions, this looks to be an ambitious target.

Small and medium-sized enterprises

104. In an addition to the Political Direction, the Decision proposes a “specific chapter” on SMEs, focused on providing information to SMEs about how to do business across borders. Supporting SMEs does not feature in the Government’s proposals.

Global cooperation

105. The PD called for the UK and EU to cooperate in a range of international fora, such as the G7 and G20, where they have a mutual interest, such as with regard to climate change or cross-border public health. The Decision proposes that the future partnership should include provisions “recognising the importance” of such cooperation, though without mandating it. The Government’s WMS acknowledges that “cooperation on foreign affairs and related issues is of course likely to be substantial”, but adds that it “does not in itself require a joint institutional framework”.⁵⁸

56 The text of the Decision that emerged from the General Affairs Council on 25 February uses the term “uphold” repeatedly, thus strengthening the wording of the Commission’s draft text.

57 European Union Committee, *Brexit: fisheries* (8th Report, Session 2017–19, HL Paper 78), paras 107, 137

58 In our 2019 report *Beyond Brexit: how to win friends and influence people* we welcomed the prospect of “continued UK-EU cooperation in international fora, including the G7, the G20, NATO and the United Nations”, across a range of issues. See European Union Committee, *Beyond Brexit: how to win friends and influence people* (35th Report, Session 2017–19, HL Paper 322), para 72.

Level playing field and sustainability

106. The EU's demand for a 'level playing field' has emerged as a fundamental point of difference. The two sides appeared to reach agreement in the Political Declaration, which stated: "Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field."⁵⁹ At the same time, the "precise nature" of these commitments was left open—it would be "commensurate with the scope and depth of the future relationship". Instead, the UK and EU agreed to "uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters". In so doing, they were to "rely on appropriate and relevant Union and international standards".
107. There was no reference in the PD to continuing UK alignment to EU rules. Nor, while the issue of alignment was raised in discrete areas (which are discussed below) was there any such reference in paragraph 89 of the Commission's draft Decision, which closely followed the PD in outlining the general principles of the level playing field. Only in the amended text, agreed by the General Affairs Council on 25 February, are two references to "Union standards as a reference point" inserted. In other words, the EU's position on the level playing field has hardened in the weeks since the draft Decision was published on 3 February.
108. Of the various elements that make up the level playing field, State aid is a particular concern to the EU. Paragraph 91 of the Decision states that, as part of the future partnership, EU State aid rules should continue to apply "to and in" the UK. This implies that not only existing EU State aid legislation, but also new or amended EU State aid laws, would extend to the UK. The Decision also proposes the establishment of an "independent and adequately resourced" domestic State aid authority in the UK, which in enforcing State aid rules would "work in close cooperation with the Commission".
109. We note in this context that one consequence of the Protocol on Ireland/Northern Ireland is that EU State aid rules will continue to apply in Northern Ireland for as long as the Protocol remains in place.⁶⁰
110. The Decision also states that, as part of the future partnership, the Parties should commit to prohibiting anticompetitive agreements, abuses of dominant position and concentration of undertakings that could distort competition, where these might affect trade between the UK and EU. It proposes mechanisms to avoid competition distortions or barriers to trade and investment arising from State-owned enterprises, monopolies and enterprises granted special rights or privileges.
111. The Decision is less prescriptive when it comes to taxation. Here it proposes that the future partnership should require both the EU and UK to commit to implementing good governance of taxation, including through OECD international standards. It proposes a non-regression clause, requiring the UK to maintain at least the common standards set at the end of the transition

59 [Political Declaration](#) (19 October 2019), para 77

60 Under Article 12(4) of the Protocol on Ireland/Northern Ireland the Commission and CJEU will retain their responsibility for overseeing the operation of EU State aid rules in Northern Ireland.

period, including on tax avoidance and country-by-country reporting. There is no reference to formal alignment with EU rules.

112. Similarly, on labour and social protection, the decision proposes non-regression from the level of protection provided “within the Union and the United Kingdom” at the end of the transition period. We note, in passing, that the bulk of EU social and employment legislation takes the form of minimum standards, which the UK has in most cases exceeded in its implementing measures. The Decision proposes that this non-regression should cover areas including fundamental rights at work, occupational health and safety, fair working conditions and employment standards, and information and consultation rights. It proposes that the UK should ensure the effective enforcement of its commitments in this area through “adequately resourced domestic authorities”, a system of labour inspections, and “effective administrative and judicial proceedings”.
113. Non-regression in environmental standards is also tied to the standards applying at the end of the transition period. The Decision adds detail to the outline agreement contained in the PD, including the new proposal that the future partnership should “ensure the Parties respect the precautionary principle and the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”. Again, there is a proposal that as part of the partnership the UK should put in place a system for monitoring, reporting, oversight and enforcement, though an “independent and adequately resourced body or bodies”.
114. On climate change, the Decision states that the UK should maintain a system of carbon pricing of “at least the same effectiveness and scope” as the EU system, and that the UK and EU should consider linking emissions trading systems (ETs). Finally, it calls for the future partnership to promote the implementation of UN measures on sustainable development, including through cooperation in international fora.
115. The Government’s WMS strikes a different note. It states that in several areas “future cooperation ... does not need to be managed through an international Treaty, still less through shared institutions”. It therefore proposes “separate and independent policies” in areas such as competition and subsidy policy, the environment, social policy”. It also makes a similar point in the free trade agreement section, under the heading “Competition Policy, Subsidies, Environment and Climate, Labour, Tax”:

“The Government will not agree to measures in these areas which go beyond those typically included in a comprehensive free trade agreement. The Government believes therefore that both Parties should recognise their respective commitments to maintaining high standards in these areas; confirm that they will uphold their international obligations; and agree to avoid using measures in these areas to distort trade.”
116. The Command Paper, on the other hand, suggests that there may be some room for manoeuvre in elements of the ‘level playing field’:
 - It says that “the Agreement should commit the parties to maintain effective competition laws”;

- It says that the Agreement “could include commitments to the principles of good tax governance as reflected in international standards”, while insisting that it “should not constrain tax sovereignty in any manner”;
- It calls for “reciprocal commitments not to weaken or reduce the level of protection afforded by labour laws or standards”;
- It also calls for “reciprocal commitments not to weaken or reduce the level of protection afforded by environmental laws”; and
- It reaffirms the UK’s commitment to carbon pricing, saying that the UK would be “open to considering a link between any future UK Emissions Trading Scheme ... and the EU ETS”.

In all these areas, the Command Paper states that the relevant provisions “should not be subject to the Agreement’s dispute resolution mechanism”.

117. State aid remains the most obvious area of disagreement. The Command Paper restates that “the UK will have its own regime of subsidy control”, and offers only “reciprocal commitments to transparency about the award of subsidies”, along with a “right to request consultations on any subsidy that might be considered to harm the interests of the parties”.
118. In this context, we also note the views of the External Affairs and Additional Legislation Committee of the National Assembly for Wales, whose, Chair, David Rees AM, wrote to us on 3 March. He noted the Government’s commitment “to not weakening or reducing existing standards”, while ruling out continuing alignment to EU rules. He reiterated his Committee’s conclusion, in an earlier report, that “we are not persuaded of the value of regulatory divergence after Brexit and note that the evidence overwhelmingly prioritises the maintenance of equivalent regulatory standards to ensure preferential market access over regulatory divergence after Brexit”.
119. **Although the UK and the EU agreed in the Political Declaration to “robust commitments to ensure a level playing field”, the precise nature of those commitments was not defined. The Council Decision adds considerably more detail, and while it calls for non-regression in several areas, it demands continuing alignment with EU rules only in respect of State aid.**
120. **The Government’s acceptance that the two sides should make “reciprocal commitments” to maintaining high standards in competition policy, the environment, labour standards and taxation, leaves open the possibility that the two sides could reach agreement in these areas. But the UK and EU positions on State aid are essentially incompatible, and have recently hardened.**

Internal Security

121. The EU’s Decision, using the same words as the Political Declaration, calls for a “broad, comprehensive and balanced security partnership” (paragraph 110).
122. The Decision then states that this partnership, entailing close law enforcement and judicial cooperation, should be “underpinned by commitments to respect fundamental rights including adequate protection of personal data”. These commitments are explicitly linked to continuing UK adherence to

the European Convention on Human Rights (ECHR): the EU envisages binding provisions, which would lead to “automatic termination of the law enforcement cooperation and judicial cooperation in criminal matters if the United Kingdom were to denounce the European Convention of Human Rights” (paragraph 113). This is a hardening of paragraph 7 of the PD, which stated: “The future relationship should incorporate the United Kingdom’s continued commitment to respect the framework of the European Convention on Human Rights.”

123. The Decision then goes significantly further than the PD in addressing the UK’s implementation in domestic law of its human rights commitments, saying that the security partnership “should also provide for automatic suspension if the United Kingdom were to abrogate domestic law giving effect to the ECHR, thus making it impossible for individuals to invoke the rights under the ECHR before the United Kingdom’s courts”.
124. On data protection, the Decision states that the Commission “will work toward an adequacy decision”. If that adequacy decision were subsequently to be “repealed or suspended by the Commission or declared invalid by the ... CJEU”, law enforcement and judicial cooperation would similarly be suspended. As we noted in 2017, even if a data adequacy decision were to be granted at the outset, “there remains the prospect that over time, the EU will amend or update its rules”; we warned that this could in effect “require the UK to continue to align domestic data protection rules with EU rules”. We also highlighted the CJEU’s record of active involvement in the interpretation of EU data protection rules.⁶¹ The CJEU is in fact currently considering a reference from the Investigatory Powers Tribunal regarding the compatibility of provisions of the Data Retention and Investigatory Powers Act 2014 with EU law.⁶²
125. The Decision then follows the same structure as the PD, setting out the EU’s approach in the areas of data exchange, operational cooperation and anti-money laundering. On data exchange, it envisages arrangements for reciprocal exchange of and access to Passenger Name Records (PNR data), and to DNA, fingerprint and vehicle registration data (the Prüm system). It also proposes arrangements for simplified exchanges of information and intelligence between law enforcement agencies, including UK cooperation with “Europol and Eurojust in line with arrangements for the cooperation with third countries set out in relevant Union legislation”.
126. Like the PD, the Decision envisages “effective arrangements based on streamlined procedures subject to judicial control” to enable the extradition of suspects between the UK and the EU. There is no reference in either document to the European Arrest Warrant (EAW), which will no longer apply to the UK after the end of the transition period.
127. The Government’s WMS envisages a “pragmatic agreement to provide a framework for law enforcement and judicial cooperation in criminal matters”. It makes no reference to the ECHR or to fundamental rights, but insists that any agreement between the EU and the UK “should not constrain the

61 European Union Committee, *Brexit: the EU data protection package* (3rd Report, Session 2017–19, HL Paper 7), paras 163, 165

62 See for instance Jennifer Baker, CPO Magazine, *Top EU Judge Says Mass Snooping Is Illegal* (19 February 2020): <https://www.cpomagazine.com/data-protection/top-eu-judge-says-mass-snooping-is-illegal/> [accessed 26 February 2020]

autonomy of the UK's legal system in any way". It also lists data protection as one of the areas in which the UK will "develop separate and independent policies".

128. This position is strengthened in the Command Paper, which says that "the UK stands ready to discuss an agreement on law enforcement and judicial cooperation in criminal matters". But it explicitly rules out binding commitments on human rights or data protection:

"Cooperation will be underpinned by the importance attached by the UK and the EU to safeguarding human rights, the rule of law and high standards of data protection. The agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal systems."⁶³

129. The Command Paper envisages a clause "that allows either party to suspend or terminate some or all of the agreement ... where it is in the interests of the UK or the EU to do so". But it is clear that the agreement "should not specify the reasons for invoking any suspension or termination mechanism".
130. On data, the Command Paper envisages both sides reaching adequacy decisions. It does not mention the possibility that an adequacy decision, once granted, might subsequently be revoked or struck down.
131. The Command Paper also calls for any agreement on security to provide for fast and effective exchange of data on criminal records, DNA, fingerprints, vehicle registration data and PNR data, envisaging, for instance, a system with "similar capabilities" to Prüm. It notes that the second-generation Schengen Information System (SIS II) is used by non-EU Schengen members, such as Switzerland, but gives no information on how the Government envisages securing access for the UK as a non-EU, non-Schengen state. The Government also seeks operation cooperation with Europol and Eurojust, which in the case of Europol should "go beyond existing precedents". On extradition, the Government's approach is similar to the EU's, ruling out participation in the EAW, but seeking a UK-EU agreement on "fast-track extradition arrangements", based on the EU's 'Surrender Agreement' with Norway and Iceland. The Command Paper notes that this agreement should have "appropriate further safeguards for individuals" beyond those provided by the EAW.
132. In 2017 this Committee identified the precedent set by Norway and Iceland as "the most promising avenue" for UK-EU extradition arrangements. At the same time we expressed concern that failing to reach an agreement would generate an "unacceptable risk", noting that the EU's agreement with Norway and Iceland took "a long time to negotiate, and applies to two European states ... that participate in the Schengen Area".⁶⁴
133. Finally, we draw attention to the evidence received on 27 February from the Chair of the Justice Committee of the Northern Ireland Assembly, Paul Givan MLA. He highlighted two security issues: the challenges presented by the land border (including the impact on the Police Service of Northern

63 HM Government, *The Future Relationship with the EU: The UK's Approach to Negotiations*, CP 211, 27 February 2020, p 25, para 31: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

64 European Union Committee, *Brexit: judicial oversight of the European Arrest Warrant* (6th Report, Session 2017–19, HL Paper 16), para 71

Ireland, on cooperation between the PSNI and an Garda Síochána, and on organised crime); and access to EU mechanisms, including Europol, Eurojust and the EAW.

Foreign policy, security and defence

134. The PD stated that collaboration on foreign policy would take place “when and where ... interests are shared”, and that the future partnership “should provide for appropriate dialogue, consultation, coordination, exchange of information and cooperation mechanisms”.
135. The Decision accordingly suggests the establishment of dialogues on foreign policy to share information, which should be in place before the end of the transition period. It sees cooperation on foreign policy and security as taking place mostly through mechanisms already available to third countries, with the UK “making full use of the existing framework”. Unlike the PD, there is no reference to a Framework Participation Agreement, which is the standard mechanism for third-country participation in CSDP operations and missions.
136. Both sides recognised in the PD the benefits of “close consultation and cooperation” on sanctions, noting that they could be “mutually reinforcing”. The Decision reaffirms this position, albeit in more neutral terms, calling for “dialogue and mutual exchange of information ... at appropriate stages of the policy cycle of their respective sanction regimes”. We reiterate our recommendation in December 2017 that a UK-EU political forum be established, expressly for the discussion and coordination of sanctions policy.⁶⁵
137. The Decision reflects the PD in offering a defence partnership that would allow the UK to collaborate on a case-by-case basis on specific research and capability projects and certain projects under the European Defence Fund. By invitation, it would also agree to the UK participating in specific Permanent Structured Cooperation (PESCO) projects.⁶⁶
138. The Decision goes further than the PD in envisaging cooperation in the field of space-based imagery (paragraph 134), including possible UK access to the Galileo Public Regulated Service (PRS). It also, however, places conditions on that access, specifically to ensure that the UK’s use of the PRS or participation in the EU’s space programme does not infringe upon EU or individual EU Member State security objectives. We have previously identified full access to the PRS as key for the UK.⁶⁷ Participation in the EU space programme more broadly is subject to negotiation and agreement of general principles and terms.⁶⁸
139. The Decision also offers the UK the option to cooperate with the EU on international development through the Union’s instruments and mechanisms,

65 European Union Select Committee, *Brexit: Sanctions Policy*, (8th Report, Session 2017–19, HL Paper 50), para 151

66 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 131

67 Letter dated 23 April 2018 from Lord Whitty, former Chair of the EU Internal Market Sub-Committee, to Sam Gyimah MP, former Minister of State for Universities, Science, Research and Innovation: https://www.parliament.uk/documents/lords-committees/eu-internal-market-subcommittee/brexit-space/230418_Letter_LordWhitty_SamGyimahMP.pdf [accessed 26 February 2020]

68 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 13

but only “in full respect of the autonomy of the Union in the programming of development priorities”.⁶⁹

140. The Government’s WMS makes clear that the UK is open to foreign policy cooperation and that policy alignment is likely to be substantial. It adds that this “does not in itself require a joint institutional framework”. It contains no references to sanctions, space, defence or international development. The Command Paper adopts the same approach, reaffirming that foreign policy is “for the UK Government to determine, within a framework of broader friendly dialogue and cooperation between the UK and the EU”.⁷⁰

Thematic cooperation

141. The areas of potential thematic cooperation outlined in the PD are reduced in the Decision from five to two. This leaves a “dialogue” on cyber-security, and “cooperation” to tackle irregular migration. Among the points omitted from the Decision are civil protection and health security.

Institutional and other horizontal arrangements

142. As we noted above (paragraphs 34–40), the Decision envisages an “overall institutional framework”, and cites an Article 217 TFEU legal basis, which would support an Association Agreement. Part IV of the Decision, which covers institutional issues, develops this model, closely following the terms of the Political Declaration. In particular, it proposes:

- Regular dialogue at “appropriate levels”, including “a dialogue between the European Parliament and the Parliament of the United Kingdom, where they see fit”.
- The establishment of a “governing body responsible for managing and supervising the implementation and operation of the envisaged partnership”. The body would “meet as often as required”, and would have the power to appoint “specialised sub-committees to assist it”.
- Arrangements for dispute settlement and enforcement, including the possibility of the governing body referring disputes to “an independent arbitration panel”. As under the Withdrawal Agreement, questions of interpretation of EU law would be referred to the CJEU, as sole arbiter of EU law—though the Decision omits the caveat contained in the PD, that “there should be no reference to the CJEU where a dispute does not raise such a question”.⁷¹ Failure to comply with the binding resolution of a dispute could lead to suspension of the agreement.

143. The Government’s WMS, on the other hand, proposes a “suite of agreements”, which “should all have governance and dispute settlement arrangements appropriate to a relationship of sovereign equals”. Several key areas are explicitly excluded, as being subject to the development by the UK of “separate and independent policies”.

69 Recommendation for a Council decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, [COM\(2020\) 35 final](#), para 137

70 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, CP 211, 27 February 2020, p 4, para 8: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu> [accessed 2 March 2020]

71 [Political Declaration](#) (19 October 2019), para 131

Conclusion

144. **A comparison of the draft Council Decision with the Government's Written Ministerial Statement of 3 February, and its the Command Paper of 27 February, demonstrates just how far the two sides have diverged since the agreement reached on 19 October 2019, which was embodied in the Political Declaration. It is to be expected that each side will, at this early stage, seek to advance its own interests in the forthcoming negotiation. But the lack of agreement on even the over-arching structure for future UK-EU relations, quite apart from specific policy issues, leaves us in no doubt as to the challenge ahead.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Introduction

1. We propose the following motion, to be moved by the Chair of the European Union Select Committee, pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020:

To move that this House agrees with the conclusion of the European Union Select Committee, that the Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, published in draft on 3 February 2020, and adopted in amended form by the General Affairs Council on 25 February 2020, raises matters of vital national interest to the United Kingdom. (Paragraph 14)

The Political Declaration and the future relationship negotiations

2. In October 2019 the European Union and United Kingdom negotiators agreed a Political Declaration, setting out the framework for future UK-EU relations. Article 184 of the Withdrawal Agreement then placed a legal obligation upon both the EU and UK to “use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration”. (Paragraph 24)
3. The European Commission, in preparing the draft Council Decision, while seeking to defend the EU’s interests, has broadly followed the structure and content of the Political Declaration. (Paragraph 25)
4. The Written Ministerial Statement published by the Government on 3 February, and the Command Paper published on 27 February, differ substantially from the Political Declaration in structure and content. It would be helpful if the Government, without prejudicing its negotiating position, could publish a comparative analysis of the Political Declaration and the Command Paper, explaining the changes in its approach. (Paragraph 26)
5. The Government has made it clear that it will not seek an extension to the transition period beyond 31 December 2020. That leaves just 10 months for the UK and EU to negotiate and conclude agreements on the future UK-EU relationship. The Government has now indicated, that if the “broad outline” of an agreement is not clear by June, it may “move away from the negotiations” and focus on domestic preparations for the end of the transition period. (Paragraph 27)
6. The marked differences between how the EU and the UK Government envisage the future UK-EU relationship may in part reflect both sides’ adoption of opening negotiating positions. But the timetable for reaching agreement was always challenging, and the Government’s truncating of the timetable, taken alongside this divergence of approach, further reduces the chances of a comprehensive agreement. (Paragraph 28)
7. We note that the European Parliament, on 11 February, following detailed consideration by committees, has adopted a substantial resolution on the Commission’s draft negotiating mandate. We regret that the United Kingdom Parliament has not been given an opportunity to play its proper

role in debating, in Government time, matters of such vital national interest. (Paragraph 29)

Analysis of the Council Decision

8. We note the Commission's provisional citation of an Article 217 TFEU legal basis, which envisages a UK-EU Association Agreement, and also the reference to this possibility in the Political Declaration. We invite the Government to indicate whether an Association Agreement remains, in its view, a feasible or desirable structure for UK-EU relations. (Paragraph 40)
9. We invite the Government to explain how far it envisages that the general principles and shared core values embodied in the Political Declaration should be reflected in any future UK-EU agreement or agreements. (Paragraph 46)
10. The UK and EU agreed in October 2019 that they would seek, through a Free Trade Agreement, to "ensure no tariffs, fees, charges or quantitative restrictions across all sectors with appropriate and modern accompanying rules of origin, and with ambitious customs arrangements". There remains significant common ground between the two sides. (Paragraph 58)
11. At the same time, we note that the EU has added a new 'level playing field' condition to the goods element of the economic partnership. We also note that the Government has yet to bring forward a detailed and workable proposal for the operation of customs controls under any Free Trade Agreement. (Paragraph 59)
12. We invite the Government to respond to the EU's proposal for mutual recognition of Authorised Economic Operators, and in so doing to reflect on the substantial body of evidence supporting the benefits of trusted trader schemes. (Paragraph 60)
13. Reconciling the Government's desire for a durable and reliable equivalence regime for the financial services sector, with the Commission's insistence on the right of both Parties to take unilateral equivalence decisions in their own interests, will be a significant challenge. The readiness of both sides to conclude their assessments of equivalence by the end of June 2020 will be an early test of whether a more durable agreement is possible. (Paragraph 72)
14. Although the UK and the EU agreed in the Political Declaration to "robust commitments to ensure a level playing field", the precise nature of those commitments was not defined. The Council Decision adds considerably more detail, and while it calls for non-regression in several areas, it demands continuing alignment with EU rules only in respect of State aid. (Paragraph 119)
15. The Government's acceptance that the two sides should make "reciprocal commitments" to maintaining high standards in competition policy, the environment, labour standards and taxation, leaves open the possibility that the two sides could reach agreement in these areas. But the UK and EU positions on State aid are essentially incompatible, and have recently hardened. (Paragraph 120)
16. A comparison of the draft Council Decision with the Government's Written Ministerial Statement of 3 February, and its the Command Paper of 27 February, demonstrates just how far the two sides have diverged since the agreement reached on 19 October 2019, which was embodied in the Political

Declaration. It is to be expected that each side will, at this early stage, seek to advance its own interests in the forthcoming negotiation. But the lack of agreement on even the over-arching structure for future UK-EU relations, quite apart from specific policy issues, leaves us in no doubt as to the challenge ahead. (Paragraph 144)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members of the European Union Select Committee

The Earl of Kinnoull (Chair)
Baroness Brown of Cambridge
Lord Cavendish of Furness
Baroness Couttie
Baroness Donaghy
Lord Faulkner of Worcester
Baroness Hamwee
Lord Jay of Ewelme
Lord Kerr of Kinlochard
Lord Lamont of Lerwick
Lord Morris of Aberavon
Baroness Neville-Rolfe
Lord Oates
Baroness Primarolo
Lord Ricketts
Lord Sharkey
Lord Teverson
Baroness Verma
Lord Wood of Anfield

Declarations of interest

The Earl of Kinnoull (Chair)
Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy
Chairman, Culture Perth and Kinross, in receipt of governmental subsidy
Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies
Shareholdings as set out in the register

Baroness Brown of Cambridge
Vice Chair of the Committee on Climate Change
Chair of the Adaptation Sub-Committee of the Committee on Climate Change
Chair of the Henry Royce Institute for Advanced Materials
Chair of STEM Learning Ltd
Non-Executive Director of the Offshore Renewable Energy Catapult
Chair of The Carbon Trust
Council member of Innovate UK

Lord Cavendish of Furness
Director, Burlington Slate Limited
Shareholder, Holker Holdings Limited
Shareholder, Cartmel Steeplechases (Holker) Limited
Shareholder, Holker Estates Co Limited
Shareholder, Holker Homes Limited
Shareholder, Burlington Slate Limited
Roose and Walney Sand and Gravel Company Limited (The) (Dormant)
Holker Estates Co Limited

Holker Holdings Limited

Cartmel Steeplechases (Holker) Limited

Corrie and Co Limited

Guides over the Kent and Levens Sands Limited

*Beneficiary of a Family Trust which owns land in South Cumbria,
including residential and business property*

Owner of a flat in London SW1 from which rental income is received

Owner of woodlands based in South Cumbria

Baroness Couttie

Non-Executive Director, Mitie

Commissioner, Guernsey Financial Services Commission

Baroness Donaghy

Former President of the Trades Union Congress

Former member European Trades Union Congress

Lord Faulkner of Worcester

Chairman, Great Western Railway Advisory Board

Chairman, Alderney Gambling Control Commission

Her Majesty's Government's Trade Envoy to Taiwan

Baroness Hamwee

Liberal Democrat Lords Spokesperson on Immigration

Lord Jay of Ewelme

*Trustee (Non-Executive Director), Thomson Reuters Founders Share
Company*

Vice Chairman, European Policy Forum Advisory Council

Member, Senior European Experts Group

Trustee, Magdalen College, Oxford Development Trust

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power PLC

Member, Scottish Government's advisory Standing Council on Europe

Lord Lamont of Lerwick

Director, Jupiter European Opportunities Trust

*Director, Compagnie Internationale de Participations Bancaires et
Financieres (CIPAF)*

Director, Chelverton UK Dividend Trust

Adviser, Halkin Investments

Adviser, Official Monetary and Financial Institutions Forum (OMFIF)

Adviser, Meinhardt Engineering Group, Singapore

Adviser, Stanhope Capital LLP

Lord Morris of Aberavon

No relevant interests declared

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury

Former Minister of State for Energy and Intellectual Property

Chair, Assured Food Standards Ltd

Chair, UK ASEAN Business Council

Non-Executive Director, Capita Plc

Non-Executive Director, Secure Trust Bank

Governor, London Business School

Shareholdings as set out in the register

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Lord Oates

*Director, Centre for Countering Digital Hate
Chairman, Advisory Board, Weber Shandwick
Director, H&O Communications Ltd*

Baroness Primarolo

*Non-executive director and chair, Thompson's Solicitors
Chair, Remuneration Board, National Assembly for Wales*

Lord Ricketts

*Non-Executive Director, Group Engie, France
Strategic Adviser, Lockheed Martin UK
Charitable activities as set out in the Register of Interests*

Lord Sharkey

No relevant interests declared

Lord Teverson

*Trustee, Regen SW
In receipt of a pension from the European Parliament*

Baroness Verma

No relevant interests declared

Lord Wood of Anfield

*Chair of the United Nations Association (UNA-UK)
Director, Good Law Project*

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>