House of Commons

European Scrutiny Committee

Seventeenth Report of Session 2019–21

Documents considered by the Committee on 16 July 2020, including the following COVID-19 related documents:

Rail infrastructure access charging
Transport (legislative amendments) (multiple modalities)

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Contents

1 EU Research Programme: Horizon Europe[1]

This EU document is legally and politically important because:

- it is relevant to the future EU-UK relationship.

Action

- Write to the Government, as detailed below, to seek further information.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee, the Science and Technology Committee and the Committee on the Future Relationship with the EU.

Overview

1.1 As agreed in the Political Declaration, the EU and UK are seeking continued cooperation in the area of research post-Brexit. To that end, the UK's participation in the next EU Framework Programme for Research — Horizon Europe, beginning on 1 January 2021 — is the subject of ongoing negotiation.

1.2 We wrote to the Parliamentary Under-Secretary of State (Amanda Solloway MP) on 26 March 2020 to seek an update on the EU-UK negotiation and on the progress in the EU institutions of agreeing the Horizon Europe Regulation, including arrangements for the association of third countries to the Programme.

1.3 The Minister responded on 11 June, noting that discussions in the EU institutions had not yet concluded and that negotiations between the UK and EU were also ongoing. She reiterated the Government's position that any agreements relating to the UK's participation in Horizon Europe should contain fair terms including fair treatment of UK participants, a fair and appropriate financial contribution, provisions allowing for sound financial management by both parties, and appropriate governance and consultation.

Action

1.4 We note that the Minister was unable to give us any further clear information on future prospects for cooperation in this area. We have therefore written to her — as set out below — requesting a further update in the autumn once discussions both at the EU level and in negotiations between the UK and the EU have made some progress. We are copying the letter to the Business, Energy and Industrial Strategy Committee, the Science and Technology Committee and the Future Relationship with the EU Committee.

1 Proposal for a Regulation establishing Horizon Europe — the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination; EU reference numbers: 9865/18 + ADDs 1–6, COM(18) 435; Legal base: Article 173(3) TFEU, Article 182(1) TFEU, Article 183 TFEU, Article 188 TFEU (second paragraph), ordinary legislative procedure, QMV;. Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 39882.

Letter from the Chair to the Parliamentary Under-Secretary of State (Amanda Solloway MP), Department for Business, Energy and Industrial Strategy

We have considered your letter of 11 June 2020 regarding the proposed Horizon Europe Programme and the UK's association to it.

We note that there were no further developments to report and we therefore request a further update in the autumn once discussions both at the EU level, and in negotiations between the UK and the EU, have made some progress.

We look forward to receiving your update by the end of September 2020.

2 EU White Paper on the "level playing field": addressing distortions caused by foreign subsidies[2]

This EU document is politically important because:

- it outlines an upcoming EU legislative proposal in 2021 to establish a "Level Playing Field" (LPF) mechanism. This would be a new tool for the EU to penalise firms active within or exporting to the EU's Single Market, if they are in receipt of government subsidies or other forms of "State aid" from a non-EU country;
- while primarily aimed at China, this new LPF mechanism would also apply to British businesses with activities in, or exports to, the EU. Its precise implications will depend not only on the final shape of the legislation establishing the mechanism, but also on the nature of the "State aid" commitments — if any — the UK and EU may make to each other as part of a new free trade agreement.; and
- it is not clear whether the proposal may also eventually give the EU additional powers to intervene within the Northern Irish economy under the Protocol on Ireland/Northern Ireland in certain cases.

Action

- Draw the European Commission White Paper to the attention of the Business, Energy and Industrial Strategy Committee, the Committee on the Future Relationship with the EU, the International Trade Committee, the Northern Ireland Affairs Committee and the Treasury Committee.

Overview

2.1 Within the EU's Single Market, goods, services and capital can flow freely across national borders. To protect a 'level playing field' for businesses active within this market, European law restricts how the EU's Member States can grant subsidies to businesses under so-called "State aid" rules (in many cases requiring prior approval by the European Commission before subsidies can be granted).[3] These rules also still apply to and in the UK until the end of 2020, as part of the post-Brexit transitional arrangement that took effect when we left the European Union on 31 January.[4]

2 White Paper on levelling the playing field as regards foreign subsidies; COM(2020) 253; Legal base: -; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41350.

3 The European Commission is currently reviewing many aspects of the EU's State aid regime, which changes to be made in 2021. EU State aid rules also apply in the EFTA members of the European Economic Area (EEA), enforced by the EFTA Surveillance Authority. References to EU State aid rules and the Single Market in this chapter should be read as encompassing the EEA as a whole.

4 Indeed, the need to prevent taxpayer-funded support that "distorts or threatens to distort competition by favouring certain undertakings" is considered so important that it is set out in the EU Treaties themselves. See, in particular, articles 107 and 108 TFEU. There are several significant exceptions to the general prohibition on government subsidies for companies, meaning substantial amounts of "State aid" can be granted by EU Governments in practice.

2.2 In recent years, the EU institutions and its Member States have become increasingly concerned about the potential economic impact of subsidies provided by other Governments to companies with activities within the EU, to whom the EU's State aid rules do not apply.[5] While the European Commission already has certain tools at its disposal to prevent 'dumping' of subsidised imported goods into the Single Market at below-market prices,[6] there is no overarching EU approach to tackling any distortions of competition arising, for example, from foreign subsidies for EU-based enterprises or from acquisitions of European companies by overseas competitors which are in receipt of financial support from their domestic Government.

2.3 To begin addressing this perceived regulatory gap, the European Commission on 17 June 2020 published a White Paper "on levelling the playing field as regards foreign subsidies". This document outlined its current thinking on introducing an entirely new Level Playing Field (LPF) mechanism under EU law that would enable the Commission, in cooperation with the EU's national Governments, to investigate the economic activities of companies in receipt of foreign subsidies and, where considered necessary, impose redress measures to mitigate their effect on the market. These could include, for example, requirements for the beneficiaries to divest assets or penalty payments or a bar on participation in a procurement exercise. The Commission intends to table formal legislative proposals to that effect in 2021, having launched a public consultation on its plans that runs until September this year.[7]

2.4 Given the Commission's thinking on this new EU legislation is still in its early stages, the implications of the proposed new anti-subsidy tool for the UK and UK businesses are unknown. They are, however, potentially significant, as the Department for Business, Energy & Industrial Strategy acknowledged in an Explanatory Memorandum submitted on 6 July 2020.

2.5 First, the LPF mechanism would apply to British businesses that are in receipt of UK Government support with activities in the EU. These could be subject to EU investigations, and subject to the redress measures envisaged by the White Paper. The extent to which this might have practical consequences for such companies will depend to some extent on how the Government intends to alter its domestic subsidy policy when free from the restrictions of EU State aid law, as well as any commitments the UK and EU may make to another with respect to subsidies under a new free trade agreement. Secondly, it is unclear whether the EU may in due course seek to incorporate the new anti-subsidy tool into the Protocol

5 For example, in its "Elements for a new EU strategy on China" of June 2016, the European Commission noted: "It is important for the EU to work with China to promote open and fair competition in each other's markets and to discourage China from underwriting its companies' competitiveness through subsidisation or the protection of domestic markets."

6 In particular the EU Anti-Dumping Regulation (Regulation 2016/1036).

7 The formal establishment of a Level Playing Field mechanism as described in the White Paper would require the agreement of the European Parliament and of the Member States' national Governments in the Council of the EU, and is therefore not yet certain.

on Ireland/Northern Ireland, which potentially could mean the European Commission could acquire new powers to address the impact of foreign (non-UK) subsidies involving Northern Irish firms active in the production, trade or sale of goods.[8]

2.6 Given these uncertainties, it is clear Parliament should monitor closely the outcome of the Commission's consultation process and the substance of any formal legislative proposals tabled to establish the Level Playing Field tool in EU law in 2021. To support any such future scrutiny, we have described the contents of the Commission's White Paper in more detail below.

The EU White Paper on foreign subsidies

2.7 The European Union operates a well-established system of controls on the provision of subsidies to businesses by the public authorities of its Member States, at any level of Government. Although these "State aid" restrictions have been temporarily relaxed to allow EU countries to support companies struggling as a result of the coronavirus crisis, in normal times EU law circumscribes how they can subsidise the private sector, to ensure that businesses from one EU country — which, as part of the Single Market, have largely unimpeded access to sell or invest into any other EU country — do not have an unfair competitive advantage funded by their domestic taxpayers.

2.8 However, European State aid rules of course do not apply to Governments outside the Single Market, even where they provide a subsidy directly or indirectly to a company in the EU (in particular for EU-based subsidiaries of overseas firms). On the multilateral level, there is the WTO's Agreement on Subsidies and Countervailing Measures (SCM), which requires signatory countries to report subsidies and sets out how other countries can impose retaliatory tariffs to remedy their impact. However, enforcement of its provisions is weak, and many countries are not transparent about subsidies they grant even where in principle required to do so. In addition, the Agreement only covers goods, not services.

2.9 Given the lack of effective multilateral remedies, the European Union already has certain unilateral tools at its disposal to address what it perceives as risks to its economy from imports of subsidised goods produced overseas, notably trade defence measures against "dumping" under the Anti-Dumping Regulation[9] and legal commitments obtained from individual economic partners through bilateral trade agreements. However, it lacks a similar mechanism with respect to imported services or acquisitions that have benefitted from subsidisation by a non-EU Government, or a tool to address the aforementioned foreign financial support for companies established within the EU itself.[10]

8 The LPF mechanism would not apply to subsidies granted to Northern Irish firms by the UK Government, which are covered by Article 10 of the Protocol (which maintains the effects of EU State aid law in Northern Ireland, subject to certain limitations). Similarly, the Protocol on Ireland/Northern Ireland does not cover the supply of services so if the mechanism were incorporated into the Protocol, it would only apply in relation to subsidies affecting trade in goods. The potential implications of the LPF mechanism under the Protocol is discussed in more detail elsewhere in this chapter.

9 See Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union.

10 While the EU has exclusive competence to regulate the imposition of tariffs on imported goods into its Member States, it does not always control market access for services providers 'imported' into individual EU Member States. Instead, EU countries can often set their own rules on market access unless the EU has legislated otherwise. For example, the EU recently introduced a new screening mechanism for Foreign Direct Investment (FDI) to assess the security risks of foreign investment in the EU's critical infrastructure. For the air and maritime transport sectors, the EU also has put in place specific legislation to "adopt redressive measures if it finds practices that distort competition through discrimination or through subsidies" for third-country operators.

2.10 To begin addressing this perceived regulatory gap, the European Commission on 17 June 2020 published a White Paper on "levelling the playing field as regards foreign subsidies".

2.11 Although this document acknowledges that it is "difficult to unequivocally identify or even quantify the impact of specific foreign subsidies" on the EU's Single Market owing to "a general lack of transparency about foreign subsidies and the complexity of the commercial reality",[11] its overarching conclusion is that the absence of a dedicated EU mechanism to address foreign subsidies can allow market distortions to occur, for example "promote an acquisition and later transfer technologies to other production sites, possibly outside of the EU". The Chinese Government, in particular, has been in the Commission's crosshairs in this respect.[12] It argues that foreign subsidies could "have facilitated the acquisition of EU undertakings [and] influenced other investment decisions", which in turn "can distort competition" within the EU and "result in an uneven playing field in which less efficient operators grow and increase market share at the expense of more efficient operators".

2.12 More specifically, the Commission highlights two areas where the lack of an EU tool to address the market impact of foreign subsidies may have a particularly pernicious effect:

- First, the acquisition of EU-based companies by overseas competitors using subsidies provided by their domestic authorities, because this practice distorts the allocation of capital and "undermines the possible benefits of the acquisition for example in terms of efficiency gains".

- Secondly, the ability of non-EU companies to use foreign subsidies to outbid EU-based competitors to obtain procurement tenders issued by public authorities within the EU. The same also applies to procurement funded from the EU budget.

2.13 The White Paper goes on to set out Commission's current thinking on how EU law might be amended in the future to deal more explicitly with the potential market distortions arising from foreign subsidies, and how any such arrangement would interact with the EU's existing tools and international obligations in this area. This is described further in the next section.

The proposed Level Playing Field Mechanism

2.14 The White Paper outlines a future EU anti-subsidy, Level Playing Field (LPF) mechanism built around three "modules". These would allow the European Commission and Member States to investigate, and intervene to mitigate, market distortions linked

11 The White Paper states, for example, that "there is not yet sufficient experience to determine how many acquisitions would prove to be negatively affected by foreign subsidies". The Commission also notes that "this is mainly due to a lack of transparency and low compliance with the obligation to notify subsidies under the Agreement on Subsidies and Countervailing Measures (SCM Agreement)".

12 See for more information our predecessors' Report of 1 May 2019 on the EU's new strategic approach to relations with China.

to the activities of companies subsidised by Governments outside the EU.[13] An Annex to the White Paper sets out general proposed principles for establishing whether a "foreign subsidy" exists in a given case.

Module 1: a general anti-subsidy instrument

2.15 The first level playing field 'module' described in the White Paper would be a "general instrument" to address foreign subsidies to EU-based companies that may cause market distortions.[14] If such a tool is created under EU law, it would allow either the European Commission or a national supervisory authority of a Member State[15] to investigate cases where foreign subsidy may be "creating a distortion".[16]

2.16 If the investigating body concludes this is the case, it could either seek binding commitments from the beneficiary company to mitigate the negative effects of the subsidy, or impose redress measures unilaterally to offset those effects (for example forced divestment of certain assets, prohibiting an acquisition or penalty payments).[17] Alternatively, the investigatory authority can close the case without seeking commitments or imposing redress measures. This would be the case where there is no subsidy, or the government support in question is found, on balance, not to have a market distorting effect. In particular, the Commission proposes to include an "EU interest test", under which the potential distortion would be weighed against any "evidence of a possible positive impact that the supported economic activity or investment might have within the EU" — such as "creating jobs, achieving climate neutrality and protecting the environment, digital transformation, security, public order and public safety and resilience".

2.17 The Commission notes that these general levels playing field investigations could be used in "all market situations", meaning irrespective of whether the subsidy benefits the production or flow of goods, services or investments within or into the EU. However, the Commission intends to exclude subsidies for goods produced or manufactured elsewhere and then imported into the EU, because these are already covered by the EU's trade defence measures under the aforementioned Anti-Subsidy Regulation. With respect to goods, module 1 as envisaged would therefore primarily apply in relation to foreign subsidies for EU-based companies producing or manufacturing goods.

13 The White Paper defines subsidies, for this purpose, as a "financial contribution by a government or any public body of a non-EU State, which confers a benefit to a recipient and which is limited, in law or in fact, to an individual undertaking or industry or to a group of undertakings or industries".

14 The White Paper also moots the possibility of applying it to companies based outside the European Union but "active" within it, for example "when an undertaking established outside the EU seeks to acquire an EU target". Such cases would also be covered, separately, by the second module as described elsewhere.

15 See section 4.1.7 of the White Paper. This suggests that both the European Commission and national regulators in each EU country should have the power to investigate potential distortive subsidies and apply the potential redress measures under this module. However, it also proposes that, where the Commission takes on a particular case, this would exclude any national authorities pursuing the same matter in parallel or subsequently (unless the Commission decides not to pursue an in-depth investigation). This is likely to be a key issue for the future legislative negotiations, as individual Member States may be unwilling to cede this level of power to the EU.

16 The White Paper lists several types of government subsidy "considered likely to distort the [EU]'s internal market" where provided to an EU-based undertaking, including export financing, debt forgiveness, or company-specific tax reliefs. Other forms of government support would "have to be examined in more detail to assess whether they would actually or potentially distort the level playing field in the internal market"

17 The White Paper notes that, in an ideal situation, the financial benefit of such subsidies "should be eliminated through redressive payments to the third country. In the case of foreign subsidies, however, it may be difficult in practice to establish that the foreign subsidy is actually and irreversibly paid back to the third country".

Module 2: Subsidised mergers and acquisitions

2.18 The second module of the Level Playing Field Mechanism would relate to acquisitions of larger EU-based companies, or a material stake in them, by another undertaking with the aid of a foreign subsidy.[18] This module would complement the Commission's existing powers to investigate, and intervene in, mergers and acquisitions "where concentrations or companies' market practices distort competition" within the EU,[19] as well as the toothless new Foreign Direct Investment Regulation, which aims to prevent overseas investment into politically-sensitive companies or infrastructure in the EU which may "affect security or public order".[20]

2.19 As part of the new Level Playing Field (LPF) mechanism, the White Paper suggests that any party intending to make an "acquisition of interest"[21] in the EU would have to notify the European Commission of the existence of a financial contribution it has received from a non-EU Government in the three previous years, or expects to receive in the year ahead. The Commission would then review the facts of the case to determine whether this in effect constituted a subsidy giving the beneficiary a market distorting advantage. If so, the Commission could then either "accept commitments by the notifying party which effectively remedy the distortion", such as divestment of assets, or, "as a last resort prohibit the acquisition". It acknowledges that definitively proving both the existence of a subsidy and a distorting market effect will be difficult.[22] The "EU interest test" would also apply, balancing any positive effects from the acquisition against the distortion of competition.

2.20 The White Paper does not foresee a substantive role for the EU Member States' national authorities under module 2, because the "ex ante" nature of the notification system would be "complex to share across multiple enforcers […], notably due to significant time constraints" and the risk of divergent national application of the same rules. Instead, national Governments would be informed of any cases being investigated by the Commission and "consulted on final decisions". However, they would have the ability to examine acquisitions supported by foreign subsidies under module 1 (provided that the Commission had not itself initiated an investigation into such a case already).

18 The White Paper suggests limiting the application of module 2 only to certain acquisition of EU undertakings or shares therein, for example where the annual turnover of the intended target exceeds €100 million or the size of any financial contribution received by the potential acquiring undertaking from a non-EU Government.

19 The White Paper notes that the EU's legal framework on mergers and antitrust does not "specifically take into account whether an economic operator may have benefited from foreign subsidies" even if in principle it could form part of the assessment and does not allow the Commission (or Member States) to intervene and decide solely or even mainly on this basis.

20 Given the potential overlap between EU anti-trust rules, the Foreign Investment Regulation and the new Level Playing Field mechanism, the Commission states that "in the case of parallel procedures under the FDI Screening Regulation, Merger rules and/or any new legal instrument, those instruments will include a mechanism to address any overlap and ensure that procedures are efficient".

21 The White Paper suggests there should be a threshold to determine whether a particular acquisition would be covered by the Level Playing Field mechanism or not. Such a threshold may be qualitative — referring to all assets likely to generate a significant EU turnover in the future — or quantitative, such as the value of the proposed transaction or the turnover of the target.

22 In an attempt to counter this arrangement's reliance on self-policing by the recipient of the subsidy, and their willingness to disclose its existence, the White Paper suggests the Commission would have the power to impose "significant fines" or even order an ex-post unwinding of the acquisition if the notification requirement was not complied with.

Module 3: Subsidised bids for public procurement tenders

2.21 The third, and final, level playing field module proposed in the White Paper relates to distortion of public procurement processes in the EU by firms in receipt of foreign subsidies.

2.22 In principle, tenders for procurement issued by public authorities anywhere in the European Union are mostly open to both EU and non-EU companies. While bidders cannot be in receipt benefit of financial support from an EU country that is incompatible with EU State aid rules, the same does not apply to subsidies granted by a country outside the EU. Such overseas support for procurement bids, the Commission says, "may be driven by strategic goals, in order to get a foothold in strategically important markets or regions, or to get privileged access to critical and major infrastructure". While it does not say so explicitly, this is of course relevant in relation to the current controversy around the role China's Huawei plays in providing telecommunications infrastructure in many countries, including the UK.

2.23 The White Paper therefore envisages a new rule that tendering authorities "would be required to exclude from public procurement procedures those economic operators that have received distortive foreign subsidies".[23] This would, in particular, be the case where such government support "enables the recipient to submit an offer that would otherwise — without the subsidy — be economically less sustainable, especially in case of bidding significantly below market price or below cost". A similar arrangement would also apply to procurement and grants funded from the EU budget by the EU institutions or the Member States.[24]

2.24 As with module 2 on acquisitions and inward investment, the onus would be on the company bidding for a tender to disclose to the contracting authority whether they "have received a financial contribution […] within the last three years preceding the participation in the procedure and whether such a financial contribution is expected to be received during the execution of the contract". Any subsidy notifications, or allegations thereof made by third parties, would be investigated by the relevant Member State's national supervisory authority for foreign subsidies within a specified time-limit.[25] During this time, no tender could be awarded to a company under scrutiny. If this investigation concludes a foreign subsidy does exist, the contracting authority would have to decide — on the basis of an EU-wide "uniform methodology"[26] — whether it has "distorted the public procurement procedure" and, if so, exclude the beneficiary from the tender in question. The White Paper also suggests that the company could be banned from participation in other tenders issued by the relevant contracting authority for a period of time.

23 This new mechanism would complement the existing grounds for exclusion of a company from a tender under EU public procurement law.

24 The White Paper also notes that a similar approach — i.e. a notification requirement for subsidies — could be considered when applications for grants from the EU budget, for example to NGOs or civil society organisations, are being considered. It is less clear how subsidies might have a distortive effect on the grant procedure, compared to a public procurement tender. The Scottish Government has however highlighted concerns that EU foreign subsidy control could impact participation in EU programmes and accessing EU funding.

25 The White Paper suggests that, for procurement under international agreements with non-EU countries not subject to EU public procurement rules, the European Commission should be the designated investigatory authority for any notifications or suspicions of a foreign subsidy affecting a tender.

26 This methodology, the Commission says, "could be set out in guidance designed to ensure a uniform practice of assessment of distortion throughout the EU".

2.25 During any investigations under this module, Member States would be required to work closely with the European Commission, although the latter could not overrule the findings of a national authority.[27] The White Paper also suggests that subsidy notifications made as part of a procurement exercise would also be made publicly available. As this new mechanism relies primarily on the willingness of companies to disclose the existence of a foreign subsidy, it may — like module 2 as described above — be circumvented with relative ease. However, if a subsequent investigation found a company had not properly disclosed the existence of a subsidy, an awarded tender could be terminated and fines imposed.

Potential implications of the Level Playing Field mechanism for the UK

2.26 The Minister for Small Business, Paul Scully MP, submitted an Explanatory Memorandum setting out the Government's views on the Commission White Paper on 6 July 2020. In it, he notes that "assessing the implications of the White Paper's proposals is challenging given the ambiguity in the paper on how they would be implemented, as well as the level of detail still to be determined following the consultation". Nevertheless, the Minister states that certain potential "implications for UK businesses […] are foreseeable". These can be broadly categorised in two ways, which we discuss in more detail below:

- First, the general implications of the new mechanism for the UK as a "third country", namely the possibility of British businesses with operations in the EU facing the redressive measures described in the sections above as a result of "allegedly distortive aid granted by the UK" following an investigation under one of the three proposed modules of anti-subsidy tool.

- Secondly, the specific implications of the EU's approach to the "level playing field" for Northern Ireland in particular, which will effectively stay in the EU's Single Market for goods under a specific Protocol annexed to the Withdrawal Agreement governing the UK's exit from the EU.

Implications for British businesses with EU operations or sales

2.27 The principal effect of the European Commission's suggested Level Playing Field mechanism on British businesses would arise from the simple fact that the UK, having left the Single Market at the end of the post-Brexit transition period, would be subject to the full panoply of EU rules on trade with "third countries". That would include the new anti-subsidy tool, as and when it is operational. In that sense, UK companies would be in the same legal position as their counterparts from other countries outside the Single Market, like China, the US or Australia.

2.28 In practice, the Minister says, this means UK companies will face additional hurdles when operating in the EU. For example, when acquiring EU undertakings, or even minority stakes in them, they would need to notify the subsidy they receive from the UK and face the risk of having that acquisition blocked as a result of the subsidy. Similarly, EU authorities would be able to block British businesses from bidding for public procurement contracts if they conclude that a UK government subsidy facilitated an "artificially low bid". This may make bids to tender from non-EU businesses, including those from the

27 Instead, the White Paper suggests that "if the Commission, when informed on the final decision, disagrees with the assessment of the national supervisory authority, the deadline for the [investigation] is extended".

UK, less competitive: they would typically be more likely to be in receipt of a foreign subsidy than an EU competitor, and therefore be more susceptible to an investigation which may incentivise the contracting authority to select an EU-based provider instead.[28]

2.29 We note in this respect that the extent to which the LPF mechanism, if enacted under EU law, would impact on UK firms would also be linked to the Government's approach to subsidies, and by extension to any new arrangements between the UK and the EU to restrict State aid as part of the future economic relationship. The EU has, controversially, demanded far-reaching legal commitments from the UK with respect to the continued application of EU State aid rules as the price of a new zero-tariff, zero-quota trade agreement beyond the end of the transition period. The Government has consistently rejected this, but it has not yet set out the UK's domestic approach to State aid policy (although Ministers have said new post-Brexit regime is being developed 'in tandem' with the trade negotiations with the EU, suggesting they are linked).[29] As such, it remains unclear what — if any — "landing zone" between the two sides may emerge on bilateral commitments on subsidies that is mutually acceptable.

2.30 Generally speaking, the more restrictive the UK is in providing subsidies to businesses, the less likely it would be that any a British business would face an investigation under the Level Playing Field mechanism. The Minister notes in this regard that "historically the UK has not generally granted the types of subsidies that the EU has identified as likely to be distortive", implying that UK companies — if that approach is maintained beyond the end of the transition period — would not typically be found to be disrupting fair competition when operating within the EU, even if they are the subject of investigation under the new LPF mechanism.[30]

2.31 While such 'past practices' will not mean the UK would be exempted from the scope of the new anti-subsidy tool, the practical impact of the LPF mechanism on UK-EU trade could be mitigated by any relevant bilateral commitments on State aid in a future free trade agreement. In fact, the Commission White Paper acknowledges the potential overlap between its latest proposals and any provisions on State aid in the EU's bilateral trade agreements with partner countries. In particular, it states that if any investigation under the anti-subsidy tool establishes the existence of a distortive subsidy involving a country with which the EU has a trade agreement, it may be "more appropriate to address the distortion […] under the dispute settlement or consultation provisions" of that agreement. The possibility of unilateral redressive measures under the LPF mechanism would then be suspended while any such political discussions took place. This would not prevent the EU from resuming unilateral action if it did not believe the distortive effect of the subsidy was being addressed.

28 In the Minister's Explanatory Memorandum, he describes this as follows: "The delay caused by a possible foreign subsidy investigation may prejudice UK businesses bidding in EU public procurement contracts because the potential winning bidder may still need to be approved by a supervisory authority in the EU, if UK subsidies are suspected."

29 Letter from Paul Scully MP, Minister for Small Business, to the House of Lords EU Internal Market Sub-Committee (15 May 2020).

30 The Minister's Explanatory Memorandum also notes that the subsidies listed as inherently distortive "correspond approximately to the EU-Japan-US Trilateral Statement on WTO reform which seeks to prohibit more types of subsidies under the WTO Agreement on Subsidies and Countervailing Measures". The implication is that, if this element of WTO reform is successful, more countries would agree multilaterally to restrict the type of subsidies the new Level Playing Field mechanism would seek to address unilaterally.

2.32 Overall therefore, while it is highly unlikely that any EU-UK free trade agreement would completely remove British businesses from the scope of the new anti-subsidy tool as described in the White Paper altogether, the extent to which they might find themselves subject to penalties or other measures under that mechanism may be mitigated by any future UK-EU bilateral commitments on government subsidies, and the dispute resolution procedures which govern them.

The implications of the White Paper for Northern Ireland under the Protocol on Ireland/Northern Ireland

2.33 The proposals set out in the June 2020 White Paper may also have specific implications for Northern Ireland, because of the unique arrangements that will apply there following the UK's withdrawal from the European Union.

2.34 The UK ceased to be a Member State of the EU on 31 January 2020, and is due to fully leave its Customs Union and Single Market at the end of a post-Brexit transitional period on 31 December. To avoid the need for customs and regulatory infrastructure to be re-built on the border between Ireland and Northern Ireland, which would otherwise be necessary by default under EU law at the end of the transition, the UK's Withdrawal Agreement on its exit from the EU contains a specific Protocol dealing with the border. In essence, this Protocol requires the UK to continue applying EU legislation on the production, trade and sale of goods in respect of Northern Ireland beyond the end of the transitional period, subject to period consent by the members of the Northern Ireland Assembly.

2.35 The LPF mechanism, insofar as it will also apply to subsidies involving companies involved in the trade in goods, could potentially be relevant to this arrangement. However, there are many uncertainties and complexities that make it impossible to determine at this stage how it may affect Northern Irish businesses under the Protocol.

2.36 There is, firstly, an overlap between the new LPF mechanism and Article 10 of the Protocol, which requires the UK to continue applying EU State aid rules — i.e. restrictions on government subsidies — "in respect of measures which affect that trade between Northern Ireland and the [EU] which is subject to this Protocol" (in other words, subsidies which affect trade in goods between the two). While the extent to which this provision also implies the continued application of EU State aid law to UK Government support for businesses in Great Britain is a matter of debate, it is clear that it maintains the effect of that legislation for subsidies for businesses in Northern Ireland in the goods sector. This presumably means that the EU's anti-subsidy tool, once established, would not apply to any financial support granted by any UK public authority to Northern Irish businesses involved in the supply of goods, because such subsidies in any event will remain subject to the full range of EU State aid law (including, where necessary, prior approval by the European Commission). There would therefore be no need for any additional investigatory and redress mechanisms in respect of such government support.

2.37 However, the situation is different with respect to subsidies granted by *other* non-EU Governments that benefit or affect companies in Northern Ireland and therefore, because of its special position under the Protocol, may have an impact on the EU's Single Market for goods. In particular, it seems conceivable the EU may argue in due course that its new tools should also allow it to investigate and address overseas subsidies received by Northern Irish companies involved in the supply chain for goods, or the acquisition of

such companies subsidies from overseas.[31] In practice, that could mean the European Commission would have the power to seek redress for subsidies granted by overseas Governments to Northern Ireland firms in the goods sector, or block subsidised foreign takeover bids of such firms there.

2.38 It cannot be definitively said at this stage whether the new LPF mechanism would apply in Northern Ireland to the extent that it relates to the production, trade and sale of goods. For it to apply automatically as and when it becomes EU law, the legislation formally establishing the anti-subsidy tool would need to either amend or replace EU legislation already listed as being applicable in Northern Ireland under the Protocol.[32] However, if it is does not amend or replace rules already listed in the Protocol, it could only be added — and therefore apply in Northern Ireland — with the UK Government's explicit consent.[33] It is therefore too early at this stage to determine how this future EU legal act may interact with the Protocol. The Minister referred to these potential ramifications of the White Paper for Northern Ireland obliquely in his Explanatory Memorandum, stating only that "the Government will further consider any interactions with the Northern Ireland Protocol if and when a legislative proposal is brought forward".

Conclusions and Action

2.39 The European Commission's formal legislative proposal to establish the envisaged new anti-subsidy tool under EU law, due in 2021, is likely to face both legal and political challenges.

2.40 Several important questions remain about the practical implementation of this new redress mechanism, including — but not limited to — the division of investigatory and enforcement powers between the European Commission and national authorities in the EU's Member States; the evidentiary standards that will be used by them to determine whether a potentially market-distorting subsidy actually exists; overlap between the anti-subsidy tool and existing EU mechanisms like the Merger Regulation; and the efficacy of any redress measures, especially where the new mechanism essentially relies on self-policing by companies in receipt of subsidies (meaning deliberate circumvention is likely and may, in many cases, be easy).

2.41 As the European Commission's White Paper is not itself a proposal for legislation, it has — as the Minister rightly points out — no direct implications for the UK. However, we agree that this new EU approach to foreign subsidies, as and when translated into EU law, could impact on British businesses and the flow of UK goods, services and investment into the EU, whose volumes will still be considerable even following the UK's exit from the Single Market at the end of 2020.

31 The Protocol does not require alignment in Northern Ireland with EU rules relating to the supply of services, so the LPF mechanism would — if it was incorporated into the Protocol — only apply to subsidies which affect trade in goods. With respect to the module on unfair bids for procurement tenders (module 3 of the White Paper), there seems to be less of an overlap with the Protocol since the continued public procurement rules will not apply in Northern Ireland. Of course, participation by Northern Irish firms in receipt of a UK subsidy in a tender issued by an EU public authority would also be covered by the new mechanism in the same was as other UK firms.

32 Article 13(3) of the Protocol on Ireland/Northern Ireland.

33 This would require a Decision of the UK-EU Joint Committee established under the Withdrawal Agreement, which can only be approved with the mutual consent of the UK and the EU. See for more information our Report of 17 June 2020 on the first Decision of the Joint Committee.

2.42 We also note the relevance of the on-going negotiations between the Government and the EU on the difficult issue of "State aid" in any future UK-EU free trade agreement and the general lack of clarity about the Government's long-term policy on subsidies. The level of continued alignment between UK and EU State aid rules will have an inverse proportional relationship to the impact of the new LPF mechanism for British businesses. Even if the Government is unwilling to make binding commitments in this respect in a free trade agreement, the White Paper shows that the European Commission is determined to expand the EU's unilateral ability to counteract what it perceives as unfair government support for businesses whose activities affect its producers and consumers.

2.43 The implications of the proposed LPF mechanism for Northern Ireland remain unclear. We accept the Minister's reticence in providing any detailed assessment of its potential ramifications under the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, given the lack of clear legal detail about the substance of the EU's new Level Playing Field mechanism and the fact that the Protocol itself is not yet operational. It is nevertheless clear that the European Commission's forthcoming legislative proposal in 2021 to establish the Level Playing Field mechanism will need to be considered carefully to ascertain its particular implications in that context.

2.44 Given the considerations above, we consider that Parliament should pay close attention to the draft Regulation to set out the new Level Playing Field mechanism in EU law when it is published by the Commission next year. In the meantime, we draw these developments to the attention of the Business, Energy & Industrial Strategy Committee, the Committee on the Future Relationship with the EU, the International Trade Committee and the Northern Ireland Affairs Committee (in light of the particular relevance of the White Paper under the Protocol on Ireland/Northern Ireland).

3 EU Biodiversity Strategy[34]

This EU document is politically important because:

- it relates to EU policy that Northern Ireland must continue to apply after the transition period, as well as to policies subject to cross-border cooperation on the island of Ireland; and
- it contains priorities which are relevant to the mutual strategic interests of both the UK and the EU at the global level.

Action

- Report to the House.
- Draw to the attention of the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee.

Overview

3.1 As part of its European Green Deal,[35] the Commission has published a Biodiversity Strategy designed to put Europe's biodiversity on a path to recovery by 2030. The Strategy ranges across a number of sectors including agriculture, forestry, and marine and includes new commitments, measures, targets and governance mechanisms. It is also seen as central to the EU's contribution to the Conference of the Parties to the Convention on Biological Diversity in 2021.

3.2 While most of it is not directly relevant to the UK, certain aspects — such as policy on pesticides and on invasive alien species — affects policy that is applicable to Northern Ireland under the terms of the Ireland/Northern Ireland Protocol. Other elements may also be relevant to cross-border cooperation on environmental protection, including the management of shared freshwater. The global aspects are relevant to the mutual strategic interests of both the UK and the EU at the global level.

3.3 The Strategy contains specific commitments and actions to be delivered by 2030, including:

- establishing a larger EU-wide network of protected sites on land and at sea, building upon the existing Natura 2000 network of sites, with strict protection for areas of very high biodiversity and climate value;
- an EU Nature Restoration Plan — a series of commitments and actions to restore degraded ecosystems across the EU by 2030, and manage them sustainably, addressing the key drivers of biodiversity loss;
- enabling transformational change through improved biodiversity governance, to ensure Member States integrate the commitments of the Strategy into national policies; and

34 Commission Communication — EU Biodiversity Strategy for 2030: Bringing nature back into our lives; COM(20) 380; Legal base: —; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41264.

35 COM(19) 640.

- measures to tackle the global biodiversity challenge, demonstrating that the EU is ready to lead by example towards the successful adoption of an ambitious global biodiversity framework under the Convention on Biological Diversity.

3.4 Concerning the matters of direct relevance to Northern Ireland, we will consider potential changes to legislation on pesticides when we scrutinise the Commission's recent Farm to Fork Strategy.[36] We note that the Commission is suggesting no changes to the Regulation on invasive alien species[37] (to which Northern Ireland must maintain alignment under the terms of the Ireland/Northern Ireland Protocol), but is emphasising the importance of effective implementation of that law.

3.5 In her Explanatory Memorandum, the Parliamentary Under-Secretary of State (Rebecca Pow MP) observes that — other than possible impact through the Northern Ireland Protocol — there are no direct implications arising for the UK. Nonetheless as the basis for the EU's engagement at the international level, the Minister recognises that the Strategy will be influential in the global efforts for preserving biodiversity in which the UK plays a significant role.

3.6 The Minister goes on to set out how the Government is responding in the areas identified by the Commission. On nature protection, where the Commission proposes to give legal protection to a minimum of 30% of the EU's land and sea area, the Minister notes that the UK Government has led the Global Ocean Alliance since 2019, promoting a target to protect 30% of the ocean by 2030, and is currently discussing a similar target to protect 30% of terrestrial land by 2030.

3.7 Concerning nature restoration — on which the Commission proposes a Nature Restoration Plan — the Minister says that the UK has already committed to a range of actions to restore nature. In England, the 25 Year Environment Programme sets a number of long-term goals for ecosystem restoration and associated habitat creation, and similar work is being taken forward by the devolved administrations.

3.8 The Minister notes that action is already being taken across the UK to improve environmental governance. Globally, she says, the UK is committed to playing a leading role in developing an ambitious post-2020 framework for biodiversity under the Convention on Biological Diversity (CBD). The UK will support ambitious and practical targets, strengthened by coherent implementation mechanisms that are consummate with the scale of the challenge.

Action

3.9 We note the measures set out by the Minister to demonstrate that the UK's level of ambition in biodiversity protection is similar to that of the EU, including a commitment to securing an ambitious outcome in global negotiations next year. We agree that the direct impact of the Strategy on the UK is limited to the impact on Northern Ireland, but would note that the impact will be felt not only through the legislation to which Northern Ireland must continue to align but also through cross-border cooperation on environmental matters such as water management.

36 COM(20) 381.

37 Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

3.10 We are reporting this document to the House due to its relevance to the Northern Ireland Protocol and its link to UK global priorities, but we seek no further information from the Minister. We draw the document to the attention of the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee.

4 COVID-19: Transport (legislative amendments) (multiple modalities)[38]

These EU documents are legally and politically important because:

- they concern the EU's response to the COVID-19 outbreak; and
- make amendments to EU law that is applicable in the UK during the post-exit transition period.

Action

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

Update

4.1 The proposals under scrutiny were previously considered by the Committee in its Tenth Report of Session 2019–21.[39] The proposals were taken forwards as a priority by the EU institutions and were adopted at the end of May 2020.[40]

4.2 In total, four measures were suggested, covering:

- aviation (document (a) (41226);
- maritime (document (b) (41225);

38 Document a — Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community in view of the COVID-19 pandemic (aviation); Council and COM number: 7576/20 and COM(20) 178; Legal base: Article 100(2) TFEU, ordinary legislative procedure, QMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41226. Document b — Proposal for a Regulation amending Regulation (EU) 2017/352, so as to enable managing bodies or competent authorities to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak (maritime); Council and COM number: 7644/20 and COM(20) 177; Legal base: Article 100(2) TFEU, ordinary legislative procedure, QMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41225. Document c — Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2016/797 and Directive (EU) 2016/798, as regards the extension of their transposition period (rail); Council and COM number: 7645/20 and COM(20) 179; Legal base: Article 91(1) TFEU, ordinary legislative procedure, QMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41224. Document d — Proposal for a Regulation of the European Parliament and of the Council laying down specific and temporary measures in view of COVID-19 outbreak and concerning the validity of certain certificates, licences and authorisations and the postponement of certain periodic checks and training in certain areas of transport legislation (road); Council and COM number: 7652/20 and COM(20) 176; Legal base: Article 91(1) TFEU, ordinary legislative procedure, QMV; Department: Transport; Devolved Administrations: Consulted; ESC number; 41223.

39 Tenth Report HC 299–vii (2019–21), Chapter 4 (10 June 2020).

40 Regulation (EU) 2020/696 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic (Text with EEA relevance) (aviation); Regulation (EU) 2020/697 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak (maritime); Directive (EU) 2020/700 of the European Parliament and of the Council of 25 May 2020 amending Directives (EU) 2016/797 and (EU) 2016/798, as regards the extension of their transposition periods (Text with EEA relevance) (rail); and Regulation (EU) 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the COVID- 19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation (Text with EEA relevance) (road).

- rail (document (c) (41224); and
- road (document (d) (41223).

4.3 The proposals were published as a response to the COVID-19 crisis and suggested changes across these transport modalities to the levying of charges and the extension of certificate, licence and authorisation validity dates. These changes were suggested by the Commission as the pandemic has caused considerable delays to processing by Member State competent authorities and, without action, stakeholders could fall foul of expirations through no fault of their own. Examples include driving licences due for renewal during the height of the pandemic that could not be reissued by authorities as staff were absent or premises or processes were not open or operating as normal.

4.4 Although also technical in nature, the aviation and rail proposals dealt with the more straightforward issues of traffic rights and access to the groundhandling market, and delaying the date of transposition of the latest EU Directive, respectively.[41]

The Government's response

4.5 The Committee wrote to the Minister responsible for the proposals on 3 June 2020 requesting further information on a number of substantive and more technical points. The Minister, Rachel Maclean MP, has since responded—dated 16 June 2020—and has furnished the Committee with a comprehensive reply.[42]

4.6 Owing to the number and nature of the proposals and the detailed questions asked, we have presented our enquiries and the Government's responses in the tables below.

Table 1: 7576/20, 7644/20 and 7645/20: Committee's questions and Government's responses

Document (a): Aviation (41226) (7576/20)	
Committee's question	Government's response
Queried the suggested naming of the Regulation and whether this would hinder visibility—and understanding—amongst affected stakeholders	It would have been preferable for all acts amended by the Regulation to have been listed in its title, however, it is believed that stakeholders will be aware after Government engagement on the proposal

41 On aviation, the Committee's previous Report chapter on the proposals explained the full details which included relaxing rules on the suspension of air carrier licences due to issues centred around financial standing, prolonging the period during which suppliers of groundhandling services may operate at EU airports, and introducing an 'urgent procedure' for the selection of groundhandling service providers during a limited period of time covering the pandemic.

42 Letter from Rachel Maclean MP to Sir William Cash MP, 16 June 2020.

Document (b): Maritime (41225) (7644/20)	
Committee's question	Government's response
Requested further information on the UK ports that are required to levy port infrastructure charges—as per current rules in this area—and, furthermore, the steps that the Government will take to ensure that port operators are aware of the changes the Regulation makes allowing infrastructure charges to be waived, reduced, suspended or deferred	A list of ports that are covered by the terms of the Port Services Regulation is provided in an Annex to the Minister's letter (these are Aberdeen, Belfast, Bristol Port Co., Loch Ryan Ports (Cairnryan, Loch Ryan), Cardiff, Newport, Cromarty Firth, Dover, Edinburgh (Forth, Grangemouth, Rosyth and Leith), Felixstowe, Harwich, Fishguard, Glasgow (Clydeport, King George V dock, Hunterston and Greenock), Glensanda, Goole. Grimsby, Immingham, Heysham, Holyhead, Hull, Ipswich, Larne, Liverpool, London (Port of London Authority, London Gateway, Tilbury), Londonderry, Manchester, Medway - Thamesport, Medway - Sheerness, Milford Haven, Orkney, Plymouth, Poole, Port Salford, Portsmouth, Port Talbot, Ramsgate, River Hull and Humber, Scrabster, Sullom Voe, Southampton, Stornoway, Teesport, Tyne, Ullapool and Warrenpoint) Ports have been notified through their trade associations of the discretion that they can now exercise with regards to levying infrastructure charges. The Government states that, as a highly competitive sector, it is for individual ports to decide whether or not to take up this option

Document (c): Rail (41224) (7645/20)	
Committee's question	Government's response
Requested further information on plans for the transposition of the incoming railway 'Technical Pillar',[43] in particular, whether the Government will give effect to its core terms irrespective of the status of EU exit. If it is not planning to, we sought information on the domestic measures, if any, that will be required to ensure legal certainty and predictability	Informed that the later transposition deadline for the Technical Pillar was put back during negotiations from 31 December 2020 to 31 October 2020. This change was accepted and, as adopted, the amending Directive will allow Member States to extend transposition from 16 June to 31 October. The Government notified the Commission on 28 May that the UK will further extend the transposition deadline until 31 October 2020

43 The Technical Pillar is comprised of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (Text with EEA relevance); Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (Text with EEA relevance); and Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (Text with EEA relevance).

Table 2: 7652/20: Committee's questions and Government's responses

Document (d): Road (41223) (7652/20)	
Committee's question	Government's response
For the Commission's proposals for extending the validity of expiring certification, licencing and authorisation documentation, asked of the steps that the Government will take to ensure that stakeholders are aware of any changes that are made to the current framework Sought further clarity on the Government's views on planned changes to Vehicle Operator Licencing rules and rules on the International Carriage of Goods and Passengers	Informed that the proposal was amended during negotiations to allow Member States to opt-out of some measures relating to road transport (Member States must, however, recognise the effects of extensions etc. for operators whose documentation has not been issued in their territory i.e. by another Member State's competent authority) Measures may be opted-out of from 28 May 2020 and the remainder of the Regulation will apply until 4 June 2020 For 'photocard' driving licences, the Driver and Vehicle Licencing Agency (the 'DVLA') has published information on its website and written to the National Police Chiefs Council to ensure that affected parties are aware that licences due to expire between 1 February and 31 August 2020 are, as per the terms of the Regulation, valid for a further seven months[44] In line with the above, Member States are permitted to opt-out of some measures and the Government informs us that the UK opted-out of those covering roadworthiness. This is justified as existing national measures, that were explained in the Committee's first Report chapter on this issue, were already in place and considered to be sufficient Explained that the Government supports the extra time allowed for operators to prove financial standing but that the second plank of the proposal—for Community licences to be extended by 6 months—will not be taken-up by the UK. Suggested that this provision is not needed for operators in the UK and uptake would complicate other renewal processes On international carriage, the extension of validity of diver attestations and permissions for regular services was not seen as necessary as the pandemic is said not to have caused major problems in the UK in this regard, however, the Government states that opt-out was not possible but that it cannot discount the possibility of making use of extensions in the future

Action

- Drawn to the attention of the Transport Committee.

44 In Great Britain, the seven-month extension does not apply where a driver needs to renew their 'entitlement' to drive when they reach 70 years of age for a car or 45 years of age for a HGV/PSV (Heavy Goods Vehicle/Public Service Vehicle).

5 COVID-19: Rail infrastructure access charging[45]

This EU document is legally and politically important because:

- it concerns the EU's response to the COVID-19 pandemic; and
- provides the UK with the ability—if taken-up—to reduce the amount operators are charged to access rail infrastructure.

Action

- Draw to the attention of the Transport Committee.

Overview

5.1 The EU rail market—and its operation—has undergone significant change over the last two decades with successive Commission's pressing ahead with the goal of creating a single, efficient and comprehensive market.

5.2 Between 2001 and 2016, four legislative packages were adopted with the aim of gradually opening up Member State rail markets.[46] These packages include rules on: competition and state aid, engendering conditions conducive to the development of a 'single European railway area', and rail interoperability and tackling barriers to entry.

5.3 At a more technical level (and directly relevant to the document under scrutiny), the first EU railway 'packages' outlined track charging and capacity allocation rules. The main instrument in this regard is Directive 2012/34/EU which is commonly known as the 'Single European Railway Directive'.[47]

5.4 The Single European Railway Directive stipulates that organisations running railway infrastructure—such as tracks and signalling—must be separate from those operating services—e.g. trains—and all must be undertaken on a competitive basis.[48] Furthermore, under the Directive, it is a legal requirement for independent companies to be able to bid for track access in a Member State other that in which they are based. The Directive establishes a framework for the creation of domestic bodies charged with the control and regulation of allocations (including setting track access prices).

5.5 The onset of the COVID-19 pandemic has caused significant challenges for the industry with passenger numbers and demand for freight services being hit hard. According to the Commission, passenger demand is not expected to recover this year and is expected to be considerably below 2019 levels. Freight, although a key modality for the transport of COVID-related equipment, is also not expected to recover quickly.

45 Proposal for a Regulation of the European Parliament and of the Council establishing measures for a sustainable rail market in view of the COVID-19 pandemic; Council and COM number: 8976/20 and COM(20) 260; Legal base: Article 91 TFEU; Ordinary legislative procedure: QMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41351.

46 On the four railway packages see European Commission, 'Railway Packages' (accessed 7 July 2020).

47 Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area Text with EEA relevance.

48 In the UK, Network Rail is the designated infrastructure manager of the main rail network.

The Commission's proposal

5.6 The draft Regulation under scrutiny has been proposed against this backdrop and would allow Member States to waive, reduce or defer track access charges for the use of rail infrastructure as per Directive 2012/34/EU. Provision is also suggested to allow waivers to be conferred where charges may be due consequent on cancelled services (or track slots not being taken-up by operators).

5.7 These changes are deemed necessary for action to be taken by responsible bodies as provision is not made in the Single European Railway Directive for flexibility in charging due to an event like the Coronavirus pandemic.

5.8 The Commission argues that to remain competitive the rail market requires relief measures to ensure that operators continue to compete on a level playing field. Without EU-level action, older undertakings would arguably be better placed to weather the serious economic impact of the pandemic versus newcomers that may not have the same financial resources available.

5.9 The Commission proposes to amend the Directive in the following main ways:

- allow track access charges to be set below direct incurred costs;
- allow for the levying of mark-ups—that can be set in relation to the ability to pay of the respective rail segments—during the current reference period;
- lift the obligation on Member States to impose charges on railway undertakings that regularly cancel train 'paths' (or infrastructure points);
- shorten refund periods for infrastructure managers; and
- place an obligation on Member States to share information with the Commission on the usage of their rail network during—and before—the crisis.

The Government's position and general comment

5.10 The Minister with responsibility for the proposal, Rachel Maclean MP, wrote to the Committee by way of Explanatory Memorandum (EM) on 2 July 2020.

5.11 The Minister provides a detailed explanation of the proposal and notes that the Government welcomes the Commission's plans "which provide further flexibility to address the difficulties being faced by the EU… and UK".

5.12 The Minister does not, however, state whether the derogations available under the draft Regulation will be taken-up by the UK. Of the main changes suggested, allowing track access charges to be set below direct costs would arguably be of greatest benefit to operators providing services who are struggling during the current crisis.

5.13 Indeed, industry has welcomed access payments being moved from 28 to 56 days (which the Minister mentions in her EM), however, there have been calls for the Government to do more to help and ensure that essential services continue to operate.[49]

49 See Global Railway Review, 'Leading businesses praise role of UK's rail freight during COVID-19 crisis' (6 May 2020); and RBD, 'Exclusive: Network Rail and its measures to keep the supply chain moving during the COVID-19 crisis' (31 March 2020).

In this regard, reducing access charges would appear to be a sensible option. Furthermore, of the other amendments suggested, allowing for the downwards revision of mark-ups during the current year would provide welcome financial relief.

5.14 If adopted, it would be for Member States—including the UK until the end of the transition period as per the UK/EU Withdrawal Agreement—to utilise the derogations under the Regulation that would allow the authorisation of infrastructure managers to reduce and amend access charges and mark-ups.

5.15 In her EM, the Minister is unclear on whether these derogations will be taken-up, noting only that such changes to the current system (i.e. those that reduce charges), would result in a financial shortfall for the UK's infrastructure manager (Network Rail) that the Government would have to cover. Any such decision would be set against the "considerable financial support already provided to the railway…".

Action

5.16 Drawn to the attention of the Transport Committee.

6 Passenger Name Record (PNR) data: updating international standards and negotiating an EU/Japan PNR Agreement[50]

These EU documents are legally and politically important because:

- they are relevant to the Government's goal of agreeing a framework for the transfer of Passenger Name Record (PNR) data with the EU and other third countries after transition.

Action

- Write to the Minister for Security (Rt Hon. James Brokenshire MP) noting the differences in the EU and UK positions on future (post-transition) exchanges of PNR data and requesting updates on the progress of negotiations with the EU, as well as information on the launch and progress of PNR negotiations with other (non-EU) third countries.
- Draw to the attention of the Home Affairs Committee and the Committee on the Future Relationship with the EU.

Overview

6.1 Access to passenger name record ("PNR") data—the passenger information held in air carriers' flight reservation and departure control systems—is an important law enforcement tool to support the investigation of terrorism and other serious cross-border crimes. At our meeting on 23 April 2020, we considered two documents, the first a Council Decision establishing the EU position on changes to international (ICAO—International Civil Aviation Organisation) standards on Passenger Name Record (PNR) data, the second a Council Decision authorising the European Commission to negotiate a PNR Agreement with Japan. The EU and the ICAO both play an important role in determining the framework within which national border control and law enforcement authorities can access PNR data.

6.2 The Council Decisions were proposed before the UK left the EU on 31 January 2020 and, in both cases, the Government decided *not* to opt-in. Despite this, we noted that the Decisions were relevant to the goal (set out in the Government's Command Paper on *The UK's Future Relationship with the European Union)*[51] of agreeing a framework for

50 Proposal for a Council Decision on the EU's position within the Council of the International Civil Aviation Organisation with regard to standards and recommended practices on passenger name record data; Council document 12197/19 + ADD 1, COM(19) 416; Legal base — Articles 16(2), 87(2)(a) and 218(9) TFEU, QMV; Dept — Home Office; Devolved Administrations consulted; ESC number 40822.
Council Decision authorising the opening of negotiations with Japan for an agreement between the EU and Japan on the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and serious transnational crime; Council document 5378/20, —; Legal base — Articles 16(2), 87(2)(a) and 218(3) and (4) TFEU, QMV; Dept — Home Office; Devolved Administrations —; ESC number —.

51 See the Government's Command Paper (CP211), The Future Relationship with the European Union: The UK's Approach to Negotiations, published in February 2020.

"reciprocal transfers of PNR data to protect the public from serious crime and terrorism", to take effect after the end of the post-exit transition period, and wrote to the Minister for Security (Rt Hon. James Brokenshire MP) on 23 April 2020 requesting additional information. Our Fourth Report of Session 2019–21 provides a more detailed overview of the Council Decisions and the Government's position.[52]

6.3 Since we wrote to the Minister, the Government has published (on 19 May 2020) its draft text for an agreement with the EU on law enforcement and judicial cooperation in criminal matters. Part Three of the draft agreement sets out the conditions for the transfer and processing of PNR data between the EU and the UK. There are some material differences compared with the provisions on PNR in Part Three of the EU's draft agreement on a new partnership with the UK (published on 12 March 2020). First, the EU makes all elements of law enforcement cooperation (including PNR transfers) conditional on the UK securing an "adequacy decision" certifying that its level of personal data protection is essentially equivalent to that required in the EU. Second, the EU imposes strict conditions on the retention of passengers' PNR data after they have left the UK and on the onward transfer of PNR data to third countries. Third, the EU only proposes sharing the PNR data of air passengers, in line with existing EU PNR-sharing agreements with Australia and the United States and the EU's own PNR Directive.[53] The UK's draft agreement would include the PNR data of passengers travelling by train and ship as well as by air.

The Council Decision establishing the EU position within the ICAO Council

6.4 Our main concern with this Decision was to clarify whether the rules governing the exchange of PNR data were an area of exclusive EU competence, as the European Commission asserted, meaning that the EU alone would be responsible for determining the position to be taken by EU Member States within the ICAO, and whether the UK had the right *not* to opt into (and not to be bound by) the Decision during the post-exit transition period. The Minister for Security (Rt Hon. James Brokenshire MP) had told us in his letter of 25 March 2020 that the Government's decision *not* to opt in meant the UK would "retain control over our national interests in the development of our independent policy on international transfers of PNR data". We asked:

- whether the Government accepted that the Council Decision fell within the ambit of Article 127 of the EU/UK Withdrawal Agreement[54] and so was binding on the UK until the end of the post-exit transition period; and
- what, if any, constraints there would be on the position taken by the UK "as a contracting party in its own right" within the ICAO during transition.

6.5 In his letter of 23 June 2020, the Minister reiterates the Government's view that the Council Decision is not binding on the UK because the UK chose not to opt in and that it therefore does not fall within the ambit of Article 127 of the Withdrawal Agreement (EU law applicable to the UK during transition). Nonetheless, Article 129(3) of the Withdrawal Agreement states that "the UK shall refrain, during the transition period, from any action or initiative which is likely to be prejudicial to the Union's interests, in particular

52 Fourth Report HC 229–ii (2019–21), chapter 13 (23 April 2020).

53 Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

54 Article 127 of the Withdrawal Agreement states that "Union law shall be applicable to and in the United Kingdom during the transition period" unless the Agreement provides otherwise.

in the framework of any international organisation, agency, conference or forum of which the United Kingdom is a party in its own right", in accordance with the principle of "sincere cooperation". The UK delegation involved in the ICAO negotiation on PNR standards and recommended practices ("SARPs") "acted fully in accordance" with this principle, "working constructively and collaboratively with delegates from the European Commission and from EU Member States". The Minister continues:

> That collaboration also extended to other international partners to secure effective and robust ICAO SARPs for the processing and protection of PNR data, reflecting principles in the EU PNR Directive and in UK law, that can provide a basis for international transfers of PNR data globally.

The Council Decision on the negotiation of a PNR Agreement with Japan

6.6 Given that the EU alone had negotiated, signed and concluded previous PNR Agreements with Australia and the US and considers this to be an area of exclusive EU competence, we asked the Minister why the EU took the view that the UK's justice and home affairs opt-in Protocol applied to the Council Decision on the negotiation of a PNR Agreement with Japan, but not to the Council Decision establishing the EU position in the ICAO. The Minister tells us that, from the Government's perspective, "there was no distinction between the two Decisions" and that the UK's opt-in Protocol applied to both. He does not comment on the EU's reasons for reaching a different conclusion.

Transfers of PNR data under a future relationship agreement with the EU

6.7 We noted that the Government wished to agree a framework for reciprocal transfers of PNR data with the EU after transition which, it said, should be "based on, and in some respects go beyond, precedents for PNR Agreements between the EU and third countries—most recently, the mandate for the EU-Japan Agreement".[55] We asked whether this meant that the scope of the agreement the UK was seeking would be broader than existing EU third country precedents, or more ambitious than the common rules set out in the 2016 EU PNR Directive, and might extend beyond areas of exclusive EU competence, necessitating Member State involvement in the negotiation and ratification of the agreement. We also asked:

- how this might affect the time needed for the agreement to become operational; and
- whether there would be any scope for the UK to negotiate bilateral agreements with individual Member States if the Government was unwilling to accept the EU's terms.

6.8 In his response, the Minister says the UK will be negotiating an agreement on PNR with the European Commission "because the EU asserts exclusive competence on the negotiation of PNR Agreements with third countries". He notes that Declaration 36 to the EU Treaties confirms that Member States may negotiate and conclude agreements with third countries in the field of police and judicial cooperation in criminal matters "in so far as such agreements comply with Union law". Whether any EU Member State would

55 See Part 2, para 40 of the Government's Command Paper (CP211), The Future Relationship with the European Union: The UK's Approach to Negotiations, published in February 2020.

consider a PNR agreement with a third country to be a matter of shared competence remains "untested" and, as negotiations with the EU are ongoing, the Minister considers that "it would be inappropriate to speculate".

6.9 We noted that any future PNR agreement between the UK and the EU would need to clear two hurdles. First, it would need to be underpinned by an "adequacy decision" and second, it would need to include all "the necessary safeguards and controls as provided by EU law",[56] the latest being the specific data protection requirements set out in Opinion 1/15 (issued by the EU Court of Justice in July 2017) concerning the proposed EU PNR agreement with Canada. We questioned how far the UK would be able to depart from existing EU precedents on PNR when negotiating with the EU without risking (and being able to withstand) a legal challenge before the Court of Justice. We also questioned how much scope there would be to diverge from EU precedents when negotiating with (non-EU) third countries without jeopardising the UK's ability to conclude its own PNR agreement with the EU and secure (and maintain) a data adequacy decision.

6.10 In his response, the Minister suggests that the UK is better placed than other third countries to secure an agreement because "the UK and the EU share a legislative approach to protection of personal data" and the agreement envisaged by the UK would commit both parties to safeguarding each other's personal data. He adds that "geographic proximity" justifies a broader agreement covering transfers of PNR data from international rail and maritime services operators as well as flight operators.

6.11 Finally, we asked whether the Government intended to continue to apply the EU's PNR agreements with Australia and the US (and any others concluded in the coming months) after transition or to negotiate new terms. If new agreements, we also asked how they were likely to differ from those concluded by the EU and the timescale envisaged both for concluding negotiations and the agreements taking effect. The Minister says that he is "committed to maintaining the effects of the EU's PNR Agreements with Australia and the United States post-transition", but based on ICAO standards and recommended practices, adding:

> We will not be seeking to diverge from these new global standards being set by ICAO.

Action

6.12 Write to the Minister for Security (Rt Hon. James Brokenshire MP) noting the differences in the EU and UK positions on future (post-transition) exchanges of PNR data and requesting updates on the progress of negotiations with the EU, as well as information on the launch and progress of PNR negotiations with other (non-EU) third countries.

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

Thank you for your letter of 23 June 2020 responding to questions raised by the European Scrutiny Committee in my letter of 23 April on two EU documents, the first a Council Decision establishing the EU position on changes to international (ICAO—International Civil Aviation Organisation) standards on Passenger Name Record (PNR) data, the second

56 See the press release issued by the Council on 18 February 2020.

a Council Decision authorising the European Commission to negotiate a PNR Agreement with Japan. Both Council Decisions concern opt-in decisions which were taken before the UK left the EU on 31 January 2020. In both cases, the Government decided not to opt in.

We note with interest that the application of the principle of sincere cooperation set out in Article 129(3) of the EU/UK Withdrawal Agreement appears to mean that the Government's decision *not* to opt into the first Council Decision had little practical effect. Although you indicated in your letter of 25 March 2020 that some elements of the EU's position (reflecting EU case law) went beyond what the UK considered necessary in a global context, citing in particular a requirement to delete PNR data "in accordance with the legal requirements of the source country", it seems in this case that you were in no position to articulate these concerns fully in the ICAO, even though the UK was not technically bound by the Council Decision establishing the EU position.

We note the Government's ambition to agree a framework for reciprocal transfers of PNR data with the EU after transition which should be "based on, and in some respects go beyond, precedents for PNR Agreements between the EU and third countries—most recently, the mandate for the EU-Japan Agreement".[57] There are some material differences between the UK's draft text for an agreement with the EU on law enforcement and judicial cooperation in criminal matters (published in May 2020) and the provisions on PNR in Part Three of the EU's draft agreement on a new partnership with the UK (published in March 2020). First, the EU makes all elements of law enforcement cooperation (including PNR transfers) conditional on the UK securing an "adequacy decision" certifying that its level of personal data protection is essentially equivalent to that required in the EU. Second, the EU imposes strict conditions on the retention of passengers' PNR data after they have left the UK and on the onward transfer of PNR data to third countries. Third, the EU only proposes sharing the PNR data of air passengers, in line with existing EU PNR-sharing agreements with Australia and the United States and the EU's own PNR Directive,[58] while the UK seeks to go further by including the PNR data of passengers travelling by train and ship as well as by air.

Given the robust position taken by the EU Court of Justice ("CJEU") on data protection, and the specific data protection requirements set out in Opinion 1/15 in relation to the proposed EU PNR agreement with Canada, it is difficult to see much scope for flexibility in the EU's negotiating position without running the risk of a legal challenge. It is also difficult to see much scope for the UK to diverge substantially from EU precedents when negotiating its own PNR agreements with other (non-EU) third countries without putting at risk the prospect of a full adequacy decision.

While we have no further questions to raise on these Council Decisions, we ask you to provide further updates as negotiations with the EU progress on the terms of any deal on the future sharing of PNR data and to provide similar updates on the launch and progress of PNR negotiations with other third countries. We would welcome a first update in September.

57 See Part 2, para 40 of the Government's Command Paper (CP211), The Future Relationship with the European Union: The UK's Approach to Negotiations, published in February 2020.

58 Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

7 UK participation in the Schengen Information System[59]

These EU documents are legally and politically important because:

- they concern preparations for a phased "upgrade" of the Schengen Information System (SIS II) to be completed by the end of 2021 and highlight "serious deficiencies" in the UK's application of current SIS II rules which may jeopardise UK participation in SIS II, or in similar real-time data sharing systems, after transition.

Action

- Write to the Minister for Security (Rt Hon. James Brokenshire MP) requesting further information on (i) how the UK is addressing the "serious deficiencies" identified, and (ii) the Government's position on existing precedents on third country access to SIS II.
- Draw to the attention of the Home Affairs Committee, the Justice Committee and the Committee on the Future Relationship with the European Union.

Overview

7.1 The Schengen Information System ("SIS") is the most widely used and largest information sharing system for security and border management in Europe. The UK cannot use SIS for the purpose of border and immigration controls as it does not participate in the Schengen free movement area in which internal border controls have been lifted between Schengen countries. The UK has, however, been able to use SIS II (the 'second generation' Schengen Information System) for policing and criminal law purposes since April 2015, giving police real-time access to data (in the form of 'alerts') which can be vital in tackling crimes which have a cross-border dimension and in identifying and apprehending criminals seeking to evade justice in the border-free Schengen area.

7.2 At our meeting on 18 June 2020, we considered two documents relating to the Schengen Information System. The first, a Council Implementing Decision ("the Council Decision") adopted on 5 March 2020, makes a series of recommendations to rectify deficiencies in the UK's implementation of SIS II—25 of the 34 recommendations concern (in the Council's view) "very serious deficiencies" requiring immediate action. It says the UK should stop making illegal copies of SIS data, ensure that copies of SIS data are up to date by carrying out full data consistency checks, improve the functionality of the Police National Computer, and take appropriate action on the alerts issued by Schengen countries. The second document, a Commission report published in February 2020,

59 (a) Council Implementing Decision setting out a recommendation on addressing the serious deficiencies in the 2017 evaluation of the United Kingdom on the application of the Schengen acquis in the field of the Schengen Information System; Council document 6554/20; Legal base Articles 1(1)(a) and 15(3) of Council Regulation (EU) 1053/2013; Department — Home Office; Devolved Administrations — Consulted; ESC number 41120.
(b) European Commission report on the state of play of preparations for the full implementation of the new legal bases for the Schengen Information System (SIS) in accordance with Article 66(4) of Regulation (EU) 2018/1861 and Article 79(4) of Regulation (EU) 2018/1862; Council document 6463/20, COM(20) 72; Legal base —; Department — Home Office; Devolved Administrations — Consulted; ESC number 41107.

examines the progress made by Member States in preparing for the phased upgrade of SIS II. The upgrade stems from wider changes made in three Regulations (adopted in 2018) concerning different aspects of SIS II. The upgrade is expected to be completed and operational by the end of 2021. Our Thirteenth Report of Session 2019–21 provides further information on both documents.[60]

7.3 The documents provide important context for the UK's continued participation in SIS II during the post-exit transition period, ending on 31 December 2020, and for any arrangements that take its place after transition. The Government is seeking "a mechanism for the UK and EU Member States to share and act on real-time data on persons and objects of interest including wanted persons and missing persons" after transition which would provide capabilities "similar to those delivered by SIS II", but with no jurisdiction for the EU Court of Justice.[61] The UK's draft agreement on law enforcement and judicial cooperation in criminal matters (published in May 2020) includes a place holder (in Part Ten of the agreement) for the insertion of "legal provisions on SIS II capability", with additional text (in square brackets) setting out the Government's view that it is legally possible for the EU to establish capabilities similar to those provided by SIS II with the UK.

7.4 By contrast, the EU has made clear that "a third country cannot enjoy the same rights and benefits as a Member State" and that alternative means of sharing criminal information and intelligence must therefore be found.[62] The EU's draft legal text for a new partnership agreement with the UK includes provisions on the exchange of information to support criminal investigations but rules out sharing data with the UK that has been "processed in databases established on the basis of Union law.[63] This would preclude direct or indirect access by UK law enforcement authorities to SIS II data. It is consistent with Article 65 of the SIS II Law Enforcement Regulation, adopted in 2018, which provides that data processed in SIS *and* related supplementary information exchanged between national law enforcement authorities "shall not be transferred or made available to third countries".[64]

7.5 Despite the importance of the Schengen Information System for law enforcement in the UK, and the diminishing time available to establish equivalent capabilities by the end of 2020, the Government failed to submit an Explanatory Memorandum (due in March 2020) on time. We therefore decided to report the documents to the House in June, without the benefit of an Explanatory Memorandum setting out the Government's position. In our letter of 18 June 2020, we asked the Minister for Security (Rt Hon. James Brokenshire MP) to:

- expand on the Government's reasons for believing that it would be legally possible for the EU to agree "legal provisions on SIS II capability" as part of a future relationship agreement with the UK, drawing on any relevant third country precedents; and

60 Thirteenth Report HC 229–ix (2019–21), chapter 10 (18 June 2020).

61 See Part Two, paras 43–45 of the Government's Command Paper on The Future Relationship with the European Union (CP 211) published in February 2020.

62 See paras 117b and 121 of the Annex to Council Decision 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.

63 See Part Three of the draft legal text, chapter four concerning cooperation on operational information.

64 Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters.

- clarify whether the Government's objective was continued UK participation in and direct access to SIS II as a third country after transition, or rather a legally binding commitment by the EU to develop capabilities short of participation that replicated those of SIS II? If the latter, what type of model the Government had in mind.

7.6 Even if any legal obstacles to maintaining capabilities similar to those provided by SIS II could be overcome, we expressed concern that serious deficiencies in the UK's implementation of the current rules governing the use of SIS II might create political obstacles which would be far harder to surmount. We asked the Minister:

- whether the Government accepted the Council's judgment that there were serious deficiencies in the UK's implementation of SIS II;
- whether the UK had drawn up an action plan to remedy the deficiencies identified by the Council and, if so, what assessment the Commission had made of its adequacy;
- whether (and how frequently) the Government was reporting to the Commission on its progress in implementing the action plan; and
- what efforts the Government had made to inform Parliament of the concerns raised about UK implementation of SIS II, the steps being taken to address them, and any practical or operational implications for UK law enforcement authorities.

7.7 As regards the Commission report on preparations for the SIS II upgrade, we asked the Minister:

- whether the UK was developing its national systems to prepare for full implementation of the SIS II upgrade by the end of 2021 (as foreseen in para 2.1 of the report);
- whether the UK was part of the network of experts (set up in January 2019) to coordinate the preparatory work (para 2.2.1 of the report);
- how much the UK had been allocated from the EU budget to fund a "quick and effective upgrade" of its national systems and how this funding was being used (para 2.4.2 of the report);
- whether the UK had submitted a "state of play" report on its preparations for deploying SIS II's automated fingerprint identification system (AFIS) and was deploying the fingerprint search functionality (para 2.4.3 of the report); and
- whether the UK had responded to the Commission questionnaire on preparations for implementing the SIS II upgrade (para 2.4.4 of the report).

7.8 Finally, we sought an assurance that the Minister and his Department were committed to fulfilling their scrutiny obligations to Parliament during the transition period.

The Minister's response

7.9 In his letter of 26 June 2020, the Minister apologises for the delay in submitting an Explanatory Memorandum (also dated 26 June 2020), makes clear he takes Parliamentary scrutiny "very seriously", and says he is "committed to ensuring that Committee deadlines are adhered to".

7.10 The Minister reiterates the Government's position that "there is a mutual interest in providing capabilities similar to SIS II and that this is legally possible". While Article 65 of the SIS II Law Enforcement Regulation, adopted in 2018, limits the sharing of SIS II data with third countries, he says "it does not explicitly preclude third country access to SIS II itself", adding:

> [...] the EU already has agreements with other third countries in respect of SIS II and other mechanisms e.g. Prüm. In addition, none of these agreements involve CJEU [Court of Justice] jurisdiction in those third countries, or a role for the CJEU in dispute resolution.

7.11 The Minister notes that the alternative model envisaged by the EU for exchanging information is based on the "Swedish initiative framework"[65]—also a Schengen measure—and has a number of limitations compared with SIS II. It only provides for the exchange of policing information and intelligence data insofar as it relates to "identified concrete criminal acts", not the real-time exchange of 'alerts' on persons and objects that are wanted, missing or otherwise of interest for law enforcement purposes. The Minister questions why the legal barriers alluded to by the EU should apply to SIS II but not to this alternative information exchange mechanism.

7.12 Turning to the Council Implementing Decision setting out the remedial action to be taken by the UK to rectify serious deficiencies in its implementation of SIS II, the Minister says that the UK "continues to engage constructively and pragmatically with the EU on the terms of the SIS II evaluation" underpinning the Council Decision (carried out in 2017) and accepts that "many of the recommendations are not without merit". The UK submitted an action plan to the Commission and Council on 24 April 2020 addressing many of the Council's recommendations, as part of the normal process of Schengen evaluation applicable to all countries participating in Schengen, and the Government will continue to engage with the EU on the SIS II evaluation process for as long as the UK remains an operational user. He indicates that the EU is mainly concerned with the UK's technical implementation of SIS II, such as shortcomings in the effective technical synchronisation of the UK system with the central SIS II network in Strasbourg, and that "significant progress" has been made. He considers that the UK is "well placed" to deliver on many of the Council's recommendations "should there be negotiated access to SIS II beyond the transition period", but adds:

> However, given the uncertainty regarding future access to the system, our approach to implementation is cautious and necessarily pragmatic.

7.13 Accordingly, the Government has given priority to addressing the concerns identified in the evaluation of the UK's implementation of the current SIS II rules, reflecting the UK's legal obligations under the Withdrawal Agreement, rather than preparing for the

65 See Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

implementation of the SIS II upgrade. The UK is not participating in the network of experts tasked with coordinating preparatory work for the SIS II upgrade but is being informally kept abreast of technical developments. The UK has responded to Commission questionnaires and provided implementation reports "in line with normal procedure" but has not received EU funds to upgrade its national system "at this juncture". The Minister says that "steps will be taken to accelerate implementation" of the SIS II upgrade if there is a positive outcome to the negotiations on SIS II capabilities after transition.

Action

7.14 Write to the Minister for Security (Rt Hon. James Brokenshire MP) requesting further information on (i) how the UK is addressing the "serious deficiencies" identified in the Council Implementing Decision, and (ii) the Government's position on existing precedents on third country access to SIS II.

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

Thank you for your letter of 26 June 2020 and Explanatory Memorandum of the same date on two EU documents: the first, a Council Implementing Decision setting out a series of recommendations to address "very serious deficiencies" in the UK's implementation of the Schengen Information System ("SIS II"); the second, a Commission report examining the progress made by countries currently connected to SIS II (including the UK during the transition period) in preparing for its phased upgrade by the end of 2021.

Turning first to the Council Implementing Decision, you accept that "many of the recommendations are not without merit" and indicate that "significant progress has been made in addressing the (largely technical) concerns raised". You add that "we are well placed to deliver against many of the recommendations should there be negotiated access to SIS II beyond the transition period".

As we noted in our Thirteenth Report of Session 2019–21, a Resolution adopted by the European Parliament in February 2020 not only ruled out UK access to SIS II as a third country after transition, but also stated that arrangements for future cooperation between the EU and the UK in the area of law enforcement should only be discussed once the UK had implemented all the recommendations made in the Council Decision.[66] **It would therefore be helpful to know how many of the Council's recommendations you intend to implement, the timescale for doing so, and which (if any) you consider to be without merit. We also reiterate the request made in our letter of 18 June 2020 for details of the European Commission's assessment of the adequacy of the action plan drawn up by the UK in response to the Council Implementing Decision.**

We appreciate that the Government's approach to the upgrade of SIS II (to take effect in 2021) is "cautious and necessarily pragmatic", given the degree of uncertainty about the prospects for continued UK access to SIS II after transition. **We nonetheless ask you to confirm whether the UK has already deployed the Automated Fingerprint Identification System (AFIS) for fingerprint searches in SIS II or intends to do so before the end of 2020.**

66 See para 94 of the EP Resolution on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, P9_TA(2020)0033.

We note your view that it is legally possible for the EU and the UK to agree capabilities similar to SIS II as part of a new relationship after transition. As you are aware, however, existing precedents for third country access to SIS II extend only to third countries (Iceland, Norway, Switzerland and Liechtenstein) which are part of the Schengen free movement area (having lifted their internal border controls with EU/Schengen countries). These non-EU Schengen countries are required, under their agreements with the EU, to apply the full Schengen rule book as it applies to EU Member States, as well as changes made to the rule book over time.[67]

While, as you note, the EU's Court of Justice ("CJEU") has no direct jurisdiction under these agreements, it does have a role to play under the mechanism established to ensure "the most uniform possible application and interpretation" of the Schengen rule book. Each non-EU Schengen country is required to report each year to a "Mixed Committee"[68] on the way in which its administrative authorities and national courts have interpreted and applied the Schengen rule book, "as interpreted, where relevant, by the CJEU". There is a requirement to "keep under constant review" relevant case law (cases decided in the CJEU and in domestic courts in Iceland, Norway, Switzerland and Liechtenstein) and to ensure the "regular mutual transmission" of this case law. Recognising that the way in which the CJEU interprets the Schengen rule book will be of direct interest to non-EU Schengen countries, their agreements with the EU include a right to submit their own statements or observations if a court in an EU Member State requests a ruling from the CJEU. Any "substantial divergence" in the way that the Schengen rule book is interpreted and applied would trigger a dispute and, potentially, the termination of the agreement if the Mixed Committee cannot settle the dispute within a specified time limit.

As you mention these precedents to support your view that an agreement with the EU on SIS II capabilities is legally possible, we would welcome your view on the provisions discussed above which seek to ensure "as uniform an application and interpretation as possible" of the Schengen rule book. Would provisions of this nature be compatible with the Government's position, set out in its Command Paper, *The Future Relationship with the European Union*, that "we 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"?[69] Would access to SIS II on the terms set out in the EU's agreements with the non-EU Schengen-associated countries be acceptable to the Government?

Finally, I very much welcome your commitment to ensuring effective scrutiny during the post-exit transition period and the direction you have given to officials to investigate and resolve any shortcomings in your Department's performance. I trust this will yield rapid results.

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

67 See the EU's Schengen Association Agreement with Iceland and Norway, its Schengen Association Agreement with Switzerland and its Protocol with Liechtenstein.

68 The Mixed Committee consists of representatives of the relevant Schengen third country Government and members of the Council and Commission.

69 See p.3 of Command Paper 211.

8 Protecting victims of crime after Brexit[70]

These EU documents are politically important because:

- they concern the implementation of two EU Directives on the protection of individuals who are (or are at risk of becoming) victims of crime which will cease to apply after transition; and
- the substantive provisions and protections afforded by one of the Directives (on victims' rights) will form part of retained EU law and continue to be available after transition, whereas those provided for in the other Directive (on the European Protection Order) will not.

Action

- Write to the Minister noting the potential gap in the protection available to individuals at risk of harm if they move from the UK to the EU after transition.
- Draw to the attention of the Justice Committee, the Home Affairs Committee, the Women and Equalities Committee and the Joint Committee on Human Rights.

Overview

8.1 These European Commission reports concern the implementation by EU Member States of two EU criminal law measures, the first a 2012 Directive ("the Victims' Rights Directive") establishing minimum standards on the rights, support and protection available to victims of crime, the second a 2011 Directive ("the European Protection Order Directive") providing a mechanism for transferring certain forms of protection granted by a domestic court in criminal cases to another jurisdiction within the EU. The UK opted into both EU Directives and they will continue to apply in the UK until the post-exit transition period provided for in the EU/UK Withdrawal Agreement ends on 31 December 2020.[71] Our Eleventh Report of Session 2019–21 provides further information on the main findings of the Commission reports.[72]

8.2 The Victims' Rights Directive applies to all criminal proceedings within the EU, regardless of the victim's residence status, citizenship or nationality. It sets minimum rules which are intended to ensure that victims of crime receive appropriate information, support and protection and that they can participate in criminal proceedings. Although the Directive will cease to apply in the UK after transition, the Parliamentary Under-Secretary at the Ministry of Justice (Mr Alex Chalk MP) confirmed in his Explanatory

70 (a) Commission report on the implementation of Directive 2011/99/EU on the European protection order; Council number —; COM (2020) 187; Legal base —; Ministry of Justice; Devolved Administrations consulted; ESC number 41249.
(b) Commission report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Framework Decision 2001/220/JHA; Council number —; COM (2020) 188; Legal base —; Ministry of Justice; Devolved Administrations consulted; ESC number 41248.

71 See Article 127 of the EU/UK Withdrawal Agreement.

72 See our Eleventh Report HC 229–viii (2019–21), chapter 7 (11 June 2020).

Memorandum that the common minimum standards enshrined in it would "remain in domestic law" as they form part of the retained EU law which is preserved by the European Union (Withdrawal) Act 2018. They would also be available to UK citizens or residents involved in criminal proceedings elsewhere in the EU.

8.3 By contrast, the European Protection Order Directive is based on the principle of mutual recognition. Its purpose is to extend the territorial scope of the protection available under domestic law by allowing certain types of protective measures, such as a restraining order made by a court in the UK to safeguard a victim of domestic abuse, to be transferred to another Member State and enforced there. The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations")[73] revoke the domestic Regulations giving effect to the European Protection Order Directive in England and Wales and in Northern Ireland from the end of transition,[74] using the power conferred on Ministers by section 8 of the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law. This is because the reciprocity on which the operation of the European Protection Order depends will end after transition. According to the Government, it would not be feasible for the UK to seek to operate the European Protection Order unilaterally as this would require "ongoing communication and cooperation between the issuing and executing EU Member States" and a framework to enable this would require a further agreement between the EU and the UK.[75]

8.4 With this in mind, we wrote to the Minister on 11 June 2020 asking him to explain:

- whether (i) the Government would support a continuation of existing cooperation in this area through specific provisions in any EU/UK future relationship agreement(s) and (ii) had proposed provisions to this effect or was open to doing so; and
- absent any such provisions, what other mechanisms would be available after transition to safeguard those whose need for protection has been recognised by a domestic court in the UK when they travel to the EU.

The Minister's response

8.5 In his letter of 3 July 2020, the Minister describes how the European Protection Order Directive was given effect in England and Wales, Northern Ireland, and in Scotland. As he explained in his Explanatory Memorandum on the Commission report on EU Member States' implementation of the Directive, the EU/UK Withdrawal Agreement includes "winding down provisions" for any cases ongoing on 31 December 2020.[76] He confirms that the Government is preparing a Statutory Instrument (using powers conferred by the European Union (Withdrawal) Act 2018) to implement these provisions. He continues:

> Such legislation will be presented to Parliament in due course, but in summary, and subject to parliamentary time to adopt the legislation

73 Statutory Instrument 2019 No. 780.

74 Although the 2019 Regulations state that they come into force "on exit day" (31 January 2020), paragraph 1 of Schedule 5 of the European Union (Withdrawal Agreement) Act 2020 changes the date on which they take effect to the end of the transition period.

75 See paragraph 7.3 of the Government's Explanatory Memorandum accompanying the 2019 Regulations.

76 See Article 62(1)(k) in Part III of the EU/UK Withdrawal Agreement on separation provisions.

this year, we expect European Protection Orders that are received by 31 December 2020 to continue to operate under the Directive in the UK. We cannot of course legislate for the EU Member States.

8.6 The Minister notes that neither the EU's nor the UK's draft legal texts on future law enforcement and criminal justice cooperation make any reference to the European Protection Order. He acknowledges that there is "no comparable fallback option" after transition as the European Protection Order is "a unique European Union law-based mechanism". As a consequence, an individual seeking a protective order after transition will need to secure a domestic (civil) protection order from the EU Member State that they are visiting.

8.7 The Minister reiterates that the use of European Protection Orders has been "rather low across the EU", and that only three European Protection Orders were issued in England and Wales in the period covered by the Commission's report (2015 to 2018).

Action

8.8 Write to the Minister noting the potential gap in the protection available to individuals at risk of harm if they move from the UK to the EU after transition.

Letter from the Chair to the Parliamentary Under-Secretary of State (Mr Alex Chalk MP), Ministry of Justice

Thank you for your letter of 3 July 2020 responding to the questions raised in the European Scrutiny Committee's Eleventh Report of Session 2019–21 and my letter of 11 June 2020 concerning the implementation of two EU criminal law Directives, one on victims' rights,[77] the other on the European Protection Order.[78]

Although both Directives will cease to apply to the UK at the end of the post-exit transition period, on 31 December 2020, you have confirmed that the common minimum standards set out in the victims' rights Directive will "remain in domestic law" as they form part of the retained EU law which is preserved by the European Union (Withdrawal) Act 2018. UK citizens or residents involved in criminal proceedings elsewhere in the EU will also be able to depend on these common minimum standards.

This is not the case for the European Protection Order. From 1 January 2021, it will no longer be possible for orders made by UK courts to safeguard an individual against a criminal act that may endanger their life, physical, psychological or sexual integrity, dignity or personal liberty to be recognised and enforced in a foreign jurisdiction if that individual moves (even temporarily) to an EU Member State.

We welcome your intention to introduce a Statutory Instrument later this year to ensure that European Protection Orders received by 31 December 2020 continue to operate in the UK under the "winding up" provisions contained in the EU/UK Withdrawal Agreement. It is nonetheless disappointing that neither the EU nor the UK has expressed interest in continuing cooperation in this area after transition, as part of their future relationship. Although the take-up of European Protection Orders in the EU so far is low, and the

77 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Framework Decision 2001/220/JHA.

78 Directive 2011/99/EU on the European protection order.

impact of losing this form of protection for those at risk of harm may therefore be limited, we note that there is "no comparable fallback option". As a result, there will no longer be a relatively simple mechanism for ensuring, for example, that the domestic abuse protection orders envisaged in the Domestic Abuse Bill will be recognised and enforced within the EU.

We have no further questions to raise on these Commission reports and do not expect a response. We draw our observations to the attention of the Home Affairs Committee, the Justice Committee, the Women and Equalities Committee, and the Joint Committee on Human Rights.

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

Department for Business, Energy and Industrial Strategy

(41359) — COM(20) 255	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems as regards the adoption of Common Operational Procedures.
(41375) — COM(20) 271	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee, established by the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems, as regards amending Annexes I and II to the Linking Agreement and the adoption of Linking Technical Standards.

Department for Environment, Food and Rural Affairs

(41266) — COM(20) 208	Report from the Commission to the European Parliament and the Council Evaluation of Regulation (EC) No 1107/2009 on the placing of plant protection products on the market and of Regulation (EC) No 396/2005 on maximum residue levels of pesticides with SWD accompanying the report.
(41267) — COM(20) 204	Report from the Commission to the European Parliament and the Council on the experience gained by Member States on the implementation of national targets established in their National Action Plans and on progress in the implementation of Directive 2009/128/EC on the sustainable use of pesticides + Annex.
(41365) 9161/20 + ADDs 1–5 COM(20) 259	Report from the Commission to the European Parliament and the Council on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC).

Department for International Trade

(41346) 8877/20 COM(20) 236	Report from the Commission to the European Parliament and the Council on Trade and Investment Barriers 1 January 2019 — 31 December 2019.

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 White Paper on the "level playing field": addressing distortions caused by foreign subsidies [EU White Paper (SC)]; EU Research Programme: Horizon Europe [Proposed Regulation (SNC)]

Environment, Food and Rural Affairs Committee: EU Biodiversity Strategy [Commission Communication (SC)]

Committee on the Future of the European Union: Passenger Name Record (PNR) data: updating international standards and negotiating an EU/Japan PNR Agreement [Proposed Council Decision (SC)]; EU White Paper on the "level playing field": addressing distortions caused by foreign subsidies [EU White Paper (SC)]; UK participation in the Schengen Information System [(a) Council Implementing Decision; (b) Commission Report (SC)]; EU Research Programme: Horizon Europe [Proposed Regulation (SNC)]

Home Affairs Committee: Passenger Name Record (PNR) data: updating international standards and negotiating an EU/Japan PNR Agreement [Proposed Council Decision (SNC)]; UK participation in the Schengen Information System [(a) Council Implementing Decision; (b) Commission Report (SC)]; Protecting victims of crime after Brexit [Commission Reports (SC)]

Joint Committee on Human Rights: Protecting victims of crime after Brexit [Commission Reports (SC)]

International Trade Committee: EU White Paper on the "level playing field": addressing distortions caused by foreign subsidies [EU White Paper (SC)]

Justice Committee: UK participation in the Schengen Information System [(a) Council Implementing Decision; (b) Commission Report (SC)]; Protecting victims of crime after Brexit [Commission Reports (SC)]

Northern Ireland Affairs Committee: EU White Paper on the "level playing field": addressing distortions caused by foreign subsidies [EU White Paper (SC)]; EU Biodiversity Strategy [Commission Communication (SC)]

Science and Technology Committee: EU Research Programme: Horizon Europe [Proposed Regulation (SNC)]

Transport Committee: COVID-19: Rail infrastructure access charging [Proposed Regulation (SC)]; COVID-19: Transport (legislative amendments) (multiple modalities) [Proposed (a)(b)(d) Regulations; (c) Proposed Directive (SC)]

Treasury Committee: EU White Paper on the "level playing field": addressing distortions caused by foreign subsidies [EU White Paper (SC)]

Women and Equalities Committee: Protecting victims of crime after Brexit [Commission Reports (SC)]

Formal Minutes

Thursday 16 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*)