



House of Commons

European Scrutiny Committee

Seventh Report of Session 2019–21

*Documents considered by the Committee on 7 May 2020,
including the following COVID-19 related documents:*

EU Structural Funds: Coronavirus Response

*Application of EU State aid rules to coronavirus support
schemes*

Contact tracing apps and data protection and privacy

EU support to the fisheries sector

Passenger rights

*Authorisation procedure for export of Personal Protective
Equipment (PPE)*

*UK exposure to EU financial support for governments and
businesses*

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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1 EU Structural Funds: COVID-19 Response¹

These EU documents are politically important because they:

- apply during the transition period; and
- propose investment funds that are available to the UK to respond to the coronavirus outbreak.

Action

- Write to the Minister pressing for further information on potential spend in the UK.

Overview

1.1 The Commission proposed in mid-March to mobilise available cash reserves under the EU Structural and Investment (ESI) Funds² to respond to the Coronavirus outbreak, amounting to around €37 billion (£31.5 billion) in total. This Coronavirus Response Investment Initiative (CRII) applies retrospectively in order to cover expenditure from 1 February 2020. Under the terms of the Withdrawal Agreement, the UK remains eligible for ESI Funds programmed until the end of this year. ESI Funds covered by the CRII should be available for:

- Coronavirus-relevant health expenditure including hospital equipment, inhalers and masks;
- provision of working capital to small business; and
- short-term employment schemes.

1.2 Normally, Member States receive a small proportion of ESI Funds as “pre-financing” to enable initial payments to projects, but any unspent pre-financing is returned to the European Commission. Rather than returning that funding, the Commission proposed that EU Member States and the UK retain their 2019 unspent pre-financing for ESI Funds and to pay the 2020 pre-financing in March and April rather than July. For the UK, this amounts to around €229 million (£195 million) covering 2019 and to around €310 million (£264 million) covering 2020.³

1 (a) Proposal for a Regulation amending Regulation (EU) No 1303/2013, Regulation (EU) No 1301/2013 and Regulation (EU) No 508/2014 as regards specific measures to mobilise investments in the health care systems of the Member States and in other sectors of their economies in response to the COVID-19 outbreak, (b) Proposal for a Regulation amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak; (a) Council document [6816/20](#), COM(20) 113, (b) Council document [7154/20](#), COM(20) 138; Legal base: (a) Articles 43(2), 177 and 178 TFEU (b) Articles 177, 178 and 322(1)(a) TFEU, QMV, Ordinary Legislative Procedure; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC numbers: 41137, 41176.

2 The European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

3 [Letter](#) from the European Commission to the UK, 18 March 2020.

1.3 The Council and European Parliament agreed the Regulation without amendment on 30 March 2020 and it entered into force on 1 April.⁴ This is not an addition to the EU budget. Rather, it allows unspent funds to be re-directed from where they might otherwise have been spent later.

1.4 A further proposal (CRII Plus) was tabled on 2 April — and subsequently agreed by the European Parliament and Council on 23 April⁵ — introducing additional flexibility so that all unspent support from the ESI Funds can be mobilised to the fullest. For the UK, this has been estimated to amount to around €2.4 billion (£2.13 billion), including national co-financing.⁶ This flexibility is provided through: transfer possibilities across the three cohesion policy funds (the European Regional Development Fund, European Social Fund and Cohesion Fund); transfers between the different categories of regions; and also through thematic concentration⁷ flexibility.

1.5 There will also be the possibility for a 100% EU co-financing⁸ rate for cohesion policy programmes for the accounting year 2020–2021, allowing Member States to benefit for full EU financing for crisis-related measures. The CRII Plus package also simplifies procedural steps linked to programme implementation, use of financial instruments and audit.

1.6 Under the CRII Plus, there are additional provisions for rural areas. Farmers and other rural development beneficiaries will be able to benefit from loans or guarantees of up to €200,000 (£177,286) at favourable conditions, such as very low interest rates or favourable payment schedules under the European Agricultural Fund for Rural Development (EAFRD). Usually these financial instruments have to be linked to investments but, under this new measure, they can help farmers with their cash flow to finance costs or compensate temporary losses.

1.7 In addition, rural development funds can be used to invest in medical facilities and small-scale infrastructure in rural areas, such as the adaptation of health centres to treat growing numbers of patients or the set-up of mobile health facilities to carry out tests and provide treatments to farmers and rural inhabitants.

1.8 The CRII Plus Regulation was agreed on 23 April.

1.9 In our Report of 1 April 2020⁹ covering the European Commission's initial response to the Coronavirus outbreak, including the first CRII proposal, we asked the Government to include the following information in its Explanatory Memorandum on that document:

4 [Regulation \(EU\) 2020/460](#) of the European Parliament and of the Council of 30 March 2020 amending Regulations (EU) No 1301/2013, (EU) No 1303/2013 and (EU) No 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative).

5 [Regulation \(EU\) 2020/558](#) of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No 1301/2013 and (EU) No 1303/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak.

6 [Technical Briefing: Coronavirus Response Investment Initiative](#), Gert Jan Koopman (Budget Director-General, European Commission), 13 March 2020.

7 The main thematic priorities are: Research and innovation; Information and communication technologies (ICT); Small and medium-sized enterprises (SMEs); and the Promotion of a low-carbon economy. Regions must concentrate a proportion of their spending on at least two of these priorities, with the proportion required varying according to the wealth of the category of regions being supported.

8 Normally the EU contribution to ESI Funds is “topped-up” by national contributions. This is known as co-financing.

9 HC 275, Second Report of Session 2020–21, [COVID-19 pandemic: the EU's policy response and its implications for the UK](#) (1 April 2020).

- its position on the potential benefits of the proposed changes to the allocation of ESI Funds; and
- to what extent the UK was likely to focus its remaining ESI funding on projects to deal with the repercussions of Coronavirus.

1.10 In his [Explanatory Memorandum](#) — received before we published our Report — the Minister for Climate Change and Corporate Responsibility (Lord Callanan) noted that how UK Managing Authorities would make use of the flexibilities depended on the particular situations of individual programmes given different commitment rates across the UK programmes.

1.11 He added that the UK was also engaging with the European Commission on what additional measures might be taken to support the UK’s response to the outbreak and to ensure current ESI Funds programmes can continue to deliver effectively.

1.12 The Minister noted that the UK would continue to participate in the 2014–20 ESI Funds programmes until they close in 2023.¹⁰ This provides certainty to regions and communities, who will continue to receive the same level of funding as they would have if the UK was a member of the EU until the end of the programme period. He observed that the UK Shared Prosperity Fund would be set up as the domestic successor to ESI Funds programmes after 2020.

1.13 The Minister largely repeated the same comments in his subsequent [Explanatory Memorandum](#) on CRII Plus, offering no new analysis and including no analysis on the additional flexibilities contained in that second proposal.

Action

1.14 We have written to the Minister — as set out below — seeking further information on uptake in the UK.

Letter from the Chair to the Minister for Climate Change and Corporate Responsibility (Lord Callanan)

We have considered your Explanatory Memoranda (EMs) of 27 March and 22 April 2020 on the above documents and note that we set out in our Report of 1 April our areas of interest in respect of these documents.

We note that it is for Managing Authorities to decide whether to make use of the flexibilities offered by the Regulations. It would be helpful if you could set out for us the latest state of play on UK uptake of this flexibility, along with latest estimates of the potential levels of funding available to the UK should UK Managing Authorities wish to avail themselves of the possibilities granted by these Regulations.

We were disappointed that your EM of 22 April on the CRII Plus did not respond to the queries that we put in our Report of 1 April. We therefore reiterate our request for the following information:

¹⁰ Money allocated only at the end of the Programmes — in 2020 — must be spent within three years (i.e. by 2023).

- the UK's position on the potential benefits (for the UK) of the proposed changes to the allocation and availability of the ESI Funds; and
- to what extent the UK is likely to devote its outstanding ESI Funds to projects dealing with the repercussions of the .

Your EM of 22 April made no specific comment on the potential for the UK of the flexibilities contained within the CRII Plus Regulation, including the proposed changes to the European Agricultural Fund for Rural Development (EAFRD). In your response to the queries set out above, we ask that you include comment on the changes to the EAFRD as well as the other proposed amendments.

We ask that you respond within ten working days.

2 COVID-19: Application of EU State aid rules to coronavirus support schemes¹¹

These EU documents are politically important because:

- they relax the usual restrictions EU State aid law imposes on taxpayer-funded support for companies in the context of the coronavirus crisis. The UK has agreed to remain subject to those laws until the end of the post-Brexit transition period.

Action

- Write to the Minister for Small Businesses (Paul Scully MP) to request further information on the effect EU State aid rules have had on the Government's COVID-related support to British businesses.
- Drawn to the attention of the Business, Energy & Industrial Strategy Committee, the Treasury Committee and the Northern Ireland Affairs Committee.

Overview

2.1 The 2020 coronavirus pandemic, and the measures imposed by governments across the globe to contain its spread, have had a devastating knock-on economic impact in the UK and elsewhere. The European Union has implemented a number of policies in a bid to support its Member States in addressing this crisis.¹² A key element of the EU's policy response has been a '[Temporary Framework](#)' granting an unprecedented level of flexibility in the way that the European Commission assesses compliance of taxpayer-funded interventions to support businesses — such as grants, loan guarantees and tax breaks — with European 'State aid' laws.

2.2 As we set out in our special COVID-19 Report of 26 March 2020, this Temporary Framework — and the EU's policy response to the coronavirus more generally — remain of direct interest to the UK, even though it ceased to be an EU Member State on 31 January 2020:

- first, under the [Withdrawal Agreement](#) with the EU,¹³ the UK has agreed to remain subject to European law as if still a Member State during a post-Brexit transition period. That transitional arrangement is due to last until 31 December 2020.¹⁴ With respect to the EU's State aid rules, this means the Government has had to seek approval from the European Commission for its [COVID-related](#)

11 EU Documents: "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak" and the "Amendment to the Temporary Framework"; Commission numbers: C(2020)1863 and C(2020) 2215; Legal base: Article 107 TFEU; Department: Business, Energy & Industrial Strategy; Devolved Administrations: consulted; ESC number: 41148.

12 See for more information our Report of 26 March 2020 on the EU's general policy response to the coronavirus.

13 As given effect domestically by [sections 1A and 1B](#) of the European Union (Withdrawal) Act 2018.

14 Article 132 of the Withdrawal Agreement provides for the possibility of an extension of the transition period until no later than 31 December 2022. Parliament has legislated to prevent the Government from agreeing to such an extension under section 15A of the European Union (Withdrawal) Act 2018.

[business support schemes](#) during this time, including the Coronavirus Business Interruption Loan Scheme and various business rate reliefs for the hardest-hit sectors;

- secondly, the UK has agreed that EU State aid rules will continue to apply to British government support schemes “which affect [...] trade between Northern Ireland and the [EU]” even *beyond* the end of the transition under the terms of the Ireland/Northern Ireland Protocol in the Withdrawal Agreement. The precise constraints this provision could place on UK Government action are still the subject of debate. Negotiations are also on-going about the role, if any, to be played by common State aid rules in a new UK new free trade agreement with the EU following its withdrawal.

2.3 The Government has confirmed it was consulted on the substance of the Temporary Framework before the Commission formally adopted it. A [second amendment](#) to the Framework, relaxing EU State aid rules further, was sent to Member States and the UK on 9 April, but has not yet been published. Based on information published by the European Commission, and taking into account an [Explanatory Memorandum](#) on State aid submitted by the Minister for Small Business (Paul Scully MP) on 23 April, we have seen no evidence that the Government has been constrained by EU rules in establishing the coronavirus-related support schemes it deemed necessary to date for businesses, workers and the self-employed.¹⁵ However, given the clear continued UK interest in this area of EU policy, we have assessed the European Commission’s approach to flexibility in applying EU State aid rules in the context of the coronavirus pandemic in more detail below.

The EU’s “Temporary Framework” for State aid

EU State aid rules

2.4 European State aid law is a subset of EU competition legislation.¹⁶ These rules are a matter of primary EU law, set out at high-level in the Treaty on the Functioning of the European Union (TFEU) itself, and supplemented by numerous pieces of implementing legislation and guidance.¹⁷

2.5 In summary, Article 107 TFEU ordinarily prohibits governmental authorities in the EU — be they national, regional or local — from providing an implicit or explicit subsidy¹⁸ to individual businesses or sectors where this “distorts or threatens to distort competition” and “affects trade between Member States” (subject to certain exceptions, as described further below).¹⁹ To fall within the scope of the rules, the government support

15 See the section of this chapter on the Government’s position on the Temporary Framework for more information.

16 Aside from State aid, EU competition law also covers the activities of private companies that affect competition, such as mergers, cartels and monopolies.

17 The rules are set out both in ‘hard’ law — notably Articles 107 and 108 of the Treaty on the Functioning of the EU, and supplementing Regulations approved by the Member States, and in policy papers — ‘Communications’ — drawn up by the European Commission to clarify how it normally interprets these rules in practice to determine types of government support which are, and are not, compatible with EU State aid law.

18 An explicit subsidy would be cash grant to a company. An implicit subsidy might be a loan on terms more favourable than available commercially.

19 Norway, Iceland and Liechtenstein, as non-EU Members of the European Economic Area, have [agreed](#) to apply State aid rules equivalent to the competition rules in the EU under the EEA Agreement. For those three countries, the competition rules in the EEA Agreement are enforced by the EFTA Surveillance Authority (ESA).

measure has to entail a *selective* advantage not available to all businesses equally. The EU rules do not restrict policies open to all businesses, such as a reduction in corporation tax or changes in employment legislation.

2.6 Monitoring the application of these rules is one of the core functions of the European Commission. With certain exceptions,²⁰ Article 108 TFEU requires all government schemes within the EU and the UK that qualify as State aid to be notified to, and approved by, the Commission. The latter has [extensive autonomous powers](#)²¹ to block, or demand adjustments to, support measures it considers in breach of State aid law.²² For aid already granted to businesses, subsequently ruled by the Commission to be unlawful, Member States can be ordered to recover the aid from the recipients with interest added.²³ Ultimately, EU countries and the UK, as well as individual businesses, can challenge the Commission’s State aid decisions before the EU Court of Justice (CJEU) to test their validity. Equally, the Commission can take Member States — and for the time being the UK Government²⁴ — to the Court if they fail to enforce its decisions in this area.²⁵

Exemptions from EU State aid rules

2.7 As noted, EU law contains a number of exceptions to the general prohibition on State aid.²⁶ As set out in detail in legislation like the General Block Exemption Regulation and the “De Minimis” Regulation, Member States can provide certain types of government support in the wider public interest — for example in [economically-underdeveloped regions](#) or for the benefit of small businesses — without having to seek European Commission approval.²⁷ In addition, there are certain safeguards to allow more intensive government support for businesses in times of emergency. These have become particularly relevant in recent months because of concerns that EU State aid rules as normally applied could hinder the rapid implementation of support schemes for businesses affected by the coronavirus crisis.

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- 20 Under the [Block General Exemption Regulation](#), certain types of State aid do not have to be notified to the Commission (and, by extension, do not need to be approved by it). This includes government support for things like rural broadband, cultural subsidies. Similarly, under the [De Minimis Regulation](#), support for businesses below a threshold of €200,000 over a three-year period is exempt from notification and approval.
- 21 The Commission is autonomous in this respect because its State aid decisions, unlike most other types of legally-binding acts which it can adopt, do not need to be approved (or can be blocked) by the Member States before they take effect.
- 22 Notifiable public support measures must normally be submitted to the EU *before* being implemented, although the Commission can decide to waive that requirement. Any State aid schemes drawn to the Commission’s attention by parties other than the responsible Member State, or notified only after they have already been implemented, is considered “non-notified aid”.
- 23 Where a Member State had not formally notified the State aid measure to the Commission, the latter can still decide whether it is lawful or not under EU rules (for example because it has been drawn to its attention by a third party, such as a business).
- 24 Under [Article 87 of the Withdrawal Agreement](#), the European Commission can initiate infringement procedures against the UK, for breaches of EU law committed before the end of the transition period, until four years after the transition ends.
- 25 There are currently two [pending State aid infringement procedures](#) before the Court of Justice, both against Greece (cases C-11/20 and C-51/20).
- 26 EU law permits State aid for a number of specific purposes, for example, government aid to “promote culture”, or subsidies for services of “[general economic interest](#)” (like commercially non-viable airports serving remote regions). For aid within the scope of the General Block Exemption Regulation, the EU has waived the requirement for Member States to seek Commission approval for exempted schemes altogether. Similarly, government support to individual businesses amounting to €200,000 or less over any three-year period — known as the “[de minimis](#)” threshold — is also exempt from having to be notified to the Commission.
- 27 In the UK, this so-called “Regional Aid” is [available](#) principally in Cornwall, West Wales, Tees Valley, the sparsely-populated areas of western Scotland, and all of Northern Ireland.

EU State aid rules during the coronavirus crisis

2.8 On 13 March 2020, the European Commission published a [policy paper](#) setting out its “coordinated economic response to the COVID-19 outbreak”. In a section on State aid, this recognised the importance of financial assistance from national Governments in the EU (and the UK) to “support citizens and companies, in particular SMEs, facing economic difficulties” due to the pandemic. It notes that countries subject to EU law can provide support to businesses without having to seek Commission approval, including by making available funds to all companies equally (such as the UK’s Coronavirus Job Retention Scheme to pay for 80 per cent of furloughed employees’ income) or measures that fall within the General Block Exemption Regulation.

2.9 Moreover, the Commission paper goes on to refer to three specific provisions in the EU Treaty relating to State aid during exceptional circumstances, which allow for further waivers or flexible interpretation of the EU’s usual restrictions on publicly-funded support for businesses:

- **Article 107(2)(b) TFEU:** This Article allows the Commission to permit State aid “to make good the damage caused by natural disasters or exceptional occurrences”;
- **Article 107(3)(b):** This provision allows the Commission to waive State aid restrictions for support to “remedy a serious disturbance in the economy of a Member State”; and
- **Article 107(3)(c):** This Article gives the Commission leeway to allow government support to “facilitate the development of certain economic activities or of certain economic areas”, provided such aid “does not adversely affect trading conditions to an extent contrary to the common [EU] interest”.

2.10 With respect to the *substance* of what types of exceptional State aid these three Treaty Articles allow, it seems useful to provide more context. At first glance, the safeguards have similar functions and may even overlap in how they allow derogations from the EU’s usual rules. The question of their legal interpretation, and their limits, has become acutely important in the context of the coronavirus pandemic, to give Member States — and businesses — legal certainty about the compatibility of government support they grant and receive respectively with EU rules (since any unlawful State aid can be subject to recovery orders from the Commission, which are ultimately under the jurisdiction of the EU Court of Justice).

2.11 In practice, **Article 107(2)(b) TFEU** allows countries to use public funds to compensate companies that have suffered losses as a direct consequence of the COVID-19 outbreak itself (but not the lockdown restrictions imposed by Governments), after the Commission formally declared the pandemic to be an “exceptional occurrence”.²⁸ This provision has been used, for example, by Denmark and France to compensate [organisers of large-scale events](#) and [airlines](#).

28 The Commission first concluded that the COVID-19 outbreak qualifies as an “exceptional occurrence” for the purpose of Article 107(2)(b) TFEU in its Decision of 12 March 2020 on a Danish State aid scheme compensating organisers of large-scale events for the mass cancellations triggered by the pandemic.

2.12 By contrast, **Article 107(3)(c) TFEU**, on the “development of certain economic activities or of certain economic areas”, can be used under certain conditions²⁹ by countries to prevent specific companies or sectors from collapsing (where there is a specific public interest in doing so).³⁰ For example, it is part of the legal basis for the EU’s “[Regional Aid](#)” programme, where businesses in poorer areas of Member States can receive more government support.³¹ On 3 April 2020, the Commission [announced](#)³² that it would expand the permitted use of this Article to allow for direct aid to companies active in the fields of researching, testing and manufacturing COVID-19 related medical and protective goods. This possibility has been used by [Luxembourg](#) and the [Czech Republic](#).

Article 107(3)(b) TFEU: serious economic disturbances

2.13 The exemptions from the usual EU State aid permitted under **Article 107(3)(b) TFEU** are potentially the most far-reaching, because its scope — referring to a “serious disturbance in the economy” — is wide, unlike Article 107(2)(b) which is linked to a specific “disaster” or “occurrence”, and the exemptions it permits are not explicitly limited to measures which do not affect “trading conditions”, unlike Article 107(3)(c). Consequently, there is a high threshold with respect to the impact of any ‘economic disturbance’ before Member States can use this Article to justify exceptional State aid measures.³³ Before 2020, Article 107(3)(b) had been used only once previously, following the financial crisis of 2008.³⁴

2.14 The coronavirus has now triggered a second activation: on 13 March 2020, the European Commission stated that it considered the “serious disturbance” threshold to have been met for Italy (which by that point had seen over 1,000 COVID-related deaths). That day it also said it was “preparing a special legal framework” on how it would apply this temporary exceptional flexibility in EU State aid rules in practice for those countries that needed it.³⁵

2.15 By 17 March, the Commission said the COVID-19 outbreak “pose[d] the risk of a serious downturn affecting the whole economy of the EU” and “even healthy undertakings [...] can struggle in these exceptional circumstances”,³⁶ requiring “well-targeted public support is needed to [...] counter the damage inflicted on healthy undertakings and to

29 In particular, rescue or restructuring aid granted to businesses under Article 107(3)(c) is subject to the “[one time, last time](#)” principle, under which this type of government support can only be offered once every 10 years.

30 Subject to European Commission approval, Article 107(3)(c) normally allows for “urgent and temporary [government] assistance in the form of loan guarantees or loans” to companies facing bankruptcy or liquidity challenges under the EU’s [Rescue & Restructuring Aid Guidelines](#). Typically, support for smaller companies can be more generous. Justifications of “common interest” could include for example high levels of unemployment in the area where the company employs its workers, or the company provides a service of general economic interest.

31 Regional aid under Article 107(3)(c) TFEU is less generous than under Article 107(3)(a) TFEU, as the latter is specifically for areas where GDP is below 75 per cent of the EU average.

32 European Commission, “[Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#)” (3 April 2020).

33 In its [judgement of 15 December 1999](#) in Joined Cases T-132/96 and T-143/96, the EU’s Court of First Instance stated that to qualify as a “serious disturbance”, an event “must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory”.

34 European Commission, “[Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis](#)” (April 2009).

35 In its paper of 13 March, the Commission said: “The Commission’s assessment for the use of Article 107(3)b for other Member States will take a similar approach of the impact of the COVID-19 outbreak on their respective economies. This is a live and developing situation. The Commission is constantly monitoring the situation across the EU, in close contact with Member States.”

36 European Commission document [C\(2020\) 1863](#), para. 8.

preserve the continuity of economic activity during and after the COVID-19 outbreak”.³⁷ It therefore declared that all EU Member States (and by extension the UK) would be allowed to call on Article 107(3)(b). That same day, the Commission [announced](#) that it had sent the Member States a “draft proposal for a State aid Temporary Framework” indicating what type of government support it would consider permissible under Article 107(3)(b), which was formally published on 19 March.³⁸ EU State aid rules were subsequently relaxed on 3 April, when the Commission [published an amendment](#) to the Temporary Framework widening the scope of the exemptions already contained in the original two weeks earlier and specifically allowed taxpayer support for businesses involved in the manufacture of medical equipment. A second amendment to the Framework, concerning the ability of Governments to directly recapitalise individual businesses, was [announced](#) by the Commission on 9 April but is still being finalised in consultation with the EU’s national governments.

2.16 The exceptional government support schemes for businesses permitted under the Framework, which must still be notified individually to the European Commission for approval, are described further below.

The Temporary Framework for State aid

2.17 The purpose of the Temporary Framework is to set out the conditions under which Member States and the UK³⁹ can expect rapid Commission approval for various types of exceptional State aid schemes notified under Article 107(3)(b), allowing them to be implemented at speed. It is worth reiterating that EU State aid rules, and therefore the Framework, only apply to government support schemes that are selective (i.e. available, in law or in practice, only to certain companies or sectors) and subject to the approval requirement. It therefore does not apply measures available to *all* businesses equally, like the UK’s [Coronavirus Job Retention](#) and [Self-Employment Income Support](#) schemes, or to State aid schemes which are exempt from having to be notified to the Commission (such as support below the “[de minimis](#)” threshold of €200,000 (£x) or less to an individual business over a three-year period).

2.18 The Commission’s Temporary Framework as it stands sets out conditions for seven types of exceptional publicly funded support under Article 107(3)(b) to ensure their compatibility with EU State aid rules.⁴⁰ The first five of these were originally announced on 19 March, whereas the last two were added by the amendment of 3 April. In summary, the different types of State aid the Commission has said it will allow (and the section of the Framework in which they are described) are:

37 The Commission has also noted that a coordinated EU-wide approach to the types of support Governments offer to their businesses “avoids harmful subsidy races, where Member States with deeper pockets can outspend neighbours”.

38 [The Government has confirmed that it was consulted on the substance of the Temporary Framework before it was finalised, given that the UK is affected by it as if still an EU Member State during the post-Brexit transition period.]

39 For Norway, Iceland and Liechtenstein, as per the EEA Agreement the EFTA Surveillance Authority will apply the compatibility conditions set out in the Temporary Framework to State aid granted in those countries.

40 The Framework also contains three types of permitted State aid under Article 107(3)(c) TFEU with respect to grants to companies whose activities are in the public interest. These are described in paragraph 13.

- **Section 3.1: Direct grants, selective tax advantages and repayable advances**, allowing Member States to provide individual companies facing “a sudden shortage or even unavailability of liquidity” with direct financial support, provided it amounts to €800,000 (£700,000) or less;⁴¹
- **Section 3.2: Public guarantees for bank loans to businesses**, in effect using public funds to partially or wholly indemnify banks against the risk of commercial loans — taken out by companies to stay afloat — not being repaid. Under the amended Temporary Framework, the guarantee can usually⁴² cover the full value of the loan if it is less than €800,000, or 90 per cent if it is bigger.⁴³ It also requires banks to pay a “premium” (fee) to the Government for each loan against which the guarantee is used.⁴⁴ The UK’s Coronavirus Business Interruption Loan Schemes (CBILS), as described below, fall into this category;⁴⁵
- **Section 3.3: Subsidies for loans to businesses**, in the form of the Government paying the interest on commercial loans for a limited time (meaning the borrower only has to pay off the principal);
- **Section 3.4: A safeguard for banks that channel State aid to the real economy**, allowing EU countries to use private sector banks to channel the benefits of loan guarantees or interest subsidies as described above to companies, without breaching EU rules on government support for the banking sector;
- **Section 3.5: Short-term export credit insurance**, setting the conditions under which national Governments can provide business with a subsidy in the form of publicly-funded export credit insurance (which compensates an exporter against the risk of non-payment by an overseas buyer) during this crisis, because such insurance is no longer available commercially;⁴⁶
- **Section 3.9:⁴⁷ Deferrals of tax or national insurance contributions**, allowing tax authorities to grant “targeted deferrals” of tax payments to companies and the self-employed in sectors or regions “hit the hardest by the outbreak”;⁴⁸
- **Section 3.10: Selective wage subsidies for employees to avoid redundancies**, so that Governments can provide income support for the self-employed and

41 Lower caps apply for support to businesses in the fisheries and agriculture sectors.

42 [According to the Commission](#), “Member States can also give, up to the nominal value of €800,000 per company, zero-interest loans or guarantees on loans covering 100% of the risk, except in the primary agriculture sector and in the fishery and aquaculture sector, where the limits of €100,000 and €120,000 per company respectively, apply.”

43 The European Commission [has said](#): “Under the amended Temporary Framework, guarantees can cover 100% of the risk of loans with a nominal amount of up to €800,000. Loans can be granted directly to the companies or via credit institutions and other financial institutions acting as financial intermediaries.”

44 The guarantee premium is calculated using basis points, by reference to the size of the loan and the size of the beneficiary (e.g. whether it is a small or large business).

45 Any government support for banks themselves is beyond the scope of the Temporary Framework, as a specific EU legal framework applies under the Bank Recovery & Resolution Directive (BRRD).

46 On 27 March 2020, the European Commission amended its [Short-Term Credit Export Insurance Communication](#), which sets out how Member States’ export support of this nature is usually assessed for compatibility with EU State aid rules, to allow governments to provide such insurance for exporters for a larger number of countries.

47 For sections 3.6, 3.7 and 3.8 of the Temporary Framework, see above on support under Article 107(2)(b) TFEU.

48 As examples of types of support allowed under this category, the Commission refers to “deferral of payments due in instalments, easier access to tax debt payment plans and of the granting of interest free periods, suspension of tax debt recovery, and expedited tax refunds”. As noted, tax deferrals available to all companies equally are not within the scope of EU State aid law.

for employees of companies, who would otherwise face redundancy, in specific sectors or regions.⁴⁹ Arrangements like the UK’s Coronavirus Job Retention Scheme, which is available to *all* companies, are not a State aid measure and therefore not caught by the Temporary Framework.

2.19 The Framework also sets out some general, ‘horizontal’ rules applicable across all types of support granted under it by EU Member States and the UK:

- Governments can normally give the same company cumulative support from the different categories under the Temporary Framework as described above, with no explicit cumulative upper limit (although specific limits may apply to individual categories of such support, such as the €800,000 cap on direct grants).⁵⁰
- The exception to this ‘cumulation’ of aid is that Governments cannot provide a business with both a bank loan guaranteed by taxpayers *and* a publicly funded interest rate subsidy in respect of the same loan, if the amount borrowed exceeds the thresholds set out in the Framework (which are calculated on a company-specific basis, for example by reference to its annual wage bill or turnover).⁵¹
- As a rule, Member States and the UK cannot use the exceptional support they are providing because of coronavirus to keep businesses afloat which were already at risk of collapse by 31 December 2019, i.e. before the pandemic struck.⁵²
- State aid decisions taken by the Commission, the Member States and — for the time being — the UK⁵³ under the Framework (and therefore EU law) remain ultimately justiciable before the EU Court of Justice, meaning future legal challenges to specific types of COVID-related State aid granted, or not granted, cannot be ruled out.
- The new flexible interpretation of permissible direct or implicit subsidies for businesses under the Framework will only apply until 31 December 2020. However, if considered necessary the European Commission could be extended in light of the economic situation in the coming months.
- Member States have been asked to maintain “detailed records regarding the granting of aid provided” under the Temporary Framework for 10 years to enable the Commission to assess their compatibility with EU rules.⁵⁴

49 The Temporary Framework states that selective wage subsidy schemes will be considered compatible with EU State aid law if it is “granted over a period of not more than twelve months” and subject to the condition that “the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted”. The level of support, on a monthly basis, should in principle be below 80 per cent of the monthly gross salary (including employer’s social security contributions) of the benefitting personnel.

50 Paragraph 20 of the Temporary Framework, as amended.

51 In addition, Member States cannot give a company support described in paragraph 13 separately for the research, testing and manufacturing phases of the production process of medical equipment respectively, if this would result in the company being given duplicate support for the same activities.

52 The Temporary Framework notes that “the aid may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation) on 31 December 2019 [...] but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak”.

53 As noted, under [Article 87 of the Withdrawal Agreement](#), the European Commission can initiate infringement procedures against the UK until four years after the transition ends.

54 Given the speed at which the Commission is approving unprecedented State aid schemes amounting to billions of euros, it cannot be ruled out that there will be future legal challenges to decisions it has taken in recent weeks.

2.20 The Commission’s Framework is not definitive, in the sense that it does not exhaustively list all the types of support EU Member States and the UK can grant to businesses to deal with the fallout of the pandemic. If a country wanted to implement a scheme that *does* fall within the scope of EU State aid rules, but goes beyond the parameters set out in the Framework, the European Commission can still approve it (but the assessment to reach a decision would most likely take longer, and the scheme may be rejected as incompatible with EU law even during the pandemic).⁵⁵ Neither the Framework, nor any approvals made by the Commission pursuant to it, will prevent businesses from lodging legal challenges against selective government support given to their competitors (a situation made more likely where Member States support businesses differently to weather the current crisis, for example in the aviation industry).⁵⁶

2.21 Changes to the text of the Temporary Framework itself are also likely. As noted, on 9 April, the Commission [said](#) that it circulated a second draft amendment to the Framework to the Member States (and presumably the UK) for consultation. This would set rules for direct government recapitalisation of individual businesses by acquiring equity in them as a “last-resort” measure.⁵⁷ Although the Commission said it aimed to publish and start applying this change the “next week” after it was announced, i.e. by 17 April at the latest, [as of 6 May it has not announced the outcome of its consultation process].

2.22 This delay appears to have been caused by the discussions around State aid waivers having become linked to the EU’s negotiations on what fiscal support to offer its Member States to spend on mitigation of, and recovery from, the current crisis (as discussed elsewhere in this Report). More specifically, the relaxation of State aid rules is of less help to countries — like Spain and Italy — whose borrowing costs are higher and who are therefore constrained in how much they can spend, while it gives governments with more fiscal room — like Germany, the Netherlands and Austria — increased opportunities to support their businesses. This increases the risk of an asymmetrical economic recovery within the EU. The former group of Member States is likely to push for a more restrictive approach to State aid while fiscal divergence remains significant, whereas the latter are known to have asked the Commission to go further in relaxing restrictions on Government support.⁵⁸

2.23 The Committee will assess any further amendments to the Temporary Framework in due course, and report them to the House as necessary.

55 If a country provides subsidies or other forms of support within the scope of EU State aid law without seeking Commission approval where it should have done so, the Commission can still investigate and still declare it incompatible (resulting in the need to recover the support from the recipients). Any non-notified government support granted after 1 February 2020 will be assessed for compatibility with the exceptional measures set out in the Temporary Framework.

56 For example, Irish airline Ryanair has said it intends to launch a legal challenge against other EU countries’ support for its competitors under EU State aid rules.

57 The Commission said that recapitalisation measures should be “subject to clear conditions as regards the State’s entry, remuneration and exit from the companies concerned, strict governance provisions and appropriate measures to limit potential distortions of competition”.

58 The Austrian Government, for example, has requested that: countries should be allowed to start applying COVID-related State aid measures before having sought Commission approval; the €800,000 limit on direct aid for smaller businesses should be raised above €800,000; and the fee banks must pay to make use of loan guarantee schemes should be waived.

The Government's position

2.24 As noted, the UK has left the EU but agreed to remain bound by EU competition laws for the duration of the post-Brexit transition period set out in its Withdrawal Agreement. On 23 April 2020, a Minister at the Department for Business, Energy and Industrial Strategy (Paul Scully MP) submitted an [Explanatory Memorandum](#) on the Temporary Framework, including the amendment of 3 April. This confirmed that the European Commission consulted the Government on the original draft Framework, and the subsequent amendment, at the same time as the 27 remaining Member States, although “the Government did not offer views”.

UK coronavirus schemes notified to the European Commission

2.25 For the duration of the transition period, the Government is observing its legal obligation under Article 108 TFEU to continue to notify support schemes within the scope of EU State aid law to the European Commission. The [Treasury Committee](#) and [Business, Energy and Industrial Strategy Committee](#) are pursuing their own detailed inquiries into the Government's coronavirus support for businesses; given our Committee's remit, we limit ourselves here to assessing the implication of the EU's Temporary State Aid Framework for those schemes.

2.26 The Minister in his Memorandum explained that the UK had notified three separate support schemes under the Temporary Framework to the Commission, which approved all of them without requesting modifications:

- The first two Commission Decisions approved UK schemes relate to the [Coronavirus Business Interruption Loan Scheme](#) (CBILS), which provides a [taxpayer-backed guarantee](#)⁵⁹ of up to 80 per cent for bank loans to SMEs (to incentivise banks to lend despite the higher likelihood of default) as well as a [subsidy](#) that pays the interest on the loan on behalf of the borrower for the first year (estimated to cost the Treasury £600 million).⁶⁰ These fall within the scope of EU State aid rules because this support is not available to all businesses in the UK, and were approved by the Commission on 25 March 2020.
- The third approved scheme, referred to by the Commission as a “[COVID-19 Temporary Framework for UK Authorities](#)“, is an umbrella scheme with an estimated budget of £50 billion (of which no more than £40 billion is expected to be spent on direct financial support).⁶¹ The scheme as approved by the EU on 6 April authorises a wide range of different support mechanisms, some of which have already been put in place by the Government.⁶² It also covers relief measures provided by the devolved administrations. Support provided by the

59 The CBILS loan guarantee scheme was approved by the European Commission on 25 March under State aid reference [SA.56792](#). The formal Decision with details of the information provided to the Commission is not yet available as of 22 April. It falls under section 3.2 of the Temporary Framework as a loan guarantee.

60 The grant component of the CBILS loan scheme, based on Section 8 of the Industrial Development Act 1982, was approved by the European Commission on 25 March under State aid reference [SA.56794](#). It falls within section 3.1 of the Temporary Framework as a direct grant.

61 The UK umbrella COVID scheme was approved by the European Commission on 6 April under State aid reference [SA.56841](#). It falls within sections 3.1, 3.2, 3.3, 3.4, 3.6, 3.7 and 3.8 of the Temporary Framework.

62 In his Explanatory Memorandum, the Minister notes that “the UK's approval decision [for the umbrella scheme] does not require any particular intervention but will enable public authorities to take immediate action within scope to support businesses, without having to further notify the European Commission”.

Treasury under the umbrella scheme includes, for example, tax advantages (like the [business rate relief](#) for certain sectors); loan guarantees (like the [Coronavirus Large Business Interruption Loan Scheme](#) or CLBILS),^{63,64} and direct grants for individual companies (like the [Small Business Grant Fund](#)).

2.27 In his Explanatory Memorandum, the Minister notes that the UK “may make further notifications” to the European Commission (i.e. ask for approval of additional support schemes that fall within the scope of EU State aid law). However, he did not indicate if any such schemes are actively under preparation. The Government can also establish further support measures for businesses in the scope of the aforementioned “umbrella scheme” without needing new Commission approval.⁶⁵

Impact of EU State aid rules on the Government’s coronavirus response

2.28 Based on the Minister’s Explanatory Memorandum, and on information published by the European Commission, there is no indication that the Government’s preferred way of providing public support to businesses affected by the coronavirus crisis to date has been impeded by EU laws. In particular, the Minister’s Memorandum did not refer to a claim — [reported](#) by the Times on 16 April⁶⁶ — that the Treasury capped the limit of its loan guarantee for small businesses under the CBILS at 80 per cent of the value of the loan, and not any higher, because of “EU state aid rules”. We note in this respect that the Temporary Framework in any event seems to permit such guarantees to cover the full principal where the loan amounts to €800,000 (£700,000) or less, and 90 per cent in other cases. On 27 April, the Treasury also launched the “[Coronavirus Bounce Back Loan](#)” which offers a 100 per cent guarantee, but only for loans up to £50,000.⁶⁷

2.29 The Commission’s State aid register shows that several EU countries have been granted approval for COVID-related loan guarantee schemes with larger guarantees (and loan limits) than their UK counterparts.⁶⁸ To ensure Parliament has a full picture of the impact the Temporary Framework has had on the Government’s efforts to support businesses to weather the current crisis, we have asked the Minister to clarify if the 80 per cent limit on the CBILS and CLBILS guarantees was a Government policy choice (and no higher limit was put to the Commission for approval), or somehow the result of an EU legal requirement. We are also seeking a more general confirmation that the Government has not decided to abandon any specific forms of business support because of concerns they would have been rejected by the European Commission under EU State aid rules.

63 Officials at the Department for Business, Energy & Industrial Strategy (BEIS) have clarified that the CBILS, the loan guarantee scheme for smaller businesses, could also have been set up under the umbrella scheme but was ready before the latter was in place; it was therefore notified, and approved, separately.

64 The European Commission [approved](#) a fourth UK State aid measure, amending the umbrella scheme, on 23 April 2020. It replaced the flat fee structure for the premiums banks have to pay to the Government for reducing their risks under the loan guarantee schemes with the tapered methodology for calculation the premium on a loan-by-loan basis as set out in the European Commission’s Temporary Framework.

65 The only types of support that are theoretically permitted by the Framework, but not covered by the three UK schemes, are tax-payer funded export credit insurance (section 3.5), deferral of company taxes and national insurance contributions (section 3.9) and selective wage subsidies (section 3.10). Any such schemes would require separate approval from the Commission.

66 The Times, “[Banks are blaming EU for their loan failures](#)” (16 April 2020).

67 This scheme is in principle outside the scope of EU State aid rules because it does not meet the “de minimis” threshold of €200,000 of support per business over a three-year period.

68 These include for example [Poland](#), [Italy](#) and [Germany](#).

Implications of the Temporary Framework under the Ireland/Northern Ireland Protocol

2.30 Aside from the direct relevance the EU’s approach to Government support for businesses throughout the UK for the duration of the post-Brexit transition, they are of even greater importance to Northern Ireland specifically. This is because, under the [Protocol on Ireland/Northern Ireland](#) in the Withdrawal Agreement, EU legislation that affects trade in goods (such as customs procedures and food safety standards) will continue to apply in and to Northern Ireland beyond the end of the transition period. This arrangement is therefore due to take effect on 1 January 2021.⁶⁹ The ultimate aim is to avoid the need for any customs and regulatory infrastructure on the land border on the island.

2.31 As part of this the unique approach, Northern Ireland will also remain subject to certain EU State aid laws. More specifically, the first paragraph of Article 10 of the Protocol reads:

“The provisions of Union [State aid] law listed in Annex 5 to this Protocol shall apply to the United Kingdom [...] in respect of measures which affect that trade between Northern Ireland and the Union which is subject to this Protocol.”

2.32 Annex 5 of the Protocol then goes on to enumerate comprehensively the EU’s body of State aid law as it stood in October 2019 (when the Withdrawal Agreement was agreed), including Articles 107 and 108 TFEU, the General Block Exemption Regulation, and numerous formal Communications from the European Commission on how it interprets and applies these rules in practice. The Temporary Framework, having only been created after the UK had already left the EU, is not listed in the Annex. However, Article 13 of the Protocol provides for a mechanism for it to be added, provided both the UK and EU agree to do so.⁷⁰ The European Commission is also currently [reviewing](#) the entire body of EU State aid rules with the aim of “streamlining and simplifying” them by the end of 2021,⁷¹ a process we intend to scrutinise more closely in the coming months given its potential impact under the Northern Ireland Protocol.

2.33 The exact implications of the State aid provisions of the Protocol are still the subject of debate. It is generally accepted that the Article keeps government support granted to Northern Irish businesses involved in the supply chain for all types of goods⁷² within the EU’s legal framework for assessing and approving State aid, potentially indefinitely.⁷³ This is in line with the way the Protocol more generally requires the continued application of EU rules on the production of and trade in goods in Northern Ireland. However, because the Article 10 applies to all “measures which affect trade between Northern Ireland and

69 See also the above footnote on the possibility of an extended transition period, which would delay the entry into force of the Northern Ireland Protocol.

70 See Article 13(4) of the Protocol.

71 This timetable may of course slip as a result of the coronavirus crisis.

72 As the Protocol also covers the Single Electricity Market for the island of Ireland, the State aid provisions will also apply to the production and sale of electricity. The impact of Article 10 on services is not definitely established but likely to be low because trade in services is not regulated by the Protocol.

73 The Protocol will initially be in effect for a four-year period from the end of the transition period. At that point, it will be renewed for a further four years provided a majority of members of the Northern Ireland Legislative Assembly [vote in favour of this](#). This process is to be repeated every four years for as long as the Protocol is in effect.

the Union which is subject to this Protocol”, the view has been expressed that the legal text also implies continued constraints under EU State aid law on government support to businesses involved in trade in goods *in the rest of the UK*,⁷⁴ even beyond the end of the transition period.⁷⁵

2.34 For example, Colin Murray, of the University of Newcastle Law School, has [told](#) our counterparts in the House of Lords that “any [State aid] support for a [...] business based in Sheffield but which has aspects of its production, subsidiaries or sales activity in Northern Ireland would thus, *prima facie*, be subject to [Article 10]”. The Government has said it “does not believe” this effect can be imputed to the Protocol, but to our knowledge has not offered any detailed explanation as to how it arrived at that conclusion.⁷⁶ Any disagreement between the Government and the EU on the scope of the applicability of EU State aid rules under Article 10 could become subject to the dispute resolution systems set out in the Withdrawal Agreement, including — as a last resort — a binding arbitration process.

2.35 Irrespective of the exact scope of Article 10, any State aid within its ambit would have to continue to be notified to, and approved by, the European Commission. That will include, in any event, subsidies and the like for businesses in Northern Ireland that are part of a supply chain for goods. An exemption is made for agricultural subsidies for Northern Irish farmers, which — below a certain level — will not be subject to Commission scrutiny under State aid rules, provided the UK and EU have jointly agreed on that threshold.⁷⁷ The EU has to assess UK schemes notified under Article 10 against the same standards as applied to the 27 remaining EU Member States, with its decisions ultimately subject to the jurisdiction of the CJEU. The Protocol also specifically requires the Commission, where examining a State aid scheme under Article 10, to keep the Government “fully and regularly informed of the progress and outcome of the examination of that measure”.

2.36 At present, there is no overlap between the European Commission’s Temporary Framework and the entry into force of the Northern Irish Protocol. Until the end of transition, EU State aid rules apply throughout the UK equally, and the Framework applying those rules flexibly is only due to remain active until 31 December 2020. Given

74 See for example oral evidence provided by George Peretz QC to the House of Lords Select Committee on the EU Internal Market Sub-Committee on “The level playing field and state aid”, Thursday 5 March 2020, Q17. He told that Committee: “I have no evidential basis for this, but I have a hunch that, when the UK Government signed up to that, they did not quite understand what they were signing up to. When a number of us in the state aid community saw that provision, there was a certain amount of jaw-dropping. I am not entirely certain that it was understood by the Government at the time.”

75 At the end of the transition period, EU law will mostly cease to be applicable in Great Britain. Aside from the requirements of the Irish Protocol, there are some other provisions of the Withdrawal Agreement that also require the UK to continue applying EU law beyond the end of the transition. These include notably the application of the EU’s Social Security Coordination Regulations to EU citizens in scope of the “citizens’ rights” section of the Agreement, and the continued application of certain EU laws in the UK’s Sovereign Base Areas in Cyprus.

76 On 11 March 2020, the Minister for the Cabinet Office (Rt Hon. Michael Gove MP) was asked if the wording of Article 10 meant that “businesses that are trading out of England into Northern Ireland, and then on to the European Union [...] are going to be subject to the full panoply of [EU] state aid regulations”. He responded the Government “do not believe so” and that “the effective working of the protocol is a matter for the Joint Committee to resolve”. That is, clearly, not a categorical reassurance that Article 10 of the Protocol will not create legal restrictions on government support for businesses in Great Britain which are part of a supply chain for goods. See: Committee on the Future Relationship with the European Union, [Oral evidence: Progress of the negotiations on the UK’s Future Relationship with the EU](#), HC 203, Wednesday 11 March 2020, Q25.

77 See paragraph 2 of Article 10 of the Protocol. If the UK and EU do not reach agreement on the threshold for agricultural support, all such subsidies will be subject to State aid scrutiny in Northern Ireland.

the Irish Protocol is scheduled to take effect the day after, the Minister in his Explanatory Memorandum noted that “there should not be any [specific] impact under the Northern Ireland Protocol”. However, the Commission has said that it “may review [the Framework] before that date on the basis of important competition policy or economic considerations”, implying an extension is possible. We are therefore seeking clarification from the Minister if the Temporary Framework — if extended beyond the end of 2020 — would need to be explicitly added to Annex 5 of the Northern Ireland Protocol in order for its flexibilities to be available in respect of State aid measures within scope when the Protocol takes effect.

2.37 If the Framework were still in force when the transition period ends, the implications would still be limited: after all, it allows substantially more State aid than is ordinarily the case under EU rules, reducing the scope for friction between the European Commission and the UK with respect to government support for businesses within the scope of Article 10 of the Protocol. Although it is not yet clear if the Government intends to pursue a more ‘interventionist’ State aid approach⁷⁸ after the transition period ends, the implications of Article 10 of the Protocol are likely to be more significant after the Temporary Framework expires. At that point, the potential gulf between what the types of State aid the Government would like to provide, and what the EU considers permissible under the Protocol, would be much wider.

2.38 With respect to the actual scope of Article 10 of the Protocol, and the extent to which UK support measures implemented outside of Northern Ireland could fall within its ambit, we note that our counterparts in the House of Lords on 3 April 2020 put a [number of questions](#) to the Minister in relation to EU State aid under the future UK-EU relationship (and under the Protocol in particular). In light of the Government’s response, due by 15 May, we will consider whether to pursue this matter further in the context of our scrutiny of the Commission’s on-going review of EU State aid rules.

Action

2.39 The Committee is grateful for the Minister’s helpful Explanatory Memorandum, and the subsequent clarifications provided by his officials, on the Temporary State Aid Framework and the application of EU State aid rules to the Government’s package of support measures for businesses affected by the COVID crisis.

2.40 We have taken note of the fact that the Government did not propose any amendments to the Temporary Framework when it was still in draft, implying support for the new flexible interpretation of EU State aid rules being applied by the European Commission. Moreover, it has seen no evidence that the UK has been prevented from offering the support to businesses it considered appropriate because of those rules. We make no judgement on the merits of the Government’s schemes, which would be beyond our remit and remains a matter for other Committees of this House.

2.41 In light of its above assessment of the Temporary Framework and the Government’s Explanatory Memorandum, the Committee has written to the Minister for Small Businesses, as shown in the Annex to this Report, asking him in particular to clarify to what extent the Framework has been a help or hindrance to the UK’s efforts to support

78 The European Commission’s latest [Competition Policy Report](#), published in July 2019, includes a “[State Aid Scoreboard](#)” which showed that the UK typically spends less as proportion of GDP on State aid schemes than Germany and France.

businesses, and whether any further government-backed schemes are being prepared that would require European Commission approval under EU law. The text of that letter is shown below.

2.42 The Committee is also drawing the EU’s Temporary Framework for State aid, and its implications for the UK, to the attention of the Business, Energy & Industrial Strategy Committee, the Treasury Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Minister for Small Businesses (Paul Scully MP)

The Temporary Framework for EU State aid rules

Thank you for your helpful Explanatory Memorandum of 23 April 2020 on the significant relaxation of EU State aid laws in the context of the COVID-19 crisis by means of the European Commission’s “Temporary Framework” of 19 March, and its subsequent amendment of 3 April. We have noted that the Government did not provide any comments to the Commission when the Framework was sent to you in draft on 17 March, implying the UK supported it fully.

To date, the Commission has approved four coronavirus-related “State aid” schemes under the Temporary Framework, three of which you referred to in your Memorandum. We are aware that the EU is finalising a further change to the Temporary Framework as regards direct recapitalisation of struggling businesses as a last resort measure, which we will consider in detail when it is published.

In your Memorandum, you did not raise any concerns about the limitations European State aid rules have placed on the Government in establishing its various support schemes for businesses hit by the pandemic and the subsequent lockdown measures. In particular, you did not refer to a claim reported in the press that the decision to cap the loan guarantee under the Coronavirus Business Interruption Loan Scheme (CBILS) to 80 per cent of the loan value was made to ensure compliance with EU law.

The Committee also discussed the potential implications of the Temporary Framework under Article 10 of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, if the Framework were still to be in effect when the post-Brexit transitional period ends.

Based on a more extensive assessment of the EU’s approach to State aid rules in the current crisis, as set out in our Report of 7 May 2020,² we are seeking some further clarifications from you with respect to the Government’s engagement with the Commission on the substance of the Framework, and as regards the latter’s implications for the UK’s COVID-related support measures for companies (including the Coronavirus Business Interruption Loan Scheme (CBILS)).

In particular, we ask you to write to us by 20 May to:

- clarify if the Government has submitted any comments to the European Commission on the Temporary Framework after it was originally consulted on 17 March, for example in relation to the first and second draft amendments to the Framework, and if so what comments consisted of;

- clarify whether any further UK requests for approval of business support schemes (beyond the first four) have been made to the European Commission or are currently planned, and if so, what they entail;
- confirm if any Government support schemes related to COVID-19, or elements thereof, were planned but abandoned because of doubts around their compliance with EU State aid rules;
- clarify in particular whether the 80 per cent cap on loan guarantees under the CBILS and CLBILS was a Government choice (and confirm if European Commission approval was sought for a potential higher limit), or whether this cap was introduced to ensure compliance with EU State aid rules; and
- explain, if the Temporary Framework for COVID-related State aid were to be extended beyond its current end date of 31 December 2020, it would need to be added to Annex 5 of the Protocol on Ireland/Northern Ireland by the UK-EU Joint Committee in order for Northern Ireland to benefit from the flexibilities it offers when the Protocol takes effect.

As part of the regular scrutiny process, we will expect further Explanatory Memoranda from you on any future amendments to the EU's Temporary State Aid Framework.

3 COVID-19: Contact tracing apps and data protection and privacy⁷⁹

These EU documents are legally and politically important because:

- they highlight the importance for the UK of EU fundamental rights and data protection law during the transition period when rolling out any contact tracing apps to combat the spread of COVID-19 and to facilitate an exit from lockdown; and
- EU data protection and fundamental rights law may continue to remain relevant for the UK after transition, should data adequacy decisions⁸⁰ (a) still need to be obtained; and (b) need to be maintained, in the light of the Commission's powers to review, amend, suspend or revoke a data adequacy decision.

Action

- To write to the Government to seek assurances and to ask for prompt submission of the outstanding Explanatory Memorandum.
- To draw these documents to the attention of the DCMS Committee, the Health Committee (given the involvement of the NHS in developing an app), the Science and Technology Committee and the Joint Committee on Human Rights (the latter two Committees have held virtual sessions covering tracing apps).

Overview

3.1 To help combat Covid-19 and to assist with the easing of lockdown measures, countries have been developing and, in some cases, launching mobile phone apps tracing the movement of those who are either diagnosed as having the virus or who have experienced symptoms of coronavirus (tracing/contact apps). The EU is encouraging Member States to adopt a harmonised approach in developing and launching tracing apps. According to the [European Parliament Research Service](#),⁸¹ about half of Member States have taken some kind of location-tracking measures.

3.2 The European Commission and the European Data Protection Board (EDPB)⁸² have both issued guidance aimed at ensuring Member States comply with EU data protection law and the Charter of Fundamental Rights in rolling out their apps. In particular, this means complying with the [General Data Protection Regulation](#) (GDPR), the ePrivacy

79 (a) Commission Recommendation on a common Union toolbox for the use of technology and data to combat and exit from the Covid-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data; C (20) 2296; Legal base: —; DCMS; Devolved Administrations: —; ESC number 41205 (b) Commission Communication: Guidance on Apps supporting the fight against COVID 19 in relation to data protection; C(20) 2523; Legal base: —; DCMS; Devolved Administrations: —; ESC number 41206

80 Adequacy decisions may be adopted for data processed for commercial and law enforcement purposes respectively.

81 "Tracking mobile devices to fight coronavirus", EPRS, 20 April 2020.

82 The EDPB is an independent European body established by the GDPR. It contributes to the consistent application of data protection rules throughout the EU and promotes cooperation between the EU's data protection authorities. The EDPB is composed of representatives of the national data protection authorities and the European Data Protection Supervisor (EDPS).

Directive⁸³ and Articles 7–8 of the Charter (right to privacy and right to data protection). In particular, it means ensuring that processing personal data, which may include sensitive health data, is done in accordance with the GDPR data protection principles,⁸⁴ on one or more of the relevant grounds for lawfully processing the data in question⁸⁵ and that any permitted restrictions of rights and obligations in the GDPR and ePrivacy Directive are lawfully applied.⁸⁶

3.3 There are two relevant EU documents under scrutiny:

- A [Recommendation](#) published on 8 April on a common EU Toolbox for the use of technology and data to combat and exit from the COVID-19 crisis.
- Commission guidance published in the form of a [Communication](#) on 16 April.

3.4 The Recommendation sets up a process for developing a common approach, referred to as a Toolbox, to use digital means to address the crisis. The Toolbox consists of practical measures for making effective use of technologies and data, with a focus on two areas in particular:

3.5 A pan-EU approach for the use of mobile apps, coordinated at EU level, for empowering citizens to take effective and more targeted social distancing measures, and for warning, preventing and contact tracing to help limit the spread of the COVID-19 disease.

3.6 A common scheme for using anonymised and aggregated data on the movement of people in order (i) to model and predict the evolution of the disease, (ii) to monitor the effectiveness of decision-making by Member States' authorities on measures such as social distancing and confinement, and (iii) to inform a coordinated strategy for exiting from the COVID-19 crisis.

3.7 On 14 April, the European Data Protection Board (EDPB) published a [letter](#) of advice on the Commission's initiative. It advised that:

- national data protection authorities should be consulted when developing apps and source code be made publicly available;
- apps needed to be used by the greatest possible share of the population to achieve maximum efficiency and that this could be better achieved by the interoperability of different Member State apps;

83 This Directive sets out rights and obligations in respect of personal data processed via electronic communications, including telecoms. The Committee is currently scrutinising a proposal for updating that Directive, the proposed ePrivacy Regulation and last reported on the proposal on [26 March](#).

84 The six principles are: lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; and integrity and confidentiality. These essentially mean that the processing of personal data should have a clear legal basis and provide data subjects with explicit information and justification about legitimate purposes. The processing of personal data should be restricted to data which is adequate, relevant and necessary and no longer than necessary. Processors should ensure that data are accurate and adequately protected against unlawful processing, loss, destruction or damage.

85 Health data require a higher degree of protection so the grounds are individual consent; protection of the vital interests of the data subject; reasons of substantial public interest; for the purposes of preventive or occupational medicine and for reasons of public interest in the area of public health.

86 For example, Article 9 of the ePrivacy Directive provides for the processing of location data on when they are made anonymous or with the consent of users or subscribers to the extent or duration necessary for the provision of a service. Article 15 allows Member States to adopt legislative measures to restrict those Article 9 rights when such restrictions are a "necessary, appropriate and proportionate measure within a democratic society to safeguard national security, defence, public security" and for law enforcement purposes.

- compliance with privacy laws, fundamental rights and data protection by design and by default (documented in Data Impact Assessments) was crucial to gaining users' trust;
- adoption of apps should be voluntary, but that performance of a task in the public interest may in some cases be the appropriate legal basis for processing rather than consent;
- legislative measures to provide a framework for voluntary apps could also be used as legal basis, but these should entail any adverse consequences for users not be used as a push towards compulsory subscription;
- contact tracing apps should not require the location tracking of individual users, which would violate the principle of data minimisation⁸⁷ and create security and privacy risks; and
- while storage of information about contact “events” could be valid either locally or in a centralised database, provided that adequate security measures are put in place, the decentralised solution is more compatible with the principle of data minimisation.

3.8 It seems from various reports in the press about efforts to coordinate EU Member States approach to developing apps that the last point made by the EDPR about data decentralisation is proving a sticking point.⁸⁸ Additionally, that the UK's own proposed model, centralised via the NHS, could fall foul of this recommendation.

3.9 The Communication sets out the Commission's own guidance on tracing/contact apps. This recommends:

- the use of voluntary apps and the use of Bluetooth communications⁸⁹ between devices to determine proximity because this “appears more precise, and therefore more appropriate, than the use of geolocation data” and because this functionality “avoids the possibility of tracking”;
- that the individual should remain in control; and
- that an appropriate legal basis for processing personal data should be used that “provides specific and suitable measures to safeguards the rights and freedoms of data subjects”.

3.10 The Government is in the process of developing a new NHA contact tracing app.⁹⁰ The Health Secretary (Rt Hon. Matt Hancock MP) said on 12 April during the Government's daily Covid-19 briefing:⁹¹

87 This principle requires that only personal data that is adequate, relevant and limited to what is necessary in relation to the purpose should be processed.

88 “UK pushes ahead with contact tracing app; EDPR issues privacy warnings”, online article in [EURACTIV](#), 23 April 2020.

89 Relevant to this recommendation to use Bluetooth, is the [opinion](#) of the UK Information Commissioner on the contact tracing app being developed by Google and Apple which is based on Bluetooth communication.

90 Since the time of writing, more details have emerged about the NHSX app. This Government [statement](#) refers, for example, to the proposed trial of the app on the Isle of Wight.

91 As reported by the [Guardian online](#) 12 April as no transcript of the statement can be found.

If you become unwell with the symptoms of coronavirus, you can securely tell this new NHS app and the app will then send an alert anonymously to other app users that you've been in significant contact with over the past few days, even before you had symptoms, so that they know and can act accordingly.

All data will be handled according to the highest ethical and security standards, and would only be used for NHS care and research, and we won't hold it any longer than it's needed. And as part of our commitment to transparency we'll be publishing the source code, too.

We're already testing this app and as we do this we're working closely with the world's leading tech companies and renowned experts in digital safety and ethics.

3.11 The Government's Explanatory Memorandum (EM) was due on 5 May.⁹² But given their urgent topicality, we have decided to report these documents to House now irrespective of whether the EM was received by the due date⁹³ and will reconsider the documents in the light of the Government's EM and any further Minister correspondence once we have had chance to review it.

3.12 Although neither of these documents are legally binding, the EU data protection law referenced by the documents is. It may even continue to have relevance for the UK after transition where data adequacy decisions have either been adopted and need to be maintained or is still being sought. For these reasons, these documents are politically important since they reflect the continued importance of that underlying law to the development of apps designed to combat the spread of COVID 19.

Action

3.13 In view of this, the Committee has written to the Secretary of State for Digital, Culture, Media and Sport, seeking reassurance that during the transition period the Government:

- will be complying with EU fundamental rights and data protection law;
- seeking to follow the guidance from both the Commission and EDPB, as well as the UK Information Commissioner, in developing any tracking Apps; and
- will be addressing any potentially problematic areas in its preferred model, for example, if it were to involve a centralised model for data storage or communication other than by Bluetooth.

3.14 Additionally, after the second round of future relationship negotiations, Michel Barnier issued a [Press Statement](#) on Friday 24 April. On the question of a future internal security relationship, he said that although both wanted that to be close, there were "problems:

- The UK refuses to provide firm guarantees — rather than vague principles — on fundamental rights and individual freedoms.

92 The EM was received within the deadline for submission at the close of play on 5 May but will be considered as part of a future Report. It can be accessed [here](#) on the Cabinet Office website

93 Again, see above.

- It insists on lowering current standards and deviating from agreed mechanisms of data protection.
- This creates serious limitations for our future security partnership”.

We therefore ask the Secretary of State how, if at all, the UK is intent on “lowering current standards” or using other mechanisms of data protection, given how relevant this may be to any interoperable UK contact tracing app which may draw on EU data after the transition period. This also raises questions about data adequacy decisions for the UK.

We have also copied that letter to the Chairs of the DCMS Committee, the Health Committee (given the involvement of the NHS in developing an app), the Science and Technology Committee (see their [virtual session](#)⁹⁴ on 28 April on this issue) and the Joint Committee on Human Rights. The latter asked the Justice Secretary about the Government’s approach to compliance with human rights and data protection law in developing such apps during their virtual [session](#)⁹⁵ with him on 20 April.⁹⁶

Letter from the Chair to the Secretary of State for Digital, Culture, Media and Sport (Rt Hon. Oliver Dowden MP)

Commission Recommendation and Communication on tracing/contact apps to combat and exit the COVID-19 crisis: C(2020) 2523 and 2296

The Committee has asked me to write to you in connection with these two documents which it is currently scrutinising. Both relate to the development of mobile applications (apps) to combat the COVID 19 crisis and facilitate an exit strategy. We note that on 12 April the Health Secretary (Rt Hon. Matt Hancock MP) stated that the NHS was in the process of developing a contact tracing app for these purposes.⁹⁷

The Government’s Explanatory Memorandum on these documents was due on 5 May.⁹⁸ However, we have decided to report these documents to the House now given their urgent topicality without considering any EM submitted by that date. We look forward to reconsidering the documents in the light of your EM once received and any other Ministerial correspondence. We expect the Department to continue to fulfil its scrutiny obligations to Parliament. We would expect to hear from you directly if there are any anticipated difficulties with this both in relation to these documents and any others within your remit.

As neither of these documents is legally-binding and both simply seek to identify existing EU data protection and fundamental rights law, we do not consider them legally important

94 “UK Science, Research and Technology Capability and Influence in Global Disease Outbreaks” inquiry, with Professor Danny Altmann, Professor of Immunology at Imperial College London, and Spokesperson at British Society for Immunology and Professor Susan Michie, Professor of Health Psychology at University College London.

95 The exchange between the Lord Chancellor and Joanna Cherry QC takes place at 30 minutes into the session.

96 See also the JCHR’s [virtual session](#) on 4 May with the Information Commissioner Elizabeth Denham and Simon McDougall Technology and Innovation Executive Director at the ICO. Also Matthew Gould CEO of NHSX. Also r Orla Lynskey, Associated Professor of Law, London School of Economics; Dr Michael Veale, Lecturer in Digital Rights and Regulation, University College London.

97 We also note developments this week on the NHSX app reported this week, including the proposed trial on the Isle of Wight announced in this Government [statement](#).

98 The EM was received within the deadline for submission at the close of play on 5 May but will be considered as part of a future Report. It can be accessed [here](#) on the Cabinet Office website.

in themselves. But in seeking to provide guidance on the relevance of underlying EU fundamental rights and data protection law to the political and public health imperative of combatting COVID-19 through mobile phone apps, they have both legal and political implications.

During the transition period, we seek your reassurance that in developing the NHS app, the Government is mindful of the continued need to comply with that law and is taking account of the EU guidance from both the Commission and European Data Protection Board and the legal principles underlying it. In particular, does the Government foresee any problems in complying with the law in this context if it does not use a Bluetooth model or if it does not decentralise stored data?

We would be also grateful to learn how much interoperability, if at all, with other Member States apps the UK is seeking to achieve. This will be important for at least the duration of the transition period once restrictions on mobility are lifted throughout the EU. Should an UK app operate on an interoperable basis, drawing on EU data after the end of the transition period, equivalence with the EU data protection law will remain important. In this respect, we note in his Press Statement of 24 April after the second round of “future relationship” negotiations Michel Barnier said that the UK’s insistence on “lowering standards and deviating from agreed mechanisms of data protection” were problematic. Could you clarify whether this accurately reflects the UK’s intent and its chances of securing UK data adequacy decisions?

4 COVID-19 Response: EU support to the fisheries sector⁹⁹

This EU document is politically important because:

- it applies during the transition period; and
- introduces flexibility that could be used by the UK.

Action

- Write to the Minister pressing for further information on potential spend in the UK and draw to the attention of the Environment, Food and Rural Affairs Committee.

Overview

4.1 According to the European Commission, the fishery and aquaculture sector has been particularly hard hit by the market disruption generated by a significant drop in demand following the COVID-19 outbreak. The closure of sales venues, markets, outlets and distribution channels has seen prices and volumes drop substantially.

4.2 Under the terms of the Withdrawal Agreement, the UK remains eligible for EU funds programmed until the end of this year.

4.3 As Member States' scope for EU financial intervention in the area of fisheries is restricted by the provisions of the European Maritime and Fisheries Fund (EMFF), which does not presently offer support for the most urgently needed actions to overcome the effects of the COVID-19 outbreak, the Commission proposed a series of amendments, including:

- support to fishermen for the temporary entire cessation of a vessel's fishing activities caused by the COVID-19 outbreak;
- support to fish farmers for the temporary suspension or the reduction of production caused by the COVID-19 outbreak; and
- support to producer organisations and associations of producer organisations for the storage of fishery and aquaculture products.¹⁰⁰

4.4 It was proposed that these measures are retroactively eligible as of 1 February 2020 and available until 31 December 2020. Additional amendments to the EMFF Regulation aim

99 Proposal for a Regulation amending Regulation amending Regulation (EU) No 1379/2013 and Regulation (EU) No 508/2014 as regards specific measures to mitigate the impact of the COVID-19 outbreak in the fishery and aquaculture sector; Council document [7153/20](#), COM(20) 142; Legal base: Articles 43(2), 175 TFEU, QMV, Ordinary Legislative Procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number 41170.

100 This measure — an amendment to Regulation 1379/2013 on the Common Organisation of the Markets — would pay for fisheries products to be taken off the market and frozen in the event that prices fall to a specific level.

to ensure a flexible reallocation of financial resources within the operational programmes, which were originally drafted at the beginning of the programme in 2014 and therefore do not reflect current circumstances.

4.5 The Regulation has since been agreed by the European Parliament and Council. It is budget neutral as it will be supported by a reallocation of financial resources away from planned projects. With fishing and aquaculture activities locked down or significantly reduced, said the Commission,¹⁰¹ there is little room for implementing the current EMFF measures and operational programmes normally.

4.6 In her [Explanatory Memorandum](#), the Parliamentary Under Secretary of State (Victoria Prentis MP) notes that the UK has almost fully committed its EMFF funding. As of 31 December 2019, EMFF commitments stood at £190.6 million (92% of its total allocation) across 2419 projects, with spend of £103.5 million (54%) certified for 1923 projects. She adds that the Department is working closely with the Devolved Administrations to assess the scope for amending the programme to include the new measures. As there is very little budget left in the EMFF programme in the UK for 2020, the Minister considers that the impact is likely to be limited.

4.7 The Minister notes that the Government and Devolved Administrations have been meeting with industry representatives on a regular basis to assess the impact of Covid-19 on the sector. While not mentioned in the EM, the various administrations have put in place domestic schemes to assist the sector.¹⁰² These include support for temporary partial cessation of fishing activities which — unlike the EU scheme — do not require the full cessation of activities.

Action

4.8 We note the Minister’s view that the impact of this measure in the UK is likely to be limited as there is very little budget left in the EMFF programme, although some budget may become available should some planned projects no longer take place. We also note that the Devolved Administrations and England have put in place separate support measures. We have written to the Minister — as set out below — seeking further information on: the potential use of both the EMFF flexibility and storage aid; and on any concerns identified, and raised with the Commission, about how the flexibility will work.

Letter from the Chair to the Parliamentary Under-Secretary of State (Victoria Prentis MP), Department for Environment, Food and Rural Affairs

We have considered your Explanatory Memorandum of 23 April 2020 on the above document.

We note your view that the impact of this measure in the UK is likely to be limited as there is very little budget left in the EMFF programme, and we also note that the Devolved Administrations and England have put in place separate support measures to support the industry in response to the COVID-19 outbreak.

101 European Commission: [“Questions and answers on the Coronavirus Response Investment Initiative Plus: New actions to mobilise essential investments and resources”](#).

102 The [English](#) scheme was launched on 17 April and is worth around £10 million, the [Scottish](#) scheme on 25 March and is now worth [around £22 million](#), the [Welsh](#) scheme on 14 April and the [Northern Ireland](#) scheme, worth around £1.5 million, on 6 April.

We ask you to set out, within four weeks:

- the progress of your work with the Devolved Administrations to assess the potential for using the proposed flexibility in the EMFF, including whether any funds might become available through the abandonment of currently planned projects;
- any concerns that you have identified, and raised with the Commission, about how the flexibility will work;
- how the various different funding options — EU and national/regional — are being communicated to potential beneficiaries; and
- whether any of the UK administrations might take advantage of the storage aid in order to remove surplus product from the market and place it into cold storage.

5 COVID-19: Passenger rights¹⁰³

This EU document is legally and politically important because:

- it concerns the UK’s response to the COVID-19 outbreak; and
- offers guidance on the interpretation of EU law which is applicable in the UK during the post-exit transition period.

Action

- To write to the responsible Minister, Rachel Maclean MP, requesting further information on the operation of the Air Passenger Rights Regulation during the outbreak.
- To draw this Report chapter to the attention of the Transport Committee.

Overview

5.1 The [document under scrutiny](#) seeks to complement existing EU legislation on passenger rights covering air, rail, bus and coach, and sea. The Commission Communication sets-out guidelines interpreting the general obligations on transport operators to uphold EU-prescribed passenger rights common to each of these four transport modalities. These rights are:

- to be informed of cancellation or delay;
- to choose between re-routing and reimbursement in the event of delay or cancellation;
- those arising in situations where passengers cannot travel or wish to cancel a trip;
- to assistance; and
- to compensation.

5.2 The Commission’s guidance offers clarification and further advice on the interpretation and implementation of these rights—for consumers, operators and Member States—in light of the ongoing travel disruption and delays resulting from the COVID-19 pandemic. This guidance is interpretative and is not, in and of itself, legally binding on Member States.

5.3 The Commission’s Communication does not cover package travel nor does it describe or assess measures taken by national authorities independently of the EU.

5.4 The Commission’s guidance is detailed and, in the interests of brevity, is summarised below.

103 Communication from the Commission: Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19; Council number 6913/20, C(20) 1830; Legal base; -; Dept; Transport; Devolved Administrations; consulted; ESC number 41144.

Air

5.5 In accordance with Regulation (EC) 261/2004 (the Air Passenger Rights Regulation),¹⁰⁴ if a flight is cancelled by an airline, passengers have the right to choose between a full refund or re-routing. For re-routing, alternative flights must be arranged by airlines at the earliest opportunity or at a later date chosen by impacted passengers. The Commission's Communication acknowledges that current operational difficulties mean that early re-routing may not be possible and delays are to be expected. When re-routing is chosen, attention is drawn to the ongoing right of passengers to receive information on delays and other linked uncertainties.

5.6 The right to care and assistance for re-routed passengers is also clarified in the Commission's guidance. The Commission notes that due to the likelihood of significant numbers of re-routed journeys, airlines will have to decide on a case-by-case basis the needs of individual passengers. In this regard, the price of flight tickets and the length of inconvenience should not be taken into account.

5.7 The Commission's guidance also covers flights cancelled consequent on measures taken by national authorities to contain the pandemic. The Commission suggests that such cancellations should generally be considered as having been caused by 'extraordinary circumstances' and, as such, airlines will not be liable to pay compensation in addition to reimbursement. The extraordinary circumstances exemption is also clarified as including situations where airlines have to cancel a flight to protect the health of air crew. Cancellations due to extraordinary circumstances are said not to obviate airlines from providing care and assistance (especially for re-routed flights).

5.8 The Commission's guidance is all but silent on the current trend of airlines issuing vouchers to passengers for cancelled flights when full cash refunds have been requested. The guidance notes only that "if a carrier proposes a voucher, this cannot affect the passenger's right to opt for reimbursement instead". The UK's Civil Aviation Authority recently published its own guidance for passengers whose flights have been cancelled due to COVID-19-related disruption. This references the Air Passenger Rights Regulation and states that:

...we are aware that some airlines and travel providers are offering vouchers in place of refunds. If your flight has been cancelled, you are entitled to a full refund, so if you would rather the financial payment, please request this from your travel provider.¹⁰⁵

5.9 At an informal videoconference of EU transport ministers on 29 April 2020,¹⁰⁶ the idea of legislating to temporarily allow airlines to issue vouchers instead of requiring the immediate cash reimbursement of cancelled tickets was raised. In a joint statement issued on the same day,¹⁰⁷ 12 Member States publicly endorsed relaxing refund rules.

104 [Regulation \(EC\) No 261/2004](#) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance).

105 Civil Aviation Authority, '[COVID 19 guidance for passengers](#)' (publication date unknown).

106 Croatian Presidency of the Council of the European Union, '[Presidency Summary of the Informal Videoconference of Transport Ministers](#)' (29 April 2020).

107 'Member States (BE, BG, CY, CZ, EL, FR, IE, LV, MT, NL, PL, PT) joint statement on airline vouchers' (29 April 2020).

Other EU countries are, however, opposed to any changes to the current air passenger rights framework; arguing that the legitimate expectations of passengers should not be frustrated.

Rail

5.10 Under Regulation (EC) 1371/2007 (the Rail Passenger Rights Regulation),¹⁰⁸ train operators and ticket vendors must provide passengers with information on disruptions and delays prior to and during journeys. For journeys delayed by more than 60 minutes, passengers are entitled to reimbursement of the full ticket cost or to continue their journey at the earliest opportunity or in the future. The Commission Communication states that operators must clearly communicate these options to passengers and emphasises that, in the current circumstances, the immediate completion of journeys may not be possible.

5.11 The Rail Passenger Rights Regulation does not allow for operators to be exempt from their assistance obligations. As such, in spite of service disruptions and delays resulting from the COVID-19 outbreak, for delays of longer than 60 minutes, passengers are still entitled to: free meals or refreshments if available; accommodation if necessary and available; and onward travel where and when possible. The Commission's Communication is clear that assistance must be adapted for the needs of passengers with disabilities.

5.12 Finally, compensation arrangements for delays and cancelled services—e.g. of 50% of ticket value for delays of over 120 minutes—continue to apply. This is as the Regulation does not provide an 'extraordinary circumstances' exemption.

Bus and coach

5.13 In common with EU air and rail rights legislation, bus and coach operators must make passengers aware in good time of disruptions, delays and cancellations.¹⁰⁹ The Commission's Communication acknowledges that due to the pandemic, notifying passengers in good time of service changes is proving difficult. Nonetheless, the Commission is clear that operators must notify passengers of all available travel options. The Commission makes clear that existing rights to timely onward travel and accommodation in the event of delay are not to be relaxed nor are rights on compensation or reimbursement.

Maritime

5.14 The Commission's guidance provides advice concerning the application of the Maritime Passenger Rights Regulation.¹¹⁰ For services disrupted by more than 90 minutes or that do not sail, passengers are entitled to a full cash refund or voucher (with passengers being able to choose which where the carrier cancels). The Communication clarifies that, as per the Regulation, due to the extraordinary nature of the COVID-19 outbreak, passengers are not entitled to compensation payments.

108 [Regulation \(EC\) No 1371/2007](#) of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

109 As per [Regulation \(EU\) No 181/2011](#) of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 Text with EEA relevance.

110 [Regulation \(EU\) No 1177/2010](#) of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 Text with EEA relevance.

The Government's position

5.15 The Minister with responsibility for the document under scrutiny, Rachel Maclean MP, wrote to the Committee by way of [Explanatory Memorandum](#) (EM) on 9 April 2020. The Minister provides a detailed summary of the Commission's guidance and outlines its potential implications for UK transport law and policy. Furthermore, the Minister helpfully explains the domestic measures that the Government is taking to support passengers and transport operators during the COVID-19 outbreak.

5.16 The Minister welcomes the Commission's guidance and, in particular, dedicates the most space in her EM to the Air Passenger Rights Regulation. The Minister notes that the Commission's clarification that the COVID-19 outbreak qualifies as an 'extraordinary circumstance'—for the purposes of cancellation and long delay compensation—"may affect the industry's finances positively to some degree". In this regard, she further states that:

...it should also help to ensure that the industry is able to meet its obligations and that air passengers will not lose out as a result of their cancelled flights.

5.17 The Minister does not, however, address the controversy amongst passengers—and the developing rift between Member States—on the issuance of vouchers for cancelled flights where full cash refunds have been requested. In mitigation, this issue has developed rapidly since the time that the Minister wrote to the Committee.

5.18 Also noteworthy is the Minister's acknowledgment—under the 'Legal and Procedural Issues' section of her EM—that the Commission's Communication is of relevance to Gibraltar. The Air Passenger Rights Regulation is currently suspended in Gibraltar. The Minister does not provide any further information on this point, in particular, whether suspension—coupled with the current crisis—could have adverse consequences for passengers traveling through Gibraltar International Airport.

Action

5.19 The Committee has written to the Minister thanking her for her Explanatory Memorandum on the Communication under consideration and requesting further information on the following points:

- the Government's view on whether the Air Passenger Rights Regulation should be amended to allow airlines to issue vouchers rather than full refunds during the COVID-19 outbreak;
- details of the conversations it has had with industry and EU partners in this regard;
- whether the Government is investigating—or will investigate—the practice of airlines issuing vouchers when refunds have been requested by passengers;
- whether the Government will propose any legislative or administrative measures to support air passenger rights during the current crisis (as other European countries have); and

- how the suspension of the Air Passenger Rights Regulation in Gibraltar will affect passengers travelling through Gibraltar International Airport

5.20 The Committee has drawn this Report chapter to the attention of the Transport Committee.

Letter from the Chair to the Parliament Under-Secretary (Rachel Maclean MP), Department of Transport

The Committee have asked me to thank you for your Explanatory Memorandum (EM) of 9 April 2020 on the above listed document.

The current challenges facing the transport industry and passengers are unprecedented and your detailed analysis of the European Commission’s guidance is greatly appreciated.

This having been said, the situation is developing rapidly and, as such, the Committee requests further information on a number of points you cover in your EM, in particular, with regards to the application of the Air Passenger Rights Regulation (which continues to apply in the UK during the post-exit transition period established by the UK/EU Withdrawal Agreement).

The Committee is aware of airlines issuing vouchers to passengers for cancelled flights when full cash refunds have been requested. A recent high-level meeting of EU transport ministers was undecided on whether the Air Passenger Rights Regulation should be amended to allow this practice or, alternatively, airlines should be warned that doing so is not permitted.

The Committee notes with interest the launch by the Competition and Markets Authority (the CMA) of its inquiry into consumer cancellation and refund rights during the pandemic. This inquiry will not, however, investigate air passenger rights. Against this background, the Committee requests further information on the following points:

- the Government’s view on whether the Air Passenger Rights Regulation should be amended to allow airlines to issue vouchers rather than full refunds during the COVID-19 outbreak;
- details of the conversations it has had with industry and EU partners in this regard;
- whether the Government is investigating—or will investigate—the practice of airlines issuing vouchers when refunds have been requested by passengers; and
- whether the Government will propose any legislative or administrative measures to support air passenger rights during the current crisis (as other European countries have).

Finally, the Committee draws attention to the ‘Legal and Procedural Issues’ section of your EM, specifically, your explanation that the Commission’s Communication is of relevance to Gibraltar. As you note, the Air Passenger Rights Regulation is currently suspended in Gibraltar. Coupled with the considerable uncertainty that the pandemic

is causing for passengers, the Committee seeks your view on how the suspension of the Air Passenger Rights Regulation in Gibraltar will affect passengers travelling through Gibraltar International Airport.

We ask that you respond to this letter in 10 working days.

6 COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE)¹¹¹

These EU documents are legally and politically important because:

- they concern the EU’s response to shortages in essential personal protective equipment (“PPE”) needed to tackle the COVID-19 pandemic;
- they apply to the UK during the post-exit transition period and may affect UK businesses exporting PPE to countries outside the EU as well as supplies of PPE to the UK; and
- they are within the scope of the Protocol on Ireland/Northern Ireland, serving as an example of how these (or similar) measures might affect trade between Northern Ireland and the rest of the UK after transition.

Action

- Write to the Minister for Prevention, Public Health and Primary Care (Jo Churchill MP).
- Draw to the attention of the Health and Social Care Committee, the International Trade Committee and the Northern Irish Affairs Committee.

Overview

6.1 Our [Report](#), *COVID-19 pandemic: the EU’s policy response and the implications for the UK*, published in April 2020, described the initial policy and legal measures taken by the EU in response to the COVID-19 public health emergency.¹¹² The rapid progression of the virus in Europe meant that many of these measures had to be taken in haste. Our Report sought to provide a snapshot of the EU’s response as the virus took hold, explore possible implications for the UK, and identify the questions that the Government should address when submitting its own Explanatory Memoranda on the measures included in the Report.

6.2 One of those measures was a [Commission Implementing Regulation](#), effective from 15 March 2020, requiring businesses established in the EU to obtain an authorisation before exporting certain categories of personal protective equipment (“PPE”)—protective spectacles and visors, face shields and masks, gowns and gloves—outside the European Union. Under the EU’s usual trade rules, this equipment can be exported without restriction, but the European Commission may introduce a requirement for prior authorisation if necessary “to prevent a critical situation from arising on account of a shortage of essential

111 Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 making the exportation of certain products subject to the production of an export authorisation; Unnumbered; Legal base — Article 5 of Regulation (EU) 2015/479 on common rules for exports; Department for Health and Social Care; Devolved Administrations informed; ESC number 41141.

112 Second Report of Session 2019–21, HC 275, published on 4 April 2020.

products”.¹¹³ In adopting the Implementing Regulation, the Commission considered that the categories of PPE it covered were essential products because of their importance in safeguarding the health of medical staff treating infected patients and in preventing further infection. As demand for PPE was increasing across the globe, the Commission anticipated that stocks and levels of production within the EU would be insufficient, particularly as some of the EU’s traditional suppliers of PPE were restricting their exports, further depleting supplies to the EU market. The requirement for an export authorisation was introduced as a temporary measure, to ensure an adequate supply of PPE within the EU, and was applicable only for six weeks (expiring on 25 April 2020).

6.3 The Commission recognised that the need for PPE would vary from one Member State to another and that each Member State should have some discretion to decide whether to authorise the export of specific PPE to countries outside the EU. The Implementing Regulation therefore listed some of the factors which public authorities should take into account in reaching a decision. They included, for example, support provided within the framework of the World Health Organisation’s Global Outbreak Alert and Response Network, EU-coordinated crisis response or procurement actions in third countries, and the supply of PPE to EU and Member State overseas delegations.

6.4 The Commission Implementing Regulation was [amended](#) shortly after its adoption to remove the requirement for prior authorisation of exports of PPE to other countries or territories with close links to the EU, notably Norway, Iceland and Switzerland.¹¹⁴

6.5 The Commission has recently adopted a [new Implementing Regulation](#), effective from 26 April 2020 for a period of 30 days (ending on 25 May 2020).¹¹⁵ The Implementing Regulation places greater emphasis on international solidarity in managing a global pandemic, encouraging Member States to authorise the export of PPE which satisfies “a legitimate need for official or professional medical use in a third country” provided it would pose no threat to “actual need for PPE” in the EU. At the same time, the Commission discourages the authorisation of exports that would “create speculative distortion” or result in the stockpiling and hoarding of PPE by countries “with little or no objective need”.

6.6 The Implementing Regulation reduces the categories of PPE for which an export authorisation is needed (removing gloves), no longer requires an authorisation to export PPE to six Western Balkans countries, as well as Gibraltar and other Member State territories excluded from the EU customs union, and requires Member States to authorise the delivery of emergency PPE supplies to third countries receiving humanitarian aid. Member States are also urged to “positively consider granting” authorisations for the export of PPE to public authorities involved in combating the COVID-19 outbreak or responsible for distributing protective equipment, subject to the proviso that the volume of authorised PPE exports does not pose a threat to the availability of the same equipment in the exporting Member State or elsewhere in the EU. To this end, the Implementing

113 See Article 5 of [Regulation \(EU\) 2015/479](#) on common rules for exports.

114 Commission Implementing Regulation (EU) 2020/426. The other countries and territories covered are Liechtenstein, the Faeroe Islands, Andorra, San Marino, the Vatican City, and overseas countries and territories listed in the EU Treaties which have a particular dependency on the metropolitan supply chains of the Member States to which they are attached or on the supply chains of neighbouring Member States. The amendment was effective from 21 March 2020.

115 Commission Implementing Regulation (EU) 2020/568 making the exportation of certain products subject to the production of an export authorisation.

Regulation introduces a new requirement to inform the Commission before issuing an export authorisation in such cases, as well as an obligation on the Commission to “issue an opinion” within 48 hours.

6.7 Member States are required to notify the Commission of export authorisations that have been granted and refused, information which the Commission (taking due account of any confidentiality requirements) is bound to publish as part of its broader role in ensuring that there are adequate supplies of PPE to meet demand within the EU.

6.8 The EU Commissioner for Trade (Phil Hogan) says that the export authorisation scheme is “temporary, targeted, proportionate and transparent” and will be notified to the World Trade Organisation (WTO) along with other EU coronavirus trade-related initiatives.¹¹⁶ The introduction (preamble) to the Commission Implementing Regulation describes the broader efforts undertaken by the EU to ensure adequate supplies of PPE. They include:

- ramping up production of PPE within the EU;
- joint procurement of PPE;¹¹⁷
- the creation of a strategic stockpile of medical equipment, including ventilators and PPE, under the EU’s Civil Protection Mechanism; and
- the establishment of a Clearing House to coordinate efforts to match supply and demand within the EU.

6.9 The export authorisation scheme does not apply to trade in PPE between EU Member States. The preamble to the Commission Implementing Regulation makes clear that any internal bans or restrictions on the movement of PPE within the EU must be lifted and that, for the duration of the post-exit transition period (under Article 127 of the EU/UK Withdrawal Agreement), the UK “is to be considered as a Member State, and not as a third country”.¹¹⁸

The Government’s position

6.10 The Minister for Prevention, Public Health and Primary Care (Jo Churchill MP) confirms that the Commission Implementing Regulations apply to the UK during the post-exit transition period and that the Department for Health and Social Care is responsible for assessing and granting export authorisations (“licences”) because it is “best placed to make critical decisions as to what PPE needs to be kept within the country in order to counter the spread of COVID-19”. In her [Explanatory Memorandum of 23 April 2020](#), she explains that the first Commission Implementing Regulation (which expired on 25 April) was “made through the urgent procedure and without advance notification to the UK Government”, meaning that it was not possible to consult affected stakeholders. She confirms that the Government has established the necessary PPE export licence system and published [guidance](#) to support UK exporters in meeting the new requirements, whilst recognising that the new requirements create “an additional regulatory hurdle for exporters looking to move PPE outside of the EU”.

116 See the [news item](#) published by the European Commission on 24 April 2020.

117 See the European Commission [press release](#) issued on 24 March 2020.

118 See recitals (10) and (24) of the Commission Implementing Regulation.

6.11 The Minister says that the Government “respects the need” to ensure that critical supplies of PPE are “kept within the Union to the benefit of the UK”, provided this does not hinder “international cooperation and humanitarian efforts to support other countries, including continuing international trade where that does not impact on critical PPE supply”. She also cautions against any disruption of supply chains of PPE, such as fire safety masks, which have no use in protecting against potentially infectious material.

6.12 The Minister anticipates that the Commission Implementing Regulations will have no implications for the UK’s future relationship with the EU as they are time-limited and are not expected to be in force when the post-exit transition period ends. For the same reason, she expects there to be “no impact on the Northern Ireland Protocol”.

Action

6.13 Write to the Minister to seek further information on the impact of the Commission Implementing Regulations on the UK during and after the post-exit transition period.

Letter to the Minister for Prevention, Public Health and Primary Care (Jo Churchill MP), Department for Health and Social Care

Thank you for your [Explanatory Memorandum](#) of 23 April 2020 on a [Commission Implementing Regulation](#) (2020/402) introducing an export authorisation scheme to prevent critical shortages in the supply of Personal Protective Equipment (“PPE”) needed to protect against COVID-19 infection within the EU.¹¹⁹ The Commission Implementing Regulation expired after six weeks, on 25 April 2020. It has been replaced by a further [Commission Implementing Regulation](#) (2020/568) which extends the export authorisation scheme for a further 30 days (from 26 April 2020) and makes a number of modifications.¹²⁰ Both of these Commission Implementing Regulations apply to the UK during the post-exit transition period. Although your Explanatory Memorandum only concerns the first of the two Implementing Regulations, the questions we raise are relevant to both and we ask you to address both in your response

The first Commission Implementing Regulation (2020/402) is one of the measures included in our [Report](#), *COVID-19 pandemic: the EU’s policy response and the implications for the UK*, which we published on 1 April 2020. We asked whether the Government agreed with the Commission’s assessment that existing stocks of PPE and manufacturing capabilities within the EU were insufficient to meet demand; whether it also agreed that the introduction of a prior authorisation requirement was a necessary and proportionate response to the COVID-19 epidemic; and how it would affect supplies of PPE within the UK, as well as UK businesses exporting PPE beyond the EU.

Your Explanatory Memorandum seems to accept the need for urgently required PPE to be kept within the EU and indicates that this would also be of benefit to the UK. To assist in our scrutiny of the Commission Implementing Regulations and their impact on the UK, we would welcome your assessment of the following matters:

119 Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 making the exportation of certain products subject to the production of an export authorisation.

120 Commission Implementing Regulation (EU) 2020/568 of 23 April 2020 making the exportation of certain products subject to the production of an export authorisation.

- how effective the Regulations have been in reducing the gap between demand for and supply of PPE in the EU, and in the UK—we would particularly welcome further information on the proportion of UK PPE supplies sourced from within the EU and from outside the EU,
- whether restrictions on the export of PPE under the Regulations have “led to the full and effective lifting of all forms of internal bans or restrictions” which some Member States unilaterally introduced to protect their own supplies of PPE
- what impact the Regulations have had on UK exporters of PPE, including data on the number of authorisations granted or refusals made since 15 March 2020.
- whether important third country exporters of PPE have reciprocated by introducing their own restrictions on supplies to the EU and/or to the UK in response to the Regulations.

We note that the UK was not given advance notification of the first Commission Implementing Regulation (2020/402). We ask you to explain how the UK was made aware of the Regulation (which took effect on the day of its publication in the EU’s Official Journal), and whether the UK was consulted on or given advance notice of the amending Regulation (adopted on 19 March) or the second Commission Implementing Regulation (2020/568 adopted on 23 April). What mechanisms exist to ensure that the Government has adequate notice of EU laws which will apply to the UK during transition before they take effect?

The latest Commission Implementing Regulation (2020/568) includes a new requirement for Member States (including the UK) to consult the Commission on decisions granting export authorisations and to notify all authorisations granted or refused immediately so that the information can be made publicly available. Do you consider that these additional requirements are helpful in ensuring an adequate supply of PPE throughout the EU and in promoting transparency as well as consistency in the application of the Regulation?

The latest Commission Implementing Regulation also refers (in its opening paragraphs) to other EU initiatives to ensure adequate provision of PPE throughout the EU, including joint procurement involving 25 Member States and a strategic “resceEU” stockpile of medical equipment under the EU’s Civil Protection Mechanism. We ask you to update us on both initiatives, indicating how much PPE and other medical equipment relevant to the COVID-19 pandemic the EU has secured by these means. We would welcome further information on UK involvement in, or contributions to, both schemes to date as well as your assessment of their value in ensuring an adequate supply of PPE in the UK in the future.

Finally, you state in your Explanatory Memorandum that the Commission Implementing Regulation/s will have “no impact” on the Protocol on Ireland/Northern Ireland or on the UK after transition as they are “time-limited” and so are not expected to be in force for long. It nonetheless remains the case that similar measures may be necessary in the future to cope with a resurgence in the COVID-19 virus or with a new pandemic threat. The parent Regulation ([Regulation \(EU\) 2015/479 on common rules for export](#)) on which these Commission Implementing Regulations are based will continue to apply in Northern Ireland under the Protocol beyond transition. We ask you to explain how this might affect

trade in and supplies of PPE (or other products deemed to be “essential” and in need of protection under Article 5 of the 2015 Regulation) within the UK’s own internal market post-transition.

We look forward to receiving your response within 10 working days.

7 Trade preferences for developing countries¹²¹

These EU documents are legally and politically important because:

- they are likely to inform the development of the UK’s own trade preference scheme for developing countries from 1 January 2021, using the powers conferred on the Secretary of State by the [Taxation \(Cross-border Trade\) Act 2018](#) (“the 2018 Act”); and
- they concern an EU Regulation which will continue to apply to Northern Ireland once the post-exit transition period has ended under the terms of the Protocol on Ireland/Northern Ireland.

Action

- Write to the Minister for Trade (Ranil Jayawardena MP) requesting a further update on the development of the UK’s future trade preference scheme for developing countries, covering conditionality, grounds for suspension, monitoring and reporting arrangements, and highlighting any differences with and/or improvements on the EU’s GSP scheme, as well as details of any relevant developments or decisions in the Joint Committee and Specialised Committee on the Protocol on Ireland/Northern Ireland which may affect the UK’s scheme.
- Draw to the attention of the International Development Committee, the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

7.1 We examined these documents—a European Commission [report](#) on the operation of the EU’s preferential trading rules (“GSP”—Generalised Scheme of Preferences) for developing countries in 2018–19 and a [Commission Delegated Regulation](#) temporarily withdrawing some of Cambodia’s tariff preferences because of serious and systematic human rights violations—at our first document scrutiny meeting in this new session of Parliament in March 2020. We noted that the Government intended to introduce its own trade preference scheme for developing countries from 1 January 2021, using the powers conferred on the Secretary of State by the [Taxation \(Cross-border Trade\) Act 2018](#) (“the 2018 Act”). We [wrote](#) to the then Minister for Trade Policy (Rt Hon. Conor Burns MP) on 26 March 2020 seeking further information on the scheme envisaged by the Government

121 (a) Report on the Generalised Scheme of Preferences covering the period 2018–2019; Council document 5949/20 + ADDs 1–10, JOIN(20) 3; Legal base —; Department for International Trade; Devolved Administrations not consulted; ESC number 41070.

(b) Commission Delegated Regulation amending Annexes II and IV of Regulation (EU) 978/2012 as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) 978/2012 in respect of certain products originating in the Kingdom of Cambodia; Council document 6020/20, C(20) 673; Legal base: Article 19(10) of Regulation (EU) 978/2012; Department for International Trade; Devolved Administrations not consulted; ESC number 41072.

and on the implications of the Protocol on Ireland/Northern Ireland (part of the EU/UK Withdrawal Agreement) in determining the UK’s preferential market access terms. Full details are in our [Third Report](#).¹²²

The Minister’s response

7.2 The Minister confirms in his [letter of 15 April 2020](#) that the UK will continue to apply the EU’s GSP scheme during the post-exit transition period, including the proposed partial suspension of Cambodia’s preferences if they are implemented in August 2020.

Market access and eligibility

7.3 We asked the Minister whether the [guidance](#) published by his Department in January 2020 stating that the UK scheme would “replicate the same market access as the EU’s GSP” and “continue to provide trade preferences to the same countries as the EU’s GSP” remained Government policy and, if so, whether this meant that the UK would apply the same criteria as the EU to determine a country’s eligibility for trade preferences.¹²³ He tells us that the UK “intends to have in place a trade preference scheme which *at least maintains* the preferential market access we currently offer to developing countries under the EU’s GSP” (our emphasis).

Human rights and other conditionality

7.4 We also asked whether the Government expected to apply the same conditionality on human rights, labour rights, good governance and sustainable development under the UK’s scheme as the EU does under its GSP rules, and what form of monitoring and reporting it intended to put in place to ensure that GSP beneficiary countries comply with any human rights or other conditionality forming part of the UK’s future trade preference scheme.

7.5 The Minister reiterates the Government’s commitment to “universal human rights and sustainable development” and to promoting these values globally. He continues:

The Government believes that for trade preferences to be effective they must be relatively stable so that businesses have confidence to make decisions to import from beneficiary countries. We retain the power that, where countries systematically commit serious human rights violations, and dialogue has failed to produce progress, a country can be suspended from the UK’s preferences scheme.

7.6 As a procedure for monitoring the application of human rights or other conditionality “is still being developed”, the Minister offers to provide an update “ahead of the UK’s GSP scheme coming into force”.

122 Third Report HC 229–i (2019–21), chapter 7 (26 March 2020).

123 Guidance on *Trading with developing nations*, published on 30 January 2020. See <https://www.gov.uk/guidance/trading-with-developing-nations-during-and-after-the-transition-period>.

Impact of the Protocol on Ireland/Northern Ireland

7.7 We noted, in any event, that the operation of the Protocol on Ireland/Northern Ireland might make it difficult, in practice, for the UK to apply a tariff rate to developing countries under its own trading preference scheme rate that differed from the EU's, given the risk that any difference might cause friction in trade in the affected goods between Great Britain and Northern Ireland or give rise to a diversion of trade. We asked the Minister whether he acknowledged this risk and how significant it would be in shaping the UK's own trade preference scheme.

7.8 The Minister does not indicate whether he accepts that there is “a potential read-across to the administration of an independent tariff”, stating only that “the UK will pursue an independent trade policy for the whole of the UK, including Northern Ireland” after transition. Meanwhile:

The Government are considering the best way to implement the Protocol and will be discussing this with the EU in the Joint Committee and Specialised Committee created under the Withdrawal Agreement.

Improving on the EU's GSP scheme

7.9 We noted that the European Commission considered the EU's GSP arrangements to be “the most progressive in terms of coverage and benefits”.¹²⁴ We asked the Minister for his view on this assessment and on the potential for a UK scheme to go further, for example, by reducing the number of products that are classified as sensitive (on which tariffs are still applied), offering more generous rules of origin and cumulation (to encourage sustainable regional supply chains), and mitigating the “cliff edge” that developing countries can face when graduating out of a trading preference scheme.

7.10 The Minister tells us that the Government wants the UK's GSP to be “as effective and simple to access as possible, to best support economic development in poor countries across the globe and to support UK business to access competitively priced inputs and goods for UK consumers”. He continues:

We are therefore actively considering what improvements can be made to the EU's GSP. No decisions have been taken on possible options. I will be happy to provide a further update to you on any changes.

Action

7.11 Ask the Minister to provide a further update on the development of the UK's future trade preference scheme for developing countries, covering conditionality, grounds for suspension, monitoring and reporting arrangements, and highlighting any differences with and/or improvements on the EU's GSP scheme. The update should also include details of any relevant developments or decisions in the Joint Committee and Specialised Committee on the Protocol on Ireland/Northern Ireland which may affect the UK's scheme.

124 See the [website](#) of the European Commission's Directorate-General for Trade.

Letter to the Minister for Trade (Ranil Jayawardena MP), Department for International Trade

We write in response to the letter of [15 April 2020](#) from your predecessor (Rt. Hon. Conor Burns MP) in which he confirmed the Government’s intention to introduce a UK trade preference scheme for developing countries at the end of the post-exit transition period which “at least maintains the preferential market access” terms currently applied by the UK under the EU’s Generalised Scheme of Preferences (“GSP”).

We note the former Minister’s commitment to promoting “universal human rights and sustainable development” globally. He made clear that the Government intends to retain a power to suspend a country from the UK’s trade preference scheme in the event of systematic human rights violations which cannot be resolved through dialogue. He did not indicate if this conditionality (including a power of suspension) would also apply to labour rights, good governance and sustainable development, as is the case under the EU’s GSP scheme. Nor did he tell us what form of monitoring and reporting the Government intends to put in place to ensure that any conditionality is effective. We ask you to fulfil his offer of an update once the details of the UK’s GSP scheme are clearer. Your update should cover all elements of conditionality which form part of the UK scheme, the grounds for suspending a country from the scheme or temporarily withdrawing preferences, and details of the monitoring and reporting arrangements. We also ask you to highlight any aspects of the scheme which differ from the EU’s GSP arrangements.

It is not clear from your predecessor’s response whether the Government accepts that the Protocol on Ireland/Northern Ireland may make it difficult, in practice, for the UK to apply a tariff rate that differs from the EU’s GSP scheme. He highlighted the role of the Joint Committee and Specialised Committee on the Protocol, established by the EU/UK Withdrawal Agreement, in agreeing some of the detailed arrangements for implementing the Protocol. We anticipate that decisions taken by the Joint Committee may well have some “read across” to the administration of the UK’s own tariff rates, including the UK’s future trade preference scheme, and ask you to ensure that the update we have requested includes any relevant developments or decisions in the Joint Committee and Specialised Committee on the Protocol on Ireland/Northern Ireland. We also look forward to receiving further details of any improvements you make to the EU’s GSP scheme in developing the UK’s own scheme.

8 COVID-19: UK exposure to EU financial support for governments and businesses¹²⁵

This EU document is legally/politically important because:

- they set out how the EU will, or may, provide substantial financial support to its Member States in addressing the economic impact of the coronavirus outbreak, and how these are to be funded, with potentially significant consequences for the long-term future of European integration. The UK also continues to contribute to some (but not all) of these EU support schemes as part of the financial settlement in the Withdrawal Agreement, and also remains eligible to receive funding from the EU budget until the end of 2020.

Action

- Write to the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) to clarify the certain details of the potential financial implications of the EU's financial support schemes related to the coronavirus for the UK.
- Draw these developments to the attention of the Business, Energy and Industrial Strategy Committee, the Committee on the Future Relationship with the EU and the Treasury Committee.

Overview

8.1 The 2020 COVID-19 (coronavirus) pandemic and subsequent lockdown measures imposed to contain the outbreak have caused severe economic distress, and led governments to implement large-scale support packages to avoid mass bankruptcies and maintain household incomes. Since February, the European Union and its Member States have been discussing joint support measures to help countries, like Spain and Italy, where the required fiscal stimulus — which runs into hundred of billions of pounds across Europe — is stretching governments' spending capacity to breaking point as their costs for borrowing money rises.

8.2 In this Report, we have summarised the state of play in the EU's [efforts to provide financial support to its Member States](#) to help them fund their crisis response to date, as

125 The EU documents covered by this chapter are: (a) [Communication from the Commission: Coronavirus Response - Using every available euro in every way possible to protect lives and livelihoods](#); (b) [Proposal for a Council Regulation on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency \(SURE\)](#); (c) [Proposal for a Council Regulation amending Regulation \(EU, Euratom\) No 1311/2013 laying down the multiannual financial framework for the years 2014–2020](#); and (d) [Proposal for a Council Regulation activating the emergency support](#); Council and Commission numbers: (a) 7159/20, COM(2020) 143; (b) 7161/20, COM(2020) 139; (c) 7147/20, COM(2020) 174; (d) 7141/20, COM(2020) 175; Legal base: (a) -; (b) and (d) Article 122 TFEU; QMV; (c) Article 312 TFEU; unanimity and European Parliament consent; Department: HM Treasury; ESC numbers: (a) 41184; (b) 41183; (c) 41182; (d) 41177.

part of a broader package of EU measures to address the coronavirus pandemic.¹²⁶ It also assesses the implications of the EU's support schemes for the UK, principally in financial terms, as a former Member State during the post-Brexit transitional period that followed its formal withdrawal from the EU as of 31 January 2020, and beyond. The Chief Secretary to the Treasury submitted an Explanatory Memorandum on the EU proposals and policy papers, after repeated delays, in early May 2020.

8.3 To date, the key elements of the EU's fiscal and monetary response to the coronavirus, which we discuss in more detail further down, are as follows:

- first, there has been a refocusing of the **2020 EU budget**, including most of the EU's emergency reserves for the year, to [provide](#) some €40 billion (£37 billion) of **short-term financial support to Member States** in addressing the pandemic and the immediate economic fall-out. This money is being distributed via existing EU programmes such as the **Structural Funds**, the **Emergency Support Instrument** and the **Solidarity Fund**;
- secondly, the **European Central Bank** has taken the lead in supporting EU countries' financial position by launching a €750 billion (£653 billion) [bond-buying scheme](#) launched on 18 March 2020, called the "**Pandemic Emergency Purchase Programme**" (PEPP). This way it is purchasing certain Eurozone sovereign and corporate bonds on the secondary market, primarily as a means of providing national governments like Italy and Spain with additional liquidity. The PEPP is currently scheduled to run until at least the end of 2020, but may be extended and expanded;
- third, EU Finance Ministers on 9 April [agreed](#) the outline of a further €540 billion (£470 billion) three-pronged fiscal "**safety net**" for Member States, the details of which are still being negotiated. Financed outside of the EU budget, it consists firstly of a [€100 billion loan facility](#) for the EU's 27 governments called "**SURE**" which they can use to fund national income retention programmes. The loans are to be financed by EU-issued debt bonds, guaranteed against the EU budget and counter-guaranteed by the Member States; secondly, a controversial "last resort" option for the 19 Eurozone governments to access [balance-of-payment loans](#) from the intergovernmental **European Stability Mechanism** (ESM) in case of financial difficulty; and, thirdly, a €25 billion [guarantee fund](#) for bank loans to small businesses in all EU countries via the **European Investment Bank**, to provide an additional €200 billion of financial support for the real economy;¹²⁷ and
- last, EU governments have also begun negotiations on an "**EU Recovery Fund**", a longer-term support mechanism to help all EU countries with their economic reconstruction efforts in the coming years. The details of this instrument,

126 In addition to direct financial support (i.e. grants and loans), the EU has also adopted policy measures that aim to facilitate domestic economic support measures (e.g. the relaxation of EU restrictions on subsidies for businesses), joint procurement of medical supplies, and coordination of entry restrictions for travellers into the Schengen Zone. The Committee has published a full list of EU COVID-related proposals under consideration on its website. Other key EU measures are discussed in more detail elsewhere in this Report, and in our Special COVID-19 Report of 26 March 2020.

127 However, the "SURE" loans will be funded from bonds guaranteed, in part, against the EU budget. We are seeking clarification from the Treasury with respect to the UK's exposure to those contingent liabilities in terms of its contribution to the EU budget during the post-Brexit transition period.

including its link to the EU’s next **Multiannual Financial Framework** (its long-term budget for 2021–2027), are yet to be decided through intensely difficult negotiations between the 27 EU countries. The European Commission is due to publish a new proposal on the EU’s long-term budget, including fiscal support to overcome the damage done by the coronavirus crisis, in mid-May. We will assess those proposals in more detail in the near future separately, but the outcome of this process — and in particular whether the remaining Member States pool further fiscal resources and powers at EU-level or not — is likely to have significant consequences for the future of the European Union itself.

8.4 The UK, although no longer a Member State of the EU since 31 January 2020, still has a direct interest in the EU’s approach to mitigating the economic impact of the coronavirus pandemic, but to different degrees. As an overarching point, the manner in which the EU — as one of the UK’s most important trading partners — provides support to its Member States in the short and longer term will also impact on our own economic recovery.¹²⁸ In addition, while the UK has left the EU,¹²⁹ under the terms of its Withdrawal Agreement it has entered a post-Brexit transitional period, due to end on 31 December 2020. Until that date, EU law continues to apply in and to the UK, and the Treasury still has to contribute to the EU budget as if still a Member State as part of a wider [£32.9 billion Brexit financial settlement](#).¹³⁰ This also means the Government and other British organisations remain eligible to access grants provided from the EU budget — including the coronavirus support measures like the Structural Funds — until the end of the year.¹³¹

8.5 With respect to the ECB’s bond-buying programme and the fiscal “safety net” agreed in outline by EU Finance Ministers, the implications for the UK are less direct. The UK, outside the Eurozone, is not involved in the PEPP scheme or a party to the European Stability Mechanism, and the Bank of England does not contribute to either. As of its date of exit, the UK is also no longer a shareholder of the European Investment Bank, meaning it will not contribute to the new €25 billion guarantee fund or be part-liable for risks associated with these new loans (and, by extension, British businesses are no longer eligible to receive EIB support).¹³² Lastly, the UK will not have to provide any counter-guarantees to the “SURE” loan programme directly, but we are seeking clarification from

128 The coronavirus pandemic has also affected the UK-EU negotiations on a new free trade agreement, with only half the planned negotiating rounds now taking place before a scheduled UK-EU summit in June 2020.

129 This also means that the UK has agreed to apply any changes to EU law adopted during the transition period to address the coronavirus crisis, such as the “Temporary Framework” for EU State aid rules — discussed in a separate chapter of this Report — or the proposed amendments to the EU’s prudential requirements for banks published by the European Commission on 29 April 2020, for which we are awaiting the Treasury’s Explanatory Memorandum setting out the Government’s position.

130 This is the most recent estimate of the net cost of the Brexit financial settlement produced by the Office for Budget Responsibility, [published in March 2020](#).

131 The substance of the Brexit financial settlement is summarised in more detail in this [House of Commons Library briefing](#).

132 Although the Government has repeatedly [stated](#) that it wants a “future relationship” between the UK and the European Investment Bank, it has not made public any proposals to that effect. The EU Treaties limit shareholding of the EIB to its Member States only.

the Treasury to ascertain if the UK’s budget contributions as part of the Brexit financial settlement could be used towards paying off the EU’s debt obligations, if the guarantee were to be called on during the transition period.¹³³

8.6 The Committee is also aware of concerns¹³⁴ that any extension of the post-Brexit transition period into 2021, and with it a further UK contribution to the EU budget,¹³⁵ could lead to the British taxpayer having to contribute to EU support for countries struggling because of coronavirus, or be forced to bail-out the European Investment Bank if it faces widespread coronavirus-related defaults on its €557 billion (£485 billion) outstanding loan book.¹³⁶ Noting that [section 15A of the European Union \(Withdrawal\) Act 2018](#) prohibits any extension of transition, the Committee is of the view that there are no current grounds for an assessment of any UK contribution to the EU budget, including its putative Coronavirus Recovery Fund, beyond the existing Brexit financial settlement. With respect to exposure to the activities of the European Investment Bank, under the Withdrawal Agreement the UK has already agreed to a maximum theoretical contingent financial liability of €39.2 billion (£34 billion) if the Bank requires further capital, but only in relation to its operations approved before the UK’s withdrawal on 31 January 2020.¹³⁷ The Committee has written to the Treasury to ask if it still classifies the possibility of the EIB-related contingent liability crystallising as “remote”, given the current extreme economic circumstances.¹³⁸

8.7 Given the importance of the EU’s fiscal and monetary response to the coronavirus crisis to the UK, we have summarised its state of play in more detail below, as regards both the immediate support measures — through the EU budget, the ECB and loans — and the longer-term “Recovery Fund” respectively.

Short-term support for Member States and the UK from the EU budget

8.8 On the basis of a number of proposals put forward by the European Commission since early March 2020, the Member States and the European Parliament have agreed to make approximately €40 billion (£35 billion) of coronavirus-related financial support available from the EU budget in 2020. In practice, these funds are being channelled through various different EU programmes and instruments, each with their own purpose and focus. As noted, under the terms of the Withdrawal Agreement, the UK remains entitled to receive, or apply for, a share of all of these funds until the end of 2020.

8.9 EU funds that have been redirected to address the pandemic and economic fall-out include notably:

133 The debt bonds to be issued by the SURE Programme would be paid off using repayments from Member States receiving loans from the facility. Therefore, the EU budget guarantee would be called on if a Member State receiving such a loan defaulted. The proposal for a Regulation establishing the SURE Programme does not contain a “guarantee fund” that would require a part of the EU budget to be set aside (“provisioned”) in case the guarantee is called on, to avoid disruption to other EU spending.

134 See for example The Daily Express, [“EU will force UK to fund huge eurozone bailout once Brexit extension is agreed”](#) (19 April 2020).

135 Article 132 of the Withdrawal Agreement.

136 [EIB Annual Report 2018](#), p. 10.

137 Article 150 of the Withdrawal Agreement.

138 The UK’s guarantee to the European Investment Bank is a legal obligation already set out in the Withdrawal Agreement, and therefore applicable irrespective of any extension to the transition period.

- **The EU Structural and Investment Funds:** The majority of the EU’s budgetary support for Member States and the UK in 2020 — said by the Commission to amount to €37 billion (£32 billion) — is being channelled through its existing Structural Funds (ESIFs) for economic development. On [30 March](#) and [23 April 2020](#), the EU agreed two legal texts constituting its “[Coronavirus Response Investment Initiative](#)” (CRII).¹³⁹ They give countries more flexibility to spend their pre-allocated share from the Structural Funds this year¹⁴⁰ to address the healthcare requirements and economic consequences of the coronavirus crisis.¹⁴¹ As the CRII is technically complex, we have considered it in more detail in a separate section of this Report;
- **The European Maritime and Fisheries Fund and European Agricultural Guarantee Fund:** Supplementing the CRII, the EU is also adapting its specific support programmes for the fisheries and agricultural sectors. This will allow EU money to be used to [help fishermen](#) who have no income due to a “temporary cessation of fishing activities”¹⁴² and [pay farmers](#) higher advances on their European subsidies.¹⁴³ We have assessed the fisheries support scheme, which required legislative change, in more detail elsewhere in this Report; and
- **The Emergency Support Instrument:** This second major financial support scheme put in place by the EU is €2.7 billion (£2.4 billion) from its [Emergency Support Instrument](#) (ESI), focussed on the costs of providing COVID-related healthcare.¹⁴⁴ The European Commission can use money from this Instrument to finance “a needs-based emergency response [...] aimed at preserving life, preventing and alleviating human suffering” within the EU.¹⁴⁵ The Commission has been [given more flexibility](#) to spend the money on “actions [that] may be

139 See EU Regulations [2020/460](#) and [2020/558](#).

140 To avoid difficult negotiations at a moment when speed was required, the Commission did not adjust the proportional *allocation* of Structural Funds reserved for each Member State, which were set when the EU’s current long-term budget was agreed in 2013. Under the [existing allocation formula](#) from 2013, Poland receives the most EU Structural Funding over the 2014–2020 period (€86 billion), roughly twice as much as the next two largest recipients Italy (€44 billion) and Spain (€39 billion). As such, the readjustment of the Structural Funds does not involve redeployment of EU funds away from less-affected countries to those hardest hit, like Italy and Spain. When announcing the CRII, the Commission justified maintaining the existing distribution of funds because “the design and launch of a dedicated and more targeted instrument would be more time consuming, which would not be of added value under the current circumstances”.

141 The Commission has said that the changes will provide a legal basis for “healthcare costs to be eligible for reimbursement, for example allowing Member States to “use money from the European Regional Development Fund and the European Social Fund to invest in their healthcare systems”.

142 The amendments to the Fisheries Fund were set out in European Commission proposal [COM\(2020\) 142](#), which was approved by the Member States and the European Parliament [on 23 April](#).

143 The European Commission has also announced that, in addition to the higher advance, it would give farmers more time to fill in their annual subsidy paperwork and reduce physical inspections to verify eligibility.

144 The Commission proposal to activate the Emergency Support Instrument — document [COM\(2020\) 175](#) — was approved by the Member States [on 14 April 2020](#) (the European Parliament not having a formal role in the process). The Commission has proposed “commitment appropriations” — the ability to spend — of €2.7 billion via the ESI in 2020. However, it envisages only €1.38 billion would be actually disbursed this year, with the rest to be funded from future EU budgets.

145 The ESI was established in 2016 to help Greece cope hosting a large influx of refugees, complementing the EU’s Humanitarian Aid Instrument (which, legally, can only be used to address disasters outside the EU). The Emergency Support Instrument has the same legal basis, Article 122 TFEU, as the former European Financial Stability Mechanism, a former crisis response instrument for EU countries with balance-of-payment difficulties.

financed in case of pandemics with large scale effect”, and designate “equipment manufacturers as well as scientists and research institutions” as potential recipients;¹⁴⁶

- **The Fund for Aid to the Most Deprived (FEAD):** this [Fund](#) was established in 2014 to support EU Member States in targeting those furthest from the labour market and most at risk of extreme poverty and social exclusion, for example with food support.¹⁴⁷ It will now be used to provide relief to this same group of people in the specific context of COVID-related economic and mobility restrictions.¹⁴⁸ The UK Government has previously [decided not to use](#) its £3.4 million allocation from the Fund for the 2014–2020 period;¹⁴⁹
- **The EU Solidarity Fund and the European Globalisation Adjustment Fund:** These EU instruments provide financial support for EU countries where they experience “serious repercussions [...] as a consequence of a major natural disaster”¹⁵⁰ or large-scale redundancies due to “as a result of a [...] economic crisis” respectively. They have a combined budget for 2020 of €1.4 billion (£1.2 billion).¹⁵¹ The UK has never applied for money from the Globalisation Adjustment Fund, but is entitled to do so;¹⁵² and
- Lastly, the EU’s **Civil Protection Mechanism (CPM):** the budget for this [Mechanism](#), whose annual budget for this year was tripled to €544 million (£457 million) following the outbreak,¹⁵³ is being used to bulk-buy medical equipment for an EU stockpile, and fund flights repatriating EU citizens and others¹⁵⁴ trapped overseas.

8.10 The Committee will pursue the Government’s intentions with respect to tapping into these EU funds to support the UK’s coronavirus response in the context of its scrutiny of the specific EU funds and programmes described. The EU has also announced a [support package](#) for non-EU countries through its existing Development Assistance and external

146 See [Council Regulation 2020/521](#). As a result, the Commission could allocate funding, for example, to support conversion of existing manufacturing facilities to produce medical equipment, the transportation of patients from one EU country to another, or the construction of temporary field hospitals.

147 The Member States and the European Parliament have amended the legal basis for the FEAD to adapt it to the current circumstances, for example by allowing the funds to be used for electronic vouchers rather than physical food parcels. See European Commission document [COM\(2020\) 141](#).

148 See [EU Regulation 2020/559](#).

149 See for more information our [Report of 26 March 2020](#).

150 On 30 March, the Member States and the European Parliament amended the Regulation establishing the Solidarity Fund to provide an explicit legal basis for using its reserves for ‘major public health emergencies’. See European Commission document [COM\(2020\) 114](#).

151 The European Commission [said on 2 April](#) the 2020 budget for the Solidarity Fund, as provided for under the terms of the MFF Regulation, was approximately €1,2 billion, while the Globalisation Adjustment Fund had an endowment of €179.3 million.

152 The UK did [successfully apply for EU Solidarity Fund](#) in 2017 for €60 million of support in relation to floods in late 2015 and early 2016.

153 The [original 2020 budget](#) for the CPM was €123 million for measures within the EU and €6 million for measures outside the EU (including repatriation flights). After two amending budgets adopted in April 2020, those amounts have been increased by €370 million and €45 million respectively, leading to a new total budget of approximately €544 million.

154 The EU’s Civil Protection Mechanism is open to all EU Member States but can also be joined by certain “third countries”. The UK is considered an EU Member State for eligibility purposes until the end of the post-Brexit transition period, meaning British nationals can benefit from CPM-funded repatriation flights.

action programmes, and is putting together [macro-financial assistance loans](#) totaling €3 billion (£2.6 billion) to ten countries including Ukraine, Tunisia and Jordan. The Committee will consider these measures separately in the near future.¹⁵⁵

The EU budget: limits on funding for Europe’s coronavirus support schemes

8.11 The support measures listed in the previous section are funded from the general EU budget. The EU’s spending power, its annual budget, is approved for each calendar year by joint agreement between Member States in the Council of Ministers and the European Parliament. They do so on the basis of long-term expenditure limits and priorities they set in advance for seven-year periods (known as the Multiannual Financial Framework or MFF). EU spending has to remain within the limits set by the MFF, which currently runs from 2014 until the end of 2020. Moreover, overall payments from the EU budget, and with it Member States’ contributions, over that period cannot exceed 1.20 per cent of its collective Gross National Income (GNI).¹⁵⁶

8.12 The way in which the EU’s finances works leads to certain limitations, which have been fundamental to shaping the Commission’s proposals for direct EU budgetary support in light of the coronavirus crisis, and the consequences of which we discuss further below:

- the EU has limited flexibility to introduce new last-minute funding priorities, like its coronavirus response, without disrupting planned spending. It can call on certain emergency pots of additional funding, known as its “Special Instruments”, but these are limited in size and cannot in any event result in the EU spending more than the statutory maximum of 1.2 per cent of the EU’s collective GNI (paragraphs 13 to 15);¹⁵⁷
- moreover, the legal limit on size of the annual EU budget means that its financial firepower — while large in absolute terms, at €153.6 billion (£134 billion) in 2020¹⁵⁸ — is limited compared to national governments’ spending ability. This has meant that the bulk of coronavirus support is currently being provided by Member States, subject to EU rules on State aid (which have been significantly loosened in response to the crisis)¹⁵⁹ and discussions are on-going about additional European support mechanisms which would not be directly funded from the EU budget but by different means (see paragraphs 16 to 23);¹⁶⁰ and

155 See European Commission documents [JOIN\(2020\) 11](#) and [COM\(2020\) 163](#).

156 Although Article 3 of [Decision 2014/335/EU](#) (the “Own Resources Decision”), which stipulates how EU Member States contribute to the EU budget) refers to 1.23 per cent, that ceiling was [recalculated](#) in accordance with the formula referred to in that same article in 2016, resulting in a downward adjustment to 1.20 per cent. Any changes to this limit would need to be approved unanimously by all Member States and ratified under domestic procedures.

157 Until the end of 2020, the UK’s economy is included in this collective total as it is a budget contributor as if still a Member State until 31 December this year.

158 This [refers](#) to the payment appropriations for 2020. The EU’s commitment appropriations for 2020, i.e. the amount of new spending it can legally commit to for payment this year or at a later date, is €168.7 billion.

159 We have discussed the relaxation of EU State aid rules during the current crisis in a separate chapter of this Report.

160 To support national support schemes to tackle the crisis, the European Commission has significantly relaxed the application of EU State aid rules – which govern how EU countries and the UK can financially support companies – under a “Temporary Framework”. The EU has also effectively [suspended](#) the Stability and Growth Pact (SGP), which limits EU Member States’ government deficit and debt (and therefore public spending). The aim of these two measures is to give countries the flexibility needed to spend what is required to limit the damage created by COVID-19 and the lockdowns imposed to contain it. The new approach to State aid rules is considered in more detail in a separate chapter of this Report.

- because the Member States and European Parliament have not yet approved the Multiannual Financial Framework for the next seven-year period (covering the years from 2021 up to and including 2027), the EU cannot provide any clarity on what kind of COVID-related support its budget can offer from next year onward, or how it would be linked to the EU long-term Coronavirus Recovery Fund (paragraphs 24 to 33).

Use of the EU's emergency funding reserves

8.13 With respect to the first of these limitations, finding funds in the EU budget for the range of support described in paragraph 9 has required certain budgetary adjustments in recent weeks. While most of the coronavirus support measures funded from the EU budget consist of redeployed funds already planned to be spent this year, emergency funding pots have been tapped to provide an additional €445 million for the Civil Protection Mechanism and €2.7 billion for the Emergency Support Instrument (see above).¹⁶¹ The EU's reserves for 2020 are now almost fully depleted,¹⁶² meaning that in practice there is now very limited flexibility in the EU budget this year to increase its coronavirus support without either reducing planned spending in other areas,¹⁶³ or securing agreement from the EU Member States to increase the size of the budget — and therefore their contributions — overall. There are no proposals to either effect on the table at present.

8.14 Of particular note in the EU's use of its reserves is an [amendment](#) to the 2013 Regulation that established the 2014–2020 Multiannual Financial Framework. To unlock more funding for the Emergency Support Instrument, a special reserve known as the “Global Margin for Commitments” (GMC) was legally modified, so that it could provide €2 billion towards the ESI where previously the money not have been used for this purpose.¹⁶⁴ The UK, under the terms of its Withdrawal Agreement, is exempt from having to apply any changes to the MFF adopted after 31 January 2020 that would “have an impact on [its] financial obligations” under the Brexit financial settlement.¹⁶⁵ The EU has asserted that the UK will have to contribute to this novel use of the GMC because the change is “limited to [its] purpose”, i.e. the EU could have decided to spend the additional €2 billion using this reserve anyway without the legal modification, but for different purposes.¹⁶⁶ We are

161 These technical budgetary adjustments have included a [first](#) and [second](#) Amending Budget to the EU Budget for 2020, the [use of the Flexibility Instrument](#) and the [use of the Contingency Margin](#), as well as recourse to the [Global Margin for Commitments](#) which is described in this Report because of its potential financial implications for the UK.

162 It appears that any further financial support this year, without reducing spending elsewhere or increasing the EU budget overall, would require additional use of the final remnants of the last-resort “Contingency Margin”.

163 Scope for significant reductions in planned EU spending for the rest of 2020 is limited, because some funds will already have been legally committed, and the lion's share of the EU budget is earmarked for the Structural Funds and the Agriculture Guarantee Fund, both of which are being used as part of the EU's coronavirus support measures.

164 The Member States and the European Parliament approved the amendment to the MFF Regulation [on 17 April 2020](#), based on European Commission proposal [COM\(2020\) 174](#). The impact is limited to the 2020 budget only since the EU's long-term budget for the 2021–2027 period, including any “Special Instruments”, is yet to be agreed.

165 See Article 135(2) of the Withdrawal Agreement.

166 Recital 4 of Regulation 2020/538/EU, which contains the amendment, in full reads: “Amendments set out in this Regulation are limited to the change of the purpose of the use of the Global Margin for Commitments and do not increase financial obligations. Therefore, it is appropriate to clarify that, for the purposes of Article 135(2) of the Withdrawal Agreement, the amendments set out in this Regulation do not have an impact on the financial obligations of the United Kingdom and, as such, are applicable to the United Kingdom”.

awaiting confirmation from the Treasury if it accepts this interpretation, which overall is likely to increase the UK's gross contribution to the EU budget under the financial settlement by an additional €252 million (£219 million).¹⁶⁷

8.15 Given the limitations on the EU budget, the coronavirus has also led to independent (and indirect) financial support for Eurozone countries, in particular from the European Central Bank. Separately, discussions on a short-term “safety net” to support EU governments in financing their immediate economic needs, and a long-term EU Coronavirus Recovery Fund, are on-going. These are discussed further below, given the UK's wider financial and economic interest in the EU's actions.

The European Central Bank's monetary policy response

8.16 After the EU budget, the second pillar of the Union's package of financial support measures related to the coronavirus-induced economic crisis has come from the independent European Central Bank (ECB), which acted while the EU's Member States were still discussing their position on a joint financial response to aid in economic mitigation and recovery efforts (see below).¹⁶⁸

8.17 In particular, on 19 March 2020 the ECB [launched](#) its “Pandemic Emergency Purchase Programme” (PEPP),¹⁶⁹ a new €750 billion (£704 billion) bond-buying scheme under which the Eurozone's national central banks purchase sovereign (and corporate) debt from countries in the single currency area on the secondary markets, making it easier for those Governments to finance the spending to respond to the COVID-19 crisis through borrowing without facing rising — and potentially unsustainable — public debt.¹⁷⁰ While the ECB is expected to expand its bond-buying programme further,¹⁷¹ there are limitations on its interventions: the EU Treaty is already understood to prohibit the ECB from buying Eurozone governments' debt bonds on primary markets, meaning it cannot directly finance their public spending like the Bank of England can do for the Treasury.¹⁷²

8.18 The PEPP has proven controversial in any event, not only because it was created in the absence of a clear joint political response from the EU's national governments (especially those part of the 19-country Eurozone). Compared to the ECB's sovereign debt purchases

167 The Office for Budget Responsibility (OBR) estimates that the UK's financing share of EU expenditure under the settlement will be 12.6 per cent, which with respect to the €2 billion mobilisation of the GMC would translate into an increase in its estimated contribution for this year of €252 million (£219 million).

168 In the UK, the [Bank of England](#) has also cut interest rates and is [directly financing](#) the Government's coronavirus support schemes for British businesses via the Treasury's Ways and Means Facility.

169 The PEPP was formalised through [ECB Decision \(EU\) 2020/440](#) on a temporary pandemic emergency purchase programme on 24 March 2020. It comes in addition to the Bank's existing [Asset Purchase Programme](#) (APP), which purchases €20 billion in bonds each month and a [coronavirus-related commitment](#) to purchase an additional €120 billion in assets made by the ECB on 12 March.

170 Compared to the ECB's previous bond-buying schemes, including the existing APP, this latest iteration is [not subject to the same constraints](#) (including limits on the proportion of the scheme which can be spent on the bonds of any individual Eurozone country's debt, and the eligibility of Greek sovereign bonds). There has been speculation that the abandonment of these constraints could lead to a legal challenge against the PEPP programme, in particular in Germany).

171 On 18 March, the Bank's Governing Council said that it “will do everything necessary within its mandate. The Governing Council is fully prepared to increase the size of its asset purchase programmes and adjust their composition, by as much as necessary and for as long as needed. It will explore all options and all contingencies to support the economy through this shock”. On 7 April 2020, the ECB also announced several [measures](#) making it easier for banks to access low-cost loans from the ECB and maintain lending levels for companies, including by allowing the use of low-rated Greek government bonds as collateral in return for these liquidity injections.

172 See Article 123 TFEU.

under its existing “Asset Purchase Programme”, this latest iteration is [not subject to the same constraints](#) (including limits on the proportion of the scheme which can be spent on the bonds of any individual Eurozone country’s debt, and by making Greek sovereign bonds eligible for purchase). There has been speculation that the abandonment of these constraints could lead to a legal challenge against the PEPP programme, in particular in Germany.

8.19 In any event, the ECB’s efforts alone, even if expanded, may not be enough, with the cost of borrowing [still rising](#) for countries including [Italy](#) (creating the risk that it may not be able to spend what it needs to in order to fight the crisis and service its existing debt obligations). This is the context in which discussions continue about a financial assistance mechanism to be funded by the EU’s national governments, rather than the Central Bank. However, the Bank’s role in the EU’s economic stabilisation and recovery efforts is likely to remain substantial, especially if there is no, or only a limited, unified EU financial support mechanism that can mobilise substantially larger amounts than the current EU budget.

The financial “safety net” agreed by EU Finance Ministers on 9 April

8.20 As noted, the cap on EU spending of 1.2 per cent of its GNI inevitably means that the bulk of public spending to address the fall-out of the pandemic will be done by national governments (aided in this by the European Central Bank, as described above, and to a lesser extent by the EU budget).¹⁷³ However, EU countries that have to pay more to raise funds on capital markets may not be able to finance the necessary schemes without risking unsustainable debt levels.¹⁷⁴

8.21 Many EU countries — in particular Italy, Spain and France — have therefore [pushed](#) for additional and immediate financial EU-level support to help governments to spend in support of their economies during this crisis. This has been especially acute for the Eurozone, because of the limits of the European Central Bank’s powers (see above), meaning the 19 EU countries which use the euro do not have the ability, like the UK does, to have a central bank finance their spending directly. Therefore, in the absence of EU support, they would either have to borrow more or increase taxes.¹⁷⁵ However, EU countries have taken very different positions on how they should structure their collective short-term “safety net” and the longer-term economic recovery, and in particular whether any support to national governments provided at EU-level should take the form of grants or loans and the level of conditionality — i.e. a requirement for painful economic reforms — that should be attached.

8.22 Against this backdrop, on 9 April 2020 the 27 EU Finance Ministers¹⁷⁶ reached a provisional [agreement](#) on the outline, in various degrees of detail, of three further short-

173 To facilitate national schemes to tackle the crisis, the European Commission has significantly relaxed the normal limits imposed by EU State aid rules to government subsidies and tax breaks, giving countries more flexibility to spend what is required. We have considered this new approach to State aid, and its links to the UK Government’s coronavirus support for businesses, in more detail in a separate chapter of this Report.

174 The EU has effectively [suspended](#) the Stability and Growth Pact (SGP), which in normal times limits each EU Member State’s government deficit and debt (and therefore public spending). However, that suspension, while avoiding the risk of sanctions from Brussels for higher government spending, does not effect what price the market may extract for buying sovereign bonds from countries like Italy and Spain.

175 The European Central Bank is explicitly prohibited from “monetary financing” under [Article 123 TFEU](#).

176 The meeting was of a videoconference of the Eurogroup — the Finance Ministers of the 19 Eurozone countries — in “inclusive format”, i.e. with all 27 EU Finance Ministers participating. The UK did not participate as it has no formal institutional representation within the EU institutions as a non-Member State.

tem support measures for Member States. These build on the EU’s budgetary grants and the ECB’s bond purchasing on secondary markets as described in the previous sections.¹⁷⁷ This third leg of the EU’s package of support measures, collectively referred to as a “safety net”, consists of three separate schemes, mostly leveraged against guarantees provided by the Member States themselves (rather than via the EU budget):

- First, a EU-level €100 billion (£87 billion) programme for “**Support to Mitigate Unemployment Risks in an Emergency**” (or “**SURE**”).¹⁷⁸ Using funds raised by issuing EU debt bonds,¹⁷⁹ SURE would provide low-cost loans to Member States to help them finance their income retention schemes for workers and self-employed people affected by the crisis.¹⁸⁰ The bonds would be guaranteed against the EU budget, in turn counter-guaranteed by €25 billion of counter-guarantees from Member States to limit the EU’s total contingent liability. The UK is explicitly excluded from having to provide guarantees for, or drawing on, this Instrument during and beyond the transition period. However, as we discuss further in paragraphs 37 to 40, it is unclear if the UK’s payments to the EU budget during the post-Brexit transition period could be used towards paying off the EU’s debt obligations incurred under the Instruments if the guarantee is called on;¹⁸¹
- Second, **emergency balance-of-payment assistance** for governments of Eurozone countries, to help them finance COVID-related measures if they are unable to raise sufficient funds on the capital markets.¹⁸² This would take the form of a conditional “Pandemic Crisis Support” loan, capped at 2 per cent of their domestic GDP, from the €500 billion **European Stability Mechanism (ESM)**.¹⁸³ It seems unlikely countries will call on it to help them respond to the coronavirus crisis if it comes with conditions of economic reform;¹⁸⁴ and

177 Eurogroup, “[Report on the comprehensive economic policy response to the COVID-19 pandemic](#)” (9 April 2020).

178 The proposal is set out in European Commission document [COM\(2020\) 139](#).

179 The EU already issues bonds to finance certain activities, for example macro-financial assistance loans to EU and non-EU countries. It can only borrow money to finance loans; EU law forbids the use of debt obligations to finance the EU budget. [According to the European Commission](#), the EU currently has approximately €52 billion in outstanding debt instruments.

180 UK examples of such measures would be the [Coronavirus Job Retention Scheme](#) and the [Self-employment Income Support Scheme](#).

181 See article 15 of the [draft SURE Regulation](#). There is a question about the use of the EU budget if the guarantee against which SURE debt instruments were issued is ever called on (i.e. the contingent liability crystallises, when a Member States fails to repay the loan), as the UK remains a contributor to the EU budget for the duration of the post-Brexit transition period.

182 For non-Eurozone countries, the EU has a [Balance of Payments Facility](#) which fulfills the same function as the ESM. The UK can technically call on this Facility until the end of the transition period.

183 The ESM was set up following the sovereign debt crisis as a last resort measure for Eurozone countries in financial difficulties, and raises funds for its operation against €80 billion of paid-in capital from the 19 members of the single currency area. Its loans are normally subject to stringent conditionality, requiring structural economic reforms from recipient countries as a way of enabling them to return to the capital markets. Because of the circumstances of its creation, the Mechanism carries significant negative connotations in much of Southern Europe.

184 The joint agreement of the EU Finance Ministers of 9 April 2020 states: “The only requirement to access the [ESM] credit line will be that euro area Member States requesting support would commit to use this credit line to support domestic financing of direct and indirect healthcare, cure and prevention related costs due to the COVID 19 crisis”. The link between the ESM and economic reforms is also clear from the inclusion, in the agreement of 9 April, of a reference to Eurozone countries’ commitment to “strengthen economic and financial fundamentals, consistent with the EU economic and fiscal coordination and surveillance frameworks”. The Italian Government has already [rejected](#) actually calling on the ESM because it is linked to internal economic reforms, whereas the coronavirus is seen as an external shock.

- Lastly, the Finance Ministers endorsed the creation of a **Coronavirus Guarantee Fund** by the European Investment Bank (EIB).¹⁸⁵ This fund, made up of €25 billion of guarantees provided by the EU’s Member States, aims to leverage €200 billion of bank lending to businesses affected by the pandemic (by partially indemnifying banks if such business loans are not repaid). Under the Withdrawal Agreement, British banks and businesses are considered non-EU companies with respect to new EIB investments even during the transition period, and therefore not generally eligible to make use of its programmes (including this new Guarantee Fund). Under that treaty, the UK is also not on the hook for any contingent liabilities related to EIB loans entered into after its exit on 31 January 2020, although concerns have been expressed about its exposure to the pre-exit stock of EIB loans in case of widespread economic collapse in the EU (which we address in paragraphs 41 to 47 below).¹⁸⁶

8.23 Negotiations on the detail and implementation of the three components of the safety net agreed on 9 April, in particular the “SURE” loan scheme and the conditions attached to any support from the ESM, are still in progress as of 7 May. On 23 April, EU leaders called for them to be “operational by 1 June 2020”, but it is not yet clear if that ambition will be realised.

The EU Coronavirus Recovery Fund

8.24 The economic consequences of the coronavirus pandemic, and the measures implemented to contain it, are already significant. The support measures for EU countries as described in the previous sections — whether already implemented or still being finalised — are all part of the Union’s immediate financial response to the current crisis. They are therefore principally aimed at ensuring EU countries’ health services cope, and ensure relative economic stability for the remainder of 2020. The EU’s approach beyond then, focussed primarily on the longer-term economic recovery rather than addressing the outbreak directly, is less clear.

8.25 On 26 March 2020, the European Council — the EU’s Heads of State and Government — issued a [joint statement](#) calling for a “coordinated exit strategy, a comprehensive recovery plan and unprecedented investment”. However, they did not provide any substantive guidance on the details of this strategy or recovery plan, instead inviting the “the President of the European Council and the President of the Commission, in consultation with other institutions, especially the European Central Bank, to start work on a Roadmap to this end”. Since then, discussions on this matter have progressed somewhat, but only glacially:

- At their meeting on 9 April, EU Finance Ministers [agreed](#) that a common EU Coronavirus “Recovery Fund” was necessary to “kick-start the economy”, but failed to agree on any of the detail;

185 EIB, “[EIB Group establishes EUR 25 billion guarantee fund to deploy new investments in response to COVID-19 crisis](#)” (16 April 2020). The new Guarantee Fund builds on other Covid-related support already being provided by the EIB, including offering guarantees and liquidity lines for, and the purchase of asset-backed securitised SME loans from, banks that lend to companies.

186 The Daily Express, “[EU will force UK to fund huge eurozone bailout once Brexit extension is agreed](#)” (19 April 2020).

- On 21 April, the European Commission produced a “[Roadmap for Recovery](#)“, which identified four areas of focus for the longer-term economic recovery efforts, including a “Marshall Plan-type investment effort”. However, it did not make any substantive proposals on the contents of such a scheme; and
- On 23 April, the European Council — the EU’s Heads of State and Government — held a videoconference to discuss the legal and practical aspects of the Recovery Fund. Again, no firm decisions were taken,¹⁸⁷ with the leaders instead [asking](#) the European Commission to “analyse the exact needs and to urgently come up with a proposal that is commensurate with the challenge we are facing”, and clarify the link between the Recovery Fund and the EU’s next long-term budget.

8.26 As of early May 2020, there is therefore still no agreement on key design features of the EU Coronavirus Recovery Fund, including its size, how it would be funded, how it would be linked to the EU budget (see below), whether it would provide governments with grants or loans, or how it would be divided between the Member States.

8.27 At the root of this lies the same problem that bedevilled the discussions on immediate fiscal “safety net”: individual EU countries have taken very different positions, resulting in clear — and acrimonious — political divisions. While Italy and others pushed for mutualisation of some government debt — the infamous “coronabonds”, to be issued jointly by Eurozone countries to reduce the cost of borrowing for the more indebted governments — the Ministers’ [joint communiqué](#) of 9 April referred only to the possibility of “innovative financial instruments” to help provision the Recovery Fund. The most likely beneficiary countries have also called for the Fund to provide support in the form of grants rather than loans, to avoid further increasing their public debt.¹⁸⁸ A number of countries, notably the Netherlands, remain deeply opposed to any debt sharing (especially if how the money is spent remains a purely national competence for each country), and want support to take the form of conditional loans instead.

8.28 Given the unprecedented impact of the current economic shock and the risks it poses for a second sovereign debt crisis in the Eurozone, whether the EU can find agreement (or not) on a common approach to help its Member States recover, in a way that is acceptable to both the hardest-hit countries in Southern Europe and the fiscal ‘hawks’ in Northern Europe, will likely have profound consequences for the process of EU integration, and potentially — if these talks fail — for the future of the European Union itself.

The Coronavirus Recovery Fund and the EU’s Multiannual Financial Framework 2021–2027

8.29 Given the directions provided by EU Finance Ministers and the European Council on 9 and 23 April respectively, the discussions on the EU Recovery Fund have become linked to the parallel negotiations on the so-called Multiannual Financial Framework (or MFF). This is the EU’s long-term budget for the 2021–2027 period, establishing spending

187 After the meeting, European Council President Charles Michel said: “We also agreed to work towards establishing a recovery fund, which is needed and urgent. This fund shall be of a sufficient magnitude, targeted towards the sectors and geographical parts of Europe most affected, and be dedicated to dealing with this unprecedented crisis.”

188 See for example a [position paper circulated by the Spanish Government](#) in mid-April 2020, which called for a €1 trillion Recovery Fund, financed through “perpetual EU debt”, to make “grants to Member States through the EU budget”.

priorities, expenditure ceilings, and the methodology for calculating Member States' contributions to the budget during that time. Talks on the next MFF have been in progress since May 2018, but have been slow because each EU country — and the European Parliament — has a veto.¹⁸⁹ If no new long-term budget is approved by the end of 2020, EU spending in many areas will come to a halt from January 2021 unless new interim measures are agreed.¹⁹⁰

8.30 As we noted in our [Report of 26 March 2020](#), the EU's next long-term budget is still a matter of interest to the UK despite its withdrawal from the Union as of 31 January. We considered this was primarily the case because the Government is seeking access to certain EU funding programmes, especially in the area of scientific research, which would require a UK financial contribution derived directly from the money allocated to those programmes under the MFF. The coronavirus pandemic has provided another reason to monitor those discussions closely, because the UK's own economic prospects will be directly affected by the way in which the EU and its Member States construct their joint stimulus package.

8.31 However, the *details* of how (and how closely) the EU's Recovery Fund and its long-term budget will be linked remain elusive, and a close connection runs the risk that a deal on the Recovery Fund could be delayed because of a lack of agreement on the EU budget.¹⁹¹ In mid-May 2020, the European Commission is expected to publish a formal proposal on how the next long-term EU budget should be used to address the coronavirus crisis, including the outline of the Recovery Fund.¹⁹² However, given that Member States are unlikely to want to significantly increase their contributions to the EU budget,¹⁹³ the Commission's attention has reportedly focussed on further [leveraging the EU budget](#) — as will already be done for its proposed “SURE” loan programme for income retention schemes¹⁹⁴ — to issue EU debt instruments under the next long-term budget, and use the resulting funds to provide low-cost loans or guarantees to Member States to spend on national recovery schemes. The EU's debt obligations would then be serviced using the repayments made by Member States making use of this facility. Whether this, politically,

189 In addition, the legal rules underpinning how Member States will contribute to the EU budget — the “Own Resources Decision” — need to be ratified by each Member State domestically before it can take effect.

190 Politico, EU, “[Politico Playbook 27 February 2020](#)” (accessed 28 April 2020). In essence, without a new MFF or interim measures, the EU would only have a legal basis to spend money on progresses not specifically tied to the current long-term budget.

191 Because of the difficult negotiations to date on the next long-term EU budget (which were protracted even before the coronavirus pandemic occurred), the direct link between the Recovery Fund and the Multiannual Financial Framework is in itself controversial. Some countries — fearing that the Recovery Fund could become a casualty if it is made dependent on an overall agreement on the long-term budget — have [called](#) for the Fund to be established outside the MFF.

192 The role to be played by the long-term EU budget in the economic recovery strategy goes beyond its specific link to the Recovery Fund. Other programmes funded by the EU, including the next generation of the Structural Funds (see paragraph 9), the Framework Programme for Research and the Connecting Europe Facility for infrastructure investment are also likely to be retooled, to varying degrees, to help Member States in their economic reconstruction efforts.

193 The direct financial support the EU budget can provide under its 2021–2027 budget is therefore likely to be limited, unless Member States — implausibly — agree to lift the legal cap on EU spending *and* contribute substantially more than they do at present. As noted, the current cap on EU spending is why the measures funded directly from the EU budget in 2020, as described in this Report, are of much smaller value than the ECB's bond-buying scheme or the proposals agreed in principle by EU Finance Ministers to use loans and guarantees instead.

194 See paragraph 22 above.

offers both the level of support seen as necessary by Spain and Italy *and* is sufficiently different from debt mutualisation to be a feasible option for the Netherlands and Germany, remains an open question.

8.32 Moreover, if the Recovery Fund is to be financed by EU borrowing, this would also most likely require an increase in the statutory cap on EU spending above the current 1.2 per cent of EU GNI. This would improve the EU's ability to borrow money at low cost by creating more theoretical space for Member State contributions to service its debt, without in fact asking them to necessarily pay more up front.¹⁹⁵ However, as changes to the EU's expenditure ceiling have to be ratified by all of its 27 national parliaments, this is far from a secure option.¹⁹⁶ Another key issue that also needs to be addressed is how the Recovery Fund will be distributed between the Member States. The hurried coronavirus-related retooling of the Structural Funds in April 2020 (see paragraphs 3 above) did not directly provide funding to countries proportional to their needs, because agreeing a methodology would have taken too long. As a result, countries hardest hit by the pandemic did not necessarily receive a larger share of that funding pot. Addressing that discrepancy is likely to be challenging.¹⁹⁷

8.33 Overall therefore, difficult negotiations on the design of the Recovery Fund and the substance of the Multiannual Financial Framework still lie ahead. As noted, the UK has a continuing economic interest in these discussions. However, it is not under any legal obligation to contribute funds towards EU spending that will be made from the new Multiannual Financial Framework. The financial settlement in the Withdrawal Agreement is clear that the UK's liabilities are limited to a share of EU expenditure committed before the end of 2020, when the current long-term budget — to which the UK agreed in 2013 — comes to an end. Questions have been posed about the option of an extension to the post-Brexit transition period and its financial implications for the British taxpayer, which we address further below.

8.34 The Committee will continue to monitor the discussions on the Recovery Fund closely. Below, we have also assessed the role the EU's next long-term budget, the Multiannual Financial Framework, may play in the EU's economic recovery strategy.

Potential UK exposure to the EU's coronavirus support schemes

8.35 Throughout this Report, we have attempted to provide clarity about the potential financial implications for the UK of the various COVID-related support schemes that have been, or are being, set up by the European Union. In this section, we briefly summarise our findings in that regard, and provide some further assessment in relation to particular concerns that have recently been raised in this regard if there were to be a hypothetical extension of the post-Brexit transition period.

8.36 With respect to UK taxpayers' exposure to the various EU financial support mechanisms described above, those schemes can be divided into four categories as follows:

195 Raising the "own resources ceiling" would aim to reassure investors that the EU could if necessary access funds from its Member States collectively to fully service its debt, even if individual EU countries Member States did not repay their loans issued under the Recovery Fund.

196 Prior to its withdrawal, the UK could only agree to changes to the Own Resources Decision — which sets the EU's spending cap and also contained the UK rebate.

197 If the Recovery Fund is to be financed via the EU budget, each EU country has a veto over the next Multiannual Financial Framework and therefore over the Recovery Fund.

- first, those funded from the **2020 EU budget**, to which the UK is estimated to make a gross contribution of €18.5 billion (£16.1 billion) directly,¹⁹⁸ and from which it can also continue to be awarded funding until the end of the year (paragraph 9);¹⁹⁹
- secondly, those to which the UK is not required to contribute because they are **for the countries of the Eurozone only**, namely the European Central Bank’s **PEPP bond-buying programme** and the potential use of the **European Stability Mechanism** to provide balance-of-payment loans to national governments (paragraphs 16 to 19, and paragraph 22);
- thirdly, those where the UK will not be required to contribute directly because the scheme is funded by EU borrowing ultimately guaranteed against the EU budget, but where clarification is necessary with respect to the UK’s exposure to those **contingent liabilities** via its contributions to the EU budget during the transition period. This is the case for the proposed **“SURE” loan programme** to fund EU countries’ income retention schemes (paragraph 22); and
- finally, those where the UK has no financial exposure to new COVID-related support provided by the EU because this is specifically **precluded by the Withdrawal Agreement** governing its exit from the European Union. These can be sub-divided into support provided by the **European Investment Bank**, where the UK’s potential exposure is already definitively settled (but significant), and the substance of the EU’s next **Multiannual Financial Framework** (including the **Coronavirus Recovery Fund**), where there is a hypothetical additional UK exposure in case of an extended transition period only, respectively (paragraphs 22 and 23).

8.37 Below, we have elaborated further on the UK’s exposure, or lack thereof, to the EU’s financial support mechanisms in the third and fourth categories above.

UK exposure to EU contingent liabilities under “SURE”

8.38 As noted, the EU is currently in the process of establishing a €100 billion support facility called “SURE”, which will provide low-cost loans to Member States to help them finance their national income retention schemes (i.e. programmes like the UK’s the [Coronavirus Job Retention Scheme](#) and the [Self-employment Income Support Scheme](#)).

8.39 Given the [total EU budget](#) for new spending in 2020 is €168.7 billion, “SURE” would not be funded by the budget directly but instead rely on the EU issuing debt bonds. These obligations would be paid off with the repayments made by Member States making use of the facility. However, given the theoretical possibility of a sovereign default where such repayments may not be made, the bonds would ultimately be guaranteed against the EU budget. To limit the EU’s exposure, further counter-guarantees would be provided by the Member States’ national treasuries, amounting to €25 billion. If this design is accepted (as legislative negotiations [are on-going](#)), the programme could add a potential €75 billion worth of contingent liabilities to the EU’s books (which would double its existing

198 [General EU budget 2020](#), Table 7.

199 Under the terms of the financial settlement, the UK will also pay for a share of EU spending commitments made by the end of 2020 but not yet paid (the ‘Reste a Liquider’). However, it will not be liable for a share of any new EU funding committed from 1 January 2021 onward.

contingent exposures).²⁰⁰ Even during the transition period, the UK is specifically excluded from having to provide guarantees towards the “SURE” facility (and, by extension, cannot borrow from it).

8.40 Although it is excluded from having to counter-guarantee the “SURE” loans, the UK, of course, continues to pay into the EU budget for the duration of the post-Brexit transition period. Its payments are made under the principle of ‘universality’, meaning they are split evenly among all kinds of EU spending made during that period—its contribution is not earmarked (‘assigned’) for any specific EU fund or programme. If a contingent liability under “SURE” were to crystallise because a Member State did not make a repayment on its loan, requiring the budgetary guarantee to be called on, we presume this would be paid for out of the general EU budget.²⁰¹ However, under Article 143 of the UK’s Withdrawal Agreement, the Treasury is only “liable to the Union for its share of crystallised contingent financial liabilities of the Union arising from financial operations” which are “relate[d] to loans for financial assistance” under specific EU programmes, of which “SURE” is not one as it did not exist when the Agreement was drafted.

8.41 It is not clear how the UK’s payments for the financial settlement would be reduced in relation to any crystallised contingent liabilities for which UK bears no responsibility is excluded under the Withdrawal Agreement. We are therefore seeking confirmation from the Treasury whether it is theoretically possible that Britain’s contributions to the EU budget during the transition period could, in part, be used to pay off any EU debt obligations created under the “SURE” loan facility if the budget guarantee has to be used during that period (and, if not, how this would be deducted from the UK’s contribution in such a scenario).

UK exposure to the European Investment Bank’s liabilities

8.42 The [European Investment Bank](#) (EIB) provides loans, guarantees and equity mainly for large infrastructure projects in EU Member States and, to a far lesser extent, in non-EU countries.²⁰² It finances its activities through a combination of capital provided by the Member States, who are the Bank’s only shareholders, and borrowing on the capital markets.²⁰³

8.43 In its [2018 Financial Report](#), the EIB recorded outstanding loans to beneficiaries of €557 billion (£485 billion) and outstanding borrowed funds amounting to €455 billion

200 Although the EU’s theoretical contingent liabilities are approximately €110 billion, the EU has already provisioned for some of these in its budget via guarantee funds, meaning if they crystallised below the amount available in the relevant guarantee fund the cost is already covered. In the EU’s latest consolidated accounts, covering the 2018 financial year, the Commission [records](#) €50.7 billion in contingent liabilities related to guarantees given to the European Investment Bank, €53.8 billion in relation to financial assistance loans to EU and non-EU countries, €2.7 billion in relation to guarantees for EU financial instruments under sectoral programmes like Horizon 2020 (which are in practice covered by allocations in the EU budget) and €5.7 billion in relation to legal cases, principally with respect to fines imposed by the Commission on companies for breaches of competition law.

201 In the [EU’s 2018 accounts](#), the European Commission states: “All contingent liabilities, except those relating to fines and guarantees covered by [guarantee] funds [...], would be financed, should they fall due, by the EU budget (and thus the EU Member States) in the years to come.”

202 Relevant projects in EU Member States are automatically eligible to apply for EIB support. Projects outside the EU are only subject to EIB support on an ad hoc basis by the Bank’s Board of Governors under Article 7(3)(d) of its Statute (i.e. the EU’s Finance Ministers). At the end of 2018, 91.7 per cent of the [EIB’s outstanding stock of loans](#) related to projects in Member States (including, at that point, the UK).

203 See Articles 4 and 20 of the [EIB Statute](#).

(£388 billion). In addition, EU countries' contributions to the Bank, paid proportionally to their economic size, consist of paid-in capital, totalling €22.2 billion, and unpaid callable capital (€226.6 billion), amounting to a total “subscribed capital” of €249 billion (£217 billion). If necessary, the Bank's [Board of Directors](#) — nominated by the Member States and the European Commission — can ask EU countries to increase their paid-in capital up to the total cap on their subscribed capital “to such an extent as may be required for the Bank to meet its obligations”.²⁰⁴ Prior to its withdrawal, the UK was committed to a total subscribed contribution of €39.2 billion (£34.1 billion), of which €3.5 billion (£3 billion) was actually paid-in.

8.44 From the date of its withdrawal on 31 January, the UK ceased to be a shareholder of the EIB. The remaining Member States replaced its previous total subscribed capital so that the Bank's overall financial position remained unchanged.²⁰⁵ Moreover, under the Withdrawal Agreement,²⁰⁶ the UK is no longer considered a Member State for eligibility purposes for EIB investment even during the transition period.²⁰⁷ To reflect the UK's exit, the EIB must return the Treasury's paid-in capital in €300 million (£261 million) annual instalments until 2030.²⁰⁸

8.45 However, the Treasury still retains a substantial level of financial exposure to the EIB's liabilities. The Withdrawal Agreement requires the UK to guarantee that it will provide, in part or in full, its subscribed capital to the Bank as it stood immediately prior to its withdrawal from the EU — i.e. a maximum of €32.9 billion — if the EIB decides it needs a capital injection to meet its financial obligations.²⁰⁹ There are important limitations on the EU's ability to call on this UK guarantee:

- the Government could only be asked to provide this money if the remaining 27 Member States are also required to increase their paid-in capital at the same time and in the same proportion (i.e. on a ‘*pari-passu*’ basis);²¹⁰
- the UK guarantee can only be used in relation to EIB financial commitments that were entered into *before* the UK's withdrawal on 31 January 2020;²¹¹ and
- when the EIB's total operations covered by the UK's liability fall below the Bank's total subscribed capital (€240 billion), the cap on the Treasury's guarantee will begin to fall (reaching zero when there are no outstanding EIB exposures entered into before the UK's withdrawal).²¹²

204 Article 5(3) of the [EIB Statute](#).

205 See Council Decisions [2019/654/EU](#) and [2019/1255/EU](#).

206 Article 151 of the Withdrawal Agreement: “As from [31 January 2020], neither the United Kingdom nor projects located in the United Kingdom shall be eligible for new financial operations from the EIB group that are reserved for Member States [...]. Entities established in the United Kingdom shall be treated as entities located outside the Union.”

207 EIB records show that investment in British projects by the Bank had already decreased sharply prior to the UK's withdrawal, from €6.87 billion in 2016 to only €456 million in 2019.

208 Article 150(4) of the Withdrawal Agreement.

209 Article 150(3) of the Withdrawal Agreement states that the UK's total liability to increase its paid-in capital “shall at no point exceed the amount of the United Kingdom's share of the uncalled subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement”.

210 Article 150(6) of the Withdrawal Agreement.

211 Article 150(1) of the Withdrawal Agreement.

212 Article 150(5) of the Withdrawal Agreement.

8.46 This limitation of the UK’s exposure to the EIB’s activities entered into before 31 January 2020 is particularly salient in the context of the EU’s response to the coronavirus crisis. As noted in paragraph 22, the EU has also turned to the EIB as a way of channelling support to the real economy. The 27 remaining Member States are in the process of establishing a new €25 billion [guarantee fund](#) within the Bank to enable it to “scale up its support for European companies up to an additional €200 billion”.

8.47 As the UK’s liabilities with respect to the European Investment Bank are definitively settled in the Withdrawal Agreement, and limited only to EIB operations agreed before 31 January 2020, the UK cannot be asked to contribute to this new guarantee fund or be required to provide more capital to the Bank in relation to any EIB financial obligations — whether borrowing or lending — related to the coronavirus crisis. However, the Withdrawal Agreement does not rule out the possibility that the Bank may decide to call on Member States and the UK to increase their paid-in capital because of deteriorating financial prospects for its *earlier* activities (i.e. lending and borrowing approved before the UK’s withdrawal) triggered by the economic crisis. The UK’s exposure in such a scenario could extend to a theoretical maximum of €32.9 billion, minus its remaining capital already paid in.²¹³

8.48 Although the accounts for the Treasury’s Consolidated Fund for the 2018–19 financial year [classified](#) the UK’s exposure to the EIB’s activities as a “remote contingent liability”, that assessment predated the current crisis.²¹⁴ The Committee will therefore ask the Treasury to clarify whether it has received any indication that its EIB guarantee may be called on, and what its current estimate is for the use of that guarantee given the wider economic circumstances.

UK exposure to the EU’s next long-term budget and Coronavirus Recovery Fund

8.49 Finally, some concerns have been raised about the UK becoming partially liable for the EU’s financial support for its Member States in addressing the coronavirus crisis, if the post-Brexit transition period were to be extended beyond 31 December 2020. This is an option included in the Withdrawal Agreement, but expressly prohibited under UK law by section 15A of the European Union (Withdrawal) Act 2018.

8.50 Under Article 132 of the Withdrawal Agreement, any extension would require a further UK ad hoc payment. The is ‘extension payment’, the size of which would need to be negotiated between the Government and the EU, would be used to contribute to EU spending in 2021, including any expenditure related to the coronavirus crisis. Given the Government has ruled out extending the transition, the fact that UK law prohibits such an extension, and any such additional budget contribution is in any event dependent on the UK’s agreement, we have not assessed this scenario further.

213 As noted, the EIB is repaying the UK’s paid-in capital in annual installments of €300 million. If any such increase is less than the yearly €300 million repayment of the UK’s paid-in capital by the EIB, that amount will be reduced by the appropriate amount. If the increase were to be higher, the UK would have to transfer the additional funds.

214 In April 2018, the National Audit Office reported that the Treasury “assumed the most likely outcome to be that the UK guarantees [to the EIB] will never be called upon” because “the bank has a high credit quality loan portfolio, which is characterised by low rates of impairment and default”, that assessment was made well before the current crisis.

The Government's position

8.51 For the duration of the post-Brexit transition period, the Government continues to provide Parliament with Explanatory Memoranda setting out its position on EU legislative proposals and policy documents.

8.52 With respect to the EU proposals described in this Report, the Chief Secretary to the Treasury submitted a Memorandum on 5 May after repeated delays, which states that “the UK will participate in the EU’s coronavirus response package where there is provision in the Withdrawal Agreement for us to do so”, i.e. with respect to funding opportunities from the EU budget for 2020. The Minister adds that the UK “does not intend to go beyond what we agreed in the Withdrawal Agreement, because we have now left the EU”. He also confirmed that the UK would not accrue any new contingent liabilities in relation to the “SURE” programme or any new loans made by the European Investment Bank, but did not refer to the wider questions about the UK’s financial exposure to these as described in the previous section. Moreover, the Minister did not clarify if the Government agrees with the EU’s position that the amendment to the Global Margin for Commitments under the Multiannual Financial Framework 2014–2020 (see paragraph 7) does not affect the UK’s obligations under the financial settlement in the Withdrawal Agreement.

Action

8.53 The Committee will continue to pursue the Government’s use of EU funding opportunities related to the coronavirus pandemic in the context of our scrutiny of the individual EU programmes deployed for that purpose. It is acutely aware of the profound political implications of the on-going negotiations about the EU’s collective financial support for those of its Member States hardest hit by the economic crisis triggered by the outbreak.

8.54 The Committee has also considered the more direct implications of the EU’s schemes as described for the Treasury and British taxpayer. It has therefore written to the Chief Secretary to the Treasury to request further information on the UK’s exposure to the EU’s contingent liabilities created under the “SURE” loan programme and its assessment of the likelihood that the UK’s guarantees to the European Investment Bank may be called on as a result of the coronavirus crisis. A copy of that letter is shown below. More generally, given their continued relevance for the UK, we expect the Treasury to provide further updates on the EU’s negotiations on the MFF, the Recovery Fund and the “SURE” programme when there are important developments. We will report those to the House in the future as appropriate.

8.55 We draw the developments described in this Report, and our assessment thereof, to the attention of the Business, Energy and Industrial Strategy Committee, the Committee on the Future Relationship with the EU and the Treasury Committee.

Letter from the Chair to the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP)

COVID-19: UK participation in and exposure to the EU’s financial response

The European Scrutiny Committee this week considered the EU’s cumulative financial response to the coronavirus crisis, and their potential implications for the UK and the British taxpayer during the post-Brexit transition period and beyond.

We focussed on the depletion of the EU’s special budgetary instruments for 2020, the activation of the Emergency Support Instrument to support the provision of healthcare, the discussions on the immediate fiscal “safety net” among EU Finance Ministers. The Committee also took note of the complicated political questions around the establishment of an EU Coronavirus Recovery Fund, including whether it should be funded via any mutualised or common debt instruments issued either by the 27 remaining Member States jointly, or by the EU itself on their behalf.

The Committee recognises that the EU’s negotiations on the Recovery Fund in particular remain difficult, and their outcome could have a lasting impact on the process of political integration in Europe. However, it is also mindful of its responsibility to scrutinise these developments in terms of their impact on the UK. In that regard, the wider economic and political consequences of the EU’s success — or lack thereof — in facilitating a sustainable economic recovery in all its Member States (and the tools it intends to use to achieve it), will be indirect, but — given the EU’s continued importance as an economic and security partner — profound. At the same time, it is clear that the UK, following its withdrawal, will not now be required to consider any further transfer fiscal or other competences to the European Union.

Given the uncertainties around the outcome of the Recovery Fund negotiations, we will continue to monitor those talks closely in the coming months. Moreover, based on our discussions, the Committee also has a number of immediate technical questions for you relating to the extent of the UK’s potential financial exposure to the EU’s short-term financial support schemes under the terms of the Withdrawal Agreement, as well as the degree to which the UK is making use of the funding opportunities while it remains eligible to access EU programmes for the duration of the post-Brexit transition period.

Unfortunately, due to delays in the submission of your Departmental Explanatory Memorandum on the EU proposals underlying our discussions today, we were unable to consider the Government’s position on these matters at our meeting. We are therefore writing to you to ask for this information, in case your forthcoming Memorandum does not cover it. The Committee will consider, based on your response, whether it will make further reports to the House or whether the UK’s vital national interest under section 13A of the European Union (Withdrawal) Act 2018 is potentially engaged by any of these EU schemes.

1. Use of EU funding opportunities

As you know, the EU has agreed changes to its Structural Funds in 2020, like the Regional Development Fund, to give countries more flexibility to use their national allocation for projects related to the coronavirus crisis. Other existing EU funding pots have also been mobilised to address the pandemic and support businesses, including the activation of the

Emergency Support Instrument to help countries increase their hospital and healthcare capacities and the Civil Protection Mechanism, which is co-financing repatriation flights for European citizens stranded overseas.

Given that the UK remains a contributor to the EU budget as if still a Member State until 31 December 2020 under the Withdrawal Agreement, it also remains eligible to access funding from those EU programmes until that date. We therefore ask you to provide the Government’s estimate of the amount of such support the UK has drawn and is likely to draw from the COVID-related support available from the EU budget this year, in particular:

- the extent to which the UK’s Structural Funds allocation for 2020 is being used for coronavirus-related projects; and
- the level of COVID-related funding the Government has received, or expects to receive, from the EU’s Emergency Support Instrument, the Solidarity and Globalisation Adjustment Funds, the Maritime & Fisheries Fund, the Fund for Aid to the Most Deprived, and the Civil Protection Mechanism.

2. Amendment to the Global Margin for Commitments

Making available the necessary resources from the EU budget for 2020 to provide the financial support described above, which was of course not foreseen when its budget was approved in November last year, has required the European Commission to make a number of budgetary adjustments and recourse to its “special instruments”, or emergency financial reserves.

In particular, you will be aware that the activation of the Emergency Support Instrument (ESI) and the tripling of the annual budget of the Civil Protection Mechanism (CPM) — together requiring more than €3 billion (£2.6 billion) of EU money — required an amendment to the 2013 Regulation establishing the EU’s long-term budget (the Multiannual Financial Framework). More specifically, a special EU reserve known as the “Global Margin for Commitments” (GMC) was legally modified, so that it could be depleted of its €2 billion (£1.75 billion) reserves for use towards the ESI and CPM, where previously the money not have been used for this purpose.

Given that the UK, under the terms of its Withdrawal Agreement, is exempt from having to apply any changes to the EU’s long-term budget adopted after 31 January 2020 that would “have an impact on [its] financial obligations”,³ the EU has asserted that the UK will have to contribute to this novel use of the GMC because the change is “limited to [its] purpose”.

Your Explanatory Memorandum was, unfortunately, silent on the issue of whether the Government agrees with this interpretation of the Withdrawal Agreement. We would like you to confirm if the Government accepts the EU’s interpretation that its amendment to expand the use of the Global Margin for Commitments applies to the UK under the Brexit financial settlement, and if so what your estimate is of its impact on the overall net cost of that settlement; or, if the Government does not accept the EU’s interpretation, we ask you to explain how the Government intends to contest the assertion that the change to the GMC applies to the UK.

3. UK exposure to contingent liabilities under the “SURE” loan facility

As you will be aware, the EU is currently in the process of establishing a €100 billion support facility called “SURE”, which will provide low-cost loans to EU Member States to help them finance their national income retention schemes.

Given the total EU budget for new spending in 2020 is €168.7 billion, “SURE” would not be funded by the budget directly but instead rely on the EU issuing debt bonds. These obligations would be paid off with the repayments made by Member States lending money from the facility. However, given the theoretical possibility of a sovereign default where such repayments may not be made, the debt bonds would also be a contingent liability guaranteed against the EU budget.

Although the UK continues to pay into the EU budget for the duration of the post-Brexit transition period, Article 143 of the Withdrawal Agreement states the Treasury is only “liable to the Union for its share of crystallised contingent financial liabilities of the Union arising from financial operations” which are “relate[d] to loans for financial assistance” under specific EU programmes, of which “SURE” is not one as it did not exist when the Agreement was ratified. The interaction between the UK’s continued contribution to the general EU budget on the one hand, and its exemption from having to pay for any new EU contingent liabilities — like those to be created under “SURE” — created post-withdrawal, is not clear.

We are therefore seeking confirmation from you whether it is theoretically possible that Britain’s contributions to the EU budget during the transition period could, in part, be used to pay off any EU debt obligations created under the “SURE” loan facility if the budget guarantee has to be used during that period (and, if not, how the relevant share of those liabilities would be deducted from the UK’s contribution in such a scenario).

4. UK exposure to the liabilities of the European Investment Bank

The Committee has taken note of the EU’s intention to establish a new €25 billion Coronavirus Guarantee Fund within the European Investment Bank, with the aim of leveraging €200 billion of support for the real economy. Although EIB support is typically reserved for EU Member States, its Statute also allows it to operate in other countries on an ad hoc basis. It is not clear if the new Guarantee Fund is reserved for Member States only.

As regards the UK’s exposure to the financial liabilities of the EIB, we note that Article 150 of the Withdrawal Agreement excludes any UK liability with respect to the EIB’s financial operations that were agreed after the UK’s exit from the EU on 31 January this year (including any entered into on the basis of the aforementioned new Guarantee Fund).

However, the Treasury retains significant potential exposure to the Bank’s liabilities that predate the UK’s withdrawal, up to a theoretical maximum of its total subscribed capital — paid-in plus callable capital — as it stood on 31 January (€39.2 billion, or approximately £34 billion under current exchange rates). In the latest accounts for the Government’s Consolidated Fund, published in July 2019, the UK’s contingent liability in relation to the EIB — i.e. the possibility that it may have to increase its paid-in capital to the Bank by any amount — was described as “remote”. However, that assessment predates the current economic crisis by several months.

In light of the above, we would like you to clarify:

- whether the Government has received any indication from the EU that the Treasury’s guarantee to the European Investment Bank guarantee under the Withdrawal Agreement may be called on, and whether it still classifies this contingent liability as “remote” given the wider economic circumstances; and
- if the new EIB Guarantee Fund provides scope, however limited, for investment support to non-EU countries like the UK, and if so whether the Government intends to make use of it.

We look forward to receiving your response to the above questions by 20 May 2020.

9 Documents not considered to be legally and/or politically important

Department for Business, Energy and Industrial Strategy

41196
ECA Opinion
3/20

European Court of Auditors Opinion 3/20 on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak.

Ministry of Defence

40940

Report by the Head of the European Defence Agency to the Council.

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40951

Council Guidelines for EDA's Work in 2020.

13579/19

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Department for International Development

(40995)

Court of Auditors 2019 Special Report no. 25: Data quality in budget support: weaknesses in some indicators and in the verification of the payment for variable tranches.

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(41051)

Annual report on the European Union's humanitarian aid operations financed in 2018.

5668/20

COM(20) 6

Department for International Trade

(41186)

Report from the Commission to the European Parliament and the Council: on the application of Regulation (EU) No 1219/2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries.

7239/20

COM(20) 134

(41189) Commission Implementing Regulation (EU) 2020/502 of 6 April 2020 on certain commercial policy measures concerning certain products originating in the United States of America.

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Department for Transport

(41147) Recommendation for a Council Decision amending the Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence.

6958/20

COM(20) 106

(41166) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Port State Control Committee of the Paris Memorandum of Understanding on port State control.

7115/20

+ ADDs 1 — 2

COM(20)117

Foreign and Commonwealth Office

(41023) Council Decision in support of a global reporting mechanism on illicit conventional arms and their ammunition to reduce the risk of their diversion and illicit transfer (iTrace IV).

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(41024) Council Decision in support of Ukraine's efforts to combat illicit trafficking in weapons, ammunition and explosives, in cooperation with the OSCE.

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(41025) Council Decision (CFSP) 2019/2110 of 9 December 2019 on the European Union CSDP Advisory Mission in the Central African Republic (EUAM RCA).

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(41027) Council Decision (CFSP) 2017/2303 in support of the continued implementation of UN Security Council Resolution 2118 (2013) and OPCW Executive Council Decision EC-M-33/DEC.1 on the destruction of Syrian chemical weapons, in the framework of the implementation of the EU Strategy against proliferation of weapons of mass destruction.

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HM Treasury

- (40699) Report from the Commission: 2018 Annual Management and Performance Report for the EU Budget.
10757/19
+ ADD 1
COM(19) 299
- (40701) Communication from the Commission: Annual accounts of the European Commission for the financial year 2018.
10827/19
COM(19) 312
- (40702) Communication from the Commission: Consolidated annual accounts of the European Union for the financial year 2018.
10828/19
COM(19) 316
- (40793) Report from the Commission on the Guarantee Fund for External Action and its management in 2018.
11781/19
+ ADD 1
COM(19) 363
- (40859) Proposal for a decision on the mobilisation of the European Globalisation Adjustment Fund following an application from Belgium — EGF/2019/001 BE/Carrefour.
12777/19
COM(19) 442
- (40905) Report from the Commission on guarantees covered by the general budget Situation at 31 December 2018.
13433/19
+ ADD 1
COM(19) 484
- (40909) Report from the Commission on Progress in Romania under the Cooperation and Verification Mechanism for 2019.
13383/19
+ ADD 1
COM(19) 499
- (40950) Proposal for a Council Implementing Decision amending Decision 2007/884/EC authorising the United Kingdom to continue to apply a measure derogating from Articles 26(1)(a), 168 and 169 of Directive 2006/112/EC on the common system of value added tax.
13997/19
COM(19) 547

(41012)	Annual Monitoring Report on the implementation of the 2018 Structural Reform Support Programme.
15216/19	
COM(19) 641	
(41015)	Recommendation for a COUNCIL RECOMMENDATION on the economic policy of the euro area.
15267/19	
+ ADD 1	
COM(19) 652	
(41017)	Annual Sustainable Growth Strategy 2020.
15321/19	
+ ADD 1	
COM(19) 650	
(41018)	Alert Mechanism Report 2020 (prepared in accordance with Articles 3 and 4 of Regulation (EU) No 1176/2011 on the prevention and correction of macroeconomic imbalances).
15283/19	
+ ADD 1	
COM(19) 651	
(41020)	Proposal for a Joint Employment Report accompanying the Communication from the Commission on the Annual Sustainable Growth Strategy 2020.
5035/20	
+ ADD 1	
COM(19) 653	
(41028)	Proposal for transfer of appropriations NO DEC 18/2019 within Section III -Commission — of the general budget for 2019.
12778/19	
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(41066)	Communication from the Commission: Economic governance review.
5817/20	
+ ADDs 1–2	
COM(20) 55	

Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny of the document is not completed; ‘SC’ indicates that scrutiny of the document is completed)

Business, Energy and Industrial Strategy Committee: COVID-19: Application of EU State aid rules to coronavirus support schemes [Commission Report (SNC)]; COVID-19: UK exposure to EU financial support for governments and businesses [(a) Communication; (b), (c) Proposed Regulation (SNC)]

Committee on the Future Relationship with the EU: COVID-19: UK exposure to EU financial support for governments and businesses [a) Communication; (b), (c) Proposed Regulation (SNC)]

Digital, Culture, Media and Sport Committee: COVID-19: Contact tracing apps and data protection and privacy [Commission (a) Recommendation, (b) Communication (SNC)]

Environment, Food and Rural Affairs Committee: COVID-19 Response: EU support to the fisheries sector [Proposed Regulation (SNC)].

Health and Social Care Committee: COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE) [Commission Implementing Regulation (SNC)]

International Development Committee: Trade preferences for developing countries [(a) Report; (b) Commission Delegated Regulation (SNC)]

International Trade Committee: COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE) [Commission Implementing Regulation (SNC)]; Trade preferences for developing countries [(a) Report; (b) Commission Delegated Regulation (SNC)]

Joint Committee on Human Rights: Contact tracing apps and data protection and privacy [Commission (a) Recommendation, (b) Communication (SNC)]

Northern Ireland Affairs Committee: COVID-19: Application of EU State aid rules to coronavirus support schemes [Commission Report (SNC)]; COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE) [Commission Implementing Regulation (SNC)]; Trade preferences for developing countries [(a) Report; (b) Commission Delegated Regulation (SNC)]

Science and Technology Committee: Contact tracing apps and data protection and privacy [Commission (a) Recommendation, (b) Communication (SNC)]

Transport Committee: COVID-9: Passenger rights [Commission Communication (SNC)]

Treasury Committee: COVID-19: Application of EU State aid rules to coronavirus support schemes [Commission Report (SNC)]; UK exposure to EU financial support for governments and businesses [(a) Communication; (b), (c) Proposed Regulation (SNC)]

Formal Minutes

Thursday 7 May 2020

After consulting all Members of the Committee, the Chair was satisfied that the Report represented a decision of the majority of the Committee and reported it to the House. (Order of the House of 24 March 2020).

Standing Order and membership

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)