House of Commons

European Scrutiny Committee

Eighth Report of Session 2019–21

Documents considered by the Committee on 14 May 2020, including the following COVI-19 related documents:

Air cargo and maritime safety

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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Contents

1 COVID-19: Air cargo and maritime safety[1]

These EU documents are politically important because:

- they concern the UK's response to the COVID-19 outbreak.

Action

- To write to the Minister, Kelly Tolhurst MP, requesting further information on: (1) the steps that the Government is taking to facilitate—and ensure the safety of personnel involved in—air cargo services; and (2) the uptake by the UK of the EU's 'Civil Protection Mechanism'.
- Draw this Report chapter to the attention of the Transport Committee.

Overview

1.1 In response to the challenges wrought by Coronavirus to the transport sector, the European Commission has published a series of guidance documents on: (1) the interpretation and application of EU law; and (2) outlining mitigation measures that can be taken by Members States.

1.2 The guidance under consideration—document (a) on facilitating air cargo; and document (b) on maritime health and safety—is not, in and of itself, legally binding on Member States. As the longer-term disruption to the transport sector becomes clearer, it is likely that these guidance documents will be supplemented at EU-level by new policies and legislation.[2]

Document (a) (air cargo) (41163)

1.3 The Commission's Communication sets out guidance in the form of ten recommendations that Member States can adopt and/or develop to ensure that air freight can continue to operate into—and within—the EU during the pandemic. The Commission has designed these recommendations to take into account short/medium-term problems and those that are likely to persist for some time.

1.4 It is important to note that air freight—also known as air cargo—is a critical complement to the transport of medical supplies and personal protective equipment (PPE) by land and sea. As has been seen during the early stages of the outbreak, total European

1 Document (a) European Commission Guidelines: Facilitating Air Cargo Operations during COVID-19 outbreak; Council number 7055/20 and C(20) 2021; Legal base; -; Dept; Transport; Devolved Administrations; Consulted; ESC number 41163; and document (b) European Commission Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships; Council number 7281/20 and C(20) 3100; Legal base; -; Dept; Transport; Devolved Administrations; Consulted; ESC number 41194.

2 In this regard, new policy and legislative proposals will be considered by the Committee as and when they are published. As explored in our previous Report, an area likely to be subject to new regulation is the Air Passenger Rights Regulation and, in particular, the issuance of vouchers by operators for cancelled flights when passengers have requested full cash refunds.

air freight capacity has reduced significantly. This is mainly due to fewer passenger flights (where freight is often carried in the hold), travel restrictions and (initially) poor coordination between affected countries.

1.5 The specific recommendations outlined in the Commission's guidance are:

i) Granting, without delay, all authorisations and permits for transport from outside of the EU—including temporary traffic rights for additional air cargo operations—where legally possible.

ii) Temporarily removing—or applying flexibly—night curfews or slot restrictions at airports for essential cargo operations.

iii) Facilitate the use of passenger aircraft for cargo-only operations including for the repositioning of air cargo flight crew, medical staff and those involved in the transport of goods, irrespective of the mode of transport.

iv) Ensure that air cargo crew, handling and maintenance personnel are classified as critical staff in cases of lockdown or curfew.

v) Ensure that sufficient cargo capacity is maintained when regional airports are closed for economic reasons or consider keeping airports open for air cargo only as well as ensuring that open airports have sufficient capacity to handle air cargo.

vi) Exempt asymptomatic transport personnel—including aircrew engaged in the transport of goods—from travel restrictions.

vii) Exempt asymptomatic aircrew, cargo personnel and airport personnel working on the ramp from containment measures if adequate health protocols are in place.

viii) Allow fast-track ad-hoc exemptions to address unforeseen situations such as sudden and unforeseen emergency operations.

ix) Provide ramp personnel with guidance on health precautions in an air cargo environment and support them with appropriate supplies of hygiene products.

x) Encourage cargo and express airlines to reserve capacity for the supply of essential goods on an exceptional basis, in particular, medical and emergency supplies, and apply reasonable shipping rates for such supplies.

Document (b) (maritime safety) (41194)

1.6 In a similar vein to the above guidance on air cargo, the Commission has produced a set of recommendations aimed at protecting the health and safety of seafarers working on board cargo vessels and cruise ships, and passengers and other persons on ships.

1.7 The Commission notes that Member States should consult employers and workers' representatives on implementing the measures it is recommending.

1.8 The Commission's recommendations are detailed and cover 'the repatriation of persons on board cruise ships and all other vessels', health and safety measures for 'all vessels concerning transit and disembarking passengers and crew', 'vessels going into lay-up', 'changeover of crews', 'designated ports for crew changes', 'sanitary recommendations and ship supplies', and reporting protocols.

1.9 As an example of the detail of the guidance, for repatriation, Member States are reminded of their obligations under EU law and international maritime law, and the EU assistance programmes that are available should individual country response capacity prove insufficient.

1.10 On the latter point, the EU's dedicated 'Civil Protection Mechanism', which provides funding and coordination assistance for repatriation efforts, is noted. The UK has reportedly used this programme during the crisis to help return UK nationals from Japan, the US and Peru.[3] The programme is co-financed by the UK and can be utilised for the duration of the transition period. It is not clear if it has been used by the UK in the context of maritime-related repatriations.

1.11 According to the UK Chamber of Shipping,[4] up to 2,000—or around one in 13—of the UK's 25,750 seafarers are currently stranded on ships around the world. The Commission's guidance on ship changeovers is clearly relevant in this regard as is the UK's ability to make use of the EU's Civil Protection Mechanism (should additional assistance be required). Furthermore, the Prime Minister's announcement on the evening of 10 May that the Government is considering introducing a 14-day quarantine period for air passengers arriving in the UK is also of interest. The Government is yet to outline details of such a policy, however, general comment has been restricted to aviation and has not covered other modes of transport including sea.

1.12 The Commission's guidance also suggests the use of temperature checks for assessing the health of crews, the implementation of 'fast-track' crew changeover facilities, and advice on where and when personal protective equipment (PPE) should be worn.

The Government's position

1.13 The Parliamentary Under Secretary for Transport (Kelly Tolhurst MP) wrote to the Committee by way of Explanatory Memorandum (EM) on 17 April 2020 (air cargo) and 29 April (maritime safety).

1.14 The quality of the information provided by the Minister varies considerably. Whereas her EM on maritime safety is detailed and explains points of difference between the EU's approach and that adopted by the UK, that on air cargo is descriptive with little by way of meaningful analysis.

1.15 On air cargo, the Minister explains that the Government:

> …recognises the importance of ensuring that air cargo can continue during the COVID-19 outbreak to ensure the supply of essential goods, in particular medical supplies, needed to help fight the outbreak.

3 The Financial Times, 'UK turns to EU for repatriation flights' (5 April 2020).
4 Cited in BBC, 'Coronavirus: 'Up to 2,000' UK seafarers stranded' (9 May 2020).

1.16 The Minister goes on to state that the Government supports the Commission's recommendations "provided sufficient consideration is given to safety and security when implementing them". Evidence of UK practice in the ten areas covered by the Commission's recommendations is not provided nor is any indication of future action in this regard.

1.17 On maritime safety, the Minister helpfully sets out current UK practice against the Commission's recommendations. As examples, on crew temperature checking, the Minister explains that UK advice is centred around self-declaration whereas the Commission suggests temperature checking should be undertaken more frequently. On PPE, the Commission recommends the use of surgical masks etc. for shore leave and pilotage but this is not currently Government policy. Another point of difference concerns quarantining measures, in particular, the automatic quarantine of ships on port arrival. This is not recommended by the Government—based on a more tailored approach to assessment—but is, in some circumstances, by the Commission.

Action

1.18 The Committee seeks further information from the Minister on the following points:

- with regard to air cargo, details of the domestic measures that the Government has taken in the ten areas identified by the Commission; the Minister should list details of these measures set against the Commission's recommendations;
- with regard to maritime safety:
  - whether the UK has made use of the EU's Civil Protection Mechanism in the context of maritime-related repatriations e.g. from cruise ships; and if so, details of the number of nationals repatriated, from where and with dates;
  - the Government's plans for the rescue of UK seafarers currently stranded on ships around the world and whether it can and, if so, will, make use of the EU Civil Protection Mechanism for this purpose; and
- in light of the Prime Minister's announcement on the evening of 10 May that the Government is considering introducing a 14-day quarantine period for air passengers arriving in the UK, whether such plans have been considered for those arriving at UK ports via sea. If the Government has not given thought to this, the Committee requests a full explanation as to why.

1.19 The Committee also draws this Report chapter to the attention of the Transport Committee.

Letter from the Chair to the Parliamentary Under-Secretary (Kelly Tolhurst MP), Department for Transport

The Committee have asked me to thank you for your Explanatory Memoranda of 17 April 2020 and 29 April, respectively, on the two above listed documents.

We recognise the severe disruption to air cargo and maritime services caused by the ongoing COVID-19 pandemic and appreciate the speed with which you have provided your analysis of the two EU documents under consideration.

With regard to document 7055/20 on air cargo, we note the limited information provided on the UK's response to the crisis when set against the Commission's recommendations for Member States. As such, we request further details on:

- the domestic measures that the Government has taken in the ten areas identified by the Commission. This information should be provided under each of the Commission's ten headings (as per your EM).

With regard to document 7281/20 on maritime safety, we are particularly interested in the UK's utilisation of the 'EU Civil Protection Mechanism' and note your statement that as a flag state "…we [the UK] have already taken measures to repatriate more than 19,000 British nationals from nearly 60 cruise ships…". According to a recent UK Chamber of Shipping statement, up to 2,000—or around one in 13—of the UK's 25,750 seafarers are currently stranded on ships around the world. With these points in mind, we request further information on:

- whether the UK has made use of the EU's Civil Protection Mechanism in the context of maritime-related repatriations e.g. from cruise ships; and if it has, details of the number of UK nationals repatriated, from where and the dates on which these repatriations took place; and

- with regard to UK seafarers stranded overseas, the Government's plans for their rescue and whether the UK can and, if so, will, make use of the EU Civil Protection Mechanism for this purpose.

The Committee also notes with interest the Prime Minister's announcement on the evening of 10 May that the Government is considering introducing a 14-day quarantine period for air passengers arriving in the UK. We request information on whether such plans have been considered for those arriving at UK ports via sea. If thought has not been given to this (or it has and such action was decided against), we seek a full explanation as to why.

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

2 Enforcement of international trade rules[5]

These EU documents are legally and politically important because:

- they are likely to be agreed and apply to the UK during the post-exit transition period;
- they will apply to Northern Ireland after transition under the Protocol on Ireland/Northern Ireland;
- they raise questions about the interaction between the UK's domestic trade policy after transition and the UK's obligations under the Protocol on Ireland/Northern Ireland; and
- they are relevant to the operation of a future EU/UK trade agreement.

Action

- Write to the Minister for Trade (Ranil Jayawardena MP) to request a further update once a final text has been agreed by the Council and the European Parliament, including information on the progress being made in the EU/UK Joint Committee, relevant Specialised Committee and Joint Consultative Working Group to address the issues we have raised about the practical operation of the Protocol on Ireland/Northern Ireland in the event of a trade dispute involving the EU, the UK, or the EU and the UK after transition.
- Draw to the attention of the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

2.1 Resolving trade disputes before they escalate into disruptive and damaging trade wars is one of the core functions of the World Trade Organisation ("WTO"). Since December 2019, the WTO's Appellate Body, responsible for hearing appeals in trade disputes, has been inquorate and unable to perform its functions, creating a void at the heart of the WTO's dispute settlement system. In response, the European Commission has proposed changes to the EU's 2014 Trade Enforcement Regulation to enable the EU to protect its interests if a third country seeks to block the resolution of a trade dispute. Under the EU's existing rules, the EU can only act once it has a final, binding and enforceable ruling at the end of a dispute settlement procedure. By "appealing into the void", a WTO trading partner can prevent the EU from securing such a ruling.

2.2 In the case of a dispute governed by WTO rules, the proposed amending Regulation would allow the EU to act as soon as it has obtained a favourable ruling from a WTO

5 (a) European Commission report reviewing the scope of the EU Trade Enforcement Regulation (Regulation No 654/2014); Council number 15090/19, COM(19) 639; Legal base —; Dept — International Trade; Devolved Administrations consulted; ESC number 40998.
(b) Proposal for a Regulation amending the EU Trade Enforcement Regulation; Council number 15088/19, COM(19) 623; Legal base — Article 207(2) TFEU, ordinary legislative procedure, QMV; Dept — International Trade; Devolved Administrations consulted; ESC number 40999.

dispute settlement panel and no other form of binding arbitration is available to resolve the dispute.[6] In the case of a dispute arising under an EU bilateral or regional free trade agreement which has its own dispute settlement procedures, the EU would be able to take unilateral countermeasures (retaliatory action) if its trading partner blocks the use of these procedures, for example by failing to appoint an arbitrator.[7] The aim, in both types of dispute, is to discourage delaying tactics or obstructionism which might damage the EU's interests and undermine the global trading system. Our Third Report of Session 2019–21 provides further details on the proposed changes.[8]

2.3 The then Minister for Trade Policy (Rt Hon. Conor Burns MP) told us in his Explanatory Memorandum of 7 January 2020 that the proposed changes were likely to take effect "by the middle of 2020" and would apply to the UK during the post-exit transition period. He added that the 2014 Regulation, as amended, would continue to apply to Northern Ireland *after* the post-exit transition period under Article 5(4) and Annex 2 of the Protocol on Ireland/Northern Ireland which forms an integral part of the EU/UK Withdrawal Agreement.

2.4 In our letter dated 26 March 2020, we asked the Minister to clarify the Government's position on the substance of the changes proposed to the 2014 Trade Enforcement Regulation, explain how the changes would affect the UK as a whole during transition and Northern Ireland post-transition under the Protocol on Ireland/Northern Ireland, and set out the wider implications for the UK's future trade relationship with the EU.

2.5 The Council has since issued a press release, on 8 April 2020, confirming that it is ready to begin negotiations with the European Parliament on the proposed changes and that the approach agreed by the Council "remains close to the spirit" of the Commission proposal. However, a review clause would require the Commission to "assess the functioning of the new rules" within three years of the date on which they take effect, as well as the possible need to extend the scope of the countermeasures permitted under the 2014 Regulation to include services and intellectual property rights.[9]

The Minister's response

2.6 The former Minister's letter of 22 April 2020 updates us on progress in negotiations on the proposed Regulation and responds to the questions raised in our earlier Report.

The UK's position and role in negotiations before exit

2.7 Turning first to the questions we raised about the UK's position on the substance of the changes proposed to the 2014 Trade Enforcement Regulation and the UK's role in negotiations before leaving the EU on 31 January 2020, the former Minister tells us that the Government:

6 Article 25 of the WTO's Understanding on rules and procedures governing the settlement of disputes allows the parties to a trade dispute to agree by mutual consent to binding arbitration.

7 The European Commission's infographic shows how the amended 2014 EU Enforcement Regulation would work.

8 HC 229–i, published on 1 April 2020.

9 See the Council's press release of 8 April 2020, *EU trade: Council agrees its position on revamped enforcement regulation*.

- accepts the case for enhancing the EU's ability to take countermeasures if a trading partner obstructs a dispute settlement procedure within the WTO or under a bilateral or regional trade agreement with the EU, provided that any action taken is consistent with WTO obligations; and
- is content that the changes proposed are sufficiently clear about the circumstances in which the EU can take retaliatory action.

2.8 He confirms that the UK attended a technical presentation on the proposed changes and three meetings of the EU Working Party on Trade Questions before leaving the EU, without making any oral interventions or submitting any written observations.

Application of the amended Regulation during a post-exit transition period

2.9 The former Minister stated in his Explanatory Memorandum that, from exit day (31 January 2020), the UK would "operate an independent trade disputes function" and any retaliatory measures would be applied in accordance [with] domestic law, under section 15 of the Taxation (Cross-border Trade) Act 2018 (the 2018 Act). Section 15 authorises the Government to impose retaliatory measures in the event of a trade dispute and is intended to replace equivalent powers available to the European Commission. The former Minister also indicated in his Explanatory Memorandum that the proposed changes to the 2014 Trade Enforcement Regulation were likely to take effect (and therefore apply to the UK) during the post-exit transition period provided for in the EU/UK Withdrawal Agreement.[10]

2.10 We questioned whether it was possible to reconcile these positions without creating a conflict between the powers given to the Government by section 15 of the 2018 Act and the UK's obligations under the EU/UK Withdrawal Agreement to apply and give precedence to EU law until the end of the post-exit transition period.[11] The former Minister confirms in his response that section 15 of the 2018 Act came into force on 23 January 2019 (under the Taxation (Cross-border Trade) Act 2018 (Appointed Day No. 2) (EU Exit) Regulations 2019), but adds that the Government will not use the powers it confers "in a manner which conflicts with UK obligations under Article 127 of the Withdrawal Agreement or the amended Regulation".

Application of the amended Regulation in Northern Ireland after transition

2.11 We noted in our earlier Report that the 2014 Trade Enforcement Regulation, as amended, would continue to apply "to and in the UK in respect of Northern Ireland" *after* transition under Article 5(4) of the Protocol on Ireland/Northern Ireland. While Article 4 of the Protocol recognises that Northern Ireland is part of the UK's customs territory and that "nothing in this Protocol shall prevent the UK from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries", it also adds the proviso that such agreements must not prejudice the application of the Protocol. We sought further information on how this proviso would apply in practice if, for example, the UK but not the EU (or vice versa) implemented trade countermeasures, or the EU and UK implemented different countermeasures, in their trading relationships with the same trading partner. We asked the Minister to explain:

10 See Article 127 of the EU/UK Withdrawal Agreement.
11 See Articles 4 and 127 of the EU/UK Withdrawal Agreement.

- which countermeasures Northern Ireland would be required to apply, those authorised under domestic law or those required by EU law; and
- what means would be available to the EU and the UK to prevent any diversion of trade designed to circumvent EU or UK countermeasures.

2.12 The former Minister says only that "the UK Government is 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". He adds:

> The UK will pursue an independent trade policy for the whole of the UK, including Northern Ireland.

Wider Brexit implications after transition

2.13 We asked the former Minister whether he anticipated that further domestic law provision would be needed to match the trade enforcement powers available to the EU under the 2014 Trade Enforcement Regulation and, if so, when and how the Government intended to legislate to this end. He responds:

> The Government keeps its trade enforcement regime under review to ensure it takes account of developments in the international trade arena, and to ensure it is fit for purpose. Further powers have been sought in the Trade Bill in relation to enforcement of rights under the Government Procurement Agreement and transitioned international trade agreements.[12] No further decisions have been taken on whether further legislation is required to seek additional powers.

2.14 We noted that the amended 2014 Trade Enforcement Regulation would give the EU the authority to take countermeasures against the UK after transition if it considered that the UK was obstructing the resolution of a dispute within the WTO (if the EU and UK are trading on WTO terms) or under the terms of a future trade agreement between the UK and the EU. Given that the impact on businesses and other stakeholders in the UK could be substantial, we asked the then Minister to set out the Government's approach to consultation and the preparation of impact assessments on EU proposals whose impact, as in this case, would only be felt after the end of transition. In response, the former Minister says only that the Government "will consider the relevant tools available (including consultations and impact assessments) that could be used to measure effectively the impact of EU proposals, or those of other trading partners, on businesses and other stakeholders", without setting out any criteria for determining when such tools should be used.

2.15 Finally, we noted the EU's efforts to develop a multi-party interim appeal arbitration arrangement, open to all WTO members, to facilitate the settlement of trade disputes while the WTO Appellate Body is unable to function.[13] We asked whether the UK would seek to participate at the end of the post-exit transition period. In a non-committal response,

12 Transitioned international trade agreements refers to the EU trade agreements in which the UK entered into commitments as a member of the EU and where the UK has been working to transition the agreements to make them apply to the UK at the end of the transition period.

13 See the press release issued by the European Commission on 27 March 2020.

the former Minister says that 16 WTO members have finalised the text of the arrangement and are expected to notify it to the WTO Dispute Settlement Body "in the coming weeks". He continues:

> We note that the Members supporting this arrangement have also stated that they 'remain firmly and actively committed to resolving the impasse of the Appellate Body appointments as a matter of priority and urgency, including through necessary reforms'. The United Kingdom welcomes and supports this ongoing focus on resolving the Appellate Body impasse. My officials will continue to follow developments on the interim appeal arrangement closely.

Action

2.16 We ask the new Minister for Trade (Ranil Jayawardena MP) to provide a further update once negotiations between the Council and the European Parliament on the proposed amending Regulation have concluded and a final text has been agreed. We expect the Minister to include further information on the progress being made in the EU/UK Joint Committee, relevant Specialised Committee and Joint Consultative Working Group to address the issues we have raised about the practical operation of the Protocol on Ireland/Northern Ireland in the event of a trade dispute involving the EU, the UK, or the EU and the UK after transition.

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

We are grateful for your predecessor's prompt response to our letter of 26 March 2020 concerning proposed changes to the EU's 2014 Trade Enforcement Regulation. We note that he accepted there was a case for the EU to enhance its ability to take unilateral action (trade countermeasures) without first securing a final, binding and enforceable ruling in its favour if a trading partner obstructs a dispute settlement procedure. He confirmed that similar (though not identical) powers were available to the UK under section 15 of the Taxation (Cross-border Trade) Act 2018 but that the Government would not use these powers in such a way as to conflict with the UK's obligations under the EU/UK Withdrawal Agreement.

Given the Government's clear commitment to pursuing an independent trade policy for the whole of the UK, including Northern Ireland, after transition, we are disappointed that your predecessor was unable to clarify how Articles 4 and 5(4) of the Protocol on Ireland/Northern Ireland would affect the application of EU and UK trade countermeasures in Northern Ireland. He anticipated that this and other issues would be discussed in the EU/UK Joint Committee, Specialised Committee, and (we would add) the Joint Consultative Working Group on the implementation of the Protocol on Ireland/Northern Ireland. We ask you to update us on the progress of these discussions in clarifying the answers to the questions we have raised with you.

We welcome the Government's support for resolving the current impasse in the WTO Appellate Body and its intention to follow closely developments on the multi-party interim appeal arbitration arrangement agreed by the EU and other WTO members. We ask you to inform us of any decision to participate (or not to participate) in the UK's own right.

We have no further questions to raise on the Commission report on the operation of the 2014 Trade Enforcement Regulation. We retain a keen interest in the amending Regulation proposing changes to the 2014 Trade Enforcement Regulation and ask you to provide a further update on the final text agreed once negotiations between the Council and the European Parliament have concluded. We also look forward to receiving the information we have requested on the Protocol on Ireland/Northern Ireland and on UK participation in the multi-party interim appeal arbitration arrangement at the earliest opportunity.

3 EU naval mission to enforce the Libya arms embargo (Operation IRINI)[14]

These EU documents are politically important because:

- they establish the legal framework for a new EU naval mission (Operation IRINI) in the eastern Mediterranean to enforce a UN arms embargo against Libya. However, disruption of human trafficking from Libya to Europe will only be a secondary objective, and the Operation's "search and rescue" capacity for people stranded at sea has been deliberately minimised; and
- during the post-Brexit transition period, the UK is required to provide financial — but not material — support to the Operation.

Action

- Report the establishment of Operation IRINI to the House in view of the UK's wider interest in the situation in Libya and human trafficking in the Mediterranean, and draw it to the attention of the Foreign Affairs Committee, the International Development Committee and the Defence Committee.
- Write to the Minister of State at the Foreign and Commonwealth Office (Nigel Adams MP) to clarify if the UK is deploying any assets in support of the Operation.

Overview

3.1 Libya has been ravaged by a civil conflict for the best part of a decade. This was a direct consequence of the circumstances in which a popular uprising in 2011, inspired by the "Arab Spring" and aided by a NATO bombing campaign, ended the 42-year rule of the country's leader (Colonel Gaddafi) without a stable successor government in place. As of 2020, fighting continues between different factions vying for control of Libya — including Islamic State — and effective control is lacking.

3.2 Although the UN Security Council has maintained an arms embargo against the country in 2011, it is routinely violated.[15] The lack of stability has also lead to Libyan oil resources being diverted to the black market, and made the country into a major transit country for refugees and others from farther afield, especially the Sahel, attempting to reach Europe by boat. This has generated an increase in human trafficking from Libyan shores to Italy in particular.

3.3 In this context, in February 2020 the EU's Foreign Affairs Ministers agreed to establish a new European naval operation in the eastern Mediterranean, with the primary purpose of enforcing the UN arms embargo and stop incoming weapons from further fuelling

14 (a) Council Decision (CFSP) 2020/472 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI) and (b) Council Decision (CFSP) 2020/471 repealing Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA): Council number: (a) 6414/20; (b) -; Legal base: Articles 42(4) and 43(2) TEU; unanimity; Department: Foreign and Commonwealth Office; Devolved Administrations: Not consulted; ESC numbers: (a) 41187 and (b) 41217.

15 A classified note by the European External Action Service (EEAS), dated 12 February 2020 and leaked to Statewatch, refers to "blatant violations of the arms embargo" at the start of 2020.

armed conflicts in Libya.[16] This new deployment, Operation "IRINI",[17] was formally launched on 31 March 2020 and will initially run for a year. The Operation's secondary objectives are to monitor illicit oil exports from Libya; train the Libyan Coast Guard and Navy; and "contribute to the disruption of the business model of human smuggling and trafficking networks" by means of "information gathering and patrolling by planes".

3.4 It is with respect to human trafficking in particular that IRINI is markedly different to its successor, Operation "SOPHIA".

3.5 SOPHIA was the EU's naval mission in the Mediterranean that was operational from spring 2015 until its mandate expired in March 2020. When it was conceived, its core task was to disrupt human trafficking networks (and in the course of doing so, rescue refugees stranded at sea as required by international maritime law). After the Italian, Austrian and Hungarian Governments insisted that this approach had a "pull" effect on refugees trying to reach the Europe from North Africa (coupled with a lack of willingness in many EU countries to host a share of those rescued),[18] SOPHIA entirely lost its naval assets, and therefore its ability to perform search-and-rescue, in March 2019.[19]

3.6 While the new Operation IRINI *will* make use of naval assets provided by Member States,[20] its exact 'endowment' in terms of ships is not yet clear, because EU countries have yet to firmly commit to making particular contributions to the Operation. Moreover, those vessels that *are* provided will be instructed to patrol further to the east than under SOPHIA, and therefore away from the main human trafficking routes from Libya to Italy.[21] It has also been reported that Greece has said it will act as the main disembarkation point for any people rescued at sea by the Operation's vessels. With respect to IRINI's primary objective of enforcing the UN arms embargo against Libya, concerns have also been raised about the effectiveness of only a naval presence when weapons also flow into the country across its land border with Egypt.[22]

16 Operation IRINI, like its predecessor, will also provide training to the Libyan coastguard and navy.

17 The Operation is named after the Greek word for "peace".

18 The EEAS, in its classified note of 12 February 2020, stated: "Objections have been raised by some Member States, according to which the re-deployment of naval assets would act as 'pull factor' and lead to an increase of irregular migrants entering into Europe. It must be noted that, the migratory flow through the Central Mediterranean substantially decreased between 2016 and 2019, while Operation Sophia's naval assets were still fully deployed. Migratory pressure would be better alleviated in a medium to long-term if the EU successfully contributes to the stabilisation of Libya".

19 By contrast, others — like the House of Lords External Affairs Committee in June 2017 — argued that "Sophia" should be replaced with a naval operation focused solely on search and rescue for migrants at sea. The Committee concluded at the time that the "Sophia" had failed to achieve its objective of disrupting human trafficking in the region, because "meaningful EU action" would require action against those organising these activities on the ground in Libya (not just at sea). Based on these findings, the report recommended closure of "Sophia" in its then-form, and its replacement with a naval operation focused solely on search and rescue for migrants at sea. In December 2018, the Foreign Office said the Operation had "saved over 44,000 lives (over 13,000 by UK assets), destroyed 551 smuggling vessels (182 by UK assets) and apprehended 151 suspected facilitators".

20 The European External Action Service had argued that "naval assets are […] indispensable to signal the credible commitment and presence of the EU".

21 Under international law, these naval assets will be under an obligation to rescue anyone in distress at sea. The purpose of shifting the patrols eastwards is to make this less likely.

22 Euractiv, "EU finalises 'Operation IRINI' to enforce Libya arms embargo" (31 March 2020).

The Government's position

3.7 The UK left the European Union on 31 January 2020 and British Ministers and officials were therefore not formally involved in the negotiations to establish Operation IRINI. The Government is not required to contribute any assets or staff to its activities. However, under the terms of the Withdrawal Agreement, the UK has entered a post-Brexit transition period lasting until 31 December 2020, during which it continues to apply EU law and has to pay towards the EU's activities, including certain costs associated with IRINI.[23] The Government estimates the UK's share of the costs to be approximately €1.53 million (£1.34 million) for 2020.

3.8 Beyond the end of the transition, the contributions the UK may make to EU military operations like IRINI will be decided on an ad hoc basis.[24] Whether or not the Government and EU agree on a framework agreement to structure their future cooperation on security and defence matters,[25] the UK — like other non-EU countries — could voluntarily choose to make a material contribution to specific EU military operations such as IRINI on a case-by-case basis, for example by providing naval or aerial assets.[26]

3.9 Given the UK's continued financial contribution to the Operation during transition, the Minister of State at the Foreign and Commonwealth Office (Nigel Adams MP) submitted an Explanatory Memorandum with the Government's position on Operation IRINI on 28 April 2020. This stated the UK would "monitor the implementation of its mandate and its overall effectiveness", adding that Government — while "supportive of efforts to implement the arms embargo" — had concerns about the likelihood of success, assessing that "implementing [IRINI's] mandate is likely to prove challenging, most immediately because of the impact of Covid-19 on force generation and operational contingency planning" and because of "questions about how to combine naval enforcement with equivalent aerial and land support" given the situation on the ground in Libya. The Minister's Memorandum does not make clear if further voluntary British contributions to IRINI have been made, or are intended to be made.

Action

3.10 The Committee considers that the UK retains a significant indirect interest in the EU's military operations in the Mediterranean, in view of both its strategic priorities with respect to Libya and migration flows through North Africa into Europe.

23 See Article 156 of the Withdrawal Agreement. Although Article 132 of the Agreement foresees the possibility of an extension of the transition until no later than 31 December 2022, in return for a further UK financial contribution, Parliament has legislated against any such extension under section 15A of the European Union (Withdrawal) Act 2018.

24 The Political Declaration on the future UK-EU relationship which the Government negotiated in October 2019 contained an ambition to "establish structured consultation and regular thematic dialogues" between the UK and the EU on foreign policy matters and Article 127(2) of the Withdrawal Agreement explicitly foresaw the possibility of a "an agreement governing their future relationship in the areas of the Common Foreign and Security Policy and the Common Security and Defence Policy" entering into force before the end of the post-Brexit transition period.

25 In February 2020, the Government indicated it did not see the need to negotiate an institutional framework for engagement with the EU on foreign policy and external security matters. The European Commission nevertheless published a draft treaty with some high level principles for cooperation with the UK on security and defence in March 2020.

26 For example, Switzerland has signed a participation agreement with the EU to govern its contribution to the EU's capability training mission for the security forces of Mali (EUCAP Sahel Mali).

3.11 We note in particular the controversial decision to minimise Operation IRINI's capacity to rescue people stranded at sea to avoid the alleged "pull" effect, and doubts cast over the EU's ability to enforce the arms embargo effectively without a ground presence on the Libya-Egypt border. The Committee therefore draws the establishment of IRINI to the attention of the House, and of the Foreign Affairs Committee, Defence Committee and International Development Committee in particular.

3.12 The Committee has also written to the Foreign and Commonwealth Office to ascertain if the UK has made, or is considering making, pledging any assets to IRINI beyond its mandatory financial contribution.

Letter from the Chair to the Minister of State (Nigel Adams MP), Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 28 April on the establishment of the EU's new military operation in the Mediterranean to enforce the UN arms embargo against Libya (Operation IRINI).[27] We note the Government's interest in the mission, and its concerns about its implementation in practice given the COVID-19 crisis and the continued violence on the ground in Libya.

The Committee notes that, while your Memorandum helpfully provided an estimate of the limited cost to the UK taxpayer of having to pay towards IRINI's activities as part of the Brexit financial settlement, it did not refer whether the Government is intending to make any further contributions, for example in the form of naval or aerial assets to boost the Mission's likelihood of success in enforcing the arms embargo.

We therefore ask you to write to us by the end of May to set out whether the Government has committed — or is considering committing — making any further voluntary contributions to Operation IRINI, and if so, the nature of those additional contributions, and to keep us informed in the future if that situation changes.

27 EU documents Council Decision (CFSP) 2020/472 and Council Decision (CFSP) 2020/471.

4 Trade in financial services: equivalence with the EU (update)[28]

This EU document is legally and politically important because:

- it sets out the EU's approach to "equivalence", the legal mechanism by which the UK is seeking limited preferential access for its financial services exports to the EU after the post-Brexit transition period discussed in more detail in our Report of 26 March 2020. On 23 April 2020, the Treasury provided an update on the state of its discussions with the EU on this matter.

Action

- Report the Minister's update to the House, and draw it to the particular attention of the Treasury Committee and the Committee on the Future Relationship with the EU.

Overview

4.1 The UK left the European Union on 31 January 2020, but continues to maintain access to the Single Market for a post-Brexit transitional period due to end on 31 December.[29] When the transition ends, British financial institutions like banks, investment firms and insurers will automatically lose their ability, derived from the UK's participation in the Single Market, to freely sell many of their services to customers throughout the EU[30] on the basis of their UK licence (an arrangement known as "passporting").[31] At that point, by default the trading relationship for this sector between the UK and EU will be based on their respective, very limited, commitments made under the General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO).[32]

4.2 To obtain some preferential market access for the British financial services industry above and beyond the EU's GATS baseline, the UK Government and the EU agreed that the latter would consider whether to grant the UK "equivalence". This — in specific cases — would allow British financial institutions to enter into transactions with EU-based customers more easily after the end of the transition period (but it does not necessarily give them the ability to sell financial services from their UK base into the EU UK on a

28 Document: Communication from the Commission: Equivalence in the area of financial services; Council and COM number: 11595/19, COM(19) 349; Department: HM Treasury; ESC number: 40782.

29 The transition period is based on Part Four of the Withdrawal Agreement governing the UK's exit from the EU. During this time, the UK continues to apply EU legislation, and is subject to the jurisdiction of the EU's institutions. Although Article 132 of the Agreement provides for the possibility of an extension of the transition until no later than 31 December 2022, section 15A of the European Union (Withdrawal) Act 2018 expressly prohibits the UK Government from agreeing to any extension.

30 The arrangement also applies to the EFTA EEA countries Norway, Iceland and Liechtenstein under the terms of the European Economic Area (EEA) Agreement.

31 This system, known as "passporting", is based on extensive harmonisation of financial services regulation among the EU countries on the basis of EU law, structured cooperation between national financial regulators, and the supranational enforcement powers of the European Commission and Court of Justice.

32 Centre for European Reform, "BREXIT AND SERVICES: HOW DEEP CAN THE UK-EU RELATIONSHIP GO?" (December 2018).

cross-border basis).[33] Because the market access implications of equivalence for financial services are relatively limited, their practical benefit to the industry compared to the GATS baseline — and by extension the cost of the UK not obtaining equivalence — is unclear.

4.3 In terms of process, equivalence relies on a sector-specific assessment by the European Commission of the extent to which the UK's relevant regulatory rulebook delivers the same outcomes, and does not pose any risks to the EU in terms of financial stability and consumer protection. Equivalence decisions do not necessarily offer long-term stability for trade in financial services: they are internal EU legal acts, which can be withheld, modified or withdrawn without the agreement of the relevant non-EU partner.[34]

4.4 The EU published its approach to how it conducts equivalence decisions in July 2019, which our predecessors reported to the House in October that year. That same month, the Political Declaration on the future UK-EU relationship committed the EU to *assessing* the UK's equivalence with EU financial services rules — but crucially not *granting* actual equivalence — by June 2020.[35] The Government has taken a strident approach to discussions with the EU on this matter, insisting that the UK obtaining equivalence should be "technical and confirmatory" because it remains fully aligned with EU law until the end of transition. Although the EU has already rejected this,[36] the Government has hinted it could walk away[37] from the trade talks with the EU altogether if there is no "good progress" in the "various autonomous processes" — such as equivalence assessments — proceeding "on a technical basis according to agreed deadlines" by the time of a planned UK-EU summit in June (which may now be held by videoconference due to the coronavirus pandemic).[38]

33 The actual benefits of equivalence fall far short of the cross-border market access available to firms within the Single Market. In very limited circumstances, EU law can create "passporting"-style rights — enabling non-EU firms to provide financial services directly to EU-based counterparties — where equivalence is granted. This is the case in particular for investment services and clearing of derivatives by Central Counterparties (CCPs). There are also negotiations on a financial services chapter in the putative new UK-EU Free Trade Agreement, but this is not likely to offer any significant cross-border market access commitments.

34 Typically, equivalence decisions take the form of EU Implementing Acts, which are made by the European Commission subject to the approval of a qualified majority of the 27 Member States.

35 This deadline was agreed between the UK and the EU when the former was still due to cease being a Member State on 29 March 2019. It was not pushed back after the UK extended its membership by a further 10 months. The EU's detailed negotiating position for the trade talks with the UK, approved by the remaining 27 Member States on 25 February 2020, reiterates the intended use of equivalence but omits the commitment of making the necessary legal assessments by June this year.

36 In July 2019, the European Commission specifically said the fact that the UK is still fully aligned with EU FS law is not a guarantee that equivalence will be granted; see page 8 of this Commission document.

37 In its command paper "The Future Relationship with the EU: The UK's Approach to Negotiations", the Government said: "The Government would hope that, by that point, the broad outline of an agreement would be clear and be capable of being rapidly finalised by September. If that does not seem to be the case at the June meeting, the Government will need to decide whether the UK's attention should move away from negotiations and focus solely on continuing domestic preparations to exit the transition period in an orderly fashion. In so doing, it will be necessary to take into account in particular whether good progress has been possible on the least controversial areas of the negotiations", which from the Government's perspective include the equivalence assessments.

38 Even if the European Commission concluded positively by June 2020 that the UK's regulatory regime was indeed equivalent for the purposes of EU law, this does not translate into guaranteed market access by the end of the transition period. Any formal equivalence decisions adopted by the EU could be revoked at any point or made time-limited, as was the case for the two UK equivalence measures it adopted in advance of a possible "no deal" Brexit (to safeguard European firms' access to vital markets infrastructure in London). The impact of any equivalence decisions adopted during transition is therefore also strongly related to the outcome of the discussions on "structured withdrawal" of equivalence.

4.5 Despite the Government's insistence to the contrary, the equivalence process is intensely political, given the UK's competitive advantage in this sector. For example, as noted in the Committee's previous Report:

- the EU's continued insistence that the equivalence for the UK will come at the price of some continued alignment of British rules with EU financial services legislation.[39] This is true especially in the EU Regulations governing professional investment services and clearing of over-the-counter derivatives respectively, which were amended in 2019 *in direct response to the UK's withdrawal* to give the EU greater cover to refuse or withdraw equivalence, or impose far stricter conditions. While ostensibly this would address EU concerns about the risks associated with having significant amounts of financial services provided from outside its regulatory perimeter, it also offers opportunities for further relocation of economic activity from the UK to the EU;

- a particular area of controversy in this regard relates to the EU's rules on equivalence for derivatives clearing by Central Counterparties (CCPs). A recent amendment to the EU's Market Infrastructure Regulation (EMIR) makes equivalence conditional on the Bank of England "assuring" supervisory decisions against British CCPs taken by the European Securities & Markets Authority (ESMA).[40] The implication of "assuring" is not clearly defined, but the Government has warned that if it were taken to mean "enforce" — in essence making the UK responsible for carrying out regulatory decisions which it did not shape and may not support — this would make it unlikely that the UK could accept equivalence;[41]

- the UK, by contrast, has emphatically rejected[42] any legal commitment to staying aligned with European legislation, in financial services as well as other sectors.[43] However, the Government does want the EU to agree to (unprecedented) jointly-

39 EU Commissioner for Economic Affairs Valdis Dombrovskis said in December 2019, in reference to the UK, that "the more systemically important the market is for the EU, the more we import potential risks, [and] the closer the regulatory alignment that is expected" in return for equivalence. Financial Times, "EU chief issues Brexit warning over City of London access" (2 December 2019).

40 Article 25(2) of EMIR, as amended, states ESMA can only grant non-EU CCPs recognition to operate into the EU if their home country has been granted an equivalence decision and that country's home regulator has entered into a cooperation agreement with ESMA which specifies—as per Article 25(7)—"the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA". Under Article 25p EMIR, ESMA […] shall withdraw a recognition decision […] where […] ESMA is unable to exercise effectively its responsibilities […] due to the failure of the third-country authority of the CCP to provide ESMA with all relevant information or cooperate with ESMA in accordance with Article 25(7)". Moreover, in such a case the European Commission would also review whether to withdraw equivalence from that non-EU country altogether (barring any of its firms from providing clearing services into the EU).

41 Summary Record of the meeting of the Committee of Permanent Representatives of 18 and 20 March 2019, p. 8.

42 See the Prime Minister's Written Statement of 3 February 2020 and the Government's Command Paper 211 of 27 February 2020.

43 As we noted in our Report of 26 March 2020, the very concept of equivalence implies some form of continued convergence of financial services rules: if there was fundamental divergence the UK and EU's financial services regimes, they would be unlikely to lead to 'equivalent' outcomes. Equivalence decisions, as internal EU legal acts, by definition cannot impose a legal requirement on the UK. The key issue is to what extent the UK chooses to exercise its new regulatory flexibility in this sector even if that risks not obtaining, or losing, formal equivalence with the EU (and therefore preferential treatment of its financial services providers within the European market). The Government's public negotiating documents have not addressed how it might approach this trade-off between regulatory freedom and EU market access.

set rules affecting how the either side can revoke its equivalence decisions once granted through a new UK-EU "institutional arrangement",[44] to provide a more stable trading environment; and

- lastly, adding to this already heavy political subtext, the EU and UK have also set the equivalence process in the context of the wider trade negotiations, albeit in different ways. Various EU leaders have drawn a link between granting equivalence and EU access to British fishing waters,[45] while as noted the UK has hinted it may make any continued trade negotiations beyond June 2020 conditional on positive equivalence assessments by the European Commission.

4.6 Against this background, it is unclear what progress has been made in the equivalence assessment process since the UK left the EU on 31 January. It is also not known how the COVID-19 crisis in particular, having led to significant redeployment of resources both within the Government and the European Commission, has affected the original timetable.[46] To solicit further information on the progress made in the discussions, the European Scrutiny Committee wrote to the Economic Secretary to the Treasury (John Glen MP) on 26 March 2020. It also asked for further clarification of the UK's proposals for "structured withdrawal" of equivalence, and the specific issue of the Bank of England's role in relation to equivalence for CCPs. The Minister replied to the Committee's queries in late April 2020.

The Treasury's update of 23 April 2020

4.7 As noted, the Government has taken the position that the EU's assessment of the UK's equivalence for financial services should be "technical and confirmatory". On 23 April 2020, the Economic Secretary provided an update on the equivalence discussions with the EU to date. The Minister's letter, otherwise scant on detail, confirmed that the UK is seeking positive EU decisions "across all the [circa] 40 equivalence regimes which currently exist in EU legislation" and reiterated the importance the Government attaches to the "meeting the jointly agreed June 2020 date for concluding equivalence assessments". However, it does not refer to the possible consequence of the UK abandoning its free trade negotiations with the EU if that deadline is not met.

4.8 With respect to the practical implementation of the new UK-EU relationship in financial services, the Minister's letter also covered the following issues:

- the envisaged treaty-based "institutional arrangement" on financial services between the UK and EU would provide the forum for a "structured dialogue" on proposed amendments to regulation of the financial sector in either party. The 'institution' would preserve the UK's and EU's regulatory autonomy, and therefore have no power to delay or block legislative change on either side;

44 The Treasury refers to this as "structured withdrawal".

45 Several senior politicians from the EU have already explicitly linked the question of EU market access for British financial services under equivalence has also explicitly been linked to concessions by the Government in other areas of the future economic relationship, notably the "adequacy" of the UK's post-Brexit data protection regime and access to fishing waters. The EU has previously ended equivalence for Swiss stock exchanges in July 2019 because of Switzerland's failure to ratify a "common institutional framework" on trade relations with the EU (similar to the one the EU is seeking with the UK).

46 On 2 March 2020, the Financial Times reported the Chancellor (Rt Hon. Rishi Sunak MP) had written to the European Commission on 27 February — the day the UK published its negotiating position — to say the UK saw "no reason" the equivalence process could not be finalised by June 2020 as originally agreed in early 2019.

- the institutional arrangement would also be the place for UK-EU discussions on equivalence matters, including through consultation on "the process of adoption, suspension and withdrawal of equivalence decisions". The UK wants provisions for the way in which this joint institution would "stabilise unilateral [equivalence] decisions" — i.e. limit how they can be revoked — through "structured processes for [their] withdrawal". The Minister's letter provides no further information on the detail of this proposed arrangement, for example with respect to minimum consultation periods, the legal basis for such restrictions (i.e. whether it would be set out in a binding treaty between the UK and the EU), or the consequences if either side does not respect the "structured processes"; and

- lastly, the Minister's letter also addressed the potential requirement for the Bank of England to "assure" EU supervisory decisions taken without its input in relation to British Central Counterparties, in return for the latter's ability to continue selling their services into the EU market using equivalence under the EU Regulation known as EMIR. He notes that the EU's precise approach — and therefore whether the UK could accept equivalence — "is not yet clearly established" and therefore no further detail can be provided.[47] It must follow that the EU has not clarified its position on this matter in discussions with the Government to date.[48]

4.9 The Minister also committed to "providing a fuller response in due course, once negotiations [on equivalence] have progressed".

Action

4.10 The Committee remains concerned about the Government's focus on the June deadline for the completion of the EU's equivalence assessments of the UK's financial rulebook, given that those by themselves have no legal effect. While the EU may well have completed its equivalence assessments by the original deadline, it seems likely it will link any progress towards translating them into formal equivalence decisions — especially for the most sensitive and/or lucrative financial sectors — to the state of play in the overall trade negotiations with the UK, and to the Government's position on de facto alignment with certain EU financial services standards in areas like investment services or derivatives clearing as the condition for retaining equivalence over the longer term.

4.11 Moreover, any equivalence decisions that flow from these initial assessments now underway can be revoked or modified by the EU at any point, meaning their long-term practical benefit to the UK financial services industry — and their European customers — is closely linked to the separate negotiations on a new institutional arrangement between the Government and the EU on financial services, and the extent to which the latter may agree to new "structured withdrawal" of its equivalence decisions. We note in this respect that the shape of the institutional governance of the new UK-EU trade relationship — like

47 More specifically, the Minister's letter notes that the European Commission is yet to adopt specific Implementing Acts — a type of EU statutory instrument — to determine how EMIR 2.2. will be applied in practice.

48 As regards the broader issue of regulatory alignment of UK financial services rules with EU legislation, the Committee also asked whether the upcoming Financial Services Bill is intended to contain clauses allowing the Treasury to implement EU financial services legislation post-transition, analogous to similar provisions the Government sought to introduce in the previous Parliament under the Financial Services (Implementation of Legislation) Bill. The Minister refused to confirm or deny this, saying only that "further detail on the specific content of the Financial Services Bill will be set out in due course".

the financial services "institutional arrangement" — is one of the key areas of divergence in the negotiations to date. The Minister's latest letter does not provide any update on the state of the negotiations on the UK's proposals "structured withdrawal" to set new parameters for how equivalence decisions can be revoked. We remain doubtful the EU will contemplate any significant limits on the unilateral nature of its ability withdraw equivalence.

4.12 Overall, however, we are mindful of the impact of the coronavirus crisis on the capacity of both the Government and the European Commission, and on the discussions on the future UK-EU relationship more specifically. The Committee has therefore decided not to pursue these matters further with the Treasury at this stage. However, it will initiate further correspondence with the Economic Secretary with respect to equivalence, if necessary, in light of the outcome of the planned UK-EU summit (or videoconference) in June, and any further information provided on the equivalence assessment process by the Commission or the Treasury by then. We also draw the Minister's letter of 23 April 2020 to the attention of the Treasury Committee and the Committee on the Future Relationship with the EU.

5 EU Fund for Aid to the Most Deprived[49]

This EU document is politically important because:

- it concerns a Government decision to withdraw from an EU Fund intended to alleviate "the worst forms of poverty" in the EU, resulting in a loss of £3.46 million in funding for the most vulnerable for the period 2014–20.

Action

- Write again to the Minister for Safeguarding (Victoria Atkins MP) at the Home Office to seek further information on the failure of the Government's bid for funding.
- Draw to the attention of the Home Affairs Committee and the Work and Pensions Committee.

Overview

5.1 In his letter of 18 February 2020, the then Permanent Secretary at the Home Office (Sir Philip Rutnam) informed us of the decision taken by Home Office Ministers to withdraw the UK from the EU's Fund for European Aid to the Most Deprived ("the Fund").[50] He explained that "due to European Commission accounting rules, the amount of funding the UK could access for a programme focused on social inclusion and mental health support would not allow us to deliver a comprehensive programme in the way it was originally envisaged".

5.2 The Fund was established in 2014 to support Member States in meeting the poverty reduction target agreed by EU leaders in June 2010 which sought to "lift at least 20 million people out of the risk of poverty and social exclusion" by the end of 2020.[51] The aim of the Fund was to "alleviate the forms of extreme poverty with the greatest social exclusion impact, such as homelessness, child poverty and food deprivation" by providing a dedicated source of EU funding—a total of €3.4 billion for the period 2014–20—to support Member State's poverty eradication and social inclusion policies. Each EU Member State was to receive a minimum allocation of around €3.5 million to be distributed in annual instalments, according to local needs.[52]

5.3 The European Commission publishes annual implementation reports describing how the Fund has been used in each Member State. These reports are deposited for scrutiny by the Government. In its latest report for 2017, the Commission estimates that the Fund helps to support around 13 million vulnerable individuals each year across 27 EU countries.[53] None of these beneficiaries are in the UK. As the European Scrutiny Committee has chronicled in its earlier Reports, the Government's delay in establishing a

49 European Commission report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2017*; Council document 10602/19 + ADD 1, COM(19) 259; Legal base —; Department: Home Office; Devolved Administrations: Consulted; ESC number 40692.

50 See Regulation (EU) No 223/2014 on the Fund for European Aid to the Most Deprived.

51 See the Conclusions agreed by the European Council on 17 June 2010.

52 Both figures—the total budget of €3.4 billion for 2014–20 and the minimum allocation of €3.5 million for each Member State—are expressed in 2011 prices.

53 See also the European Commission's mid-term evaluation of the Fund, Commission Staff Working Document SWD(2019) 149.

programme to make the Fund operational in the UK before the end of 2018 meant that the UK lost one year's worth of funding—€600,000—from a total allocation of €3.96 million (£3.46 million) for the UK for the period 2014–20.[54]

5.4 In July 2019, the Minister for Safeguarding (Victoria Atkins MP) confirmed that the Home Office had taken over the management of the Fund and had submitted the UK's operational programme to the European Commission for approval.[55] Conscious that further delay might put at risk another year's worth of funding for some of the most vulnerable in society, we asked the Minister to notify us as soon as the European Commission had approved the UK programme and tell us when it would be up and running.[56] Instead, we heard from the Home Office's then Permanent Secretary on 18 February 2020 that Home Office Ministers had decided to withdraw from the Fund. We wrote to the Minister on 26 March 2020 asking her to explain:

- why, having submitted the UK's operational programme for approval, put the necessary governance structures in place and signed a service level agreement with the Government's Internal Audit Agency to audit the programme, Ministers had decided to withdraw from the Fund;
- when the decision to withdraw was taken and communicated to the European Commission; and
- whether the Government intended to fill the funding gap by committing to provide an equivalent sum for the vulnerable groups targeted in the UK's operational programme up until the Fund's expiry date at the end of 2020.[57]

5.5 We also noted the Minister's assurance in correspondence with the House of Lords European Union Committee in September 2019 that the Government would be "complying stringently with European Commission rules regarding the proportion of funding that can be spent on administration and management costs" and that "no more than 5% of FEAD funding" would be spent on management costs, "with the clear majority of funding dedicated to 'on the ground' activity".[58] We suggested that this was difficult to reconcile with the then Permanent Secretary's letter in February indicating that "European Commission accounting rules" were the reason why the UK would not be able to access sufficient EU funding to deliver a comprehensive programme in the way envisaged by Home Office Ministers.

54 See our Third Report HC 229–i (2019–21), chapter 11 (26 March 2020); Seventy-third Report HC 301–lxxi (2017–19), chapter 7 (4 September 2019), Sixty-fifth Report HC 301–lxiii (2017–19), chapter 1 (8 May 2019) and Fifty-third Report HC 301–lii (2017–19), chapter 9 (30 January 2019).

55 See the Minister's Explanatory Memorandum of 9 July 2019.

56 See our Seventy-third Report, HC 301–lxxi (2017–19), chapter 7 (4 September 2019).

57 See our Third Report HC 229–i ((2019–21), chapter 11 (26 March 2020) and the letter dated 26 March 2020 from the Chair of the European Scrutiny Committee.

58 See the Minister's letter of 27 September 2019 to the Earl of Kinnoull, Chair of the House of Lords European Union Committee. See also Article 27(4) of the FEAD Regulation which provides: "At the initiative of the Member States, and subject to a ceiling of 5% of the Fund allocation, the operational programme may finance preparation, management, monitoring, administrative and technical assistance, audit, information, control and evaluation measures necessary for implementing this Regulation. It may also finance technical assistance and capacity building of partner organisations."

The Minister's response

5.6 In her letter of 5 May 2020, the Minister tells us that when the Home Office took over responsibility for the Fund in September 2018, it anticipated that around £2.9 million would be available to the UK and structured its operational programme on this basis. Following feedback received from the European Commission, it transpired that "the funding would be substantially less than anticipated"—around £500,000 in total—because of "various accounting and administrative rules". The Minister continues:

> This level of funding would not allow the Home Office to deliver the programme as it was originally envisaged as it would be unable to commission the range of services specified in the proposal, over any meaningful time period.

5.7 The Minister says that the Home Office notified the European Commission of the Government's decision to withdraw from the Fund in January 2020. The factors informing the decision were "the significant reporting requirements for the Fund and the limited possibility to design and deliver a programme utilising £500k, with administrative and management costs that would amount to 5% of the available funding". She reiterates the Government's commitment to ensuring that victims of trafficking, unaccompanied asylum-seeking children and refugees "continue to get the support they need" without, however, indicating whether the Government intends to ensure that these vulnerable groups targeted by the UK's operational programme will not lose out as a result of the Government's decision to withdraw its application to the EU Fund.

Action

5.8 Write once more to the Minister asking her to explain: why the funding available to the UK would be "substantially less than anticipated"; why the Government was unable to submit a viable funding proposal; whether the Government intends to fill the gap left by the loss of EU funding and provide an equivalent sum to support the vulnerable groups targeted in its proposed programme; and what will happen to the UK's allocation of the Fund now that the UK's funding application has been withdrawn.

Letter to the Minister for Safeguarding (Victoria Atkins MP), Home Office

Thank you for your letter of 5 May 2020 in which you seek to address the concerns raised by the European Scrutiny Committee about the Government's decision to withdraw its application for EU funding for some of the most vulnerable in society made under the Fund for European Aid to the Most Deprived.

As you know, the European Scrutiny Committee has kept a close eye on UK involvement in this Fund. We appreciate that the total budget allocation for the UK—€3.5 million (in 2011 prices) over a seven-year period from 2014 to 2020—is small relative to need. Nonetheless, as the Committee has noted in previous Reports, this funding is not, by itself, intended to deliver a comprehensive programme but to make a useful contribution to national poverty reduction and social inclusion policies, with a particular focus on alleviating "forms of extreme poverty with the greatest social exclusion impact, such as

homelessness, child poverty and food deprivation".[59] Even a modest amount of additional funding targeted towards those most in need has the potential to transform lives for the better.

You tell us that when the Home Office took over responsibility for the Fund, in late 2018, you anticipated that "approximately £2.9 million would be available to the UK". Following feedback received from the European Commission on the operational programme submitted for approval by the UK, you discovered that the funding available would be "substantially less than anticipated". Further discussions with the European Commission towards the end of 2019 indicated that the Home Office "would only be able to access a sum of around £500k". Later in your letter, you appear to suggest (though it is unclear) that the European Commission's 5% cap on administrative and management costs would make it impossible for the Government to design and deliver the sort of programme it had in mind and that, in these circumstances, the programme would be "unsustainable". When your former Permanent Secretary (Sir Philip Rutnam) wrote to us in February 2020, he indicated that "European Commission accounting rules" were the main factor in deciding to withdraw the UK's funding application.

We are at a loss to understand how accounting rules and administrative or management costs alone could reduce the anticipated spend available to the UK from around £2.9 million to only £500,000—a funding gap of £2.4 million. Even allowing for a maximum of 5% of the total available budget (approx. £145,000 from a budget of £2.9 million) to cover administrative and management costs, as envisaged in the Fund itself, that should have left around £2.75 million to support the beneficiaries targeted in the UK's programme.

We assume, therefore, that there must be another explanation. The reference in your letter to the funding being insufficient to deliver the programme "as it was originally envisaged" by the Home Office suggests that the programme itself may not have been suitably aligned with the objectives set out in the Fund itself. This is all the more surprising given that the Government's initial proposal, in 2014, to expand the provision of school breakfast clubs in deprived areas, also faltered. By contrast, although the pace of implementation has varied across the 27 EU Member States, all have managed to deliver viable programmes. We ask you to explain why, uniquely, the UK was unable to do so. We also ask you, again, whether you intend to fill the gap left by the loss of EU funding and provide an equivalent sum to support the vulnerable groups targeted in your proposed programme. Finally, please explain what will happen to the UK's allocation of the Fund now that the UK's funding application has been withdrawn.

59 See recital (7) of Regulation (EU) 223/2014.

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

Department for Business, Energy and Industrial Strategy

(40987) — —	Annual report on the EU Joint Undertakings for the financial year 2018 — Bio-based Industries; ITER and the Development of Fusion Energy.
(40988) — —	European Court of Auditors Annual report on the EU Joint Undertakings, including the Innovative Medicines Initiative for the financial year 2018.
(40994) — —	European Court of Auditors Annual report on the EU Joint Undertakings, including Fuel Cells and Hydrogen for the financial year 2018.
(41153) 7091/20 COM(20) 104	Report from the Commission on the implementation of the Commission Communication on a stronger and renewed strategic partnership with the EU's outermost region.

Department for Environment, Food and Rural Affairs

(40979) 14609/19 + ADD 1 COM(19) 606	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration.
(40992) — —	Council Decision 2019/1987 of 25 November 2019 on the position to be taken on behalf of the European Union in the Council of Members of the International Olive Council (IOC) as regards trade standards applying to olive oils and olive pomace oils (OJ L308/95).
(41000) 15197/19 COM(19) 635	Report from the Commission to the European Parliament and the Council on the implementation of apiculture programmes.
(41014) 15209/19 COM(19) 630	Report from the Commission to the European Parliament and the Council on the exercise of the delegated powers conferred on the Commission pursuant to Regulation (EC) No 1007/2009, as amended by Regulation (EU) 2015/1775 on Trade in Seal Products.

Department for Transport

(41071) 5872/20 + ADD 1 COM(20) 59	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Council of the International Civil Aviation Organization, in respect of the adoption of Amendments to a number of Annexes to the Chicago Convention.
(41079) 6099/20 COM(20) 58	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Maritime Organization during the 75th session of the Marine Environment Protection Committee and the 102nd session of the Maritime Safety Committee on the adoption of amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships, amendments to Chapter II-1 of the International Convention for the Safety of Life at Sea and amendments to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels.
(41201) 7396/20 COM(20) 149	Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2009/42/EC on statistical returns in respect of carriage of goods and passengers by sea.
(41208) 7440/20 + ADD 1 COM(20) 154	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the 13th session of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) for the adoption of modifications to UTP rolling stock noise, UTP freight wagons, UTP vehicle marking, and for the adoption of full revision of the rules for the certification and auditing of entities in charge of maintenance (ECM) and the specifications concerning vehicle registers.

Foreign and Commonwealth Office

(41091) — —	Council Regulation (EU) 2020/213 of 17 February 2020 amending Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe.
(41092) — —	Council Regulation (CFSP) 2020/215 of 17 February 2020 amending Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe.
(41168) — —	Commission Implementing Regulation (EU) 2020/219 of 17 February 2020 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe.
(41118) 6423/20 SWD(20) 46	Commission Staff Working Document Update on the Republic of Albania.

(41119) 6424/20 SWD(20) 47	Commission Staff Working Document Update on the Republic of North Macedonia.
(41145) 6930/20 JOIN(20) 7	Joint Communication: Eastern Partnership policy beyond 2020 Reinforcing Resilience — an Eastern Partnership that delivers for all.
(41160) — —	Council Decision (CFSP) 2020/435 of 23 March 2020 amending Decision 2011/173/CFSP concerning restrictive measures in view of the situation in Bosnia and Herzegovina.
(41164) — —	Council Decision (CFSP) 2020/458 of 27 March 2020 amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya.
(41191) — —	Council Decision (CFSP) 2020/512 of 7 April 2020 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran.
(41192) — —	Council Implementing Regulation (EU) 2020/510 of 7 April 2020 implementing Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.
(41197) 7339/20 COM(20) 180	Draft amending budget No 3 to the general budget for 2020: Entering the surplus of the financial year 2019.
(41198) — —	Council Decision (CFSP) 2020/418 of 19 March 2020 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt.
(41199) — —	Council Implementing Regulation (EU) 2020/416 of 19 March 2020 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt.
(41215) — —	Council Decision (CFSP) 2020/399 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
(41216) — —	Council Implementing Regulation (EU) 2020/398 implementing Regulation (EU) No.269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

HM Treasury

(41181) 7146/20 COM(20) 173	Communication from the Commission: Technical adjustment in respect of special instruments for 2020 (Article 6(1)(e) and (f) of Council Regulation No 1311/2013 laying down the multiannual financial framework for the years 2014–2020).
(41138) 6817/20 COM(20) 114	Proposal for a Regulation amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States and countries negotiating their accession to the Union seriously affected by a major public health emergency.
(41161) 7011/20 COM(20) 145	Draft amending budget No 1 to the general budget for 2020: Assistance to Greece in response to increased migration pressure — Immediate measures in the context of the COVID-19 outbreak — Support to post-earthquake reconstruction in Albania — Other adjustments.
(41162) 7048/20 COM(20) 140	Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2020/265 as regards adjustments to the amounts mobilised from the Flexibility Instrument for 2020 to be used for migration, refugee inflows and security threats, for immediate measures in the context of the COVID-19 outbreak and for reinforcement of the European Public Prosecutor's Office.
(41178) 7142/20 COM(20) 170	Draft amending budget no 2 to the general budget for 2020: Providing emergency support to Member States and further reinforcement of the Union Civil Protection Mechanism/rescEU to respond to the COVID-19 outbreak.
(41180) 7145/20 COM(20) 172	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the Contingency Margin in 2020 to provide emergency assistance to Member States and further reinforce the Union Civil Protection Mechanism/rescEU in response to the COVID-19 outbreak.

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)

Defence Committee: EU naval mission to enforce the Libya arms embargo (Operation IRINI) [Council Decisions (SNC)]

Foreign Affairs Committee: EU naval mission to enforce the Libya arms embargo (Operation IRINI) [Council Decisions (SNC)]

Committee on the Future of the European Union: Trade in financial services: equivalence with the EU (update) [Commission Communication (SNC)]

Home Affairs Committee: EU Fund for Aid to the Most Deprived [Commission Report (SNC)]

International Development Committee: EU naval mission to enforce the Libya arms embargo (Operation IRINI) [Council Decisions (SNC)]

International Trade Committee: Enforcement of international trade rules [(a) Commission Report; (b) Proposed Regulation (SNC)]

Northern Ireland Affairs Committee: Enforcement of international trade rules [(a) Commission Report; (b) Proposed Regulation (SNC)]

Transport Committee: COVID-19: Air cargo and maritime safety [Commission Guidelines (SNC)]

Treasury Committee: Trade in financial services: equivalence with the EU (update) [Commission Communication (SNC)]

Work and Pensions Committee: EU Fund for Aid to the Most Deprived [Commission Report (SNC)]

Formal Minutes

Thursday 14 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*)