



House of Commons
European Scrutiny Committee

**Fifteenth Report of
Session 2019–21**

Documents considered by the Committee on 2 July 2020,
including the following COVID-19 related documents:

**Increases in the EU budget for 2020 and implications for the UK
Travel and tourism guidance**

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 2 July 2020*

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 COVID-19: travel and tourism guidance¹

These EU documents are politically important because:

- they concern the EU’s response to the COVID-19 pandemic; and
- they raise questions regarding the Government’s support to the UK travel industry during—and after exit from—current lockdown restrictions.

Action

- Draw to the attention of the Digital, Culture, Media and Sport Committee, and the Health and Social Care Committee.

Overview

1.1 The files under scrutiny—[document \(a\) \(41252\)](#) and [\(b\) \(41253\)](#)—have been published by the Commission as non-binding guidance for Member States in their efforts to restart domestic and international tourism as the COVID-19 pandemic eases.

Communication: Tourism and Transport in 2020 and beyond (document (a) (41252))

1.2 The Communication under scrutiny has been published as a response to the Coronavirus pandemic and the significant impact that it is having on the tourism industry. With the beginning of the summer season afoot, there is concern that without action on the behalf of the EU—and between Member States—the industry will suffer significant losses that will have disastrous implications for some national economies.

1.3 The Commission’s Communication is intended as a coordinated framework to “enable all [of] Europe to benefit from a restful and above all, safe tourism season”. Towards this end, it outlines priority areas in which the Commission will launch its own initiatives and provide support to Member States.

1.4 The Commission’s framework trails guidance and recommendations in four areas:

- i) free movement and internal borders;
- ii) transport and connectivity;
- iii) tourism and hospitality; and
- iv) consumer confidence.

¹ Document (a) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Tourism and transport in 2020 and beyond; Council and COM number:—; COM(20) 550; Legal base: — ; Department: Digital, Culture, Media and Sport; Devolved Administrations; Consulted; ESC number: 41252. Document (b) Communication from the Commission: COVID-19: EU Guidance for the progressive resumption of tourism services and for health protocols in hospitality establishments; Council number:—; C(20) 3251; Legal base: — ; Department: Digital, Culture, Media and Sport; Devolved Administrations; Consulted; ESC number: 41253.

1.5 Under each of these headings, standalone initiatives and joint actions are outlined. As an example, under the heading ‘consumer confidence’, the recently published Commission Recommendation on travel vouchers is outlined. As with the other initiatives covered by the Communication, where deposited for scrutiny by Government Departments, the Committee has undertaken its own separate analysis.²

1.6 The Communication primarily serves to notify Member States and stakeholders of the Commission’s future actions, however, there are exceptions where it invites direct contact between itself and Member States.

1.7 By way of example, building on the ‘Joint European Roadmap’ (towards the lifting of Coronavirus containment measures),³ the Commission invites Member States to provide data to the European Centre for Disease Prevention and Control (ECDC) on the transmission of the disease at sub-national level. This is with the intention of being able to develop a European map of COVID-19 transmission so that, amongst other concerns, better informed decisions can be made by Member States and tourists on travel plans.

1.8 During the transition period (established by the UK/EU Withdrawal Agreement), the UK is permitted to continue to participate in the work of the ECDC.⁴

1.9 At a more general level, the Commission is keen to stress that restoring tourism will not be sufficient, on its own, to ensure the viability of the industry in the long term. The Commission’s Communication highlights the current liquidity crisis in the sector, the number of jobs at risk if public action is not taken, and the need for better promotion of local tourism i.e. meaning travel within and between Member States.

Communication: COVID-19: EU guidance for the progressive resumption of tourism services and for health protocols in hospitality establishments (document (b) (41253))

1.10 The second Communication under consideration—document (b)—falls under the ‘tourism and hospitality’ title of the Commission’s headline framework (document (a)).

1.11 The Communication is intended to serve as guidance for Member States on the safe and gradual restoration of tourism activities and the development of health protocols for hospitality establishments.

1.12 The Communication suggests that Member States should consider a number of criteria before relaxing measures intended to prevent the spread of COVID-19.

1.13 The criteria suggested for relaxing containment measures specifies that:

- the COVID-19 incidence has declined to low levels;
- sufficient health system capacity is in place;
- robust surveillance and monitoring is in place;

2 The Commission Recommendation on travel vouchers was considered by the Committee in its Twelfth Report of Session 2019–20.

3 European Commission, [‘Joint European Roadmap towards lifting COVID-19 containment measures’](#) (8 April 2020).

4 As with other EU agencies and bodies, the UK is not permitted to be involved in decision-making during the transition period.

- testing capacity is in place;
- contact tracing is in place; and
- coordination and communication mechanisms are in place.

1.14 The Communication further outlines key principles that should be developed and tailored to hospitality establishments to ensure the safety of guests and workers. Examples of covered locations include hotels, restaurants and local attractions.

1.15 The main guiding principles detailed in this regard are that:

- the health and safety of guests and workers should be a priority;
- local—as well as national—arrangements should be in place;
- establishments should have action plans in place in case of infection;
- there should be adequate training for staff in recognising infection symptoms and the measures that should be taken to ensure infection control; and
- physical distancing and hygiene measures should be in place.

The Government 's position

1.16 The Minister with responsibility for the documents under scrutiny, Nigel Huddleston MP, wrote to the Committee by way of [Explanatory Memorandum](#) (EM) on 4 June 2020. The Minister's EM is largely descriptive and does not provide any assessment of the Commission's guidance or how it relates to the measures that the Government has put in place—or is planning to put in place—to mitigate the impact of the pandemic on the UK's tourism sector.

Action

1.17 The Committee has written to the responsible Minister, Nigel Huddleston MP, requesting information on the advice or guidance that the Government has provided to the hospitality sector to ensure the safety of tourists and workers as the pandemic eases and related establishments are permitted to reopen.

1.18 The Committee has requested information on the Government's engagement with the ECDC, in particular, whether it has, or plans to, provide data to the EU and Member States for the development of a European COVID-19 transmissions map.

1.19 The Committee has also asked the Minister to outline the steps that his Department are taking to ease liquidity problems in the tourism sector and any activities it has initiated to promote tourism at home—and abroad—as the crisis eases.

1.20 Drawn to the attention of the Digital, Culture, Media and Sport Committee, and the Health and Social Care Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Nigel Huddleston MP), Department for Digital, Culture, Media and Sport

The Committee have asked me to thank you for your Explanatory Memorandum on the two above listed EU documents dated 4 June 2020.

Taken together, these EU documents speak to the implications of the current pandemic for the tourism industry and the long road ahead towards its recovery. The Commission's Communications helpfully detail the actions that the EU is taking in the sector and its role in coordinating the responses of Member States.

We refer you to the Prime Minister's statement to the House of 23 June 2020 that most hospitality establishments will be permitted to reopen as of 4 July 2020. Against the Commission's guidance, we request further information on the measures that the Government has put in place—or is planning to put in place—to ensure that tourists and related workers are safe as lockdown measures are eased. We are interested, in particular, in the specific guidance and support that you have provided to hospitality venues such as hotels.

The Committee notes the Commission's invitation for Member States to contribute data to the European Centre for Disease Prevention and Control on the national transmission of COVID-19 to enable the creation of a European transmission map. Under the UK/EU Withdrawal Agreement, the UK is not precluded from participating in the work of EU agencies and bodies during the transition period.⁵ We therefore request further information on the Government's engagement with the European Centre for Disease Prevention and Control, in particular, whether it has, or plans to, provide data for the development of a European COVID-19 transmissions map.

The Commission's Communications highlight the severe financial difficulties that the tourism sector is facing during the current crisis. Indeed, the cash flow problems encountered by some operators are predicted to continue for some time. The Commission details EU-led actions designed to combat these problems and we would like to hear the steps Government is taking to ease liquidity problems in the sector and any activities it has initiated to promote tourism as the crisis eases.

We request a response to this letter within 10 days.

⁵ Depending on the EU agency or body, this may be by request or invitation, however, the UK is not permitted to be involved in any related decision-making during the transition period.

2 Aviation and climate change: COVID-19 and UK/EU future relationship negotiations⁶

These EU documents are politically important because:

- they give formal effect to the UK’s participation in the ‘Pilot Phase’ of CORSIA (the international aviation community’s effort to reduce greenhouse gas emissions by way of a Carbon offsetting scheme);
- they change the ‘baseline’ year for the scheme; meaning that emissions reduction targets will be calculated against data from 2019—not 2020—to take account of the significant drop in traffic—and thus emissions—consequent on the COVID-19 pandemic; and
- they are related to the EU’s own scheme—the EU ‘ETS’—and raise questions regarding the UK’s future ‘linking’ to it—or participation in other schemes—at the end of the transition period.

Action

- Write to the responsible Minister, Kelly Tolhurst MP, requesting further information on progress of UK/EU future relationship negotiations on Carbon pricing and trading and, whether, in light of the opening of trade negotiations with New Zealand, Carbon trading will be discussed.
- Draw this Report chapter to the attention of the Transport Committee, the Environmental Audit Committee, the International Trade Committee and the Environment, Food and Rural Affairs Committee.

Overview

2.1 At transnational level, the International Civil Aviation Authority (ICAO) is responsible for the development and management of air transportation. This includes, but is not limited to, setting standards and recommended practices covering issues such as air safety, navigation and flight inspection.

2.2 The 1997 Kyoto Protocol gave ICAO responsibility for tackling greenhouse gas emissions from civil aviation. Set against this responsibility and with progress towards the

6 Document (a) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and of the option selected for calculating the aeroplane operators’ offsetting requirements during the 2021–23 period + Annex; Council and COM number: 7973/20 + ADD 1, COM(20) 194; Legal base: Article 192(1) and 218(9) TFEU, OMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41251. Document (b) Proposal for a Council Decision amending Council Decision (EU) 2016/915 as regards the reference period intended to be used for measuring growth of CO₂ emissions, to take account of the consequences of the COVID-19 pandemic in the context of CORSIA + Annex; Council and COM number: 8122/20 + ADD 1, COM(20) 219; Legal base: Article 192(1) and 218(9) TFEU, OMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41260.

entry into force of the Paris Agreement (under the UN Framework Convention on Climate Change), in 2010, ICAO committed itself to the medium-term goal of maintaining net emissions from international civil aviation at 2020 levels.

2.3 As part of this pledge, in 2016, ICAO established CORSIA (the Carbon Offsetting and Reduction Scheme for International Aviation).

2.4 As a Carbon reduction mechanism, CORSIA requires operators on routes between participating States to offset any increase in emissions covered by the scheme above a baseline of an average of 2019 and 2020 levels.

2.5 CORSIA is split into three phases:

- i) a pilot phase covering 2021–23;
- ii) a first phase covering 2024–26; and
- iii) a second phase covering 2027–35.

State participation in the pilot and first phases is voluntary. When a State participates, all routes between the State and other participating States are subject to offsetting obligations. Participation is mandatory for all operators on routes that meet certain thresholds (regardless of the nationality of the operator). As of 2027 (with the entry into force of the second phase of CORSIA), routes between all States will be included.

Documents under scrutiny

2.6 The two documents under scrutiny—[41251](#) and [41260](#)—would authorise the EU to vote in favour of a number of minor technical changes to the implementation and operation of CORISA at forthcoming ICAO meetings.

2.7 During the transition period (as established by the UK/EU Withdrawal Agreement), the UK is bound by the majority of EU laws (including Council Decisions giving effect to the EU’s position(s) in international bodies such as ICAO).

2.8 The Minister responsible for the documents under scrutiny, Kelly Tolhurst MP, wrote to the Committee by way of [Explanatory Memorandum](#) on 2 June 2020.

Decision to voluntarily participate (41251) (document (a))

2.9 On 3 September 2016, all EU Member States—including the UK—committed through the ‘Bratislava Declaration’ to participate in the voluntary phase of CORSIA.⁷ The draft Council Decision under scrutiny would reaffirm this commitment and signal the EU’s intention to participate in CORSIA from 2021 (the launch of the pilot phase). The Government is supportive of this position and argues that the UK’s participation “... will demonstrate our [the UK’s] commitment to international action to tackle aviation’s contribution to climate change...”

7 European Civil Aviation Conference, [‘Bratislava Declaration’](#) (3 September 2016).

Impact of COVID-19 on the design of CORSIA (41260) (document (b))

2.10 The Coronavirus pandemic has had a significant impact on international aviation with air traffic dropping markedly since its onset. As a consequence, it is expected that for 2020 total greenhouse gas emissions from aviation will be considerably lower than for 2019. With 2020 serving as the ‘baseline’ year for CORSIA, there is the potential for disproportionately low emissions data leading to higher offsetting costs for operators.

2.11 The draft Council Decision would, in effect, allow the EU to support the use of data from 2019 for baseline calculation purposes. The Minister notes that “...this change would be consistent with the Government’s position on the issue”.

2.12 In her Explanatory Memorandum of 2 June, the Minister highlights the interaction between CORSIA and the EU’s own ‘Emissions Trading Scheme’ (ETS).⁸ This link is explored in further detail below; in terms of the differences between the respective schemes and the place of Carbon pricing in UK/EU future relationship negotiations.

EU ETS and future UK ‘linking’

EU ETS

2.13 Whereas CORSIA is a CO₂ ‘offsetting’ scheme—where emissions reductions that cannot be achieved in the aviation sector alone are compensated by schemes in other parts of the economy with greater reductions potential—the EU’s ‘ETS’ operates in a slightly different way and is known as a ‘cap-and-trade’ system.

2.14 For ETS, a limited number of emission ‘allowances’ are issued and steadily decreased over time. Allowances are awarded centrally free-of-charge to operators and can be traded on an open marketplace.

2.15 Supply and demand is driven by the emissions profiles of users, for example, an operator may emit less CO₂ than it has allowances for as a result of utilising CO₂ reduction strategies. These leftover allowances can then be sold to ‘heavier’ users; for whom reducing CO₂ emissions is either not possible or, versus the cost of buying extra allowances, not considered to be economically viable.

2.16 As a market-based system, supply and demand for allowances is said to establish a stable price—as of September 2018, allowances were trading at c.€20 per tonne—and the decreasing number of allowances in circulation, an incentive to reduce emissions. Alongside the aviation sector, ETS also covers operators of stationary installations such as power stations and energy intensive factories.

2.17 After initial controversy,⁹ ETS has been clarified as applying to flights within and between Member States and not, as originally planned, international flights as well. The

8 [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance).

9 A derogation from the full application of the ETS Directive was granted in 2014 to facilitate the negotiation of a global market-based measure for international aviation emissions within the auspices of ICAO (which subsequently saw fruition as CORSIA).

scope of ETS takes in all EEA airports including the EU Member States, Norway, Iceland, Liechtenstein and related territories (and Switzerland as of 1 January 2020 with the advent of the EU-Swiss ETS linking agreement).

2.18 When fully effective, CORSIA offset credits will not be valid in the ETS system and nor will ETS allowances be redeemable in CORSIA. This is a consequence of both systems having been developed separately. The Commission is, however, keen to look at how ETS could be amended to integrate CORSIA obligations given the potential for operators to be subject to two sets of charges under schemes with similar objectives.

Future UK linking

2.19 The UK will cease to be a member of the EU's ETS at the end of the transition period (as established by the UK/EU Withdrawal Agreement).

2.20 Article 96 of the Withdrawal Agreement provides that from the 1 January 2021 the UK will be obliged to, and will retain the ability to, enforce EU ETS for 2019–20. Due to how ETS functions, 2020 emissions will have to be submitted by UK operators and verified by regulators by no later than 31 March 2021. Furthermore, the deadline for surrender allowances for 2020 emissions will be the later date of 30 April 2021.

2.21 In their recent response to their consultation on UK Carbon pricing after EU Exit,¹⁰ the Government and Devolved Administrations signalled their intention to establish a UK ETS and noted that they were open to considering linking this to the EU's system. Indeed, in both the UK and EU's draft future relationship texts, mention is made of linking systems for the pricing of Carbon.¹¹

2.22 With regard to the EU's suggestions for 'linking', under the now well-known heading of 'level playing field' commitments, the EU specifies that the UK shall "...implement a system of carbon pricing of at least the same scope and effectiveness of that provided by the EU Emissions Trading System (EU ETS)".¹²

2.23 The idea of linking is well established and is viewed as a way of creating larger Carbon markets which can reduce overall compliance costs, increase market liquidity and, ultimately, improve market stability. The respective systems of the EU and Switzerland have been linked as of 1 January 2020. This link allows for the recognition of emissions allowances and monitoring processes. With similar systems either in operation or development in New Zealand, Canada, China, Japan, South Korea and the United States, the possibility of a future UK ETS linking to jurisdictions other than the EU is a distinct possibility.

2.24 As an alternative to an ETS (and in the event of a 'no trade deal' EU Exit or a barebones UK/EU trade agreement), a domestic UK 'Carbon tax' has been proposed. Indeed, in the 2018 budget, the previous Government announced the introduction of a 'Carbon

10 HM Government, ['The future of UK carbon pricing: UK Government and Devolved Administrations' response'](#) (June 2020).

11 The Government's draft text notes the potential of ETS linking and states that "additional legal provisions on carbon pricing may be inserted following further discussions". See Chapter 4 'Carbon Pricing' ['Draft working text for an agreement on energy between the United Kingdom and the European Union'](#) (last updated 19 May 2020).

12 See Article LPFS.2.35: Carbon pricing ['Draft text of the Agreement on the New Partnership with the United Kingdom'](#) UKTF (2020) 14.

Emissions Tax’ in place of the EU ETS in the event that the UK left the EU without a negotiated agreement at the end of 2019. It is possible that this idea could be revived if a standalone UK ETS is not ready by the end of the transition period.

Action

2.25 The Committee has written to the responsible Minister, Kelly Tolhurst MP, requesting further information on progress on UK/EU future relationship negotiations on carbon pricing and trading, in particular, covering the following points:

- whether the Government has had conversations with the EU on linking a future UK emissions trading system to the EU ETS; and
- if linking has been discussed, details of these conversations.

The Committee has also asked the Minister whether the introduction of an interim Carbon Emissions Tax—as suggested in the event of a no-deal EU Exit—would be compatible with the EU’s future trade requirement “...for carbon pricing of at least the same scope and effectiveness of that provided by the EU Emissions Trading System”.

Finally, the Committee has asked the Minister whether, in light of the opening of trade negotiations with New Zealand, linking Carbon trading systems will be discussed.

2.26 This Report chapter has been drawn to the attention of the Transport Committee, the Environmental Audit Committee, the International Trade Committee and the Environment, Food and Rural Affairs Committee.

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

The Committee have asked me to thank you for your Explanatory Memorandum on the above listed documents dated 2 June 2020.

We were pleased to hear of the Government’s plans for reducing greenhouse gas emissions and the commitment being shown to international efforts to mitigate the role played by aviation in climate change.

Of particular interest to the Committee was your mention of the EU’s ‘Emission Trading System’ and the Government’s plans for its replacement with a domestic equivalent at the end of the transition period (as established by the UK/EU Withdrawal Agreement). In this regard, we have carefully considered your response—along with the Devolved Administrations—to your joint consultation on UK Carbon pricing after EU Exit. With this in mind and against ongoing negotiations on the UK’s future relationship with the EU, we request further information on:

- whether the Government has had conversations with the EU on linking a future UK emissions trading system to the EU ETS; and
- if linking has been discussed, details of these conversations.

We also seek your view on whether the introduction of an interim Carbon Emissions Tax—as was suggested in the event of a no-deal EU Exit—would be compatible with the EU’s future trade requirement “...for carbon pricing of at least the same scope and effectiveness of that provided by the EU Emissions Trading System”.

Finally, in light of the recent opening of trade negotiations with New Zealand, we are interested to know whether linking Carbon trading systems will be discussed.

3 EU Health Programme¹³

This EU document is politically important because:

- it concerns an EU Programme in which the UK is eligible to participate and which is designed, among other objectives, to support the efforts of EU Member States and other participating countries in responding to cross-border health challenges;
- the Government has provided a limited explanation of its decision not to participate; and
- there is potential interaction between the proposal and the Northern Ireland Protocol.

Action

- Write to the Minister seeking further information on the Government's position.
- Draw to the attention of the Health and Social Care Committee, the Northern Ireland Affairs Committee and the Future Relationship with the EU Committee.

Overview

3.1 The EU adopts multi-annual health funding programmes in order to support cooperation among EU countries and underpin and develop EU health activities. The Commission's proposal for the fourth programme, the 'EU4Health Programme' aims to ensure that the EU remains the healthiest region in the world, with all possible tools available to address health challenges, as well as being prepared for any new emerging health threats. It is open to participation by third countries and would therefore be relevant to the UK, should the UK decide to participate.

3.2 The proposal outlines the EU's assessment that COVID-19 has shown the need to significantly boost the EU's capability to respond effectively to such major health threats, going beyond the existing Early Warning and Response System.¹⁴ According to the Commission, the pandemic has revealed gaps in terms of the development and manufacturing of medicinal products, the adequate supply of equipment in hospitals and sufficient medical human resources, the uptake of digital tools and services that enable continuity of care, and the need to maintain access to essential goods and services in times of crisis. The EU4Health Programme is envisaged as being the key instrument in the EU's response to this challenge

3.3 In recognition of the importance attached to the Programme, the Commission has proposed a budget of €10.4 billion (£9.4 billion) for the period 2021–27, which is an increase compared to the €450 million (£405 million) budget for the period 2014–20 and compared

13 Proposal for a Regulation on the establishment of a Programme for the Union's action in the field of health — for the period 2021–27 and repealing Regulation (EU) No 282/2014 ("EU4Health Programme"); [COM\(2020\) 405](#); Legal base: Article 168 TFEU, Ordinary legislative procedure, QMV; Department: Health and Social Care; Devolved Administrations: Consulted; ESC number: 41321.

14 Established by [Decision No 1082/2013/EU](#) of 22 October 2013 on serious cross-border threats to health.

to the original €413 million (£372 million) indicative allocation for 2021–27. The majority of the funding would be provided by the Coronavirus Recovery Instrument, a €750 billion (£676 billion) crisis fund on top of the EU’s planned spending under its 2021–2027 long-term budget.

3.4 The proposals set out three overall objectives:

- To protect people in the Union from serious cross-border threats to health.
- To improve the availability in the Union of medicines, medical devices and other crisis relevant products, contribute to their affordability, and support innovation.
- To strengthen health systems and the healthcare workforce, including by digital transformation and by increased integrated and coordinated work among the Member States, sustained implementation of best practice and data sharing, to increase the general level of public health.

3.5 Support can take the form of joint procurement exercises or “eligible actions”, such as: clinical trials; stockpiling and procurement of crisis-relevant products (including medicines, vaccines, Personal Protective Equipment (PPE) and ventilators); actions on cancer; digital transformation of health systems; and the development and implementation of EU health legislation and action.

3.6 In his [Explanatory Memorandum](#), the Minister of State for Health (Edward Argar MP) recalled that the Government’s document¹⁵ on its approach to the future relationship negotiations with the EU in February 2020 stated that the UK was seeking a relationship based on friendly cooperation between sovereign equals, with both parties respecting one another’s legal autonomy and right to manage their own resources as they see fit. It was indicated that the UK was ready to consider standard third country participation in certain Union programmes where it was in the UK’s and the EU’s interest to do so. It also set out that any agreements relating to Union programmes should contain fair terms for UK participation. This should include fair treatment of participants, a fair and appropriate financial contribution, provisions allowing for sound financial management by both parties, and appropriate governance and consultation. The programmes identified in February did not include the future Health Programme. The Minister said that careful consideration was given at the time to the benefits of participation in the Health Programme, including the value of participation to the UK taxpayer, and — based on this assessment — Ministers decided not to pursue future participation in the EU Health Programme.

3.7 Since then, noted the Minister, the EU has published its proposal for the future Health Programme. He noted that the proposed new programme is “far more ambitious and far-reaching than previous programmes with a budget 20 times larger than the current Third Health Programme”. The proposal, he said, also refers to “action surrounding health infrastructure and implementing health system reform”. These areas, argued the Minister, “fall under UK competence”. For these reasons (large budget and scope), the Minister considered that “it remains the right decision not to pursue participation in the EU4Health Programme”.

15 [The Future Relationship with the EU: The UK’s Approach to Negotiations](#), HM Government, February 2020.

3.8 The Minister recognised that some health researchers and organisations may be affected by this decision but noted that there would continue to be “many opportunities in science and innovation in the UK”. The UK would not be offering a domestic alternative for the EU Health Programme because there is domestic funding available from sources including UKRI (UK Research and Innovation) and NIHR (National Institute for Health Research), amongst others. The Government, said the Minister, is determined to continue to support the UK’s world-leading research sector.

3.9 While the UK would not participate in the EU4Health Programme, said the Minister, the UK’s domestic efforts and collaborations with international partners, as well as other elements of the Future Relationship negotiations, would seek to address some of the proposals put forward for the EU4Health Programme. For example, the UK wants to continue to cooperate with the EU on medicines regulations and health security issues.

3.10 Finally, the Minister confirmed that the proposal has no interaction with the Northern Ireland Protocol.

Our assessment

3.11 We take no view on the desirability or otherwise of participation in the Programme, but we do expect a comprehensive explanation from the Government as to its policy.

3.12 We agree with the Minister’s assessment that the proposed funding level for this Programme for the next MFF represents a substantial increase and we take note of the Commission’s rationale for such an increase. The amount proposed by the Commission forms part of a much wider overall funding package, which is yet to be agreed. Consequently, the final agreed allocation of the Programme could change. Bearing that in mind, we consider it premature for the Government to have made a decision on participation based on a proposed — rather than agreed — figure. Furthermore, there is no certainty at this stage as to how the UK contribution to any schemes would be calculated in any case. We have twice written to the Treasury, as the lead Department on any future contributions to EU budget, to clarify the Government’s position on the EU’s proposed mechanism for that calculation but it has not provided clarity on this matter to date.

3.13 The other objection cited by the Government is that the programme refers to “action surrounding health infrastructure and implementing health system reform”, which the Minister says are a matter of UK competence. Post-transition, all policy referenced in this document will — legally — be a matter of UK competence. Even at EU level, though, the EU’s powers in this area are restricted, giving the EU the power to:

complement and support national health policies, encourage cooperation between Member States and promote the coordination between their programmes, in full respect of the responsibilities of the Member States for the definition of their health policies and the organisation and delivery of health services and medical care.¹⁶

3.14 Our interpretation of the proposal is that it is intended to support health infrastructure and health system reform, but only where desired. As far as we can see, there would be no

requirement for the UK to engage in projects designed to support health infrastructure or health system reform if it did not wish to do so. A clearer articulation of the Government's concerns in this regard would therefore be helpful.

3.15 The Government identifies the two disadvantages cited above — the level of the budget and the impact on matters of UK competence. It does not, though, identify any potential benefits from UK participation and does not distinguish between the Programme's support for individual countries and its support for cooperation between countries. To make an adequate assessment of the UK's position, it is necessary for the Government to enter into a more granular analysis of the Programme, explaining any advantages or disadvantages of UK engagement in each aspect of the Programme. This should include an assessment of both the potential for joint procurement (Article 10) and the eleven suggested areas for Eligible Actions (Article 13) as set out in Annex 1 of the proposal.

3.16 The Government notes that the UK's domestic efforts and collaborations with international partners, as well as other elements of the Future Relationship negotiations, would seek to address some of the proposals put forward for the EU4Health Programme. By way of example, said the Minister, the UK wants to continue to cooperate with the EU on medicines regulations and health security issues. We require further information from the Government on the detail of these alternative ways of collaborating and why either a) they would be preferable to participation in the Health Programme or b) why they and participation in the Programme are mutually exclusive.

3.17 Finally, the EM notes that participation in EU Programmes is a reserved policy matter, but that officials in the Department of Health (NI), the Scottish Government and the Welsh Government have an interest relating to their responsibilities and were therefore consulted in preparing this Explanatory Memorandum. It would be helpful to know if any of those administrations expressed views on the proposal, notably Northern Ireland where cross-border work on matters relating to health is of particular relevance.

3.18 Concerning the Northern Ireland Protocol, we do not share the Government's categorical view that there is no interaction between the proposal and the Protocol. Under the terms of the Protocol, Northern Ireland will be required to apply EU health legislation covering the regulation of medicines, medical devices and the quality and safety of blood, tissues and cells and of organs for transplantation. Given that one of the objectives of the Programme is to assist Member States and other participating countries with their implementation of EU health legislation and action, it seems at least possible that the potential to be involved may be helpful to Northern Ireland in meeting its ongoing regulatory alignment obligations. In consequence, there does appear to be interaction between the proposal and the Protocol, although not of a binding nature.

Letter from the Chair to the Minister of State for Health (Edward Argar MP)

We have considered your Explanatory Memorandum (EM) on the above proposal and have noted several matters on which further information from you would be helpful.

We take no position on whether the UK should seek to participate in this Programme, but we are keen to ensure that the Government's position is adequately explained.

You reject participation on two grounds: the size of the budget and the impact on areas which “fall under UK competence”.

Concerning the size of the proposed budget, we note that this is yet to be agreed and nor is there yet a decision on the method of calculating UK contributions to any EU programmes. If the size of the budget, rather than the Programme itself, is problematic, why are you not waiting until the budget and UK calculation mechanism are agreed before taking a final decision?

Concerning the impact on areas which you identify as falling “under UK competence”, notably health systems and health infrastructure, we would welcome a more detailed articulation of your concerns. The Commission is clear in its document that the Programme is designed to support the work of Member States (or participating third countries) rather than control that work and, of course, the UK would be under no obligation to participate in any aspect of the Programme with which it did not feel comfortable.

We note that your EM did not identify any potential benefits from UK participation and does not distinguish between the Programme’s support for individual countries and its support for cooperation between countries. To make an adequate assessment of your position, we do need you to provide a more granular analysis of the Programme, explaining any advantages or disadvantages of UK engagement in each aspect of the Programme. This should include an assessment of both the potential for joint procurement (Article 10) and the eleven suggested areas for Eligible Actions (Article 13) as set out in Annex 1 of the proposal.

You appear to support some of the objectives of the Programme but consider that the UK national interest would be better served by pursuing them through other mechanisms. Those that you cite are: domestic efforts; collaboration with international partners; and “other elements of the future relationship negotiations”. By way of example, you say, the UK wants to continue to cooperate with the EU on medicines regulations and health security issues. We require further information from the Government on the detail of these alternative ways of collaborating and why either a) they would be preferable to participation in the Health Programme or b) why they and participation in the Programme are mutually exclusive.

Finally, we would be interested to know if you received any feedback from the devolved administrations, notably Northern Ireland where cross-border work on matters relating to health is of particular relevance. We are less confident than you that there is no interaction between the Programme and the Northern Ireland Protocol given the potential use of the Programme to support countries in their implementation of EU health legislation. As Northern Ireland is required to implement some EU health legislation, it seems at least possible that the potential to be involved may be helpful to Northern Ireland in meeting its ongoing regulatory alignment obligations. In consequence, there does appear to be interaction between the proposal and the Protocol, although not of a binding nature. We would welcome your reflections on our observations and whether you continue to be categorically of the view that there is no interaction between the Programme and the Protocol.

We would welcome a response to this letter within ten working days and look forward to being able to scrutinise your position more accurately in the light of that additional information.

4 COVID-19: Increases in the EU budget for 2020 and implications for the UK¹⁷

These EU documents are legally and politically important because:

- they increase EU spending in 2020 to respond to the coronavirus crisis, which has direct implications for the UK because it continues to contribute to, and receive funds from, the EU budget until the end of 2020 under the financial settlement in the Withdrawal Agreement; and
- in particular, the Government apparently disputes whether it has a legal obligation under that Agreement to contribute towards a €2 billion (£1.8 billion) increase in EU spending on the “Emergency Support Instrument”, which could affect the UK’s ability to participate in an EU-led initiative to use part of this money to secure a supply of any future coronavirus vaccine.

Action

- Write to the Chief Secretary to the Treasury requesting further information on the Government’s engagement with the EU on both the UK’s financial obligations and how this may impact on any potential participation in the EU’s efforts for joint purchases of a coronavirus vaccine.
- Draw these developments to the attention of the Committee on the Future Relationship with the EU, the Health and Social Care Committee, the Public Accounts Committee and the Treasury Committee.

Overview

4.1 The 2020 COVID-19 pandemic and subsequent lockdown measures imposed to contain the outbreak have caused severe economic distress. To assist in mitigation and recovery of the fall-out, the European Union has made significant adjustments to its spending plans for this year, with particular financial and policy implications for the UK even as a non-Member State.¹⁸

4.2 The EU has, notably, reinforced the lending capacity of the European Investment Bank, pledged to borrow money if necessary to support its Member States’ in paying for any national income retention schemes for furloughed workers, and increased its planned spending from the EU budget for 2020 by more than €4 billion to fund a variety of coronavirus-related schemes. Of this latter amount, €2.7 billion is to be used to fund an “Emergency Support Instrument”, intended primarily as a [down payment on any future coronavirus vaccine](#) for the EU’s Member States, using the EU’s collective buying power

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

18 The EU has also announced a range of other policy initiatives related to the COVID-19 crisis. An overview of these is [available](#) on the European Scrutiny Committee website.

through Advance Purchase Agreements (APAs) to secure stocks of the product by covering part of the production costs up front. A further [proposed €11.5 billion increase](#) in the EU's 2020 budget, to support struggling businesses and regions, is still pending.¹⁹ These efforts are a prelude to a much larger planned surge in EU spending over the coming decade, with the European Commission having recently proposed a €750 billion EU "[Coronavirus Recovery Instrument](#)" (ECRI) on top of €1.1 trillion of 'regular' EU expenditure over the 2021–27 period.

4.3 The United Kingdom now has a unique relationship with the EU budget. Although it ceased to be a Member State of the European Union on 31 January 2020, under the terms of a Withdrawal Agreement governing the terms of its exit, the UK accepted certain residual financial obligations to the EU. Under this financial settlement Treasury continues to pay into the EU budget until 31 December 2020 as if the UK were still a Member State. In return, British beneficiaries remain, for the most part,²⁰ eligible to be awarded funding from EU programmes until the end of the year and receive their money in full, even if it is not paid out until 2021 or later.²¹ In our [Report of 7 May 2020](#), we therefore put some questions to the Treasury about the extent to which the UK would benefit from, and contribute to, the EU's COVID-related funding schemes under the terms of the financial settlement.

4.4 In his [reply of 9 June 2020](#), the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) emphasised that it was not yet possible to estimate how much funding the UK is set to receive from the EU's coronavirus support schemes (but that such information would be provided, where possible, in 2021).²² He also confirmed that, where the EU's budgetary response to coronavirus relies on EU borrowing money²³ or uses the EU or national budgets as a guarantee to leverage investment,²⁴ these do not create any new contingent liabilities for the UK. We also understand that the UK would not have to contribute to the proposed €11.5 billion increase in the 2020 EU budget relating to the Coronavirus Recovery Instrument, but we are awaiting the Minister's confirmation of this.²⁵

19 These figures refer to "commitment appropriations", i.e. what the EU can commit to spend this year even if actual payment falls in 2021 or later.

20 There are certain exceptions to the UK's general eligibility to continue to receive EU funding until the end of 2020. For example, the Withdrawal Agreement precludes UK entities from being awarded funding contracts related to "security sensitive" programmes, such as parts of the Galileo satellite navigation development project. Similarly, the UK is no longer eligible for routine European Investment Bank investments.

21 In many cases, EU expenditure is "differentiated" meaning it is awarded ("committed") in one year but not actually paid out until a later year. As part of the financial settlement, the UK has agreed to pay for a share of any EU funding commitments made by 31 December 2020 which remain outstanding by the start of 2021 (the "Reste a Liquider" or RAL). In return, the UK will be able to receive funding commitments until the end of the 2020 EU budget, and receive the funds even if they are not paid out until 2021 or later. However, the UK will not be eligible to receive any new EU funding commitments from 1 January 2021 onwards unless it has an agreement with the EU for participation in a specific EU programme (an issue which we addressed in our Reports of [26 March](#) and [21 May 2020](#)).

22 As part of the Treasury's annual "EU Finance Statement", typically published in June or July. This provides general information on the UK's contribution to, and receipts from, the EU budget in the preceding financial year.

23 See paragraph 7, in particular with respect to the "SURE" loan facility for EU Member States' national income retention schemes.

24 This is the case, for example, for investment by the European Investment Bank (for which EU Member States, as shareholders, are ultimately liable). See paragraph 9.

25 The [proposed Regulation](#) to implement this increase states: "This Regulation shall not increase the financial obligations of the United Kingdom in comparison with those it had at the date of its withdrawal from the Union".

4.5 However, there is one potentially difficult issue that has arisen. The Minister confirmed that the Government is “discussing” the EU’s assertion that the UK should pay a share, estimated to be between €200 and €300 million (£181 to £272 million), towards a €2 billion (£1.8 billion) segment of the additional EU spending agreed for this year. It appears that, because this component of the overall expenditure increase required a [legal change](#) to the EU’s spending limits for 2020 agreed only *after* the UK had left the EU, the Government argues it is not obliged to pay towards it under the terms of the Withdrawal Agreement. It is not clear what the outcome of these “discussions” with the EU is to date, nor how it will affect any potential UK participation in the EU’s scheme for collective Advance Purchase Agreements for a future coronavirus vaccine, on which part of €2 billion at issue — and therefore the UK’s putative share — is due to be spent.

4.6 In this Report, we have focussed on the immediate changes to the EU’s budget for 2020, given they are directly relevant to the UK under the aforementioned Brexit financial settlement, whereas new EU spending from the start of 2021 onwards is not. We will, however, assess the broader set of proposals for the EU Coronavirus Recovery Instrument, including its political, economic and financial implications for the UK, in the near future.

Increased spending from the 2020 EU budget to address the COVID-19 crisis

4.7 As noted, the EU has made a number of efforts to provide financial support to its Member States to help them fund their immediate coronavirus crisis response. It has rapidly increased its spending on top of planned expenditure for 2020 when the EU’s annual budget was set in November last year. Through a series of “amending budgets” and related legislation, the EU has notably established the following support schemes:

- a €100 billion (£90 billion) loan facility, entitled “[SURE](#)“, under which the EU can lend money to the national governments of its Member States to help them finance their domestic income retention schemes for furloughed workers and the self-employed. The money to fund any such loans, which no government has yet applied for, would be raised by the EU borrowing it on the capital markets;²⁶
- a “[Coronavirus Response Investment Initiative](#)“, which gives individual EU countries (and the UK) more flexibility in how to spend their collective €37 billion (£33 billion) of remaining annual allocation from the EU’s Structural & Investment Funds — like the Cohesion and Regional Development Funds — this year, to address the healthcare requirements and economic consequences of the coronavirus crisis. We considered the specific implications of this Initiative for the UK in our [Report of 7 May 2020](#);
- €2.7 billion (£2.4 billion) of new funding for the “[Emergency Support Instrument](#)“, a crisis fund now deployed to co-finance COVID-related healthcare expenditure, in particular to contribute towards the cost of a joint procurement exercise by EU countries to obtain stocks of a future vaccine for coronavirus using their collective purchasing power;

26 Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak. As of [25 June 2020], no EU country is known to have requested a loan from the facility.

- a tripling of the annual budget for the EU’s [Civil Protection Mechanism](#) (CPM) from €129 million to €544 million (£457 million), used to bulk-buy medical equipment for an EU stockpile, and fund flights repatriating EU as well as UK citizens (and others) trapped overseas;
- the EU also adjusted its €578 million “Fund for Aid to the Most Deprived” to ensure the support it aims to provide to the EU’s poorest can be delivered despite the operational challenges posed by COVID. In addition, Member States can apply for the EU’s Solidarity Fund and Globalisation Adjustment Fund, with a combined budget this year of €1.4 billion (£1.26 billion), to help them address any “serious repercussions [...] as a consequence of a major natural disaster” or large-scale redundancies “as a result of a [...] economic crisis” respectively;²⁷ and
- lastly, the EU is providing financial assistance to non-Member States, especially in Eastern Europe, North Africa and the Near East, including via €3 billion (£2.7 billion) of macro-financial assistance loans to countries including Ukraine, Jordan and Tunisia.²⁸

4.8 More recently, the European Commission [proposed](#) a further €11.5 billion (£10.4 billion) increase in EU spending in 2020, as part of a proposed €750 billion “Coronavirus Recovery Instrument” to run in parallel to the EU’s next €1.1 trillion long-term budget from the start of 2021. The Commission wants to begin spending a small slice of this money before the end of the year, to “make much needed funding available to workers, businesses and Member States”.²⁹ This extra financial firepower for the EU under its 2020 budget, which unlike the other measures listed above has not yet been approved by the Member States and the European Parliament, would be [used](#) primarily to provide emergency liquidity for EU businesses facing insolvency and to boost the funds available under the European Regional Development Fund for “the regions whose economy and jobs have been hit harder” by the pandemic.

4.9 In addition to these EU budgetary measures, there have also been other support mechanisms established at the EU level in response to the coronavirus crisis. In particular, the European Central Bank continues to [intervene in the bond markets](#) to support Eurozone sovereigns and corporations. Separately, EU Finance Ministers agreed to boost the capacity of the European Investment Bank (EIB) to lend to struggling businesses through a new [€25 billion guarantee fund](#), and to provide a “last resort” lending capacity from the [European Stability Mechanism](#) for Eurozone governments in need of emergency liquidity. We do not consider those further in this Report.³⁰

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

28 We looked these EU initiatives to support non-EU countries in more detail in our [Report of 4 June 2020](#).

29 In our [Report of 7 May 2020](#), we noted: “The EU’s reserves for 2020 are now almost fully depleted, meaning that in practice there is now very limited flexibility in the EU budget this year to increase its coronavirus support without either reducing planned spending in other areas, or securing agreement from the EU Member States to increase the size of the budget — and therefore their contributions — overall.” The European Commission’s proposals bear out this assessment.

30 See for more information our [Report of 7 May 2020](#). No EU country has called on the European Stability Mechanism for this purpose.

Implications of the changes to the EU budget for 2020 for the UK

4.10 We last considered the EU’s budgetary and financial support for its Member States as part of its response to the coronavirus response, in light of the UK’s unique position vis-à-vis the EU budget under the Brexit financial settlement in the Withdrawal Agreement, in our [Report of 7 May 2020](#).

4.11 In particular, we drew the attention of the House to the fact that under the terms of that settlement, the Government has agreed to contribute to the EU budget until the end of 2020 as if the UK were still a Member State, and pay towards a share of outstanding EU spending commitments made on or before 31 December 2020 as they fall due in 2021 and beyond. In return, the UK remains entitled to receive, or apply for, a share of all EU funding until that date on the same basis as the remaining 27 Member States, unless there is an explicit legal exception to the contrary.³¹

4.12 This means, for example, that the UK [retains an allocation](#) for 2020 from the EU’s Cohesion and Regional Development Funds, and benefits from the new flexibilities introduced as a result of the coronavirus pandemic in how it can invest this money.³² There are also safeguards to prevent the EU from retroactively increasing the UK’s financial liabilities: the Withdrawal Agreement states that any change to the EU’s spending limits under its long-term budget for the 2014–20 period, as established back in 2013, do not apply to the UK “insofar as those amendments have an impact on the United Kingdom’s financial obligations”.³³

4.13 Our last Report also noted that the EU had had to deplete its emergency funding pots for 2020, known as the “Special Instruments”, to be able to fund much of the unplanned coronavirus-related expenditure without affecting planned spending for the year.³⁴ In particular, approximately €2 billion of the additional funding put towards the Civil Protection Mechanism and the Emergency Support Instrument (see above) required an [amendment](#) to a special EU reserve within its 2014–2020 long-term budget known as the “Global Margin for Commitments” (GMC). This amendment has particular political and financial implications for the UK under the financial settlement, because the Government and the EU apparently disagree over whether it has “an impact on the United Kingdom’s financial obligations” (and therefore whether the Treasury should pay for part of this budget increase under the settlement). We explore this further in paragraphs 17 to 23 below.

4.14 As the UK is no longer an EU Member State, the Government is not involved in any of the discussions within the EU institutions to shape the bloc’s financial response to the coronavirus crisis, despite the direct implications for the UK under the financial settlement. Given the substantial budgetary adjustments made by the EU to its spending

31 There are certain exceptions to the UK’s general eligibility to continue to receive EU funding until the end of 2020. For example, the Withdrawal Agreement precludes UK entities from being awarded funding contracts related to “security sensitive” programmes, such as parts of the Galileo satellite navigation development project. Similarly, the UK is no longer eligible for routine European Investment Bank investments.

32 See for more information our [Report of 7 May 2020](#).

33 Article 135(2) of the Withdrawal Agreement.

34 The EU has limited legal flexibility to introduce last-minute financial priorities without disrupting planned expenditure. This is because the EU’s annual and long-term budgets are subject to approval not only by the European Parliament but more importantly by its Member States in the Council of the EU given they, ultimately, have to provide the necessary funds. As such, the amount the EU can commit to spend and actually spend each year are subject to caps and other legal constraints.

plans for 2020, and the UK’s obligation to contribute to the EU budget for that year under the Withdrawal Agreement, we [wrote to the Chief Secretary to the Treasury](#) (Rt Hon. Steve Barclay MP) on 7 May 2020 to establish to what extent available EU coronavirus-related funding opportunities were being used by the UK, if any, and what direct exposure the British taxpayer had to the EU’s schemes as described in paragraph 7 above under the terms of the financial settlement. In particular, we asked him to clarify — because his [original Explanatory Memorandum](#) on the EU’s plans did not — whether the Government accepted having to pay towards the additional EU spending made possible by the recent amendment to the Multiannual Financial Framework.

4.15 The Minister [replied](#) on 9 June 2020, with his letter setting out the following:

- with respect to the adjusted European Structural & Investment Funds, the bulk of the EU’s coronavirus-related budgetary support for which the UK remains eligible until the end of the year, the Minister states that “the UK Managing Authorities for ESIFs are considering how best to use these flexibilities [...] to address the economic and health impacts of COVID-19”, with more details to follow “later in the summer”;
- there is no indication in the Minister’s letter that the Government intends to apply for additional COVID-related EU funding for which the UK is eligible, for example from the EU’s Globalisation Adjustment Fund, Solidarity Fund or the Fund for Aid to the Most Deprived, to contribute towards schemes to alleviate the impact of the pandemic. Overall, the Minister states, “it is not possible at this time to produce a meaningful estimate of the UK receipts [from EU funds] which will be specifically allocated to use in the UK response to COVID-19 in 2020”. Such information, to the extent possible, will be published as part of the Treasury’s annual EU Finances Statement in 2021;
- as regards the “SURE” loan facility and the new €25 billion European Investment Bank guarantee fund,³⁵ these are not financed by the EU directly but guaranteed against the EU or national budgets (meaning, either way, the cost of any loan defaults would ultimately be borne by the EU’s Member States). The Minister confirms that the financial settlement precludes the UK from accruing any new contingent liabilities as a result of these schemes, and neither will it be eligible to receive support from them; and
- finally, in relation to whether the EU’s amendment to the “Global Margin for Commitments” to increase the 2020 EU budget by €2 billion also requires the UK to contribute more under the financial settlement, the Minister noted only that “the Government is discussing the amendment to the GMC with the Commission”. We have provided some further analysis of the Government’s position below, as it raises a number of important financial and policy questions.

4.16 Separately, we also considered the proposed additional €11.5 billion increase in the 2020 EU budget put forward by the European Commission (as part of the broader set of

35 The Minister also adds that, while the UK does have a contingent liability under the Brexit financial settlement in relation to EIB investments made before its withdrawal on 31 January 2020, the Government “has received no indication that the EIB is considering a call during the present crisis”. He furthermore states “the UK is open to exploring options for a future relationship with the EIB as a third country, [and] any future [EIB] investments into the UK will be subject to a wider agreement”.

proposals for the €750 billion Coronavirus Recovery Instrument). These, as noted, would allow the EU to begin spending this year on a Solvency Support Instrument for businesses struggling because of coronavirus, as well as on the “REACT-EU” initiative which will provide financial support for the regions and sectors hardest hit by the pandemic.³⁶ It is our understanding that this significant hike to the EU’s spending limits for this year, if approved, would *not* apply to the UK and therefore not require any additional British contributions under the financial settlement. We await formal confirmation of this from the Minister. The Committee intends to assess the economic, political and financial implications of the Recovery Instrument in more detail in the near future, and will report its findings to the House as appropriate.

4.17 A table showing the implications of the various changes to the EU budget for 2020 for the UK schematically, with the information we have currently at our disposal, is shown in the Annex.

The UK’s contribution to the EU’s Emergency Support Instrument and participation in joint EU procurement of a future COVID-19 vaccine

4.18 As we have described above, the Withdrawal Agreement requires the UK to pay for a share of all EU spending committed before the end of 2020, within the limits and restrictions set on such expenditure by the EU’s current long-term budget for the 2014–20 period (the Multiannual Financial Framework or “MFF”).³⁷ However, any changes introduced to those spending limits *after* the UK’s withdrawal on 31 January 2020 — and therefore, without the Government’s approval³⁸ — do not apply to the UK “insofar as those amendments have an impact on the United Kingdom’s financial obligations”. This is the reason, for example, that the Treasury should not be required to contribute more as a result of the most recent proposed amendment to the current MFF, which seeks to increase the EU’s capacity to commit to new spending by €11.5 billion this year as part of the Coronavirus Recovery Instrument (see above).

4.19 This particular safeguard is of particular relevance because, as noted the coronavirus crisis has already triggered an earlier [amendment to the Multiannual Financial Framework](#), agreed by the 27 Member States in the Council and the European Parliament on 17 April 2020, the financial implications of which for the UK are disputed.

4.20 More specifically, to provide €2 billion of additional funding for the EU’s Emergency Support Instrument and the Civil Protection Mechanism as part of a larger €3 billion budget increase of those funds this year, this amendment modified a special EU funding reserve known as the “Global Margin for Commitments” (GMC). Legally, the effect was to widen the scope of this reserve, which allows for EU underspend in previous years to be carried over, so that the available money could be spent on healthcare-related

36 The Solvency Support Instrument and the REACT-EU initiative would account for €10 billion of the €11.5 billion increase in EU spending commitments relating to the Coronavirus Recovery Instrument. The remainder relates to the European Fund for Sustainable Development for non-EU countries, and the EU’s capital for the European Investment Fund.

37 The logic behind this is that the Government approved of the EU’s long-term budget for the 2014–2020 period, the Multiannual Financial Framework (or “MFF”), back in 2013 and that “the United Kingdom [should] honour its share of the financing of all the obligations undertaken while it was a member of the Union”.

38 Individual EU Member States have a veto over amendments to the Multiannual Financial Framework, as these must be approved unanimously by the Council of the EU.

projects (whereas prior to the amendment, it could be used only for “policy objectives related to growth and employment, in particular youth employment, and to migration and security”).³⁹

4.21 In the [legal act](#) making this amendment, the EU asserts that the UK will have to pay towards this additional €2 billion of EU spending under the financial settlement because the change is “limited to [its] purpose”.⁴⁰ In other words, the EU argues that it could have decided to spend the additional money anyway *without* the legal modification, even if only for a more limited range of public policy purposes, and therefore any such expenditure is covered by the UK’s existing financial obligations under the settlement. When the Chief Secretary to the Treasury submitted an [Explanatory Memorandum](#) on these changes on 5 May 2020, he did not indicate whether the Government accepted this assertion and, by implication, the implied obligation for the UK to pay towards this increased EU expenditure. In our [letter of 7 May](#), we therefore specifically asked him to clarify the Government’s position.

4.22 On 4 June, before we had received the Minister’s reply, it became clear from press reports that the Government did *not* in fact agree with the EU’s interpretation of the UK’s obligations under the financial settlement with respect to the €2 billion of additional spending using the amended Global Margin for Commitments.⁴¹ At a meeting on 19 May of the Specialised Committee on Financial Provisions, a preparatory body for the UK-EU Joint Committee under the Withdrawal Agreement, the Treasury reportedly told the EU that “around two-thirds of what the EU is asking the U.K. to pay into the [Emergency Support Instrument] falls outside the scope of what was agreed in the Brexit deal”. This is clearly a reference to the share of the increased funding for the Instrument from the 2020 EU budget provided via the amended GMC.⁴² When the Minister finally replied to our query on 9 June, he confirmed only that the “Government is discussing the amendment to the GMC with the Commission”, but did not clarify the outcome of those discussions to date or the details of the UK’s position.

4.23 Overall, it appears the Government accepts that it is liable to pay towards the €1 billion increase in funding for the Emergency Support Instrument and Civil Protection Mechanism from the 2020 EU budget which is *not* based on the amendment to the Global Margin for Commitments but funded from other EU reserves.⁴³ It is also worth reflecting on the purpose of the EU’s decision to increase the budget for the Emergency Support Instrument in particular, including the €2 billion for which the Government reportedly disputes the UK’s putative share: on 17 June 2020, the European Commission announced in its new [COVID-19 Vaccination Strategy](#) that it intends to put “a significant proportion” of these funds towards Advance Purchase Agreements (APAs) with pharmaceutical

39 See [Regulation 2020/538](#).

40 Recital 4 of [Regulation 2020/538](#).

41 Politico, “[UK and EU clash over British share of Covid fund](#)” (4 June 2020).

42 The remainder of the funding for the Emergency Support Instrument was drawn from other special reserves besides the GMC, namely the Flexibility Instrument and the Contingency Margin, which did not need to be amended to be used for this purpose and as such fall unambiguously within the scope of the financial settlement. The same applies, we presume, to the smaller budget increase for the Civil Protection Mechanism, which is similarly funded by a combination from these three special instruments.

43 This additional funding was provided from other “special instruments” within the EU budget known as the Flexibility Instrument and the Contingency Margin. These did not need to be amended to provide the necessary financial resources and as such did not trigger any consideration of the UK’s liabilities under the financial settlement.

companies to secure a stock of any future coronavirus vaccine on behalf of EU countries.⁴⁴ In other words, the money is to be used by the EU as a down payment on joint procurement such a product for its Member States when the vaccine is ready for general use.

4.24 At this stage, it is not clear whether the UK will be eligible for participation in such Advance Purchase Agreements funded from the Emergency Support Instrument under the 2020 EU budget (to which the UK will contribute to some extent under the financial settlement, even if it disputes the full amount). We also do not know how any such eligibility would be affected if, as the Government appears to argue, it does not have to contribute to it financially to those costs on the same terms as the EU's remaining Member States. Ultimately, in case of persistent disagreement about whether the UK needs to contribute to the increased EU spending from the 2020 EU budget made possible by the amended Global Margin for Commitments, the matter could be referred for formal arbitration under the dispute resolution mechanisms established by the Withdrawal Agreement. The finding of any such panel of arbitrators would be binding on the UK and the EU.

Action

4.25 As described above, the Chief Secretary to the Treasury has helpfully clarified the UK's financial rights and obligations in relation to many of the EU's coronavirus-related support schemes being funded from its 2020 budget.

4.26 However, important policy and financial questions remain about the Government's apparent position that it cannot be asked to contribute to the €2 billion increase in spending for the EU's Emergency Support Instrument and Civil Protection Mechanism (made possible by an amendment to the EU's long-term budget after the UK's withdrawal from the EU on 31 January this year). A "significant proportion" of this money is intended to as a down payment on a joint procurement initiative for a future coronavirus vaccine led by the EU, the UK's participation in which is not yet clear. We have therefore written to the Treasury and Department of Health and Social Care to request that the Government clarify its policy towards this initiative, in particular with respect to the interplay between the UK's potential participation in this procurement scheme and the parallel discussions with the EU about the extent of the Treasury's financial contribution thereto.

4.27 More generally, it is extremely disappointing that information on the Government's discussions with the EU on the UK's potential increased contribution to the 2020 EU budget was made public via the press, not by the Government via formal channels of parliamentary scrutiny and accountability (especially given that we had explicitly asked for this information as early as 7 May). This again underlines the need for Parliament to have access to the agendas of the Specialised Committees of the UK-EU Joint Committee, and be informed of the outcome of the discussions held to ensure, in the words of the Chancellor of the Duchy of Lancaster (Rt Hon. Michael Gove MP) that "Parliament finds out first". We wrote to the Cabinet Office on 18 June, formally requesting certain commitments with respect to the transparency of the Joint Committee and its Specialised Committees, to which we are awaiting a reply.

4.28 We draw these latest developments relating to the EU budget for 2020, and their implications for the UK under the terms of the financial settlement in the Withdrawal

44 European Commission document COM(2020) 245, "EU Strategy for COVID-19 vaccines" (17 June 2020). The Committee will consider the implications of this Vaccination Strategy for the UK in more detail in due course.

Agreement, to the attention of the Committee on the Future Relationship with the EU, the Public Accounts Committee and the Treasury Committee. Moreover, as noted, the Committee intends to consider the ramifications of the wider package of EU proposals for the €750 billion Coronavirus Recovery Instrument for the UK in the near future. It will also follow up with the Treasury separately on the on-going negotiations on the EU's next general long-term budget, the Multiannual Financial Framework 2021–2027 period, with respect to its specific implications for the Government's pursuit of continued participation in a number of EU-funded programmes.

Annex: Overview of COVID-related changes to the EU budget for 2020 and implications for the UK

This table shows the implications of the various changes to the EU budget for 2020 for the UK schematically, with the information we have currently at our disposal.

EU programme	Purpose	Adjustment due to coronavirus under the 2020 EU budget ⁴⁵	UK required to contribute to additional EU spending / contingent liabilities	UK eligible for additional EU spending
Civil Protection Mechanism	The CPM is used to procure medical equipment and other goods, as well as for the repatriation of EU citizens and others stranded overseas due to COVID-related travel restrictions	€415 million in additional funding, namely:		Yes, and the government is known to have made use of the CPM to help residents stranded overseas return to the UK. It is unclear if eligibility to receive CPM funding would be affected by discussions around the use of the GMC.
		€45 million redeployed from the Humanitarian Aid Instrument ⁴⁶	Yes	
		€94.3 million ⁴⁷ from the Flexibility Instrument	Yes	
		€71.5 million from the Contingency Margin ⁴⁸	Yes	
		€204.2 million from the amended Global Margin for Commitments ⁴⁹	Disputed, see paragraphs 14 to 20 above.	

45 All amounts refer to commitment appropriations, i.e. what the EU can commit to spend from its 2020 budget for the programme in question. Full payment may be made in 2020, or could follow in 2021 or later.

46 This money was earmarked for repatriation flights for EU nationals and others covered by the Civil Protection Mechanism stranded abroad because of the outbreak, see Draft Amending Budget 1/2020, COM(2020) 145. In this document, the European Commission noted that "Given the urgency of the repatriations and the need for immediate action, the Commission will transfer the required funds from the humanitarian aid instrument, with the intention of proposing a budgetary transfer to the Council and the European Parliament later in the year to reinstate these commitment appropriations for the purposes of humanitarian aid".

47 This includes €70 million under Amending Budget 1/2020, and a further €24.3 million under Amending Budget 2/2020. This latter amount was calculated by taking the full mobilization of the Flexibility Instrument under Amending Budget 2/2020, €243 million, and taking the proportion of additional funds under that Amending Budget to spend on the Civil Protection Mechanism (10 per cent) compared to funds earmarked for the Emergency Support Instrument (90 per cent).

48 Under Amending Budget 2/2020, the EU released €714.6 million from the Contingency Margin, of which 10 per cent was related to the Civil Protection Mechanism and 90 per cent for the Emergency Support Instrument.

49 Under the amended Global Margin for Commitments, Amending Budget 2/2020 released €2.042.400.000, of which 10 per cent is to be used for the Civil Protection Mechanism and 90 per cent for the ESI.

EU programme	Purpose	Adjustment due to coronavirus under the 2020 EU budget ⁴⁵	UK required to contribute to additional EU spending / contingent liabilities	UK eligible for additional EU spending
Coronavirus Recovery Investment Initiative	Provide new flexibilities allowing countries to use their allocation from the EU Structural Funds (ESIFs) for 2020 towards COVID-related projects and schemes	No additional funding compared to the original EU budget for 2020	Not applicable, as there is no funding increase. However, the UK contributes to the ESIFs expenditure under their existing budgets for 2020 under the financial settlement	Yes
EIB Coronavirus Pan-European Guarantee Fund	The Member States have provided additional guarantees to the European Investment Bank to enable it to provide financial support to struggling companies	Guarantees totalling €25 billion	No	No
Emergency Support Instrument	This Instrument provides financial support for efforts to “mitigate the immediate consequences of the pandemic and anticipate the needs related to the exit and recovery”.	€2.7bn in additional funding, namely:		Yes, but unclear if affected by discussions around the use of the GMC
		€218.7 million from the Flexibility Instrument ⁵⁰	Yes	
		€643.1 million from the Contingency Margin ⁵¹	Yes	
		€1.838 billion from the amended Global Margin for Commitments ⁵²	Disputed, see paragraphs 14 to 20 above.	

50 This amount was calculated by taking the full mobilization of the Flexibility Instrument under Amending Budget 2/2020, €243 million, and taking the proportion of additional funds under that Amending Budget to spent on the ESI (90 per cent) compared to funds earmarked for the Civil Protection Mechanism (10 per cent).

51 Under Amending Budget 2/2020, the EU released €714.6 million from the Contingency Margin, of which 10 per cent was related to the Civil Protection Mechanism and 90 per cent for the Emergency Support Instrument.

52 Under the amended Global Margin for Commitments, Amending Budget 2/2020 released €2.042.400.000, of which 10 per cent is to be used for the Civil Protection Mechanism and 90 per cent for the ESI.

EU programme	Purpose	Adjustment due to coronavirus under the 2020 EU budget ⁴⁵	UK required to contribute to additional EU spending / contingent liabilities	UK eligible for additional EU spending
Fund for Aid to the Most Deprived	This Fund provides support to support Member States in meeting the poverty reduction targets.	No additional funding compared to the original EU budget for 2020, but the Fund was <u>adjusted</u> to ensure its support could still be delivered despite the operational challenges posed by COVID	Not applicable, as there is no funding increase. However, the UK contributes to expenditure under its €578m existing budget for 2020 under the financial settlement	Yes. The UK was eligible for €3.5 million over the 2014–2020 period, but the Government has chosen not to make use of this funding .
Globalisation Adjustment Fund	This Fund provides financial support to groups of employees affected by large-scale redundancies	No additional funding compared to the original EU budget for 2020	Not applicable, as there is no funding increase. However, the UK contributes to expenditure under its existing budget for 2020 under the financial settlement	Yes, but the Government has a policy of not applying for this kind of EU funding
REACT-EU	This <u>fund</u> will ‘top up’ national allocations from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) to support labour markets and economic development	€5 billion from the increased expenditure limits as part of the proposed revision of the 2014–2020 EU budget ⁵³	No ⁵⁴	No ⁵⁵
Solidarity Fund	This fund provides financial support to EU countries to help them address natural disasters and pandemics	No additional funding compared to the original EU budget for 2020	Not applicable, as there is no funding increase. However, the UK contributes to expenditure under its existing budget for 2020 under the financial settlement	Yes, but there is no indication the Government has applied for this funding
Solvency Support Instrument	This Instrument will provide recapitalisation to companies struggling as a result of COVID	€5 billion from the increased expenditure limits as part of the proposed revision of the 2014–2020 EU budget ⁵⁶	No ⁵⁷	No ⁵⁸

53 [Draft Amending Budget 6/2020](#). This budgetary adjustment has not yet been approved by the European Parliament and the Council.

54 The proposed amendment to the Multiannual Financial Framework 2014–2020 states: “This Regulation shall not increase the financial obligations of the United Kingdom in comparison with those it had at the date of its withdrawal from the Union.”

55 The [proposed Regulation](#) establishing REACT-EU states that it “shall not apply to and in the United Kingdom. References to Member States in those provisions shall be understood as not including the United Kingdom”.

56 [Draft Amending Budget 6/2020](#). This budgetary adjustment has not yet been approved by the European Parliament and the Council.

57 The proposed amendment to the Multiannual Financial Framework 2014–20 states: “This Regulation shall not increase the financial obligations of the United Kingdom in comparison with those it had at the date of its withdrawal from the Union.”

58 The proposed [.hows202Regulation](#) establishing the SSI states that it “should not apply to and in the United Kingdom”.

EU programme	Purpose	Adjustment due to coronavirus under the 2020 EU budget ⁴⁵	UK required to contribute to additional EU spending / contingent liabilities	UK eligible for additional EU spending
SURE loan facility	A facility enabling EU Member States to borrow money from the EU to help finance their national income retention schemes for furloughed workers and the self-employed. The EU would, if called on, borrow the money for this facility on capital markets	The EU and its Member States jointly provide a maximum guarantee of €100 billion	No	No

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

UK contribution to the EU's Emergency Support Instrument

Thank you for your letter of 9 June, which contained a number of helpful clarifications with respect to the UK's receipts from, and contributions to, the EU's coronavirus-related support schemes funded in 2020.⁵⁹

We nevertheless remain concerned about the lack of clarity about the UK's contribution towards €2 billion of the overall €3 billion increase in the budget for the EU's Emergency Support Instrument and Civil Protection Mechanism this year, given this extra spending is possible only because of an amendment to the EU's long-term budget approved after the UK ceased to be a Member State. We agree there is a legitimate question as to whether this change can entail financial consequences for the Treasury under Article 135(2) of the Withdrawal Agreement.

However, while your letter confirms the existence of "discussions" with the European Commission on whether the UK is required to contribute to this additional expenditure, it is not clear what the outcome of those talks has been, or indeed whether it may eventually result in a formal dispute resolution procedure. We therefore ask you to write to us by the end of July with an update on the Government's discussions to date with the EU on this matter. We also ask you to explain in your reply the implications for the UK's eligibility to receive funding from the Emergency Support Instrument and Civil Protection Mechanism until the end of 2020, if the Government and EU were to agree that the UK does not need to contribute towards the share of any additional EU spending via these Instruments this year which is based on the modified Global Margin for Commitments (GMC).

With respect to this latter point, the publication of the EU's COVID-19 Vaccination Strategy of 17 June has also underlined the importance of determining how the Government might maximise the benefit it derives from EU spending while it still contributes to its budget. In

⁵⁹ EU documents (a) 7161/20, COM(2020) 139 (41183); (b) 7147/20, COM(2020) 174 (41182); (c) 7141/20, COM(2020) 175 (41177).

particular, we note that a “significant proportion” of the new funding for the Emergency Support Instrument, to which the UK’s contribution under the Withdrawal Agreement is apparently disputed, is intended be used to finance Advance Purchase Agreements (APAs) between the European Commission and pharmaceutical companies to secure stocks of a future COVID vaccine, in effect by making a down payment to cover production costs ahead of a joint procurement exercise.

It is not clear if the UK, as a contributor to the EU budget until the year, can participate in these EU-led APAs, and — if so — how this would be affected by any outstanding dispute over the UK’s financial contribution to the initiative via the Emergency Support Instrument. The controversy earlier this year surrounding the UK’s non-participation in a number of other COVID-related joint procurement initiatives organised by the EU has underlined the need to establish clearly what the Government’s position is. We therefore expect the Department of Health and Social Care, in its forthcoming Explanatory Memorandum on the EU Vaccination Strategy, to reflect on the costs and benefits of UK participation in the APAs for a coronavirus vaccine, and how this might be affected by any dispute around the extent of the UK’s contribution to the Emergency Support Instrument that will fund those Agreements. To that end, I am copying this letter to the Parliamentary Under Secretary of State for Innovation.

Finally, the Committee has also asked me to underline again the importance it attaches to effective parliamentary scrutiny of the UK-EU Joint Committee and its Specialised Committees, including on the financial settlement.

It is not acceptable that information on the Government’s discussions with the EU in relation to the financial consequences for the UK of the amended Global Margin for Commitments on the financial settlement was reported first in the press, especially when we had already asked you for information on this matter a number of weeks previously. We will continue to pursue the general transparency of the work of the Joint Committee and the Specialised Committee with the Cabinet Office, but also expect individual Departments to notify us speedily and comprehensively about relevant discussions in those bodies, as the matter of the GMC clearly was.

5 Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm⁶⁰

These EU documents are legally and politically important because:

- they affect the basis on which Parliament agreed (in December 2015) that the UK should take part in EU data sharing arrangements for the exchange of DNA profiles and fingerprints to tackle cross-border crime; and
- they concern an area of cooperation which the EU and the UK wish to maintain after the transition period ends on 31 December 2020.

Action

- Write to the Minister for Security (Rt Hon. James Brokenshire MP) raising concerns about the Home Office’s handling of these documents and seeking further information on the possible continuation of Prüm data exchanges after transition.
- Draw to the attention of the Committee on the Future Relationship with the EU, the Home Affairs Committee, the Justice Committee and the Joint Committee on Human Rights.

Overview

5.1 The so-called “Prüm Decisions”—[Council Decision 2008/615 JHA](#) and [Council Decision 2008/616/JHA](#)—establish a framework for cross-border police cooperation to support the prevention and investigation of crime. At their core is a decentralised system for the automated exchange of DNA profiles, fingerprint and vehicle registration data held in the national databases of EU Member States (there is no central EU database). One of the main benefits of Prüm for law enforcement is the ability to compare DNA and fingerprints found at a crime scene in one Member State with data held in other Member States to see if there is a match (“hit”). Information revealing the identity of a possible suspect can only be exchanged once a match has been confirmed.

5.2 The UK opted out of the Prüm Decisions in December 2014, before they had become operational in the UK, as part of a wider exit from EU police and criminal law measures reflecting the then Government’s unwillingness to accept the jurisdiction of the EU Court of Justice (‘CJEU’). The Government nonetheless undertook to carry out a [Prüm Business and Implementation Case](#) (published as a Command Paper in November 2015) which

60 (a) Council Implementing Decision (EU) 2019/968 on the launch of automated data exchange with regard to DNA in the UK; Legal base: Article 33 of Council Decision 2008/615/JHA on the stepping up cross-border cooperation, particularly in combating terrorism and cross-border crime, QMV, EP consultation; Department: Home Office; Devolved Administrations: consulted; ESC number 40679.

(b) Council Implementing Decision on the launch of automated data exchange with regard to dactyloscopic data in the UK; Council document 14247/19, —; Legal base: Article 33 of Council Decision 2008/615/JHA on the stepping up cross-border cooperation, particularly in combating terrorism and cross-border crime, QMV, EP consultation; Department: Home Office; Devolved Administrations: consulted; ESC number 41121.

concluded “that there would be undoubted operational and public protection benefits” for the UK in rejoining Prüm, while making clear that the final decision would be for Parliament.⁶¹ A [Report](#) published by our predecessors in December 2015 on Cross-border law enforcement cooperation—UK participation in Prüm provides a detailed overview of the Prüm framework and the case advanced by the Government at the time for the UK to participate.⁶²

5.3 Following a [debate in the Commons on 8 December 2015](#), the House resolved that the Prüm Decisions were “an important aid to tackling crime” and voted in favour of UK participation. It did so on the understanding that certain safeguards set out in the Command Paper would be enshrined in domestic law. One such safeguard proposed by the Government was to specify in legislation that “when other Member States conduct searches through Prüm against the UK’s DNA and fingerprint databases, those searches will not be run across the DNA or fingerprints of those who have not been convicted”.⁶³ The motion debated and agreed to by the House endorsed UK participation in Prüm on the following terms:

That this House, wishing to see serious crimes solved, to counter terrorism and to see foreign criminals prosecuted and deported, supports opting in to the Prüm Decisions; notes the views of senior law enforcement officers that the Prüm Decisions are an important aid to tackling crime; notes the success of a pilot that demonstrated that the Prüm Decisions mechanism is both swift and effective; and further notes that only a subset of the relevant national DNA and fingerprint databases, containing data relating to individuals convicted of recordable offences, will be made available for searching by other participating States, and that the higher UK scientific standards will be applied to matches in the UK.⁶⁴

5.4 In July 2019 our predecessor Committee considered a [Council Implementing Decision](#) (adopted on 6 June 2019) authorising the UK to take part in the automated exchange of DNA profiles (“the DNA Decision”).⁶⁵ These exchanges can only take place once the Council has unanimously determined that each Prüm participant meets the necessary data protection requirements, following the completion of a questionnaire, an evaluation visit and a pilot run.⁶⁶ The Council gave its approval for the UK to begin DNA exchanges from 14 June 2019, but set a deadline of 15 June 2020 for the UK to “complete a review of its policy of excluding suspects’ profiles from automated DNA exchange”, failing which the Council would “re-evaluate the situation with regard to the continuation or termination of DNA exchange with the UK”. The Council underlined the “practical and operational significance” of including the DNA profiles of criminal suspects in tackling terrorism and cross-border crime.

5.5 Our predecessor Committee’s [Report](#) on the DNA Decision requested further information on the process and timescale envisaged for conducting the review and how

61 See Command Paper 9149.

62 See the European Scrutiny Committee’s [Twelfth Report](#) HC 342–xii (2015–16), published on 4 December 2015: Cross-border law enforcement cooperation—UK participation in Prüm.

63 See p.79 of Command Paper 9149.

64 See [Hansard, 8 December 2015, col 963](#).

65 Council Implementing Decision (EU) 2019/968. See our Seventy-second Report HC 301–lxx (2017–19), [chapter 3](#) (17 July 2019).

66 See Article 25(2) of [Council Decision 2008/615/JHA](#).

the Government intended to inform and consult with Parliament during the review. The Government was also asked for its assessment of the likelihood that the EU would terminate DNA exchanges with the UK if there were no change to the Government's policy of limiting data sharing to the DNA profiles of convicted criminals. We have had no response.

5.6 Meanwhile, in early March 2020 the Government deposited for scrutiny a [draft Council Implementing Decision](#) (published on 5 December 2019) which, if agreed by the Council, would allow the UK to begin the automated exchange of fingerprint (dactyloscopic) data (“the Fingerprint Decision”). The Decision also proposes a 15 June 2020 deadline for the UK to review its policy of excluding the fingerprints of criminal suspects from Prüm data exchanges. An Explanatory Memorandum on the draft Council Implementing Decision was due by 20 March.

5.7 In May 2020, the European Parliament (which has a consultative role only) rejected the Council's proposal to allow the UK to exchange fingerprint data, acting on the recommendation of its Committee on Civil Liberties, Justice and Home Affairs (“the LIBE Committee”).⁶⁷ The [LIBE Committee's report](#) underlined the importance of data exchanges being “based on the principle of full reciprocity of access” and suggested that the UK was out of step with other Prüm participants by excluding access to the fingerprint data of criminal suspects.⁶⁸ The Committee said that the Council Implementing Decision should only be adopted once the UK had agreed to share both the DNA and fingerprint data of criminal suspects in its automated Prüm exchanges. The Committee also noted that the UK would, in any event, become a third country for the purposes of EU law once the post-exit transition period ended on 31 December 2020 and that “a different legal instrument”—a data adequacy decision—would be needed to exchange the types of data foreseen in the Prüm Decisions. The Committee added that it was too soon to tell whether the UK would (after transition) ensure a level of protection of personal data “essentially equivalent” to EU standards (the standard necessary to qualify for a data adequacy decision), thereby casting doubt on the feasibility of personal data exchanges for law enforcement purposes beyond 31 December 2020.

The Government's position

Exchange of DNA profiles

5.8 The Government has not provided the information requested by our predecessor Committee in July 2019 and, as far as we are aware, Parliament has not been consulted on the conduct of the Government's review on the sharing of criminal suspects' DNA profiles through Prüm or informed of the Government's initial findings. Instead, the outcome of the review was announced by the Minister for Security (Rt Hon. James Brokenshire MP) in a [Written Statement issued on 15 June 2020](#).⁶⁹ In his [letter of the same date](#) to the Chairman of the European Scrutiny Committee (Sir William Cash MP), the Minister confirms the Government's intention to notify the EU that the UK will share the DNA profiles of criminal suspects insofar as they are held in databases in England and Wales and in Northern Ireland (the Northern Ireland Executive having already given its consent

67 See the [Resolution](#) adopted by the European Parliament on 13 May (P9_TA_PROV(2020)0068).

68 See the LIBE Committee's Report of 8 May 2020 (A9-0100/2020).

69 See Hansard, 15 June 2020, HCWS290.

to this policy change) because he believes there to be “important public safety benefits”. He adds that consultations are continuing with the Scottish Government as criminal justice and policing are devolved matters.

5.9 In summary, the reasons for the Government’s decision are:

- the “two-step” process for sharing DNA profiles, based first on an anonymised hit/no hit result, followed by “a series of stringent checks” by UK law enforcement agencies before sharing demographic or identifying data, minimises the risks to individuals;
- the UK’s experience of operating Prüm DNA searches over the last year has delivered “public protection benefits” that would not have been available without Prüm;
- the National Crime Agency and Metropolitan Police Service have identified “risks and missed opportunities associated with not sharing suspects’ data” and support the inclusion of criminal suspects in the Prüm data sharing mechanism;
- the “other Prüm safeguards debated and voted on by Parliament in 2015”—the creation of an independent oversight board, the exclusion from Prüm of low quality matches, the introduction of an additional step for a ‘hit’ involving data relating to a child, and the exclusion of data held for only a short period in relation to vulnerable persons—are “working well” and providing “essential protections” so that UK citizens are not unnecessarily caught up in overseas criminal investigations; and
- the Police and Criminal Evidence Act 1984 (PACE), as amended by the Protection of Freedoms Act 2012, creates a strict retention regime which ensures that the data of criminal suspects constitute only around 2% of the profiles in the DNA and fingerprint databases.

5.10 The Minister adds that the Government’s policy to date of not sharing the DNA profiles of criminal suspects “puts us out of step with EU Member States”. Changing it will not require further legislation as PACE already provides the legal basis for sharing suspects’ biometric data.

Exchange of fingerprint data

5.11 In his [Explanatory Memorandum of 26 June 2020](#), the Minister notes that the proposed Decision would allow the UK to begin exchanging anonymised fingerprint data on a “hit/no hit” basis with EU Member States already participating in Prüm fingerprint data exchanges with a view to identifying a match. He continues:

The UK notified the EU institutions on 15 June that suspects’ profiles will be included in all automated biometric data exchanges within the shareable Prüm dataset, including fingerprints once sharing begins.

5.12 He notes also that the UK is seeking a future internal security agreement with the EU which will provide capabilities “similar to those delivered by Prüm”.

Our analysis

5.13 The Council Implementing Decisions only concern the automated exchange of DNA profiles and fingerprint data, not vehicle registration data, the third dataset covered by Prüm’s automated data exchange mechanisms. Their lifespan will be short. Both will cease to apply at the end of the post-exit transition period on 31 December 2020. A new legal base will be necessary for these exchanges to continue after transition.

5.14 The [Political Declaration](#) agreed by the EU and the UK in October 2019 envisages “comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters, with the view to delivering strong operational capabilities for the purposes of the prevention, investigation, detection and prosecution of criminal offences”, underpinned by “continued adherence and giving effect to the ECHR [European Convention on Human Rights], and adequate protection of personal data”. Both elements—data adequacy and the protection of ECHR rights—are expressed as “essential prerequisites” for continued cooperation in this field. With this underpinning, the Political Declaration calls for “reciprocal arrangements for timely, effective and efficient exchanges [...] of DNA, fingerprints and vehicle registration data (Prüm)”.⁷⁰

5.15 The [EU’s draft legal text on law enforcement and judicial cooperation in criminal matters](#) (itself part of an overarching agreement with the UK covering trade and security) includes provisions on Prüm which largely replicate the main elements of the Prüm Decisions on the exchange of DNA, fingerprint and vehicle registration data.⁷¹ It also expressly requires the UK to “respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights” and to secure an adequacy decision before any exchanges of personal data can take place.⁷²

5.16 The [UK’s standalone draft agreement on law enforcement and judicial cooperation in criminal matters](#) includes all elements of the Prüm Decisions supporting cross-border police cooperation (such as cooperation on major events with a cross-border dimension, joint police operations, and the spontaneous supply of personal information to prevent a terrorist offence) which extend beyond the automated exchange of DNA, fingerprint and vehicle registration data. Unlike the EU’s draft legal text, the UK’s includes no overarching reference to the European Convention on Human Rights.⁷³ It replicates many of the specific provisions on data protection in the Prüm Decisions, but without any

70 See paras 80–1 and 84 of the Political Declaration.

71 The Prüm package also includes a further [Council Framework Decision 2009/905/JHA](#) on forensic laboratories carrying out analysis of DNA and fingerprints to ensure there is mutual trust in the quality and reliability of the systems underpinning the cross-border exchange of information.

72 See pp 229–235 of the EU’s draft legal text.

73 A recital in the preamble to the agreement simply reaffirms the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and the principles of democracy and the rule of law.

mention of the Council of Europe’s Data Protection Convention and its Recommendation regulating the use of personal data in the police sector which establish a base line level for the protection of personal data under Prüm.⁷⁴

Third country precedents

5.17 In its [Prüm Business and Implementation Case](#), the Government said (at a time when the UK was an EU Member State) that it “would generally be concerned about the EU entering into third country agreements with other States as this is something that should largely be done by the Government in this sensitive area in order to ensure our interests are best served”.⁷⁵ The UK nonetheless supported the conclusion of an [EU agreement with Iceland and Norway](#) in July 2010, and the signing of EU agreements with [Switzerland](#) and [Liechtenstein](#) in June 2019, and is now keen to secure its own agreement with the EU to continue Prüm data exchanges.

5.18 The agreements with Iceland, Norway, Switzerland and Liechtenstein (not yet operational) are the only precedents for Prüm cooperation extending beyond EU Member States. They concern third countries that have a close connection with the EU through their participation in the EU’s border-free Schengen area and apply EU free movement rules. The agreements also reflect a high level of mutual confidence in “the structure and operation of [the parties’] legal systems”.⁷⁶ The Prüm Decisions are not included in Iceland, Norway, Switzerland and Liechtenstein’s Schengen association agreements with the EU as Prüm does not form part of the Schengen rule book. Arguably, this removes one obstacle to UK participation in Prüm—the Government has made clear that the UK’s status as a non-Schengen country will not change after transition. There are, however, some important differences in the EU’s agreements with these Schengen-associated third countries and the provisions of the UK’s draft legal text on Prüm, as illustrated in Table 1.

74 For the time being, the general provisions on data protection in the Prüm Decisions will continue to govern exchanges of DNA, fingerprint and vehicle registration data. However, [Directive \(EU\) 2016/680](#) on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences provides (in recital (94) of the Preamble) that: “Since Article 8 of the Charter and Article 16 TFEU require that the fundamental right to the protection of personal data be ensured in a consistent manner throughout the Union, the Commission should evaluate the situation with regard to the relationship between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, in order to assess the need for alignment of those specific provisions with this Directive. Where appropriate, the Commission should make proposals with a view to ensuring consistent legal rules relating to the processing of personal data.”

75 See p.53 of Command Paper 9149, November 2015.

76 See the Preambles to all the agreements.

Table 1

UK draft legal text on Prüm	EU Agreement with Iceland and Norway (2010)	EU Agreements with Switzerland and Liechtenstein (2019)
<p>Human Rights (Preamble)</p> <p>Reference to respect for human rights and fundamental freedoms, “for example as laid down in the Universal Declaration of Human Rights proclaimed in Paris on 10 December 1948 and for the principles of democracy and the rule of law”.</p> <p>No reference to ECHR.</p>	<p>Human Rights (Preamble)</p> <p>Reference to “compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950”.</p>	<p>Human Rights (Preamble)</p> <p>Reference to “compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950”.</p>
<p>Protection of personal data (Preamble)</p> <p>No reference to Council of Europe standards on data protection or to the 2016 EU Directive on the processing of personal data for law enforcement purposes.</p>	<p>Protection of personal data (Preamble)</p> <p>Processing of personal data should observe the level of protection required by the 1981 Council of Europe Convention on data protection and the principles set out in the 1987 Council of Europe Recommendation regulating the use of personal data in the police sector.</p> <p>EU Directive 2016/680 (EU rules on the protection of personal data exchanged for policing and criminal law purposes) also applies to Iceland and Norway under the terms of their Schengen association agreement with the EU.</p>	<p>Protection of personal data (Preamble)</p> <p>Processing of personal data should be subject to a standard of protection under national law which complies with EU Directive 2016/680 (EU rules on the protection of personal data exchanged for policing and criminal law purposes).</p> <p>The 2016 Directive also applies under the terms of Switzerland and Liechtenstein’s Schengen association agreement with the EU.</p>
<p>Application and interpretation</p> <p>EU/UK Joint Committee responsible for the political resolution of disputes concerning the application and interpretation of the agreement—no role for the EU Court of Justice (“CJEU”).</p>	<p>Uniform application and interpretation</p> <p>No direct CJEU jurisdiction, but a binding commitment on the parties to “keep under constant review” the development of the case-law of the CJEU and of the competent Icelandic/Norwegian courts and to set up a mechanism to ensure “the regular mutual exchange of such case law” (Article 3).</p>	<p>Uniform application and interpretation</p> <p>No direct CJEU jurisdiction, but a binding commitment on the parties to “keep under constant review” the development of the case-law of the CJEU and of the competent Swiss/Liechtenstein courts and to set up a mechanism to ensure “the regular mutual exchange of such case law” (Article 3).</p>
<p>Alignment with EU law</p> <p>No automatic (dynamic) alignment with changes to EU law.</p> <p>But note that the EU/UK Joint Committee is given powers to amend the agreement “in light of changes to the legislation of the UK, the Union or the Member States”.</p> <p>Decisions of the Joint Committee are legally binding and must be taken by mutual consent.</p>	<p>Alignment with EU law</p> <p>No automatic (dynamic) alignment with changes to EU law but Iceland and Norway are to be notified of any EU amendments to the Prüm Decisions concerning the exchange of DNA, fingerprint or vehicle registration data.</p> <p>A failure to implement these changes in their national laws (or to demonstrate equivalence) would lead to the suspension of the agreement and of all Prüm cooperation (Article 5).</p>	<p>Alignment with EU law</p> <p>No automatic (dynamic) alignment with changes to EU law but Switzerland and Liechtenstein are to be notified of any EU amendments to the Prüm Decisions concerning the exchange of DNA, fingerprint or vehicle registration data.</p> <p>A failure to implement these changes in their national laws (or to demonstrate equivalence) would lead to the suspension of the agreement and of all Prüm cooperation (Article 5).</p>

UK draft legal text on Prüm	EU Agreement with Iceland and Norway (2010)	EU Agreements with Switzerland and Liechtenstein (2019)
<p>Termination: Written notification (3 months) of intention to suspend or terminate all or part of the agreement, with no requirement to state reasons.</p> <p>The UK's notice of termination may relate to a specific EU Member State, not all.</p>	<p>Termination: Automatic termination of the agreement 6 months after its suspension if divergences in its application or interpretation have not been resolved (Article 5).</p>	<p>Termination: Automatic termination of the agreement 6 months after its suspension if divergences in its application or interpretation have not been resolved (Article 5).</p>

Alignment with EU law and jurisdiction of the EU's Court of Justice

5.19 The Government has made clear in its negotiating position on the UK's future relationship with the EU that it “will not agree to any obligations for our laws to be aligned with the EU's, or for the EU's institutions, including the Court of Justice, to have any jurisdiction in the UK”.⁷⁷ The agreements with Iceland, Norway, Switzerland and Liechtenstein indicate, nonetheless, that some mechanism for avoiding a divergence in EU and national laws governing the automated exchange of DNA, fingerprint and vehicle registration data is likely to be necessary—as these exchanges operate on a reciprocal basis, the conditions governing access to data would have to be broadly the same to ensure that the exchanges yield equivalent benefits for law enforcement and equivalent protections for those whose data is being shared.

5.20 The UK's draft legal text does not include a specific mechanism in the provisions on Prüm to ensure the uniform application and interpretation of EU and domestic UK rules governing Prüm exchanges or to address the consequences of divergence. The institutional provisions of the draft text do, however, envisage that the EU/UK Joint Committee (comprising representatives of the EU and the UK) will be responsible for resolving any dispute as to the interpretation and application of the agreement (by means of “good faith” consultations) and also give the Joint Committee the power to agree, by mutual consent, amendments to the agreement “in light of changes to the legislation of the United Kingdom, the Union or the Member States”. Amendments agreed to by the Joint Committee would “be confirmed by and enter into force upon the exchange of diplomatic notes between the United Kingdom and the Union, unless otherwise agreed” and so would not as a rule require approval by Parliament or ratification.⁷⁸

Action

5.21 Write to the Minister for Security (Rt Hon. James Brokenshire MP) asking him to:

- respond to the questions raised by our predecessor Committee in July 2019 on the Council Implementing Decision authorising the UK to receive and supply DNA profiles with effect from 14 June 2019;
- clarify whether the notification given to the EU institutions on 15 June 2020 concerning the exchange of suspects' data covered DNA and fingerprints and, if so, why this was not made explicit in his Written Statement to Parliament of 15 June 2020; and

77 See para 5 of [Command Paper 211](#), *The Future Relationship with the EU: the UK's Approach to Negotiations*, February 2020.

78 See Parts 13 and 14 of the UK's draft legal text on institutional provisions and on general and final provisions.

- provide further information on the prospects for the continuation of Prüm data exchanges beyond the end of the transition period when the Prüm Decisions themselves and the Council Implementing Decisions will cease to apply.

Letter from the Chair to the Minister for Security (Rt Hon. James Brokenshire MP), Home Office

Thank you for your [letter of 15 June 2020](#) concerning UK participation in the data sharing mechanisms established by the Prüm Decisions. Your letter supplements a [Written Statement](#) of the same date informing Parliament of the Government’s decision to include in its Prüm data sharing arrangements with EU Member States the DNA profiles of criminal suspects held in the UK’s national DNA databases (subject to ongoing consultations with the Scottish Government).

The Government’s decision stems from a [Council Implementing Decision](#) adopted in June 2019 which our predecessor Committee examined and reported on in July 2019. The Council Implementing Decision authorised the UK to take part in the automated exchange of DNA profiles, but this authorisation was made conditional on the UK reviewing its policy of excluding the DNA profiles of criminal suspects from its automated data exchanges with EU Member States. The Council set a deadline of 15 June 2020 for completing the review and made clear that continued exchanges of DNA data would be at risk if the UK failed to change its policy.

As you are aware, House of Commons approval for UK participation in Prüm was given on the understanding that “only a subset of the relevant national DNA and fingerprint databases, containing data relating to individuals convicted of recordable offences, [would] be made available for searching by other participating States”. The fingerprint and DNA data of criminal suspects were expressly excluded, reflecting a commitment made by the Government in its [Prüm Business and Implementation Case](#) (published as a Command Paper in November 2015) to specify in legislation that “when other Member States conduct searches through Prüm against the UK’s DNA and fingerprint databases, those searches will not be run across the DNA or fingerprints of those who have not been convicted”.⁷⁹

A change in the Government’s policy on access to the DNA profiles and fingerprints of criminal suspects therefore merits particularly close scrutiny by Parliament, given that it alters the very basis on which Parliament agreed to UK participation in Prüm data exchanges in December 2015. That is why our predecessor Committee asked the Government, in July 2019, to provide further information on the process and timescale for conducting the review required by the Council Implementing Decision and how the Government intended to inform and consult with Parliament during the review.⁸⁰ In your letter, you “note the summary comments contained in [the European Scrutiny] Committee’s Report shared with the Home Office on 17 July 2019” but you do not respond to any of the concerns raised in the Report’s conclusions. In fairness, this is a discourtesy which we attribute to your predecessors, whose engagement with this Committee has been poor, not to you. **We nonetheless ask you, as the responsible Minister, to explain why we have not had a response and what efforts the Government made to inform and consult with Parliament during the review process.**

79 See p.79 of Command Paper 9149.

80 See the European Scrutiny Committee’s Seventy-second Report HC 301–lxx (2017–19), [chapter 3](#) (17 July 2019).

A [second \(draft\) Council Implementing Decision](#) which would authorise the UK to take part in the automated exchange of fingerprint data was deposited for scrutiny in March 2020, following its publication by the Council in December 2019. It includes the same review clause as the earlier Council Implementing Decision, this time on the inclusion of the fingerprints of criminal suspects in the UK’s automated data exchanges. In your Explanatory Memorandum dated 26 June, you tell us that the Government notified the EU institutions on 15 June 2020 that “suspects’ profiles will be included in all automated biometric data exchanges within the shareable Prüm dataset, including fingerprints once sharing begins” (our emphasis). In our view, this was not made clear in your Written Statement of 15 June 2020 or in your letter of the same date to this Committee. Our understanding was that the review specifically concerned DNA profiles.

We ask you to:

- **explain the reasons for the delay in depositing the document for scrutiny (it was published on 5 December 2019) and in submitting an Explanatory Memorandum more than three months after it was due;**
- **confirm that the notification given to the EU institutions on 15 June 2020 concerning the exchange of suspects’ data covers DNA and fingerprints and, if so, why this was not made explicit in your Written Statement to Parliament of the same date;**
- **explain why you notified us of the Government’s policy review after it had concluded, rather than seeking to engage with Parliament earlier in the process, given that Parliament’s endorsement of UK participation in Prüm in December 2015 was expressly based on the exclusion of criminal suspects’ DNA and fingerprint data from automated Prüm searches; and**
- **clarify the implications (legal and political) of the European Parliament’s decision to reject the Council Implementing Decision on the exchange of fingerprint data and the effect it may have on automated exchanges of fingerprint data between the EU and the EU during transition;**

You acknowledge in your letter that the Government’s policy to date of excluding the DNA profiles and fingerprint data of criminal suspects “puts us out of step with EU Member States”. **Do you consider that UK implementation, following your policy review, is now fully in conformity with the Prüm Decisions?**

Turning to the future, we note that the EU and the UK have both put forward proposals to maintain the Prüm data sharing arrangements after transition. Both sets of proposals differ (though in different ways) from the existing precedents established in agreements with Iceland, Norway, Switzerland and Liechtenstein, as we set out in our XX Report. **We ask you to explain why the Government has decided to depart from these precedents, particularly the provisions which seek to ensure consistent application and interpretation of the rules governing Prüm exchanges.**

For the Prüm data sharing arrangements to operate effectively after transition, we assume that the conditions governing access to data would have to remain broadly the same in the UK and in the EU to ensure that these reciprocal exchanges yield equivalent benefits for law enforcement and equivalent protections for those whose data is being shared. The existing

third country precedents include specific mechanisms to adapt to changes made by the EU to the Prüm Decisions themselves and to ensure a uniform application and interpretation of the rules in the EU and in participating third countries. These mechanisms are not replicated in the UK's draft legal text. The text does, however, include a provision giving an EU/UK Joint Committee the power to agree, by mutual consent, amendments to the agreement "in light of changes to the legislation of the United Kingdom, the Union or the Member States". Amendments agreed to by the Joint Committee would "be confirmed by and enter into force upon the exchange of diplomatic notes between the United Kingdom and the Union, unless otherwise agreed" and so would not as a rule require approval by Parliament or ratification.⁸¹ **Do you envisage this provision providing the vehicle for updating the EU/UK agreement on law enforcement cooperation to reflect changes in EU rules governing Prüm exchanges? How do you anticipate translating these changes into domestic UK law where necessary to keep the UK in step with any future changes to the Prüm Decisions? Do you accept that changes of this nature to align UK domestic laws with changes to EU law would require close engagement with Parliament, not least to ensure there is no conflict between the commitments made in international law and how they are given effect to in domestic law?**

I look forward to receiving your response within ten working days.

81 See Parts 13 and 14 of the UK's draft legal text on institutional provisions and on general and final provisions.

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

Department for Business, Energy and Industrial Strategy

(41203) ECA Report No. 7/2020: Implementing Cohesion policy: comparatively low costs, but insufficient information to assess simplification savings.
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(41221) European Court of Auditors Special Report no 11/2020: Energy efficiency in buildings: greater focus on cost-effectiveness still needed.
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Cabinet Office

(41329) Proposal for a Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism.
8330/20
COM(20) 220

Department for Environment, Food and Rural Affairs

(41237) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic on the integration of Macaronesia in the OSPAR maritime area.
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COM(20) 182

(41325) Proposal for a Regulation of the European Parliament and of the Council amending the Regulation (EU) 2019/833 of the European Parliament and of the Council of 20 May 2019 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation.
8472/20
COM(20) 215

Department for International Development

(41320) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1601 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund.
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COM(20) 407

(41323) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 1257/96 of 20 June 1996 concerning Humanitarian Aid.
8292/20
COM(20) 461

(41330) Report from the Commission to the European Parliament and the
 Council on the implementation of the European Fund for Sustainable
 8503/20 Development
 COM(20) 224

Department for Transport

(41344) Proposal for a Council Decision on the position to be taken on behalf
 of the European Union at the International Civil Aviation Organization
 8797/20 + ADD1 as regards notification of differences to Annexes 1 and 6 to the
 Convention on International Civil Aviation related to COVID-19
 COM(2020) 247 pandemic.

Foreign and Commonwealth Office

(41327) Council Implementing Regulation (EU) 2020/716 of 28 May 2020
 implementing Regulation (EU) No 36/2012 concerning restrictive
 — measures in view of the situation in Syria.
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(41328) Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision
 2013/255/CFSP concerning restrictive measures against Syria.
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HM Treasury

(40664) Statement of estimates of the European Commission for the financial
 year 2020 (Preparation of the 2020 Draft Budget).
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Ministry of Justice

(41337) Proposal for a Council Regulation amending Regulation (EC) No
 168/2007 establishing a European Union Agency for Fundamental
 — Rights
 COM(2020) 225

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)

Digital, Culture, Media and Sport Committee: COVID-19: travel and tourism guidance [Commission Communications (SNC)]

Environmental Audit Committee: Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Council Decisions (SNC)]

Environment, Food and Rural Affairs Committee: Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Council Decisions (SNC)]

Committee on the Future of the European Union: COVID-19: Increases in the EU budget for 2020 and implications for the UK [Proposed Council Regulations (SNC)]; EU Health Programme [Proposed Regulation (SNC)]; Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm [Council Implementing Decisions (SNC)]

Health and Social Care Committee: COVID-19: Increases in the EU budget for 2020 and implications for the UK [Proposed Council Regulations (SNC)]; COVID-19: travel and tourism guidance [Commission Communications (SNC)]; EU Health Programme [Proposed Regulation (SNC)]

Home Affairs Committee: Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm [Council Implementing Decisions (SNC)]

Joint Committee on Human Rights: Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm [Council Implementing Decisions (SNC)]

International Trade Committee: Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Council Decisions (SNC)]

Justice Committee: Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm [Council Implementing Decisions (SNC)]

Northern Ireland Affairs Committee: EU Health Programme [Proposed Regulation (SNC)]

Public Accounts Committee: COVID-19: Increases in the EU budget for 2020 and implications for the UK [Proposed Council Regulations (SNC)]

Transport Committee: Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Council Decisions (SNC)]

Treasury Committee: COVID-19: Increases in the EU budget for 2020 and implications for the UK [Proposed Council Regulations (SNC)]

Formal Minutes

Thursday 2 July 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*)