



House of Commons

European Scrutiny Committee

Sixteenth Report of Session 2019–21

Documents considered by the Committee on 9 July 2020,
including the following COVID-19 related documents:

Guidelines on the progressive restoration of transport services
and connectivity

Non-Road Mobile Machinery Emissions

Relaxation of EU capital requirements for banks (update)

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 EU Industrial Strategy¹

This EU document is politically important because:

- it relates to future EU policy relevant to Northern Ireland under the Protocol on Ireland/Northern Ireland; and
- it concerns policies of interest to the UK more widely, such as trade and climate policies.

Action

- Write to the Minister.
- Draw to the attention of the Future Relationship on the EU Committee; the Business, Energy and Industrial Strategy Committee; and the Northern Ireland Affairs Committee.

Overview

1.1 The Commission’s proposed industrial strategy aims to: maintain European industry’s global competitiveness and a level playing field, at home and globally; help to make Europe climate-neutral by 2050; and shape Europe’s digital future. It sets out a range of actions which, while not directed at the UK, will affect the UK either directly due to obligations under the Northern Ireland Protocol or indirectly through trade and strategic interests.

1.2 The suggested actions include:

- boost the digital single market—including an Intellectual Property Action Plan to uphold technological sovereignty, promote a global level playing field, better fight intellectual property theft and adapt the legal framework to the green and digital transitions;
- uphold the “global level playing field”—adopt a White Paper by mid-2020 to address distortive effects caused by foreign subsidies in the single market and tackle foreign access to EU public procurement and EU funding, hand in hand with ongoing work to strengthen global rules on industrial subsidies in the World Trade Organization, and actions to address the lack of reciprocal access for public procurement in third countries through an EU “International Procurement Instrument”;
- adopt an Action plan on the Customs Union in 2020 to reinforce customs controls, including a legislative proposal for an EU Single Window to allow for fully digital clearance processes at the border;

¹ Commission Communication—A New Industrial Strategy for Europe; [6782/20](#), COM(2020) 102; Legal base:—; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41129.

- measures to support industry towards climate neutrality (such as a Strategy on Clean Steel, a Chemicals Strategy for Sustainability, an EU Strategy on Offshore Renewable Energy and a Carbon Border Adjustment Mechanism to reduce carbon leakage);²
- measures to reinforce Europe’s industrial and strategic autonomy (such as an Action Plan on Critical Raw Materials and a Pharmaceutical Strategy); and
- develop new industrial alliances in the areas of clean hydrogen, low-carbon industries, industrial clouds and platforms and of raw materials.

1.3 The Commission notes that competition is important and so notes the importance of the ongoing review of EU competition rules, including the ongoing evaluation of merger control and fitness check of State aid guidelines. These will ensure that EU rules are fit for purpose for an economy that is changing fast, increasingly digital and must become greener and more circular.

1.4 In his [Explanatory Memorandum](#) of 25 March, the Parliamentary Under-Secretary of State (Lord Callanan) identified a number of issues of interest.

1.5 Concerning the proposed carbon border adjustment mechanism, he said that, as a global leader on decarbonisation, the UK recognises the issues that the EU’s carbon border tax proposals could look to address and would continue to follow the EU’s debate on possible designs of a carbon border tax with interest.

1.6 Referring to the EU’s review of competition rules, he said that the UK remains committed to the principles of open and fair competition. The UK was monitoring EU policies in this area that may affect the UK as it transitions to third country status. He added that the UK was also undertaking work on competition policy for digital markets.

1.7 In his [Supplementary Explanatory Memorandum](#) of 22 May, the Minister identified a number of areas where the policies included in the Strategy interact with obligations under the Ireland/Northern Ireland Protocol: VAT—concerning which, we [wrote](#) to the Financial Secretary to the Treasury on 25 June—; Review of product safety rules; Placing of goods on the market; Single Electricity Market; Intellectual property; and State aid. The Minister noted the UK’s obligations in those areas in respect of Northern Ireland as well as the flexibilities, such as the application of EU state aid rules only to those areas covered by the Protocol.

Our assessment

1.8 The Commission’s non-legislative strategic document is wide-ranging and ambitious but we are aware that the scope and level of ambition may not be fully reflected in final policy decisions. Nevertheless, it is helpful that the Government has identified areas of interest to the UK generally and to Northern Ireland specifically.

1.9 There are further areas, however, which we consider may be relevant to the UK in the future. These include:

2 The diversion of high emitting activities from one jurisdiction to another with lower emissions standards. The carbon border adjustment mechanism would counteract this risk by putting a carbon price on imports of certain goods from outside the EU.

- reinforcement of customs controls, an initiative which would likely be relevant to the import of goods into Northern Ireland from Great Britain;
- a Chemicals Strategy for Sustainability, given that EU chemicals policy applies to Northern Ireland under the terms of the Protocol; and
- an EU Strategy on Offshore Renewable Energy. The EU's strategy in the North Sea is likely to be of particular interest to the UK, given that offshore renewable energy in that area may also be an important part of the UK's own efforts to achieve climate neutrality.

1.10 We will look to the Government to provide additional comment on those matters and to explain whether it has any plans to engage with the Commission as it develops the detail of these policies.

Action

1.11 We have written to the Minister as set out below requesting further information. We are copying our letter to the Committee on the Future Relationship with the European Union; the Business, Energy and Industrial Strategy Committee; and the Northern Ireland Affairs Committee.

Letter from the Chair to the Parliamentary Under Secretary of State (Lord Callanan), Department for Business, Energy and Industrial Strategy

We have considered your Explanatory Memorandum and Supplementary Explanatory Memorandum on the above document.

We note the issues that you have identified of potential future interest to the UK as well as a number of areas where policies in the Strategy intersect with the UK's obligations under the Northern Ireland Protocol. We concur with your assessment in all of those cases, but would also welcome your view on the potential relevance to the UK of the following initiatives:

- reinforcement of customs controls;
- a Chemicals Strategy for Sustainability; and
- an EU Strategy on Offshore Renewable Energy.

As some of the policy following from this Strategy may affect the UK in the future, we ask that you confirm whether or not the Government intends to engage with the EU institutions on the further development of those policies.

We would welcome a response to this letter by 20 August 2020.

2 EU Circular Economy Action Plan³

This EU document is politically important because:

- it suggests initiatives which would need to be applied in Northern Ireland under the terms of the Ireland/Northern Ireland Protocol, such as amendments to ecodesign, batteries and packaging legislation; and
- it is likely to have an indirect effect on the whole of the UK as it affects an area in which a Common Framework is expected in order to support post-Brexit cooperation among the four nations of the UK and as it is an area in which the UK will wish to be mindful of ongoing EU policy.

Action

- Write to the Minister asking for clarification of the Government’s approach to ongoing engagement with the EU institutions concerning this policy and to inclusion of the Sustainable Use of Plastics Directive in the Protocol.
- Draw to the attention of the Environmental Audit Committee; the Environment, Food and Rural Affairs Committee; the Northern Ireland Affairs Committee; and the Committee on the Future Relationship with the European Union.

Overview

2.1 The United Nations has estimated that, should the global population reach 9.6 billion by 2050, the equivalent of almost three planets could be required to provide the natural resources needed to sustain current lifestyles.⁴ In response—and as part of its wider European Green Deal strategy—the Commission published this Circular Economy Action Plan. Its core objective was to “accelerate the transition towards a regenerative growth model that gives back to the planet more than it takes”, addressing both consumption and production. The document set out a high-level agenda, with an [Annex](#) outlining the dates that key actions would be pursued.

2.2 The Commission intends to propose a sustainable product policy legislative initiative, at the core of which will be a widening of the Ecodesign Directive beyond energy-related products so as to make it applicable to the broadest possible range of products and make it deliver on circularity. As part of the same initiative, the Commission will consider establishing sustainability principles and regulatory options to improve product durability, reusability, upgradability, and repairability.

2.3 Other initiatives within the sustainable product policy framework will include:

- a review of EU consumer law to make changes concerning the provision of information and concerning consumer rights, including a new “right to repair”;

3 Commission Communication: A new Circular Economy Action Plan “For a cleaner and more competitive Europe”; [6766/20](#) + ADD 1, COM(20) 98; Legal base:—; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41133.

4 <https://www.un.org/sustainabledevelopment/sustainable-consumption-production/>.

- minimum mandatory green public procurement criteria and targets in sectoral legislation; and
- a review of the Industrial Emissions Directive, including the integration of circular economy practices in upcoming Best Available Techniques reference documents.⁵

2.4 The Commission identified seven key product value chains, where sustainability challenges require rapid, comprehensive, and coordinated action:

- Electronics and IT—the Commission will present a Circular Electronics Initiative, common charger solution, and reward systems to return old devices and it will review the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
- Batteries and Vehicles—the Commission will propose a new regulatory framework for batteries and review rules on end-of-life vehicles and the proper treatment of waste oils.
- Packaging—the Commission will review the Directive on packaging to reinforce the essential requirements for packaging and reduce excess packaging and packaging waste.
- Plastics—the Commission will propose mandatory requirements on recycled plastic content and plastic waste reduction measures for key products such as packaging, construction materials and vehicles and will also seek both to restrict microplastics and ensure the timely implementation of the Single Use Plastics Directive.⁶
- Textiles—the Commission is proposing a comprehensive EU Strategy for Textiles.
- Construction and Buildings—the Commission will launch a new Strategy for a Sustainable Built Environment.
- Food, water, and nutrients—the Commission will propose a target on food waste reduction, and explore the scope of a possible initiative to substitute single-use packaging, tableware and cutlery by reusable products in food services.

2.5 In addition to the measures for key product value chains, the Commission will put forward waste reduction targets for specific streams, and other measures on waste prevention and waste collection. It will develop methodologies to minimise the presence of hazardous substances in recycled materials and articles made thereof, scope the development of further EU-wide end-of-waste and by-product criteria and revise EU rules on waste shipments.

5 A Best Available Technique (BAT) Reference document (BREF) is a publication resulting from a series of exchanges of information between a variety of stakeholders, including regulators, industry and environmental non-governmental organisations. BAT conclusions are the final evaluations of Best Available Techniques and form part of every BREF. They determine the reference points used to set permit conditions for installations covered by the Industrial Emissions Directive.

6 Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

2.6 In order to steer financing mechanisms towards more sustainable patterns, the Commission will reflect circular economy objectives in the revision of the guidelines on state aid in the field of environment and energy.

2.7 In her [Explanatory Memorandum](#) of 25 March 2020, the Parliamentary Under-Secretary of State (Rebecca Pow MP) noted that the suggested legislative actions were likely to come into force after the transition period and so the UK as a whole would not be obliged to implement them. Some of the suggestions would, though, affect Northern Ireland directly. She identified a number of EU laws on waste and resources with which Northern Ireland must continue to comply, including any amendments made as suggested in this Action Plan:

- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators;
- Directive (EU) 2018/852 on packaging and packaging waste;
- Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment;
- Regulation (EC) No 1013/2006 on shipments of waste;
- Regulation (EC) No 66/2010 on the EU Ecolabel;
- Directive 2005/64/EC on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability; and
- Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products.

2.8 Despite the fact that the nations of Great Britain would not need to apply the provisions, said the Minister, the UK welcomed the new Action Plan, which mirrored much of the work across the UK to advance the transition to a circular economy. It would be important to monitor the Commission's detailed policy proposals and assess how well the systems work in parallel to future UK policy in this area. Having left the EU, said the Minister, the UK may be well-positioned to lead and shape product and consumer information requirements, although manufacturers and suppliers would want to see a degree of consistency.

Our assessment

2.9 The Minister acknowledged both that initiatives set out in the Action Plan would have direct implications for Northern Ireland in several instances and also that it would be helpful for the UK to be mindful of developments in the EU when shaping future UK policies in this area.

2.10 Concerning the impact on Northern Ireland specifically, we note the range of legislation identified by the Minister as salient and would add reference to both Directive 2010/75/EU on industrial emissions (Annex 4) and to state aid (Annex 5).

2.11 Furthermore, the document mentioned that the Commission was keen to see the swift implementation of the Sustainable Use of Plastics Directive. This is a law that was not included in the Protocol but that the EU has proposed be added.⁷ To date, the Government has not shared with Parliament its view on whether it should indeed be added. We look forward to that assessment.

2.12 A related matter not raised by the Minister in her EM is that of the UK's internal market, and the development of common frameworks to support coordination between the nations of the UK where necessary post-Brexit. Notably, this would allow any divergence to be managed. In early June, the Cabinet Office wrote to various House of Commons Select Committees explaining the process for scrutiny of common frameworks and setting out the expected frameworks. They include a framework covering “waste (management and packaging and product regulations)”. It follows that EU law will essentially come into that equation as it will be the default law for most of that policy area in part of the United Kingdom. That means that the changes to EU law suggested in this document may have an indirect impact across the UK.

2.13 The likely direct relevance of much of the Action Plan for Northern Ireland raises the question of how the UK intends to a) identify Northern Ireland specific interests and b) represent those in discussions with the EU institutions as policy evolves.

Action

2.14 We have written to the Minister as set out below raising additional queries concerning UK engagement with the EU institutions on these matters moving forward and pursuing our query regarding the UK's position on inclusion of the Sustainable Use of Plastics Directive in the Protocol. We are drawing this chapter to the attention of the Environmental Audit Committee; the Environment, Food and Rural Affairs Committee; the Northern Ireland Affairs Committee; and the Committee on the Future Relationship with the European Union.

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

We have considered your Explanatory Memorandum (EM) dated 25 March 2020 on the above document. We welcome the comprehensive information and analysis that you provided, articulating issues to be aware of for the UK post-Brexit.

In particular, you rightly highlighted the relevance of the Ireland/Northern Ireland Protocol attached to the Withdrawal Agreement and, as you note, the Commission is suggesting changes to a number of pieces of legislation already included in the Protocol and with which Northern Ireland must continue to comply. You identified several explicitly, but we note that the list of affected legislation is potentially greater.

We also see that—since your EM—the Government has written to various House of Commons Select Committees explaining the process for scrutiny of the common

7 [Council Decision \(EU\) 2020/769](#) of 10 June 2020 establishing the position to be adopted on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the amendment of the Agreement.

frameworks to be put in place to help the nations of the United Kingdom cooperate post-Brexit on a subset of devolved policies. We note that a framework on waste policy is expected. Northern Ireland will be part of that framework but will naturally be constrained in how flexible it can be by its obligations under the Protocol. As such, EU law will essentially come into the equation of managing the UK internal market. Furthermore, as you note in your EM, the UK will wish to maintain awareness of EU policy developments in this area given that manufacturers and suppliers will want to see a degree of consistency.

In consequence, it seems to us that this document is likely to have a direct impact on Northern Ireland and an indirect impact across the UK as a whole. That begs the question as to whether the Government intends to cooperate with the EU as it develops its policies and, if so, how. We would welcome your views on how you see that process.

Finally, one piece of legislation mentioned in the document was the Sustainable Use of Plastics Directive. As you will be aware, the EU recently proposed that the Directive be inserted into Annex 2 of the Ireland/Northern Ireland Protocol. While the Cabinet Office submitted an Explanatory Memorandum to us covering the Commission's proposal, the Government has not—to date—set out a view on inclusion of that Directive. We would ask for clarification of the Government's position on that matter.

We look forward to a response within ten working days.

3 COVID-19: Guidelines on the progressive restoration of transport services and connectivity⁸

This EU document is politically important because:

- it relates to the EU's response to the COVID-19 pandemic.

Action

- No further action is deemed necessary.

Overview

3.1 The [Communication under scrutiny](#) has been published by the Commission as guidance for Member States, stakeholders and businesses on how to gradually restore transport services as the COVID-19 pandemic eases.

3.2 The Commission's guidance is not binding and is intended to inform the approach adopted by Member States to their own recovery strategies and ensure that efforts across Europe and with neighbouring countries are coordinated and well managed. The guidance forms part of the Commission's 'transport and tourism' response to the crisis and is accompanied by related documentation (all of which has been considered by the Committee in previous Reports to the House).⁹

3.3 The guidance lays down general principles that should be borne in mind when considering the easing of lockdown measures. These are summarised as follows:

- all transport modes should be progressively resumed, subject to deployment of proportionate and effective measures to protect the health of transport workers and passengers;
- restrictions to transport operations should be limited in scope and duration and any measures should be non-discriminatory, transparent and maintain a level playing field;
- measures should be continuously monitored with a focus on implementing efficient and cost-effective measures as they become available;
- Member States should act in a coordinated and cooperative way between themselves and with neighbouring countries;
- actions to lift travel restrictions should be notified to the Commission and Member States;

8 Communication from the Commission: COVID-19: Guidelines on the progressive restoration of transport services and connectivity; Council and COM number: COM(20) 3139; Legal base: N/A; Department: Transport; Devolved Administrations: Consulted; ESC number: 41254.

9 See, in particular, Thirteenth Report HC 229–ix (2019–21, [chapter 5](#) (24 June 2020) (flight and travel vouchers).

- where possible, measures that facilitate the limited and safe operation of a transport system are preferable to a wholesale stop to that system;
- transport of freight should be safeguarded to ensure supply chains are functional. Essential transport workers should have unobstructed movement and other measures should be reduced gradually to what is strictly necessary;
- restrictions on private transport should be lifted as soon as the health situation allows;
- safe public transport should be increased to provide increased mobility for the public;
- operators providing equivalent services for the same route should be subject to equivalent measures to ensure a level playing field;
- measures at departure and arrival points should be comparable across transport modes and mutually accepted;
- operators should think about how passengers plan their journeys and consider how to make information available on occupancy rates at specific times of the day;
- the development and implementation of urban mobility solutions and active travel should be promoted; and
- the rules and duties that apply to transport operators and service providers should be made clear.

3.4 The Communication also sets-out more specific guidance for the protection of transport workers and passengers. Previous guidance published covering individual transport modalities is cross-referenced as are measures that have been trailed in other Commission Communications.¹⁰ As an example, reference is made in the area of road freight to the ‘Green Lanes’ initiative—which was intended to keep key border crossings open during the height of the crisis—and how the measures adopted should be relaxed by Member State and neighbours in a coordinated and well managed way.

3.5 Of specific interest to the EU’s future legislative and policy agenda is the suggestion that lessons learnt from the crisis will be reflected in the Commission’s forthcoming ‘Sustainable and Smart Mobility Strategy’ (which is expected towards the end of 2020). This document will be considered by the Committee as and when it is published.

The Government’s position

3.6 The Minister with responsibility for the guidance, Rachel Maclean MP, wrote to the Committee by way of [Explanatory Memorandum](#) (EM) on 2 June 2020.

3.7 The information that the Minister provides on the Commission’s guidance and the related actions that the Government is taking is thorough; covering all transport modes

10 The Commission’s Communication covers aviation, road, rail, waterborne transport and urban mobility.

in considerable detail. This having been said, the rapidly changing nature of the crisis and its effect on the industry means that some of what has been included has been superseded by events (many of which could not reasonably have been foreseen).

3.8 The Minister notes that the Government welcomes the Commission's guidance and acknowledges the role that transport will play as a key enabler of economic recovery. The Minister states that the guidelines set-out in the Communication are aligned with the UK's objectives and that many of the general principles that are detailed have been used to inform the Government's own policies.¹¹

3.9 The most interesting part of the Minister's EM is that which covers areas of divergence between the EU's guidance and the approach adopted thus far by the UK. The Commission's guidance suggests the use of face masks and face covering on the public transport network whereas the Minister notes that the Government actively discourages the use of masks outside of clinical settings.

3.10 In recent weeks, however, the Government's approach appears to have changed on this issue with face coverings now required to be worn on public transport and when attending a hospital or as a visitor or an outpatient.¹²

3.11 In a similar vein, EU guidance strongly favours transport operators supplying hand sanitiser to passengers and workers; whereas the Government does not.

3.12 Interestingly, the Minister acknowledges that Government guidance is not specific to individual transport modalities and, instead, an approach has been adopted that provides general principles that are considered to be applicable across all sectors. Over recent weeks, however, the Minister's Department has published guidance specific to the aviation industry and covering seafarers.

3.13 The Committee considers the more holistic package of measures suggested by the Commission—covering all forms of transport and potentialities—engenders greater confidence among operators and passengers than the Government's ad-hoc approach. Furthermore, the Minister suggests in her EM that:

[Transport] operators are in the best position to make operational decisions about what is and is not safe for their workers and passengers. We have therefore avoided making specific recommendations for different types of operations.

In response, we respectfully urge caution: the COVID-19 pandemic has shown the absolute necessity of strong Government leadership, and direct and clear public policy. We agree that industry has an important role to play in ensuring the safety of all, however, industry cannot be left alone to order itself; recovery from the crisis is dependent on the solid economic foundations and public confidence that can only be brought about by present and active Government.

11 In this regard, mention is made of the roadmap document 'Our Plan to Rebuild: The UK Government's COVID-19 recovery strategy'; and transport specific guidance for passengers—'Coronavirus (COVID-19): safer travel guidance for passengers'—and operators ('Coronavirus (COVID-19): safer transport guidance for operators').

12 See HM Government, ['Guidance: Staying safe outside your home'](#) (24 June 2020).

Action

3.14 No further action is deemed necessary.

4 COVID-19: Non-Road Mobile Machinery Emissions¹³

This EU document is legally and politically important because:

- it concerns the EU's response to the COVID-19 pandemic;
- if adopted, the proposal would apply in the UK during the transition period (as established by the UK/EU Withdrawal Agreement); and
- it would amend an instrument that is listed in Annex 2 to the Ireland/Northern Ireland Protocol to the Withdrawal Agreement.

Action

- No further action is deemed necessary. This Report chapter has been published for information purposes.

Overview

4.1 The [proposal under consideration](#) would amend Regulation (EU) 2016/1628 on Non-Road Mobile Machinery Emissions (NRMM).¹⁴ The proposal would make changes to the dates of application of parts of the Regulation in light of the significant disruption to manufacturing caused by the COVID-19 pandemic.

4.2 The Regulation covers small gardening and handheld equipment (e.g. chainsaws), construction machinery (e.g. bulldozers), agricultural machinery (e.g. harvesters), and rail cars, locomotives and inland waterway vessels. It is intended to improve EU air quality by progressively reducing emissions and phasing out equipment that is powered by engines that are considered to be, especially environmentally, hazardous.

4.3 As with EU law covering road vehicles, the NRMM Regulation defines emission limits for engines of different power ranges and applications, and sets the procedures that manufacturers must follow to obtain type-approval (which is a prerequisite for placing certain products on the EU's internal market).

4.4 To ease the burden on manufacturers, the NRMM Regulation sets transitional provisions for when covered engines may no longer be used in associated equipment (this is because engine and equipment manufacture is often separate with equipment manufacturers having considerable stockpiles of engines for use in future products). Production has slowed significantly across Europe during the pandemic and it is unclear

13 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1628 as regards its transitional provisions in order to address the impact of COVID-19 crisis; Council and COM number: 8521/20 and COM(20) 233; Legal base: Article 114 TFEU, ordinary legislative procedure, QMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41332.

14 [Regulation \(EU\) 2016/1628](#) of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (Text with EEA relevance).

when it will return to pre-crisis levels. There is a danger that if action is not taken to delay the full entry of the Regulation into force, manufacturers will be left with engine stock that cannot be used for EU-bound products.¹⁵

4.5 The proposal would delay by 12 months the dates by which equipment must be built and sold against older criteria in force before the NRMM Regulation took effect. Equipment would therefore have to be built before 1 July 2021 (versus 1 July 2020) and sold by the end of the year (31 December 2021 (versus 31 December 2020)).

4.6 If the proposal is adopted before the end of the transition period (as established by the UK/EU Withdrawal Agreement), it will be directly applicable in the UK. Government Officials suggest that adoption of the proposal will take place shortly and, in any event, before the end of the transition period (being 31 December 2020).

4.7 The NRMM Regulation is listed in Annex 2 to the Ireland/Northern Ireland Protocol to the UK/EU Withdrawal Agreement. If adopted, the proposal would also be covered.¹⁶ Those instruments listed in Annex 2 have been determined as necessary for the establishment of a single regulatory system in which goods in Northern Ireland are in the same competitive environment as those in Ireland.

The Government's position

4.8 The Minister with responsibility for the proposal, Rachel Maclean MP, wrote to the Committee by way of [Explanatory Memorandum](#) on 18 June 2020.

4.9 The Minister explains that the Government welcomes the proposal and the additional time it will provide industry to meet its environmental obligations whilst balancing this with the disruption caused by COVID-19.

Action

4.10 The Committee does not deem any further action necessary.

15 Pre-NRMM engines are more expensive than engines produced in third countries (this is due to higher regulatory compliance costs). It is therefore unlikely that products containing these engines could be sold at a profit in markets outside of Europe e.g. in China.

16 By virtue of the amendments that it would make to the NRMM Regulation.

5 COVID-19: Relaxation of EU capital requirements for banks (update)¹⁷

This EU document is legally and politically important because:

- it makes a number of COVID-related changes to the EU's capital requirements rules for banks, to incentivise continued lending to businesses struggling because of the pandemic. The Treasury has now informed us it has no concerns about those changes, some of which will need to be applied in the UK until the end of the post-Brexit transition period.

Action

- Draw these developments to the attention of the Treasury Committee.

Overview

5.1 The coronavirus crisis has had a devastating impact on many businesses, and the current uncertain economic outlook also means banks are hesitant to extend new commercial loans given the high risk of default.

5.2 On 28 April 2020, the European Commission [published](#) a series of proposed amendments to EU rules on capital requirements for banks specifically to counteract this dynamic, in a bid to incentivise continued lending to businesses affected by the crisis. It would, notably, delay the impact of the “IFRS9” international accounting standard for the calculation of bank losses on regulatory capital as [recommended](#) by the internal Basel Committee on Banking Standards earlier this year.¹⁸ The European Parliament and the remaining 27 Member States in the Council of the EU formally approved the amendments to EU banking rules on 24 June. The final Regulation differs from the original Commission proposal in a number of respects, including by establishing a temporary three-year “prudential filter” to limit the impact of the shrinking value of sovereign debt held by banks on their capital ratio.¹⁹

The Government's position

5.3 Certain elements of the amended Capital Requirements Regulation will [take effect before the end of the post-Brexit transition period](#) on 31 December 2020, meaning they will apply to the UK's banking sector (although the Government had no formal say in their making). When the Economic Secretary to the Treasury (John Glen MP) submitted an [Explanatory Memorandum](#) on the proposals on 20 May 2020, this did not clarify if the Government had any concerns about the draft legislation, nor if it was seeking any

17 [Proposal for a Regulation amending Regulations \(EU\) No 575/2013 and \(EU\) 2019/876 as regards adjustments in response to the COVID-19 pandemic](#); EU reference numbers: 7620/20, COM(2020) 310; Legal base: 114 TFEU; ordinary legislative procedure; Department: HM Treasury; Devolved Administrations: not consulted; ESC number: 41219.

18 In some respects the EU has gone beyond specific COVID-related modifications to prudential rules endorsed by the Basel Committee earlier this year, thereby deviating EU law in this area from internationally-agreed standards.

19 The regulatory treatment of sovereign debt is one of the key issues the EU Member States are discussing in the context of the “Banking Union”, which aims to make the Eurozone's banking sector more stable.

changes to the legal text via the UK Mission to the EU in Brussels. In our [Report of 21 May 2020](#), in which we also discussed the substance of the proposed changes in more detail, we therefore requested the Minister provide this information.

5.4 The Minister replied to our questions by [letter dated 15 June 2020](#), providing further technical clarifications of the individual elements of the Capital Requirements Regulation being modified and stating that both the Government and the British banking sector “broadly support” the changes to the EU’s prudential rules triggered by coronavirus.²⁰ The Minister has since also provided a more comprehensive overview of the changes that will be introduced by the revised Capital Requirements Regulation, and whether these will apply in the UK under the post-Brexit transitional arrangements, in [additional correspondence](#) with our counterparts in the House of Lords.

Action

5.5 As the Government has not raised any concerns with us about the COVID-related amendments to the EU’s prudential rulebook for the British banking sector, we do not require any further information from the Minister. We draw the Economic Secretary’s latest update to the attention of the Treasury Committee, should it wish to pursue the substance of the EU’s revised capital requirement rules further with the Government.

20 With respect to the question of whether the Government sought any changes to the draft Regulation to ensure it did not pose risks to the UK’s financial services industry for the duration of the transition period, the Minister added that the Government “seeks to engage [...] with our EU friends and partners through normal diplomatic channels”.

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

Department for Business, Energy and Industrial Strategy

(41112) Proposal for a Regulation of the European Parliament and of the
 6547/20 Council establishing the framework for achieving climate neutrality
 and amending Regulation (EU) 2018/1999 (European Climate Law).
 COM(20) 80

Department for Digital, Culture, Media and Sport

(41343) Joint Communication to the European Parliament, the European
 8514/20 Council, the Council, the European Economic and Social Committee
 and the Committee of the Regions Tackling COVID-19 disinformation—
 JOIN(20) 8 Getting the facts right.

Department for Environment, Food and Rural Affairs

(41301) Proposal for a Council Decision on the signing, on behalf of the
 8354/20 European Union, of the Agreement between the European Union and
 +ADD1 the government of the People's Republic of China on cooperation on,
 and protection of, geographical indications.
 COM(20) 214

(41302) Proposal for a Council Decision on the conclusion of the Agreement
 8357/20 +ADD1 between the European Union and the government of the People's
 COM(20) 213 Republic of China on cooperation on, and protection of, geographical
 indications.

(41338) European Court of Auditors Special Report No.13, 2020: Biodiversity on
 — farmland: CAP contribution has not halted the decline.
 —

(41340) Recommendation for a Council Decision authorising the opening of
 — negotiations on behalf of the European Union for the conclusion of a
 protocol to the Sustainable Fisheries Partnership Agreement with the
 COM(20) 227 Government of Cook Islands.

Department of Health and Social Care

(41273) Report from the Commission to the European Parliament and the
 8310/20 Council regarding the use of additional forms of expression and
 presentation of the nutrition declaration.
 COM(20) 207

Department for Transport

(41348) Court of Auditors Special Report No. 10: EU transport infrastructures:
— more speed needed in megaproject implementation to deliver network
— effects on time.

Foreign and Commonwealth Office

(41357) Proposal for a Council Regulation amending Regulation (EU) No
— 216/2013 on the electronic publication of the Official Journal of the
European Union.

COM(20) 257

HM Treasury

(41342) Report from the Commission to the European Parliament and the
— Council assessing the application and the scope of Directive 2011/61/
EU of the European Parliament and of the Council on Alternative
Investment Fund Managers.

COM(20) 232

Annex

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: EU Industrial Strategy [Commission Communication (SNC)]

Environmental Audit Committee: EU Circular Economy Action Plan [Commission Communication (SNC)]

Environment, Food and Rural Affairs Committee: EU Circular Economy Action Plan [Commission Communication (SNC)]

Committee on the Future of the European Union: EU Circular Economy Action Plan [Commission Communication (SNC)]; EU Industrial Strategy [Commission Communication (SNC)]

Northern Ireland Affairs Committee: EU Circular Economy Action Plan [Commission Communication (SNC)]; EU Industrial Strategy [Commission Communication (SNC)]

Treasury Committee: COVID-19: Relaxation of EU capital requirements for banks (update) [Proposed Regulation (SNC)]

Formal Minutes

Thursday 9 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*)