



House of Commons
European Scrutiny Committee

**Fourteenth Report of
Session 2019–21**

Documents considered by the Committee on 25 June 2020,
including the following COVID-19 related documents:

**Air cargo and maritime safety
Authorisation procedure for export of Personal Protective
Equipment (PPE)**

Report, together with formal minutes

*Ordered by the House of Commons
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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 European Green Deal¹

This EU document is politically important because it:

- proposes possible changes to EU laws applicable to Northern Ireland under the Ireland/Northern Ireland protocol; and
- sets out policy strategy that will potentially affect the UK in the future.

Action

- Report to the House and draw to the attention of the Business, Energy and Industrial Strategy Committee; Environmental Audit Committee; Environment, Food and Rural Affairs Committee; Committee on the Future Relationship with the EU; and the Northern Ireland Affairs Committee.

Overview

1.1 In its document, the Commission described the European Green Deal as:

a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.

1.2 The Commission’s Communication setting out its strategy was published in December 2019 and included a [list](#) of around 50 specific policy initiatives that would be put forward in order to deliver the objectives.² Some of those have since been published and will be considered by this Committee in the coming weeks.

1.3 For the United Kingdom — where a goal of net zero emissions has already been agreed — the implications are largely strategic, with the hope that the EU’s ambitions will help the EU and UK to work in partnership internationally in order to tackle climate change. There are specific areas which are likely to affect policy included in the Ireland/Northern Ireland Protocol — such as regulation of chemicals and batteries as well as state aid — and, in other instances, which may have direct or indirect impacts on the UK as a whole. That is notably the case in relation to any trade measure adopted by the EU, such as a tax on the import of carbon-intensive goods — known as a “Carbon Border Adjustment Measure”. Another example is the proposed Offshore Wind Strategy, which may have implications for the UK’s own approach to offshore wind in the North Sea.

1.4 The strategy must also now be considered in the context of the coronavirus pandemic, which was identified after publication. The EU has been clear that the efforts towards delivery of the European Green Deal should continue and should form part of the economic recovery from coronavirus. Members of the European Council — meeting

1 Commission Communication: The European Green Deal; [15051/19](#) + ADD 1, COM(19) 640; Legal base: —; Department: Business, Energy and Industrial Strategy; Devolved Administrations; ESC number: 40996.

2 [Annex](#) to the Commission Communication: The European Green Deal.

by videoconference on 23 April 2020 — welcomed³ the EU’s [Joint Roadmap for Recovery](#),⁴ which spelled out how the EU and its Member States should relaunch and transform their economies. In particular, it concluded:

The Green transition and the Digital transformation will play a central and priority role in relaunching and modernising our economy. Investing in clean and digital technologies and capacities, together with a circular economy, will help create jobs and growth and allow Europe to make the most of the first-mover advantage in the global race to recovery.

1.5 This was later fleshed out by the Commission in its proposals for a [Next Generation EU](#) plan,⁵ a major focus of which will be the green transition. We will consider that plan, along with the related amendments to the next multi-annual EU budget, in due course.

1.6 The Minister for Climate Change (Lord Duncan of Springbank) summarised the document and set out the Government’s position in his [Explanatory Memorandum](#) dated 14 January 2020. The Minister was clear that the Government would examine detailed policy proposals or draft legislation as it emerged but that the Green Deal Communication is “a very broad vision statement”.

1.7 In terms of implications for the UK, one area of interest is the impact of Green Deal policies on Northern Ireland. As the Minister noted, some EU legislation will continue to apply to Northern Ireland under the Protocol on Ireland/Northern Ireland (“NI Protocol”) within the EU Withdrawal Agreement. This includes legislation relating, for example, to chemicals, waste, energy, emissions and state aid. As more detailed proposals on implementing the Green Deal emerge, the Government will consider whether these could be relevant to the Northern Ireland Protocol and continued North-South cooperation on the island of Ireland.

1.8 The Minister noted that the document outlined the Commission’s intention to revise several existing EU laws. He recalled that Northern Ireland is only obliged to apply revisions to the EU legislation set out in the NI Protocol. Should the Commission introduce new legislation not covered by the NI Protocol, its application in Northern Ireland would be subject to discussion at the Joint Committee.

1.9 On “clean growth and climate action”, the Minister noted that clean growth is at the heart of the UK Government’s Industrial Strategy, and its Clean Growth Strategy sets out plans for accelerating decarbonisation in reserved areas across the UK through the 2020s. The UK’s domestic targets, he said, are amongst the most stringent in the world.

1.10 Concerning medium-term greenhouse gas emissions reductions, the UK supports the Commission’s suggestion that the EU increase its 2030 climate ambition from “at least 40%” to 50–55% on 1990 levels. Similarly, the UK intended to come forward with increased international ambition in advance of the international climate summit in Glasgow, which has since been delayed until next year.

3 [Conclusions](#) of the President of the European Council following the video conference of the members of the European Council, 23 April 2020.

4 A ROADMAP FOR RECOVERY Towards a more resilient, sustainable and fair Europe, European Commission and the President of the European Council, 21 April 2020.

5 Commission Communication: Europe’s moment: Repair and Prepare for the Next Generation, COM(20) 456.

1.11 The Minister noted that the EU’s new strategy on climate change adaptation could shape the approach to adaptation within the EU’s climate diplomacy, funding, and international engagement, so the UK will examine any developments.

1.12 The UK, said the Minister, welcomes the EU’s focus on ‘green deal diplomacy’ and he added that the UK was fully committed to working with other countries to achieve the goals set in the Paris Agreement on climate change.

1.13 Turning to financing, the Minister noted that the proposed “Just Transition Mechanism” (on which we will report separately) demonstrated the Commission’s commitment to ensuring that those most affected by the transition to a net-zero emissions economy are supported. The Minister drew attention to the Treasury’s review in November 2019 of the costs of the low-carbon transition, its impact on low-income households, and how to maximise the opportunities. He also noted the similarities in terms of objective between the Commission’s planned sustainable finance strategy and the UK’s Green Finance Strategy, published in July 2019. Our work on the EU’s Sustainable Investment Taxonomy Regulation (see separate chapter of this Report) is relevant in that regard.

1.14 Concerning the proposed carbon border adjustment mechanism (a tax imposed on imports of carbon-intensive goods from countries with lower levels of climate ambition), the Minister said that the UK recognises the issues that such proposals look to address and would continue to follow developments in this area with interest.

1.15 The Minister went on to set out the Government’s overarching approach to environmental protection, drawing attention to the Environment Bill and to the Environmental Land Management (ELM) scheme. The ELM Scheme, said the Minister, adopts a similar approach to the Commission with regards to agricultural and biodiversity policies. Land managers may enter into agreements for delivering public goods such as clean air and water, thriving plants and wildlife, protection from and mitigation of environmental hazards, and adaptation to climate change. A National Pilot is planned to run from late 2021 to 2024, in order to test and refine the scheme before the full roll out of the ELM scheme in late 2024 across England.

1.16 The Government agrees with the EU’s ambition to shift towards a more circular economy, but with a degree of difference in focus. UK Government policy measures on recycling are more fully developed and prioritised according to the Minister. Those on reduction, reuse, and repair are under development, and will be taken forwards through the Waste Prevention Programme in 2020. The Government recognises there are benefits to taking actions in parallel to the EU, but the Minister considered it important that the UK has the flexibility to develop the detail of policies in ways that are most appropriate for the UK economy and existing systems.

Action

1.17 This document is politically important as its content is likely to have direct and indirect implications for the United Kingdom in the future. We draw particular attention to the following areas of potential relevance:

- initiatives amending laws applicable to Northern Ireland under the Ireland/Northern Ireland Protocol, such as in the areas of chemicals, batteries, waste, pesticides, energy, emissions and state aid;
- initiatives with trade policy implications, such as the proposed “Carbon Border Adjustment Mechanism”; and
- initiatives relevant to global environmental policy (such as biodiversity and climate change), where UK and EU interests may be aligned.

1.18 We seek no additional information from the Government at this stage but will consider each of the specific policy initiatives as they come forward, raising queries or concerns at that stage. We draw this chapter to the attention of the: Business, Energy and Industrial Strategy Committee; Environmental Audit Committee; Environment, Food and Rural Affairs Committee; Committee on the Future Relationship with the EU; and the Northern Ireland Affairs Committee.

2 2020 Fishing Opportunities⁶

These EU documents are politically important because:

- they raise issues concerning implementation of the Withdrawal Agreement;
- they apply during the transition period; and
- they are relevant to the future EU-UK relationship.

Action

- Report to the House.
- Draw to the attention of the Environment, Food and Rural Affairs Committee and the Committee on the Future Relationship with the EU.

Overview

2.1 These documents concern the setting of fishing opportunities for the EU and UK during 2020, including two sets of amendments to those opportunities. We report to the House the Minister’s latest letter and an Explanatory Memorandum due to concerns expressed that the UK has not been sufficiently consulted on changes to fishing opportunities during 2020. Such consultation is required by the Withdrawal Agreement given that EU law in this area applies to the UK until the end of 2020. In our last [letter](#) — of 21 May — we sought further information from the Government on that matter and on preparations for the negotiation of fishing opportunities in 2021 under a scenario in which there is no EU-UK framework agreement on fisheries.

2.2 In her [Explanatory Memorandum](#) on the latest amendment to the 2021 fishing opportunities, the Parliamentary Under-Secretary of State (Victoria Prentis MP) reiterated the Government’s view that it had been inadequately consulted on the measure’s preparation. The latest amendment relates, among others, to North Sea cod recovery, North Sea sprat catches and North Sea herring catches.

2.3 The Minister indicated that the UK had made its views on cod recovery and on sprat catches clear to the Commission but had seen no evidence that its views had been taken on board. The UK was considering the implications of the latest draft Regulation, which was expected to be adopted by the end of June in order to be in place by the beginning of the sprat quota year on 1 July.

2.4 In her subsequent [letter](#) of 12 June, the Minister confirmed receipt of a letter from the Commission assuring the UK of the Commission’s intention to honour its obligations

6 (a) Proposal for a Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, (b) Proposal for a Council Regulation amending Regulation (EU) 2019/1838 as regards certain fishing opportunities for 2020 in the Baltic Sea and other waters, and correcting and amending Regulation (EU) 2020/123 as regards certain fishing opportunities for 2020 in Union and non-Union waters, (c) Proposal for a Council Regulation amending Regulation (EU) 2019/1838 as regards certain fishing opportunities for 2020 in the Baltic Sea and other waters, and amending Regulation (EU) 2020/123 as regards certain fishing opportunities for 2020 in Union and non-Union waters; (a) [13438/19](#) + ADDs 1–2 COM(19) 483 (b) [6546/20](#) + ADD 1, COM (20) 87; (c) [8078/20](#) + ADD 1, COM(20) 205; Legal base: Article 43(3) TFEU; QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: (a) 40907 (b) 41111 (c) 41262.

under the Withdrawal Agreement and ensure that the UK is consulted on amendments to the 2020 fishing opportunities. The Minister added that the Government would continue to monitor the amount of time allowed for consultation and would escalate the matter if the UK considered the EU approach to be insufficient in allowing proper consultation.

2.5 Turning to the negotiation of fishing opportunities for 2021, the Minister confirmed the Government's working assumption that such fishing opportunities will be negotiated under framework agreements successfully concluded with the EU, Norway and Faroe Islands. She added, however, that the Government is preparing for a range of possible outcomes under which the UK would negotiate as an independent coastal state for fishing opportunities in 2021, including those where no fisheries agreements are in place.

Action

2.6 We are reporting these documents to the House for information given their relevance to the UK during the transition period and their salience to the future fisheries relationship between the UK and the EU.

2.7 We note the commitments that the Commission has made concerning consultation with the UK on amendments to fishing opportunities during 2020 and the Minister's indication that the Government is monitoring compliance with that commitment. We require no further information on the issues raised in this strand of scrutiny, but we trust that the Minister will alert us to any further significant developments in terms of consultation and in terms of specific measures affecting UK fishers in 2020. Regarding arrangements for 2021, we are aware that the Commission has already published its own outline [approach](#)⁷ for the negotiation of the 2021 fishing opportunities and so we expect to pursue the Government's preparations for 2021 in more detail when we come to scrutinise the Commission's document.

2.8 We draw this chapter and the accompanying letters and Explanatory Memorandum to the attention of the Environment, Food and Rural Affairs Committee and the Committee on the Future Relationship with the EU.

7 Commission Communication: Towards more sustainable fishing in the EU: state of play and orientations for 2021, [8871/20](#).

3 COVID-19: Air cargo and maritime safety⁸

These EU documents are politically important because:

- they concern the EU’s response to the COVID-19 outbreak.

Action

- Draw this Report chapter to the attention of the Transport Committee.

Overview

3.1 At the onset of the Coronavirus pandemic, the Commission published a series of guidance documents outlining measures that could be taken by Member States to ensure the continued operation of transport services.

3.2 In our Eighth Report of Session 2019–21,⁹ we considered two guidance documents: the first concerned facilitating air cargo and the second was directed at protecting the health and safety of seafarers working on board cargo vessels and cruise ships, and passengers and other persons on ships.

3.3 The Committee subsequently wrote to the Minister responsible for the documents, Minister for Aviation, Maritime and Security, Kelly Tolhurst MP, requesting further information on the steps that the Government had taken/was going to take to give effect to the measures suggested by the Commission. The Minister’s response of 5 June 2020 is considered below.¹⁰

Air Cargo (41163)

3.4 The Commission’s guidance sets out 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 account of short/medium-term problems and those that are likely to persist for some time. Examples include: 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; temporarily removing—or applying flexibly—night curfews or slot restrictions at airports for essential cargo operations; and facilitating the use of passenger aircraft for cargo-only operations including for the repositioning of air cargo flight crew, medical staff and anyone involved in the transport of goods, irrespective of the mode of transport.

8 Document (a) European Commission Guidelines: Facilitating Air Cargo Operations during COVID-19 outbreak; Council number 7055/20 and C(20) 2010; Legal base; -; Department: 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; -; Department: Transport; Devolved Administrations; Consulted; ESC number: 41194.

9 Eighth Report HC 229-v (2019–21), [Chapter 1](#) (14 May 2020).

10 [Letter from Kelly Tolhurst MP to Sir William Cash MP](#), 5 June 2020.

3.5 The Minister's Explanatory Memorandum was not clear on the steps that the Government had taken in the areas covered by the Commission's recommendations and, as such, the Committee requested further information in this regard.

3.6 In her letter of 5 June, the Minister provides a comprehensive account of the measures that the Government has taken to facilitate the movement of air cargo into and out of the UK. The Minister's full response is included as an annex to this chapter.

Maritime safety (41194)

3.7 As with air cargo, at the onset of the outbreak, the Commission published 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.

3.8 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.

3.9 The Commission's guidance mentions the EU's dedicated 'Civil Protection Mechanism' which provides funding and coordination assistance for Member States repatriation efforts. The UK has used this programme during the crisis to repatriate nationals from a number of countries around the world.¹¹ The programme is co-financed by the UK and can be utilised for the duration of the transition period.

3.10 It was not clear in the Minister's Explanatory Memorandum whether the Government had used the EU's Civil Protection Mechanism in the context of maritime-related repatriations and the Committee asked for further information on its uptake of the programme and, more generally, its wider maritime repatriation efforts.

3.11 In her letter of 5 June, the Minister confirms that the Government has not used the EU's Civil Protection Mechanism for maritime repatriations and further states that, where repatriations have been undertaken, these have been mainly bilateral affairs. Moreover, the Minister states that the Government has no intention of utilising the Union's Civil Protection Mechanism for such repatriations in the future.

3.12 In response to this stance, the Committee would clarify that programmes like the EU's Civil Protection Mechanism are not fulfilled centrally by an EU body or officials. Rather, in the case of the Civil Protection Mechanism, the EU acts to connect Member States and participating countries undertaking closely linked repatriation operations. As an example, at the onset of the crisis, Germany organised flights to return EU citizens from Egypt, Morocco, Tunisia, the Philippines, Argentina and the Dominican Republic.¹² Furthermore, as a financial contributor to the programme, the UK could benefit from co-financing of repatriation costs up to 75%; making potentially costly and logistically challenging operations more viable.

11 See European Commission, '[Summary table — repatriation flights under the Union Civil Protection mechanism](#)' (18 June 2020)

12 European Commission, '[Coronavirus: new round of repatriations of EU citizens via Civil Protection Mechanism](#)' (23 March 2020).

3.13 In our Eighth Report of Session 2019–21, the Committee also raised concerns regarding the number of seafarers stranded on ships around the world due to disruption caused by the pandemic. In response, the Minister states that the Government is committed to seafarer welfare and has made statements to this effect to the International Labour Organisation and the International Maritime Organisation.

3.14 The Minister also helpfully provides more background on the Government’s rationale for staging repatriations. With regard to stranded UK nationals on cruise ships, the Minister states that nationals are under the duty of care of the vessel operator—for passengers and seafarers—and that this duty extends to providing for repatriation arrangements. It is suggested that Government practice is to step in only when operators are unable to secure commercial repatriation flights.

Action

3.15 Draw this Report chapter to the attention of the Transport Committee.

Annex (the Commission’s ten recommendations for facilitating air cargo set against the Government’s response of 5 June 2020)

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

The Department for Transport (DfT) and the Civil Aviation Authority (CAA) have worked together to ensure that the necessary operational permissions for air freight are approved at pace. The process of approving such permissions rapidly is well established in the UK and so no additional domestic measures are required in order to remove any unnecessary impediments to the movement of air freight.

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

The EU has suspended the airport slot requirements which oblige airlines to use at least 80% of their take-off and landing slots in order to keep them the following year (the “80:20” rule). The waiver applies for the period from 1 March until 24 October 2020. To qualify for the waiver, airlines must release any unused slots back to the coordinator, so that they can be reallocated to other airlines if requested. This means that they can be used on an ad hoc basis to support essential services such as repatriation and freight operations.

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

Where there is commercial demand, a number of UK airlines have already exercised this option, using their passenger aircraft for cargo-only operations on key air freight routes. Again, there is already a regime in place to facilitate such operations if needed, so no additional UK domestic measures are required.

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

To ensure air cargo continues to be able to move critical goods in and out of the country air cargo crew, handling and maintenance personnel are classified as key workers and therefore are able to still attend work.

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

The Government recognises that airports are critical in enabling essential air services across the country and overseas, including getting UK nationals home from abroad, delivering essential supplies and connecting isolated communities. We are working to make sure that a network of infrastructure remains in place across the UK to continue to deliver these services. Where monitoring suggests that critical freight services are endangered, we would consider support to ensure that they remain open.

The Transport Secretary, Aviation Minister and officials at the DfT will continue to stay in close contact with the aviation sector, so the Government is kept fully aware of the latest developments and to understand where additional policy measures could address specific industry issues. This will ensure UK nationals overseas are able to return home and freight continues to flow in and out of the country.

- vi) **Exempting asymptomatic transport personnel, including aircrew engaged in the transport of goods, from travel restrictions.**

Air crew are exempt from the self-isolation elements of the new border health control measures.

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

DfT recently published guidance for Transport Operators which encourages operators to take a risk-based approach, including conducting a risk assessment to identify risks resulting from coronavirus and identifying sensible measures to control these risks. BEIS has also recently published a number of guidance documents targeted at working in different workplace environments such as warehouses and vehicles that may be applicable. It will be for operators to determine what risk-control measures they implement, and who they should apply to, as part of their risk assessment.

In addition to new guidance, COVID-19 tests have been made available for transport workers and their families if they are showing symptoms. This is another layer of protection to help ensure that staff are healthy and able to work.

- viii) **Allowing fast-track ad-hoc exemptions to address unforeseen situations such as sudden and unforeseen emergency operations Provided safety and security standards can be maintained we will consider fast tracking exemptions where needed.**

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

See above response to recommendation seven.

- x) **Encouraging 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.**

The Government is monitoring air freight capacity and pricing. To date, the Government has not needed to encourage airlines to reserve capacity specifically for essential goods or medical and emergency supplies.

4 COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE)¹³

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 Ireland Affairs Committee.

Overview

4.1 In our [Report](#), *COVID-19 pandemic: the EU’s policy response and the implications for the UK*, published in April 2020, we examined the initial policy and legal measures taken by the EU in response to the COVID-19 public health emergency.¹⁴ One of these measures was a [Commission Implementing Regulation](#), effective for six weeks (from 15 March to 25 April 2020), introducing an export authorisation scheme for certain categories of personal protective equipment (“PPE”) to prevent critical shortages within the European Union. The Commission adopted a further [Implementing Regulation](#)¹⁵ extending the requirement for an export authorisation for a further 30 days (from 26 April to 25 May 2020), while making some modifications in recognition of the need for international solidarity in managing supplies of PPE to counter a global pandemic. Our [Seventh Report](#) of Session 2019–21 provides a more detailed overview of both Commission Implementing Regulations.¹⁶ We also [wrote](#) to the Minister for Prevention, Public Health and Primary

13 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 of Health and Social Care; Devolved Administrations informed; ESC number: 41141.

14 Second Report of Session 2019–21, HC 275, published on 1 April 2020.

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

16 Seventh Report HC 229-iv (2019–21), [chapter 6](#) (7 May 2020).

Care (Jo Churchill MP) seeking further information on the legal and policy implications of the Regulations for the UK during and after the post-exit transition period established by the EU/UK Withdrawal Agreement.¹⁷

4.2 We asked the Minister whether the UK had advance notice of the Commission Implementing Regulations (given that the UK would be bound to apply them during transition but no longer participated in the EU decision making process) and what mechanisms existed to ensure that the Government had adequate notice of such EU laws before they took effect. We also asked her to explain the practical impact of the Regulations on the UK, including:

- how effective they had been in reducing the gap between demand for and supply of PPE in the EU, and in the UK, as well as details of the proportion of UK PPE supplies sourced from within the EU and from outside the EU;
- whether restrictions on the export of PPE had “led to the full and effective lifting of all forms of internal bans or restrictions” which some Member States had unilaterally introduced to protect their own supplies of PPE;¹⁸
- what impact the Regulations had had on UK exporters of PPE, including data on the number of authorisations granted or refusals made since 15 March 2020; and
- whether important third country exporters of PPE had reciprocated by introducing their own restrictions on supplies to the EU and/or to the UK in response to the Regulations.

4.3 We noted that the second Commission Implementing Regulation (2020/568) included a new requirement for Member States (and the UK)¹⁹ to consult the Commission on decisions granting export authorisations and to notify all authorisations granted or refused immediately so that the information could be made publicly available. We asked whether the Minister considered these additional requirements were 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. We also invited the Minister to update us on other EU initiatives to ensure adequate provision of PPE throughout the EU, for example through joint procurement and the development of a strategic “rescEU” stockpile of medical equipment under the EU’s Civil Protection Mechanism, and to indicate how much PPE and other medical equipment relevant to the COVID-19 pandemic the EU had secured by these means, as well details of UK involvement in, or contributions to, both schemes to date.

4.4 Finally, we noted that the parent Regulation ([Regulation \(EU\) 2015/479 on common rules for export](#)) on which both Commission Implementing Regulations were based would continue to apply in Northern Ireland under the Protocol on Ireland/Northern Ireland after transition. We asked the Minister to explain how this might affect trade in

17 See our [letter dated 6 May 2020](#) from the Chair of the European Scrutiny Committee to the Minister.

18 See recital (10) in the Preamble to Commission Implementing Regulation (EU) 2020/568 making the export of certain products subject to the production of an export authorisation.

19 In accordance with Art 127(3) of the [Withdrawal Agreement between the UK and EU](#)

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.

The Minister’s response

4.5 In her [letter of 10 June 2020](#), the Minister tells us that the UK was informed of the first Commission Implementing Regulation on 15 March 2020, the day after its adoption by the Commission. The UK thus had no advance warning as the Regulation was “an urgent implementing act”. The UK was given advance notice of a subsequent amendment to the Commission Implementing Regulation (clarifying its territorial scope)²⁰ but not, it seems, of the second Commission Implementing Regulation adopted “through the normal procedure” on 23 April 2020. Only Member States had the opportunity to “comment and formally clear it”, even though the UK would be bound to apply it during transition, because the UK “is no longer a Member State [and] it is not part of the decision-making process”.

4.6 Turning to the impact of the Commission Implementing Regulations on the UK, the Minister says she cannot quantify their specific impact in reducing the gap between the supply of and demand for PPE in the EU and in the UK because they are “just one of a number of factors”, but adds that the “vast majority” of PPE is procured from outside Europe, “with only 6.5% of the value of foreign payments for PPE going to companies in Europe”. The Minister considers that the Regulations have helped to keep supplies of PPE in the UK and the EU, with [the Government’s guidance page on exporting PPE during coronavirus](#) receiving 26,692 unique page views between 15 March and 21 May 2020, indicating a large reach. 501 requests for an export authorisation had been made by exporters in the UK up until 14 May 2020 which the Minister groups into six main categories:

- **Out of scope**—items which, although ostensibly PPE, were not PPE for the purposes of the Regulations, such as welding masks, tinted safety spectacles, firefighting face masks, etc. (155 out of 501 requests).
- **In scope**—items in such low quantities as not to put at risk PPE provision within the UK or the EU, for example non-commercial personal parcels (232 out of 501 requests).
- **Humanitarian**—items (generally low in volume) to fulfil non-COVID pre-existing arrangements for NGO medical clinic resupply (35 out of 501 requests).
- **UK Sovereign interest**—military exports to supply personnel abroad. As these were not exempt from the requirement for an export authorisation, the Government sought to ensure smooth passage of these items through the system. Initially, exports of PPE to Gibraltar also required authorisation, but this requirement was lifted in the second Commission Implementing Regulation (12 out of 501 requests).

20 Commission Implementing Regulation (EU) 2020/426. It removed the requirement for an authorisation to export to 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.

- **Other potentially in scope cases**—for example, exports in support of World Health Organisation activities, exports to fulfil contracts already arranged before the Regulations took effect, exports supporting integrated supply chains which were identified in the Regulations themselves and/or in Commission Guidance as ones in respect of which Member States should consider the grant of a licence. None of the requests in this category were of a volume detrimental to the provision of PPE within the UK or EU (63 out of 501 requests).
- **In scope and detrimental to PPE provision within the UK or EU**—there were four cases in which export licences were refused.

4.7 The Minister considers the overall impact of the Regulations on businesses in the UK to have been small, describing the application process for an export authorisation as straight-forward and refusals only issued where there was a strong market demand for PPE in the UK.

4.8 The Minister is not willing to indicate whether the temporary EU restriction on the export of PPE has led to “the full and effective lifting of all forms of internal bans or restrictions” within the EU or whether 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. Instead, she refers us to the [World Trade Organisation website page on COVID-19 and world trade](#) which includes a list of trade restrictions notified to the WTO. The Minister is similarly unwilling to comment on the differences between the Commission’s first and second Commission Implementing Regulation which, we suggested, might promote transparency and greater consistency in applying the export authorisation rules across the EU, saying that “it would not be appropriate” for the Government to do so.

4.9 The Minister does not appear to anticipate that trade in or supplies of PPE within the UK’s own internal market might be affected should similar EU restrictive measures be introduced after transition, given that Northern Ireland (but not the rest of the UK) would be required to implement any such EU restrictions under the provisions of the Protocol on Ireland/Northern Ireland. She observes:

The Protocol makes clear that Northern Ireland is and remains part of the UK’s customs territory and allows the UK to ensure unfettered market access for goods moving from Northern Ireland to Great Britain. The arrangements we introduce will reflect this, including in the context of PPE movements from Northern Ireland to Great Britain.

4.10 Finally, the Minister provides further information on the UK’s involvement in the EU’s joint procurement initiative for PPE and the creation of a strategic stockpile of PPE and medical equipment under the EU Civil Protection Mechanism. She confirms that the UK signed the [EU Joint Procurement Agreement](#) in 2014.²¹ She continues:

To date, the EU has formally launched four joint procurements in response to COVID-19, including on PPE and ventilators. The UK did not receive an invitation from the EU in time to have the opportunity to consider

21 The Joint Procurement Agreement establishes a mechanism for the advance purchase of medical countermeasures for serious cross-border threats to health. See Article 5 of [Decision No 1082/2013/EU](#) on serious cross-border threats to health.

joining the first four EU joint procurements launched in response to the coronavirus pandemic. The UK has expressed an interest in participating in two EU procurement schemes in relation to medicines, but neither of these schemes has yet been formally launched by the Commission.

We are also in discussion with the Commission on other possible topics for future joint procurements. We will consider participating in other future EU schemes on a case by case basis, taking into account our health requirements, including any schemes on PPE.

4.11 The UK also continues to participate in and contribute to the EU Civil Protection Mechanism (and its “rescEU” stockpile) during transition. She adds:

Specifically, on the creation of the rescEU stockpile, which consists of medical equipment including PPE, ventilators, and laboratory supplies, the stockpile can only be activated in exceptional circumstances and when a participating state’s national means are not sufficient.

The stockpile is currently being hosted by Romania and Germany and is fully funded by the European Commission. The UK will continue to monitor this stockpile closely and assess against national interest, including our need to have full control over the capabilities we purchase and to avoid commitments that are not in line with UK policy on future collaboration with the EU.

4.12 The Minister says that the Government “does not hold all the information on how much PPE and other medical equipment relevant to the COVID-19 pandemic has been secured through EU Joint Procurement schemes or the rescEU stockpile” and that “it would not be appropriate for the UK Government to disclose or comment on the total quantities of PPE and medical equipment secured by the European Commission.

Action

4.13 The EU no longer requires an export authorisation for PPE as the Commission Implementing Regulations have expired (the last one on 25 May 2020) and have not been renewed.²² The measures nonetheless provide a useful illustration of the operation of EU law in the UK during transition and in Northern Ireland after transition under the Withdrawal Agreement and Protocol on Ireland/Northern Ireland.

4.14 We ask the Minister for:

- further information on the mechanisms for informing the UK of EU laws applicable to it during transition before they take effect;
- an assurance that the Government will engage with the substance of EU laws that are binding on the UK during transition;

22 See the [Government’s guidance on exporting personal protective equipment during coronavirus \(COVID-19\)](#) which states: “Goods exported from the European Union after midnight on Monday 25 May 2020 will no longer require an export authorisation. The European Union export authorisation requirement for PPE products (Regulation 2020/568) expired on 25 May 2020 and will not be extended.”

- meaningful engagement on the practical implications of future divergence in laws relating to trade in goods applicable to Northern Ireland under the Protocol on Ireland/Northern Ireland and the rest of the UK after transition; and
- further details of UK participation in joint procurement schemes and of UK contributions to or calls on the rescEU stockpile.

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

Thank you for your [letter of 10 June 2020](#) responding to the questions raised by the European Scrutiny Committee in its [Seventh Report](#) of Session 2019–21 and in my [letter of 6 May 2020](#) on the measures taken by the EU to prevent critical shortages in the supply of Personal Protective Equipment (“PPE”) in the early stages of the COVID-19 pandemic. I note that the Commission Implementing Regulations introducing a temporary export authorisation scheme have expired (the last one on 25 May 2020) and have not been renewed.²³ The Committee therefore has no further questions to raise on the Regulations themselves but makes the following observations on your response.

First, you accept that the UK was under a legal obligation to implement the Commission Implementing Regulations during the transition period provided for in the EU/UK Withdrawal Agreement but, it seems, had no advance notification or sight of the measures before they were formally adopted by the Commission. Whilst the UK is not entitled to participate in the EU’s decision-making processes, Article 128 of the Withdrawal Agreement does envisage circumstances in which the UK may exceptionally attend meetings or be consulted on draft Union acts to ensure their effective implementation and application in the UK.²⁴ Do you consider that the UK should have had greater involvement in the process leading to the adoption of the Commission Implementing Regulations? I would also welcome a response to the broader question raised in my previous letter which asked you to explain 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.

Second, you tell us in your letter that “it would not be appropriate for the UK Government to comment on the content” of the Commission Implementing Regulations. We recognise that the Government has limited means to influence or inform the content of EU laws that are applicable to the UK during the transition period, but can see no reason why you cannot comment on the policy choices made (in this case) by the Commission and their implications for the UK. It is fundamental to the process of scrutiny that the Government does engage with the substance of EU laws that are binding on the UK, even if only for a limited period, and seek an assurance that you intend to do so.

Third, we would welcome more meaningful engagement from the Government on the practical implications of future divergence in laws relating to trade in goods applicable to Northern Ireland under the Protocol on Ireland/Northern Ireland and the rest of the UK after transition. Using these Regulations as an example, if the Commission were to adopt similar measures to address a critical shortage in essential goods (in this case PPE)

23 See the [Government’s guidance on exporting personal protective equipment during coronavirus \(COVID-19\)](#) which states: “Goods exported from the European Union after midnight on Monday 25 May 2020 will no longer require an export authorisation. The European Union export authorisation requirement for PPE products (Regulation 2020/568) expired on 25 May 2020 and will not be extended.”

24 See Article 128(5) and (7) of the [EU/UK Withdrawal Agreement](#).

after transition, the Government would presumably have to apply the criteria set out in the Regulations to decide whether to authorise the export of PPE from Northern Ireland to the rest of the UK unless the Regulations included a specific exemption for Northern Ireland. Do you agree with this analysis?

Finally, you say that the UK has expressed an interest in participating in two EU procurement schemes concerning medicines and will consider taking part in other EU schemes “on a case by case basis”. You also confirm that the UK continues to participate in and contribute to the EU Civil Protection Mechanism during transition. We would welcome further details as and when these procurement schemes are formally launched. We also ask you whether the UK has contributed medical equipment, including PPE and ventilators, to the rescEU stockpile and whether the UK has made any call on this stockpile.

5 Green finance: the EU’s Sustainable Investment Taxonomy (update)²⁵

This EU document is legally and politically important because:

- it creates a new EU-wide legal framework for the assessment of the environmental sustainability of any given economic activity. The Treasury has now confirmed this “Taxonomy” will automatically remain on the UK statute book under the European Union (Withdrawal) Act 2018, and the Minister has raised the possibility of continued alignment with the EU in this area after the end of the post-Brexit transition period.

Action

- Seek clarification from the Minister about the question of continued alignment of UK law with the EU’s Sustainable Investment Taxonomy.
- Draw the information the Treasury has provided on the UK’s implementation of the Taxonomy to the Environmental Audit Committee and the Treasury Committee.

Overview

5.1 In April 2020, the EU agreed on a “[Sustainable Investment Taxonomy](#)” Regulation,²⁶ a new statutory classification system that will be used by European financial institutions, investors and regulators to determine whether a particular economic activity can be said to contribute substantially to one of six high-level environmental objectives, such as climate change adaptation or pollution prevention²⁷ (to establish, in turn, the degree to which *investment* in that activity could be considered sustainable and conducive to that objective, as an aid to environmentally-conscious investors).²⁸

5.2 Notably, the new Regulation will oblige the 27 EU Member States to use the Taxonomy as and when legislating for “any measures setting out requirements [for] [...] financial products or corporate bonds that are made available as ‘environmentally

25 Proposal for a Regulation on the establishment of a framework to facilitate sustainable investment; Council and COM number: 9355/18 + ADDs 1–2, COM(18) 353; Legal base: Article 114 TFEU; Department: HM Treasury; Devolved Administrations not consulted; ESC number: 39806.

26 The Taxonomy is part of a larger package of EU measures — the “[Green Finance](#)” package — that aim to ensure the financial services industry plays its part in the fight against climate change. The overall aim of the proposals is to channel more investment into sustainable activities by incorporating ‘Environmental, Social and Governance’ (ESG) considerations into investment industry practices. The Commission argues this would benefit the environment and lead to more sustainable economic growth (as well as being in the industry’s own interest by reducing insurance claims related to environmental damage and ensuring the viability of long-term investments). The Regulation was formally approved by the Member States in the Council on 15 April 2020 and by the European Parliament on 17 June 2020, and published in the Official Journal of the EU on 22 June 2020 as [Regulation 2020/852](#).

27 The six environmental objectives for which the Sustainability Taxonomy sets criteria to determine whether an economic activity is of benefit are: climate change adaptation and mitigation; sustainable use and protection of water and marine resources; the transition to a circular economy; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems.

28 More concretely, to be classified as ‘sustainable’ under the Taxonomy, an economic activity will have to “contribute substantially” to one of the environmental objectives; avoid any “significant harm” to the environmental objectives; and meet certain “minimum social safeguards” in the form of ILO Conventions.

sustainable”, for example when introducing a statutory “[green bond](#)“ label (on which the European Commission [launched a consultation](#) in June 2020). In addition, from the end of 2021 onwards,²⁹ it will require financial companies that sell investment products in the EU to either make regular disclosures to investors about the extent to which their products can be considered ‘sustainable’ under the terms established by the Taxonomy, or include a disclaimer that a particular investment product does “not take into account the EU criteria for environmentally sustainable investments”. In December 2020, the European Commission is due to publish the first detailed “screening criteria” that will be used to determine whether an economy activity contributes to one of the six high-level environmental objectives.

5.3 We last reported on the Taxonomy to the House and other interested Select Committees in our [Report of 30 April 2020](#). At that time, we also noted that the new disclosure requirements for firms offering sustainable investments were not expected to apply in the UK as a matter of EU law, because they will become operational only from 31 December 2021 (and therefore well beyond the scheduled end of the post-Brexit transitional period at the end of this year).³⁰ We did, however, ask the Treasury to clarify if the Government would take the EU’s new system for classifying investments by sustainability as a model for a future UK approach.

The Government’s position

5.4 The Economic Secretary to the Treasury (John Glen MP) wrote to us [on 28 May 2020](#) with further information on the potential implementation of the EU’s taxonomy in the UK beyond the end of the post-Brexit transition period.

5.5 In his letter, the Minister explained that Articles 4 to 8 of the Regulation, which principally cover disclosure requirements for those offering investment products with respect to the impact of their offerings on environmental sustainability, will only take effect from late 2021 onwards. Under [section 3](#) of the [European Union \(Withdrawal\) Act 2018](#) (“the 2018 Act”), an EU Regulation becomes retained UK domestic law only if it is “in force and applies immediately before [the end of transition]”. As such, those disclosure requirements will not remain on the statute book automatically when the transitional period ends.

5.6 By contrast, the remainder of the Regulation — in particular the requirement for any statutory “green finance” schemes to take into account Taxonomy’s six high-level environmental objectives, and how those are defined — *will* begin to apply in July 2020, twenty days after its [publication in the EU’s Official Journal](#) on 22 June. This, the Minister stated, “effectively means that the UK will retain the framework for the taxonomy” in its domestic law at the end of the transition period. Under [section 8](#) of the 2018 Act, the Government can use Statutory Instruments to correct “deficiencies” in the Taxonomy that will remain part of UK law. While the Minister notes the Treasury intends to use

29 The European Commission is currently working on detailed screening criteria to implement the Taxonomy Regulation, with an initial focus on developing ways of measuring an economic activity’s impact on climate change mitigation and adaptation.

30 While the Withdrawal Agreement with the EU provides for the possibility of extending the transition period, and therefore the supremacy of EU law, for a period of up to two years until 31 December 2022, [Section 15A](#) of the European Union (Withdrawal) Act 2018 states that “a Minister [...] may not agree [...] to an extension of the [transition] period”.

this power to “ensure it is fully operable from the end of the [transition] period”,³¹ he did not clarify which actual changes to the Regulation are foreseen in this regard, especially with respect to the establishment of the detailed screening criteria for each of the six environmental objectives set out in the Taxonomy.

5.7 As regards the broader policy choice of whether to retain the Taxonomy under UK law in the longer term, the Minister added that the detailed implementation of the EU’s new framework — the detailed ‘screening’ criteria to determine to what an extent an economic activity contributes to one of the high-level environmental objectives — are yet to be published by the European Commission. This, he argued, means there is no “clarity on the final outcome of the file” and therefore “we cannot comment at this stage on the extent to which we will *align with the EU* after the [transition] period” (our emphasis).

The Committee’s assessment

5.8 The Economic Secretary to the Treasury has clarified that some substantive elements of the EU’s new Taxonomy to classify investment opportunities by their impact on environmental sustainability will remain part of UK law under the terms of the European Union (Withdrawal) Act 2018, but notes that the choice of whether to retain the Taxonomy domestically beyond the end of the transition period, and if so in which form, has not yet been made.

5.9 There are two elements of the Minister’s letter of 28 May 2020 that deserve further attention:

5.10 First, there is the general question of the longer-term retention of the EU Taxonomy under UK law. Here, the Minister states the “taxonomy will play an important role in the development of Green Finance”. He then, curiously, refers to the need for the Government to have seen the European Commission’s detailed screening criteria for the Taxonomy’s six environmental objectives — due to be published in stages from the end of 2020 onwards — to get “clarity on the final outcome” of this new EU framework, adding that he therefore cannot yet “comment [...] on the extent to which we will align with the EU”. We do not know why the Minister explicitly raised the possibility of alignment with the EU on the Taxonomy as part of the future UK-EU economic relationship. In our Report of 30 April 2020 we asked him only “to clarify whether [it] is considering establishing a similar legally-binding Sustainability Taxonomy domestically for investment products”.

5.11 However, the reference to “align” may be linked to the Government’s on-going discussions with the European Commission about “equivalence” in financial services. This is the arrangement, which we discussed in more detail in our Reports of [26 March](#) and [14 May 2020](#), under which the Government is seeking preferential market access into the EU for Britain’s financial services exports after the UK leaves the Single Market.³² It is not clear if the EU is seeking commitments from the Government that it will retain a version of the Taxonomy under its domestic law, in return for such “equivalence” for the British

31 By way of example, the Government will need to use this power at the very least to remove references to the need for the European Commission to conduct an evaluation of the Regulation since this would clearly not be relevant under UK domestic law.

32 At the end of the transition period, British financial institutions automatically lose their “passport” to operate in any EU Member State using their UK licence.

asset management and investment services industries (nor how any such commitment would be compatible with the [Government’s own insistence](#) that the UK “will not agree to any obligations for our laws to be aligned with the EU’s”).

5.12 Moreover, the question of alignment with the EU is separate from the issue of whether the Government intends to retain the Taxonomy as such as a UK statutory arrangement in the first place. The European Commission’s detailed rules for implementation of the new ‘green’ screening process are not due to apply from early 2022 at the earliest, well beyond the scheduled end of the transition period. It is therefore entirely possible for the Treasury to instead work on its own “screening criteria” to complement the Regulation as retained EU law, if the Government intends to keep the Taxonomy on the UK statute book. The European Commission’s proposals in this regard may be relevant or helpful, but they are not a precondition for such a policy choice.

5.13 Secondly, Parliament should pay close attention to any Statutory Instruments laid by the Treasury to correct “deficiencies” in the Taxonomy as it applies in UK law from the end of the transition period. We note that the powers granted to the Government under the 2018 Act to do so appear to preclude in this instance a complete repeal of the Taxonomy Regulation, given that — in the words of the Act — it cannot be said to have no “practical application in relation to the United Kingdom [...] or is otherwise redundant or substantially redundant”. However, the Government will need to decide how it seeks to modify the process for establishing the aforementioned “detailed screening criteria” for the Taxonomy to the UK’s situation after the end of the transition period.

5.14 In particular, under the EU Regulation, those crucial technical rules would be set by the European Commission, but subject to a veto by either the European Parliament or by a qualified majority of EU Member States in the Council.³³ What process the Government foresees for the establishment of the UK’s own sustainability screening criteria (if, indeed, it intends to retain the Taxonomy in the longer term), including any role for Parliament and the [proposed new Office for Environmental Protection](#), or some other independent body, is unclear.

Action

5.15 It follows from our assessment above that it is not possible at this stage to determine how the EU’s Sustainable Investment Taxonomy might be applied to statutory “green finance” schemes or financial market participants in the UK beyond the end of the post-Brexit transition period.

5.16 Given these uncertainties, the Committee is writing to the Economic Secretary to the Treasury, to seek clarification around his remarks regarding potential UK regulatory alignment with the EU on the Taxonomy. We have also asked the Minister to inform us, any other Select Committees with an interest, in due course when any draft legislation is published that would amend the Regulation establishing the Taxonomy as it applies in domestic law after the end of the transition period. A copy of that letter is shown in the Annex to this chapter.

33 Under the Regulation, the detailed screening criteria would be made by means of Delegated Acts, a type of EU statutory instrument.

5.17 There are also a number of other EU policy initiatives which are linked to the Sustainable Investment Taxonomy, and which may also be relevant for the UK in the future (even if only as a comparator for the Government’s future proposals with respect to ‘green finance’). These include a series of European Commission reports planned for 2021 and 2022 that will assess when an activity does *not* contribute meaningfully to sustainability³⁴ and evaluating the “effectiveness of [...] this [Taxonomy] Regulation in channelling private investments into environmentally sustainable economic activities”.³⁵ As noted, the European Commission in June 2020 also launched a consultation on an EU “green bond” label (which could lead to the introduction of a voluntary or binding product label for such investment products based on the Taxonomy at EU-level).³⁶ The Committee will continue to monitor these related developments and report any relevant implications for the UK to the House, as necessary.³⁷

5.18 We draw the Treasury’s update, and our assessment thereof, to the attention of the Environmental Audit Committee and the Treasury Committee, who may wish to pursue this matter further with the Government in light of their own work in this area.

Letter from Sir William Cash MP to the Economic Secretary to the Treasury, (John Glen MP)

UK implementation of the EU’s Sustainable Investment Taxonomy

Thank you for your letter of 28 May 2020 on the EU’s new Sustainable Investment Taxonomy to assess the environmental impact of investment in particular economic activities, and its potential implications for UK investors and financial institutions.³⁸ We note the Regulation establishing the Taxonomy has now been formally approved by both the European Parliament and the Member States in the Council, and was published in the Official Journal of the EU on 22 June.

The Committee was intrigued by the reference in your letter to the fact that the Government is apparently considering “the extent to which we will align with the EU” as regards the Taxonomy beyond the end of the transition period, based on the detailed screening criteria for the high-level environmental objectives which the European Commission is due to begin publishing at the end of this year. It would be helpful if you could clarify why such

34 That report will also assess the possibility of introducing more detailed preconditions with respect to social and employment conditions for an activity to qualify as ‘sustainable’.

35 These reviews are also likely to give some Member States an opportunity to push for amendments to the Taxonomy Regulation, given that the legislation is not without its detractors among the remaining 27 EU Member States, with Sweden [voting against](#) while Austria, Bulgaria, Hungary and Poland abstained from the final vote. The legislative process to establish the current version of the Taxonomy already highlighted a number of areas of controversy between the EU’s Member States and the European Parliament. Notably, EU countries were divided on whether energy generation from nuclear power and gas should be considered ‘sustainable’, which has resulted in ambiguities in the legal text. The final Regulation also contains a category of “transitional” activities, which could allow activities otherwise classified as non-sustainable, like for example nuclear energy or steel manufacturing, to be classified as ‘sustainable’ if there is “no technologically and economically feasible low carbon alternative” and the activity “has greenhouse gas emission levels that correspond to the best performance in [its] sector or industry”. The extent to which the Regulation defines sustainability in terms of forestry management was also controversial.

36 In June 2019, the EU’s Technical Expert Group on Sustainable Finance published a [report](#) on an “EU green bond standard”.

37 The Committee will also continue to pursue the broader matter of “equivalence” with the EU on financial services regulation with the Treasury, especially as regards the extent to which that arrangement could require continued UK regulatory alignment with EU financial services rules more generally.

38 Document 9355/18 + ADDs 1–2, COM(18) 353; 39806.

alignment is under consideration, and in particular whether the issue of the UK operating something akin to the Taxonomy has been raised, or is likely to be raised, in the context of discussions with the EU on ‘equivalence’ for financial services (especially with respect to asset management and investment services).

We would also be grateful if you could inform us, and any other Select Committees with an interest, in due course when any draft legislation (under section 8 of the European Union (Withdrawal) Act 2018 or otherwise) is published to amend the Regulation establishing the Taxonomy as it applies in domestic law after the end of the transition period. If the Government intends to retain a version of the Taxonomy in the longer term, we believe Parliament should take a particular interest in any Government proposals relating to the process for establishing the UK’s own detailed screening criteria for the environmental objectives set out in the Taxonomy.

We look forward to receiving your response as regards alignment with the EU Taxonomy in the customary 10 working days.

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

Department for Business, Energy and Industrial Strategy

(41155) Proposal for a Council Decision on the adoption of the 2020–23 high
6999/20 flux reactor supplementary research programme at Petten to be
+ ADD 1 implemented by the Joint Research Centre for the European Atomic
COM(20) 108 Energy Community.

Department for Digital, Culture, Media and Sport

(40687) Commission Staff Working Document Digital Economy and Society
10211/19 Index (DESI) 2019.
+ ADDs 1–5
SWD(19) 206

Department for Environment, Food and Rural Affairs

(41169) Report from the Commission to the European Parliament and the
7174/20 Council on the exercise of the power to adopt delegated acts conferred
COM(20) 131 on the Commission under Regulation (EU) 2017/1004 concerning Union
framework for the collection, management and use of data in the
fisheries sector.

(41172) Proposal for a Regulation of the European Parliament and of the Council
7195/20 amending Council Regulation (EC) No 1215/2009 introducing exceptional
+ ADD 1 trade measures for countries and territories participating in or linked to
COM(20) 135 the European Union's Stabilisation and Association process.

(41185) Proposal for a Council Decision on the position to be taken on behalf of
7229/20 the European Union in the Assembly of the Lisbon Union.
COM(20) 136

(41188) Proposal for a Decision of the European Parliament and of the Council
7238/20 amending Council Decision 2003/17/EC as regards the equivalence of
COM(20) 137 field inspections carried out in Ukraine on cereal seed producing crops
and on the equivalence of cereal seed produced in Ukraine.

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: European Green Deal [Commission Communication (SNC)]

Environmental Audit Committee: Green finance: the EU’s Sustainable Investment Taxonomy (update) [Proposed Regulation (SNC)]; European Green Deal [Commission Communication (SNC)]

Environment, Food and Rural Affairs Committee: European Green Deal [Commission Communication (SNC)]; 2020 Fishing Opportunities [Proposed Council Regulations (SNC)]

Committee on the Future of the European Union: European Green Deal [Commission Communication (SNC)]; 2020 Fishing Opportunities [Proposed Council Regulations (SNC)]

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

International Trade Committee: COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE) [Commission Implementing Regulation (SNC)]

Northern Ireland Affairs Committee: European Green Deal [Commission Communication (SNC)]; COVID-19: Authorisation procedure for export of Personal Protective Equipment (PPE) [Commission Implementing Regulation (SNC)]

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

Treasury Committee: Green finance: the EU’s Sustainable Investment Taxonomy (update) [Proposed Regulation (SNC)]

Formal Minutes

Thursday 25 June 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*)