



House of Commons
European Scrutiny Committee

Twentieth Report of Session 2019–21

Documents considered by the Committee on 10 September 2020

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 EU Hydrogen Strategy¹

This EU document is politically important because:

- EU policy in this area is of strategic importance to the UK; and
- there are specific regulatory implications for Northern Ireland, with potential regulatory implications for the UK as a whole.

Action

- Write to the Minister.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee and the Northern Ireland Affairs Committee.

Overview

1.1 As part of its Green Deal policy, the Commission has put forward this Strategy to boost zero-carbon hydrogen. It is a non-legislative roadmap which signals the EU's intended direction of travel in an area of interest to the UK and with implications for the UK's strategic interests, such as climate change, as well as potential implications for future UK-EU research cooperation and for regulatory requirements under the Ireland/Northern Ireland Protocol.

1.2 The Commission notes that hydrogen has many possible applications and that, most importantly, it does not emit carbon dioxide when used. It therefore offers a solution to decarbonising industrial processes and economic sectors where reducing carbon emissions is both urgent and hard to achieve. This, argues the Commission, makes hydrogen essential to delivering the EU's commitment to reach carbon neutrality by 2050 as part of wider global ambition to mitigate climate change.

1.3 Hydrogen, though, is still largely produced from fossil fuels and its level of use is marginal. The Commission concludes that, for hydrogen to contribute to climate neutrality, it needs to achieve a far larger scale and its production must become fully decarbonised. The long-term priority for the EU is to develop renewable hydrogen,² produced using mainly wind and solar energy. In the short and medium term, however, other forms of low-carbon hydrogen³ are needed, primarily to rapidly reduce emissions from existing hydrogen production and support the parallel and future uptake of renewable hydrogen.

1.4 The following phases are identified by the Commission:

1 Commission Communication — A hydrogen strategy for a climate-neutral Europe; [COM\(20\) 301](#); Legal base: —; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41389.

2 'Renewable hydrogen' is hydrogen produced through the electrolysis of water (in an electrolyser, powered by electricity), and with the electricity stemming from renewable sources. The full life-cycle greenhouse gas emissions of the production of renewable hydrogen are close to zero. Renewable hydrogen may also be produced through the reforming of biogas (instead of natural gas) or biochemical conversion of biomass, if in compliance with sustainability requirements.

3 'Low-carbon hydrogen' encompasses fossil-based hydrogen with carbon capture and electricity-based hydrogen, with significantly reduced full life-cycle greenhouse gas emissions compared to existing hydrogen production.

- from 2020 to 2024, the EU will support the installation of at least 6 gigawatts (GW) of renewable hydrogen electrolyzers, and the production of up to 1 million tonnes of renewable hydrogen;
- from 2025 to 2030, hydrogen needs to become an intrinsic part of an integrated energy system, with at least 40 GW of renewable hydrogen electrolyzers and the production of up to 10 million tonnes of renewable hydrogen in the EU; and
- from 2030 to 2050, renewable hydrogen technologies should reach maturity and be deployed at large scale across all hard-to-decarbonise sectors.

1.5 These objectives will, acknowledges the Commission, require substantial investment. The Commission expects electrolyser costs to halve in 2030 compared to today. In regions with low-cost renewables, electrolyzers are expected to be able to compete with fossil-based hydrogen by 2030. From now to 2030, says the Commission, investments in electrolyzers could range between €24 bn (£21.6 bn) and €42 bn (£37.8 bn) and €220–340 bn (£198–306 bn) would be required to scale-up and directly connect 80–120 GW of solar and wind energy production capacity to the electrolyzers to provide the necessary electricity.

1.6 To support these investments and the emergence of a whole hydrogen “eco-system”, the Commission proposes to kick-start the European Clean Hydrogen Alliance (announced in the Commission’s recent Industrial Strategy). The key objective of the Alliance will be to identify and build up a clear pipeline of viable investment projects. This will facilitate coordinated investments and policies along the hydrogen value chain, and cooperation across private and public stakeholders across the EU, providing public support where appropriate and crowding in private investment.

1.7 A range of policies will be explored in order to unlock demand and scale-up production. To boost demand, the Commission will — among other actions — consider quotas of renewable hydrogen in specific end-use sectors, for example certain industries in the chemicals or transport sectors. In order to encourage production, the Commission’s suggestions include:

- establish common low carbon standards and certification;
- the use of support schemes to promote both demand and supply; and
- ensuring that future changes to the Emissions Trading System — including the sectors eligible for free allowances — take into account how the production of renewable and low-carbon hydrogen could be further incentivised.

1.8 The Commission also notes that there will need to be a framework for hydrogen infrastructure and market rules. This is with a view to ensuring system interoperability and cross-border trade. Furthermore, the Commission suggests that research and innovation into hydrogen technologies be promoted. This would, in part, be through the Clean Hydrogen Partnership under the Horizon Europe framework Programme for Research. Finally, the Strategy recognises the need for ambitious and well-coordinated policies at national and European levels, as well as diplomatic outreach on energy and climate with international partners.

1.9 In his [Explanatory Memorandum](#) and subsequent [corrigendum](#), the Minister of State for Business, Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP) says that the Government welcomes the publication of the Hydrogen Strategy as part of the European Green Deal, but offers no further analysis.

Our assessment

1.10 The Minister fails to provide any analytical comment at all on this Strategy, which is very disappointing and serves only to frustrate our ability to scrutinise the Government's approach. While we recognise that the details of the EU's future plans will be set out in greater detail at a later stage, we consider that there is a sufficient level of information to indicate the direction of travel. We will therefore ask for an expeditious and thorough analysis from the Government.

1.11 While we are reluctant to provide our own analysis in advance of receiving the Government's perspective, we note the following potentially relevant observations:

- the UK is aiming to secure ongoing cooperation with the EU in research, which is highlighted in this Strategy as a relevant area;
- both the EU and the UK are committed to climate change mitigation, with the UK acting as President of the next Conference of the Parties of the UN Framework Convention on Climate Change (“COP 26”);
- the Commission recognises the need for “diplomatic outreach” on energy and climate with international partners;
- some future EU regulatory changes identified could affect Northern Ireland in particular, either due to its obligation to continue to apply specific EU legislative instruments such as the Emissions Trading System Directive, or through participation in the Irish Single Energy Market (I-SEM);
- the EU's plans are heavily reliant on the development of renewable energy, which is likely to include offshore wind energy in the North Sea; and
- the UK may wish, in the future, to cooperate with the EU in the cross-border trade of hydrogen and so its approach to interoperability and market rules may at least be of interest.

Action

1.12 We have written to the Minister as set out below. Our letter has been copied to the Business, Energy and Industrial Strategy Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Minister of State for Business, Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP)

We have considered your Explanatory Memorandum on the above document.

The lack of analysis was very disappointing and has rendered our task of scrutinising your approach impossible. We consider that the Strategy may at least have regulatory implications for Northern Ireland, with wider strategic — and potentially regulatory — implications for the whole of the UK.

We therefore ask that, within ten working days, you provide a comprehensive analysis to include, as a minimum:

- the strategic relevance of this policy development to the UK;
- any potential regulatory implications, both for Northern Ireland and for the UK more widely;
- the potential for research cooperation in this area given the UK’s negotiating ambition to seek association to the Horizon Europe programme;
- the extent to which the EU’s high-level policy direction in this area aligns with that of the UK; and
- the UK’s likely response to any “diplomatic outreach” from the EU in this area.

2 EU Energy System Integration Strategy⁴

This EU document is politically important because:

- EU policy in this area is of strategic importance to the UK; and
- there are specific policy implications for Northern Ireland due to obligations under the Ireland/Northern Ireland Protocol, with potential policy implications for the UK as a whole.

Action

- Write to the Minister.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee and the Northern Ireland Affairs Committee.

Overview

2.1 As part of its Green Deal policy, the Commission has put forward this Strategy to accelerate energy system integration — the coordinated planning and operation of the whole energy system, across multiple energy carriers, infrastructures, and consumption — as the pathway towards the decarbonisation of the EU economy. The Strategy has potential direct effects by virtue of suggested changes to legislation to which Northern Ireland must continue to align and indirect effects at a strategic level as well as through the push to develop renewable energy further, such as offshore wind energy in the North Sea.

2.2 Explaining its initiative, the Commission says that the energy system is built on several parallel, vertical energy value chains, which link specific energy resources with specific end-use sectors. Petroleum products, for instance, are predominant in the transport sector, while coal and natural gas are mainly used to produce electricity and heating. Electricity and gas networks are planned and managed independently from each other, and market rules are also largely specific to different sectors. The Commission argues that this incoherent approach cannot deliver a climate-neutral economy.

2.3 The Commission's Strategy is built on three pillars, the first of which is to make the system more 'circular' by improving efficiency and utilising waste. The Strategy proposes targeting waste heat from industrial sites, data centres, or other sources, as well as using agricultural residues to create biogas. It also promotes the 'energy efficiency first' principle to reduce demand and thus overall costs for energy production, infrastructure and use.

2.4 The second pillar is to increase the share of renewable energy in end-use sectors through direct electrification, utilising the rapid growth in production of decarbonised electricity to power heat pumps in buildings, industrial processes, and electric vehicles.

4 Commission Communication — Powering a climate-neutral economy: An EU Strategy for Energy System Integration; [COM\(20\) 299](#); Legal base: —; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41390.

2.5 The third pillar — where electrification is not possible or too costly — is to increase the use of clean and decarbonised gases such as renewable hydrogen or sustainable biogases. The Commission will propose a new classification and certification system for renewable and low-carbon fuels.

2.6 Specific actions outlined in this document include:

- through the Offshore Renewable Strategy and follow-up regulatory and financing actions, ensure the cost-effective planning and deployment of offshore renewable electricity, taking into account the potential for on-site or nearby hydrogen production, and strengthen the EU's industrial leadership in offshore technologies;
- revise the gas market regulatory framework and the Energy Taxation Directive, Energy Efficiency Directive, Renewable Energy Directive, Industrial Emissions Directive, Alternative Fuels Infrastructure Directive and the Emissions Trading System Directive;
- revise carbon dioxide emission standards for cars and vans to ensure a clear pathway from 2025 onwards towards zero-emission mobility;
- improve information to customers on the sustainability of industrial products (in particular steel, cement and chemicals) as part of the sustainable product policy initiative and, as appropriate, through complementary legislative proposals;
- adopt a digitalisation of energy action plan;
- ensure that the revision of the State aid framework supports cost-effective decarbonisation of the economy where public support remains necessary;
- publish a new impact-oriented clean energy research and innovation outlook for the EU to ensure research and innovation supports energy system integration; and
- develop a regulatory framework for the certification of carbon removals based on robust and transparent carbon accounting to monitor and verify the authenticity of carbon removals.

2.7 The Strategy has been published alongside a Hydrogen Strategy, on which we are reporting separately.

2.8 In his [Explanatory Memorandum](#), the Minister of State for Business, Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP) says that the Government welcomes the publication of the Energy System Integration Strategy as part of the European Green Deal, but offers no further analysis.

Our assessment

2.9 The Minister fails to provide any analytical comment at all on this Strategy, which is very disappointing and serves only to frustrate our ability to scrutinise the Government's approach. While we recognise that the details of the EU's future plans will be set out in

greater detail at a later stage, we consider that there is a sufficient level of information to indicate the direction of travel. We will therefore ask for an expeditious and thorough analysis from the Government.

2.10 While we are reluctant to provide our own analysis in advance of receiving the Government’s perspective, we note the following potentially relevant observations:

- the UK seeks ongoing energy cooperation with the EU;
- the UK is aiming to secure ongoing cooperation with the EU in research, which is highlighted in this Strategy as a relevant area;
- both the EU and the UK are committed to climate change mitigation, with the UK acting as President of the next Conference of the Parties of the UN Framework Convention on Climate Change (“COP 26”); and
- the Strategy suggests changes to a number of legislative acts to which Northern Ireland remains bound under the terms of the Ireland/Northern Ireland Protocol, including the Industrial Emissions Directive, the Energy Taxation Directive, the Emissions Trading System Directive, the Regulations on emissions from new cars and vans, as well as the EU’s state aid framework and requirements related to the Irish Single Energy Market (I-SEM).

Action

2.11 We have written to the Minister as set out below. Our letter has been copied to the Business, Energy and Industrial Strategy Committee and to the Northern Ireland Affairs Committee.

Letter from the Chair to the Minister of State for Business, Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP)

We have considered your Explanatory Memorandum on the above document.

The lack of analysis was very disappointing and has rendered our task of scrutinising your approach impossible. We therefore ask that, within ten working days, you provide a comprehensive analysis to include, as a minimum:

- the strategic relevance of this policy development to the UK;
- the regulatory implications for Northern Ireland, with detail on changes suggested, or affecting, Northern Ireland’s continued obligations under the terms of the Ireland/Northern Ireland Protocol;
- any potential regulatory implications for the UK more widely;
- the potential for research cooperation in this area given the UK’s negotiating ambition to seek association to the Horizon Europe programme; and
- the extent to which the EU’s high-level policy direction in this area aligns with that of the UK.

3 EU preparations for the end of the post-Brexit transition period⁵

This EU document is politically important because:

- it contains the European Commission’s description of the new barriers to trade between the UK and the EU when the UK leaves the Single Market and Customs Union at the end of the post-Brexit transition period on 31 December 2020; and
- the Commission has not confirmed whether it intends to ‘reactivate’ earlier EU contingency measures to mitigate any disruption in UK-EU trade, especially for road and air transport links, if no trade agreement is in place by the end of the year.

Action

- Draw the European Commission’s policy paper to the attention of the Committee on the Future Relationship with the EU, the Business, Energy and Industrial Strategy Committee, the International Trade Committee, the Transport Committee, the Treasury Committee and the Northern Ireland Affairs Committee.

Overview

3.1 The UK left the European Union on 31 January 2020 but stays in its Single Market and Customs Union until the end of a transitional period on 31 December. At that point, the practical consequences of Brexit for UK businesses and residents when trading with or travelling to the EU will take effect. In July 2020, the European Commission published a [policy paper](#) summarising the EU’s view of the impact of the end of the transitional arrangement on UK-EU trade in particular, and how some of the disruption might be mitigated by the outcome of the UK-EU trade negotiations.

3.2 Given the slow progress in those trade talks, both sides have also begun considering unilateral measures to mitigate the impact of the UK’s exit from the Single Market and Customs Union. However, the Government has gone much further — for example by delaying the application of full customs and regulatory controls on goods imported from the EU for a further six months until July 2021— than the EU, which expects its Member States to apply the full suite of EU rules to goods and services imported from the UK from 1 January 2021. However, the EU has previously considered limited and temporary contingency measures to mitigate any disruption in its relationship with the UK in the fields of air and road transport, fisheries and financial services. It is unclear to what extent it intends to reactivate those unilateral policies if the UK-EU negotiations do not result in an agreement by the end of the year.

5 Communication from the Commission: Getting ready for changes Communication on readiness at the end of the transition period between the European Union and the United Kingdom; 9538/20, COM(20) 324; Legal base: – ; Department: Cabinet Office; Devolved Administrations: Consulted; ESC number: 41394.

3.3 Given the Committee’s remit of scrutinising the impact of EU law and policy for the UK, we examine the substance of the Commission’s paper in greater detail below. We have also considered what, if any, unilateral measures the EU might take as the end of the transition approaches if there is no trade agreement with the UK in place.

The transitional arrangement in the Withdrawal Agreement

3.4 The UK left the European Union on 31 January 2020. While it ceased to have political representation within EU bodies and institutions on that day, under the terms of the Withdrawal Agreement approved by Parliament, the UK stays part of the EU’s economic and security arrangements until the end of a transitional period on 31 December 2020. In practice, this means the UK is still in the Single Market and Customs Union, and therefore its trading arrangements with the EU remain unchanged, until that date. In addition, the UK retains access to justice and home affairs mechanisms like the European Arrest Warrant for the duration of the transition.⁶

3.5 However, this also means that the UK remains bound by EU law as if still a Member State and it is subject to the powers and jurisdiction of the European Commission and the Court of Justice of the EU (CJEU) until the end of the transition. The justification for this arrangement advanced by the Government is that it “provides certainty to businesses and individuals and ensures they only have to adjust to one set of changes in line with the future relationship with the EU”.⁷

The European Commission’s Communication of 9 July 2020

3.6 The European Commission, like the Government, has published a range of information notices on the specific implications of the UK’s withdrawal from the Single Market — now due to happen on 31 December, rather than when the UK formally exited the EU on 31 January — for specific sectors and business activities since 2018.⁸ To bring this information together, on 9 July 2020 the Commission published a more comprehensive [policy paper](#) on “readiness at the end of the transition period between the European Union and the United Kingdom”. It focuses on the consequences of the UK’s exit from the EU’s Single Market and Customs Union, where there will be direct ramifications for individuals and businesses, summarising the contents of its readiness notices on a sector-by-sector basis.

3.7 While we do not repeat the detail of the Commission notices here, which cover a vast range of areas from the recognition of UK drivers’ licences to food safety, it is clear that the overarching message in the document is that, at the end of the transition period, the UK’s relationship with the EU will change drastically in practical terms in a way it did not

6 Germany, Austria and Slovenia, for constitutional reasons, no longer extradite their nationals to the UK on the basis of the European Arrest Warrant since the start of the transition period.

7 HM Government, “[Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#)” (14 November 2018). The provisions on the transitional arrangement in the Withdrawal Agreement as ratified in January 2020 are identical to those initially negotiated while Theresa May MP was Prime Minister and put to Parliament in early 2019.

8 It is in the process of updating those, as they were originally drafted before it was known whether the UK and EU would ratify the Withdrawal Agreement. That Agreement contains a number of transitional provisions, especially with respect to commercial transactions between the UK and the EU initiated before the end of the transition period, which change the effect of the UK’s withdrawal from the Single Market and Customs Union. For example, under Article 147 of the Agreement, no customs duties will be payable on goods which were shipped from the UK before the end of transition but do not reach their final destination within the EU after it had ended.

when it actually ceased to be a Member State on 31 January. In particular on 31 December 2020 the UK will fully exit the Single Market and Customs Union and be treated as a ‘third country’. Focussing on the ability of the UK to sell goods and services into the EU, the Commission describes how this will impose certain barriers to trade automatically by operation of EU law.

3.8 As we and other Committees have set out in previous Reports, the EU’s default market access and trade arrangements for the UK will be very different from the current situation when the transition period ends:

- As regards trade in goods, the UK will no longer be part of the system that allows goods to move between EU countries without border controls. Customs and VAT controls required under EU law will “apply to all goods entering [its] customs territory” from the UK. Regulatory checks, including sanitary formalities related to food safety and animal health, will also be imposed on the relevant British goods on entry. In principle, these border controls will also apply to goods entering Northern Ireland from Great Britain, as required by the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement that aims to avoid such checks along the land border on the island of Ireland.⁹
- With respect to trade in services that are regulated at EU level, firms like insurers, transport operators and broadcasters in the UK will lose the ability — sometimes known as the ‘passport’ — to provide their services throughout the EU on the basis of their UK licence. Instead, they will need to meet a new set of requirements as third country companies to continue operating within the EU. These are often set by individual EU Member States and can therefore vary country-by-country.¹⁰ In some cases, UK services providers will simply not be able to operate in their current European markets without relocating part of their business to the EU.

3.9 The Commission’s policy paper does not cover consequences of the end of the transition related to the UK’s exit from EU justice, home affairs and security arrangements including the European Arrest Warrant. We continue to assess the implications of the end of the transition period for law enforcement cooperation separately, and therefore do not cover them here.¹¹

3.10 The economic, social and political impact of the change in the UK’s legal status under EU law in both the UK and the EU remains a matter of debate and is likely to remain controversial for some time. Given the likelihood of disruption in trade and travel that

9 The UK-EU Joint Committee established by the Withdrawal Agreement is empowered to take certain decisions to adjust how these border controls will work on intra-UK trade, but these have not yet been agreed at the time of consideration of this Report. The Government on 9 September 2020 introduced the Internal Market Bill in Parliament, which — if passed as published — would allow it to override certain provisions of the Protocol as a matter of domestic law (the implications of which for the overall functioning of the Protocol are unclear). The unique position of Northern Ireland was subject to a comprehensive Report by the Northern Ireland Affairs Committee in July 2020: [Unfettered Access: Customs Arrangements in Northern Ireland after Brexit](#) (First Report of Session 2019–21), HC 161, 8 July 2020.

10 In some cases, the EU has legislated with respect to third-country access for the provision of a specific type of service, in which case individual EU countries must observe those rules. This is the case, for example, with respect to transport and insurance services.

11 See for example our recent assessment of the [UK’s access to the “Prüm” database](#) on exchange of DNA material.

these changes will entail¹² while the economic ramifications of the COVID-19 crisis are still significant, the Commission also pointedly refers to the Government’s decision not to extend the transition period into 2021 — as had been possible under the Withdrawal Agreement¹³ — to delay any disruption in UK-EU relations caused by the end of the transition until a later date.¹⁴

3.11 The Commission also warns that the impact of these changes will, at best, be mitigated only partially by the outcome of the UK-EU negotiations on a new treaty or new treaties to underpin a new post-Brexit relationship, and that the EU will only take limited unilateral action to prevent disruption to trade in goods and services between the EU and the UK at the end of the transition. It states categorically that “inevitably, the fact that the United Kingdom will no longer participate in [EU] policies as of the end of the transition period will create barriers to trade in goods and services and to cross-border mobility and exchanges that do not exist today”. We assess the potential mitigations available to both the UK and the EU with respect to any disruption at the end of the transition, on a bilateral or unilateral basis, in more detail below.

Trade facilitation and market access under a new UK-EU trade agreement

3.12 The European Commission document describes the default position on how imports of goods and services from the UK will be treated from the end of transition, based on the relevant EU legislation. However, the EU can agree to diverge from that standard approach via preferential bilateral or multilateral agreements that supersede those rules. For example, imports of animal products like lamb meat from New Zealand face a lower physical inspection rate on entry into the European Union under a [bilateral sanitary agreement](#), rather than the default rate under EU law.¹⁵

3.13 Similarly, the substance of a new UK-EU trade agreement could to some extent mitigate the barriers to trade that will arise when the UK leaves the Single Market and Customs Union. As such, the conditions under which UK-EU trade will take place from the end of the transition period may be different in certain respects from the “default” picture painted by the Commission in its paper. Indeed, the document acknowledges as much: although it states that it is describing “main areas of change that will take place in any event as of the end of the transition period, whether there is an agreement on a future partnership between the European Union and the United Kingdom or not”, the summary of those changes for certain sectors makes clear the outcome of the negotiations on the new economic relationship could make a difference.

12 The UK Government is also acknowledging the potential for disruption, with the Department for Transport in August 2020 [launching a consultation](#) on management of traffic in Kent if lorries are unable to pass through the port and toward Calais without causing traffic jams. The document specifically refers to the fact that “at the end of the transition period, the UK will be treated as a third country with respect to EU rules, which creates new potential sources of disruption for the Short Straits” because “the French authorities will impose full EU customs and controlled goods checks on all goods travelling from GB to the EU’s customs territory”.

13 Article 132 of the Withdrawal Agreement allowed for the transition period to be extended once, for a period of no more than two years. However, that possibility to make use of this option expired on 30 June 2020.

14 The Commission document states: “The choices made by the United Kingdom’s government on the future relationship and on not extending the transition period mean that these inevitable disruptions will occur as of 1 January 2021 and risk compounding the pressure that businesses are already under due to the COVID-19 outbreak.”

15 The default sanitary inspection rates for animal and food imports into the EU are established under the Official Controls Regulation ([Regulation 2017/625](#)).

UK-EU trade in goods

3.14 The key area of the future relationship under negotiation in this respect is the level of customs duties on trade in goods between the EU and the UK.

3.15 Both sides have agreed to seek a continued absence of tariffs on bilateral trade in goods, but have very different views with respect to the wider “level playing field” conditions that should be attached to make this a possibility.¹⁶ In any event, the Commission and Government have both emphasised that even if the two sides conclude a zero-tariff, zero-quota trade agreement, this will not eliminate border controls on goods exported from the UK to the EU and vice versa. While it would, in principle, remove the need for the payment of tariffs, paperwork and physical checks which are currently absent on UK-EU trade will still be required, for example to apply “rules of origin” to verify a good meets the conditions for tariff-free importation, to ensure collection of other import taxes (notably VAT and excise duty) and to perform regulatory checks.

3.16 The Government is not pursuing the continued absence of border controls on trade in goods because the EU had insisted this would require continued regulatory alignment with European law (as demonstrated, for example, by the extensive alignment provisions contained in the aforementioned Protocol on Northern Ireland).¹⁷ The Prime Minister, in his [negotiating objectives](#) for the new UK-EU relationship, has been explicit that his Government “will not agree to any obligations for our laws to be aligned with the EU’s”.¹⁸ It is noteworthy that this “red line” precludes the UK from pursuing all the facilitations for trade with the EU for which precedent already exists in the EU’s trade relations with other countries outside the Single Market and Customs Union.

3.17 The most eye-catching example of this is the Government’s decision not to seek a reciprocal waiver for [Safety and Security Declarations](#) for UK imports into the EU.¹⁹ Such documentation is required under EU law in advance of cargo arriving in its territory to enable customs officers to assess potential safety risks associated with incoming goods, alongside traditional customs declarations (which serve, for example, to determine the applicable tariff or rules of origin). The European Commission is expected to require Safety and Security Declarations to be submitted for imports from the UK that arrive by sea from any British port, including Dover, at least two hours before arrival in the

16 Of particular contention are the EU’s demands in the field of new domestic subsidy controls (“State aid”) in the UK. See for more information the Report of the Committee on the Future Relationship with the EU, [“The need for progress in the negotiations”](#) (First Report of Session 2019–21, 17 June 2020) and also our [Report of 16 July 2020](#) on the EU’s new approach to foreign subsidies.

17 This is echoed by the Government itself in its recent publications on preparing businesses for the end of the transition period. For example, in its new [“Border Operating Model”](#) for trade in goods between the UK and the EU from 1 January 2021, it states: “Heavy Goods Vehicle (HGV) drivers will need to have evidence that EU import requirements have been met for the goods they are transporting [from the UK to the EU]. These include customs or transit declarations and any other commodity-specific approvals such as Export Health Certificates. This will be true regardless of the outcome of negotiations and whether the UK and the EU conclude a Free Trade Agreement” (emphasis added).

18 HM Government, [“The Future Relationship with the EU: the UK’s Approach to Negotiations”](#) (27 February 2020), p. 3. The same document also states the UK “will not agree to any obligations for [...] the EU’s institutions, including the Court of Justice, to have any jurisdiction in the UK”. However, it has since conceded that the Court of Justice could have jurisdiction over funding agreements between the European Commission and British recipients of EU funding under EU scientific programmes in which the Government is seeking continued UK participation.

19 Similar documentation will also be required under EU law for EU exports to the UK. They are also known as Entry and Exit Summary Declarations.

EU.²⁰ The haulage industry has warned that the impact of transport operators having to complete 220 million such declarations annually — especially across the Channel, where the EU time limit essentially requires the form to be submitted before a truck has even rolled onto the ferry, or risk being turned away by French or Belgian customs — could cause delays at ports.²¹

3.18 While [Norway](#) and [Switzerland](#) have negotiated the removal of this requirement on their trade with the EU by agreeing to maintain “an equivalent level of security through measures based on legislation in force in the [EU]”, the Government has apparently rejected this possibility because it would be contrary to its determination to avoid any alignment with European law.²² Instead, the EU has [characterised](#) the Government’s approach as one of wanting to remove customs formalities on UK-EU trade by having British rules and procedures “recognised as equivalent, while refusing to commit to the necessary compliance checks and monitoring, or alignment to EU rules where necessary”. The extent to which this approach will be successful in reducing the practical customs procedures that will become applicable to UK-EU trade when the UK leaves the Single Market and Customs Union on 31 December is unclear.

UK-EU trade in services

3.19 As regards trade in services, the Government *is* actively seeking new bilateral arrangements with the EU that would preserve, to a limited extent, the ability of British companies in certain sectors to operate across the EU without needing to establish a physical presence in an EU Member State first.

3.20 For example, the UK has proposed ambitious arrangements with the EU on mutual recognition of professional qualifications, the ability of UK professionals like solicitors to perform their activities within the EU for short periods, and restrictions on the ability of either side to withdraw “equivalence” decisions that grant market access rights for financial institutions. The EU has shown little enthusiasm for these proposals, with its Chief Negotiator, Michel Barnier, [describing them](#) as an attempt to “pick and choose the most attractive elements of the Single Market without the obligations [to follow EU law]”. He has also been explicit that the EU may have an interest in rejecting some of the UK’s proposals, as part of a longer-term EU objective to force relocation of economic activity from Britain into the European Union.²³

20 The European Commission introduced the two-hour time limit for submission of Safety and Security Declarations on imports from the UK in December 2018, when it was not yet clear if there would be a transitional period. See [Commission Delegated Regulation 2019/334](#). That Regulation lapsed when the Withdrawal Agreement was ratified and the transitional period took effect. In light of the Government’s decision not to negotiate a waiver, it is likely to be reintroduced by the European Commission in time for the end of the transition.

21 The Daily Telegraph, “Truckers face paperwork mountain after Britain opts against fast-track security checks agreement with EU” (8 March 2020).

22 There is no indication that the refusal to seek a UK-wide waiver from Safety and Security Declarations on trade with the EU is based on concerns about the substance of the latter’s customs security rules (which were, of course, agreed while the UK was an EU Member State). The UK will also require such declarations on goods exported to or imported from the EU (like it does for the rest of the world). The UK is, however, [seeking](#) the EU’s agreement to waive the need for Safety and Security Declarations (and export declarations more generally) on goods moved between Northern Ireland and Great Britain under the aforementioned Protocol in the Withdrawal Agreement. The outcome of those efforts is not yet known.

23 In a [speech on 10 June 2020](#), Mr. Barnier told the European Economic and Social Committee: “As [the UK] prepares to leave the Single Market and the Customs Union, we must ask ourselves whether it is really in the EU interest for the UK to retain such a prominent position. [...] Do we really want the UK to remain a centre for commercial litigation for the EU, when we could attract these services here?”

3.21 Presumably for this reason, the Government’s proposed bilateral mitigations to facilitate UK-EU trade in services from January next year are not explicitly referenced in the Commission paper, reflecting the difficulty the British negotiating team faces in persuading the EU to build on the — limited — default market access for UK services providers under EU and Member State law with these proposed preferential arrangements.

3.22 The Commission does, nevertheless, accept that there is the potential for preferential arrangements between the UK and the EU as regards trade in services. In particular, with respect to air and road transport operations, the European Commission notes that “the access rights that EU operators and UK operators will have to each other’s respective markets will depend on the outcome of the negotiations between the EU and the United Kingdom”. Similarly, when it comes to the coordination of social security entitlements for workers who move between the UK and the EU from 1 January 2021, it refers to the possibility that “under a future partnership agreement with the United Kingdom [...] certain social security entitlements could potentially be ensured [...] for instance on health care costs or pension rights”, even if these will not offer “the same extensive cross-border social security protection as under current [EU] rules”.

3.23 More generally, a trade agreement between the UK and the EU could in theory contain an implementation phase during which the UK’s participation in — and therefore trade arrangements with — all or parts of the Single Market and Customs Union is maintained beyond the end of the transition period set out in the Withdrawal Agreement. Such an arrangement would constitute a reversal from the normal situation, where trade agreements routinely are phased in gradually from more to fewer trade barriers. Instead — like the transitional arrangement does at present — it would *defer* the application of such barriers until the new base line envisaged by the trade agreement is fully in place after one or multiple deadlines where the UK’s rights and obligations as a participant in the Single Market and Customs Union fall away. Neither the EU nor the UK have to date proposed a phased implementation of the new trade agreement of this kind to date, by default implying the UK-EU relationship will change significantly as soon as the transition period ends even if a deal is in place.²⁴

3.24 Overall therefore, at present it appears there is some scope for bilateral arrangements to offset the fundamental changes that will occur in UK-EU trade at the end of the transition period, but their impact is likely to be limited. The negotiations are not intended to avoid the application of customs and regulatory controls on UK trade in goods with the EU (even if there is a “zero tariff” trade agreement), or the loss of the passport for British services providers. As such, both the EU and UK have also turned to certain unilateral arrangements, to be taken and revoked at their own discretion, to mitigate any disruption to UK-EU trade and transport links from 1 January 2021. We consider this further in the next section.

24 Any implementation arrangement of this nature would most likely face significant political opposition, given that it might be seen as a *de facto* extension of the transitional period if — as the EU would undoubtedly insist — it involve continued UK adherence to EU law in the areas where the UK retained Single Market-style access. It might also be legally complicated on the EU’s side, were it to engage the competences to legislate of both the EU and its individual Member States.

Unilateral EU measures related to the UK's exit from the Single Market and Customs Union

3.25 In areas where a new UK-EU agreement does not aim to mitigate the impact of the former's withdrawal from the Single Market (or if no such agreement is in place by the end of the transition period), the new barriers to trade between the two sides would, in principle, be as described in the Commission paper of 9 July 2020.

3.26 However, these barriers would arise from the internal legislation of the UK and the EU, as well as its Member States, on the default treatment of imports and overseas services providers. As such, it is open to both sides to amend relevant legislation unilaterally to mitigate any disruption at the end of the transition period, subject of course to their respective international obligations (for example at the World Trade Organisation). This gives the UK and EU the flexibility to introduce domestic measures to lessen any disruption that could not be agreed bilaterally. It is inherently also less stable than a bilateral arrangement because it can be modified or revoked unilaterally and can lead to asymmetric situations where one party is taking more drastic measures to avoid trade disruption.

3.27 This is, in fact, what has already happened. The UK Government in spring 2020 announced its intention to [defer the full application](#) of customs and regulatory controls to goods imported from the EU until July 2021 to give “industry extra time to make necessary arrangements”. The UK is also taking a liberal approach to the continued provision of services by EU companies, for example having granted a “adequacy” decision allowing personal data to flow from the UK to the EU until at least 2024 and permitting EU financial services to [continue operating on the British market](#) temporarily beyond the end of transition on the basis of their European licence.

3.28 The EU, however, is not reciprocating these UK measures.²⁵ While the European Commission and the individual Member States have of course made a variety of practical preparations in anticipation of the UK's exit from the Single Market and Customs Union, and individual EU countries retain a wide margin of discretion whether they want to allow UK services providers to operate in their territory (see above), specific *EU-wide* mitigation measures to offer the UK preferential market access or trade facilitations on a temporary basis beyond the end of the transition period are likely to be rare.

3.29 In particular, the EU intends to apply its full suite of customs and regulatory controls to goods imported from the UK immediately after the end of the transition period on 1 January 2021. The only partial exemption of which we are aware in this respect — aside from the unique arrangements for the island of Ireland set out in the Withdrawal Agreement — is the fact that British seafood exports entering the EU at Calais after crossing from Dover will be [allowed to travel onwards](#) to an inspection point at Boulogne for customs and sanitary controls, deviating from the usual requirement that such food products should be inspected at their immediate point of entry into the EU.²⁶ This will relieve some pressure on the new customs and regulatory infrastructure at Calais and, to a limited extent, facilitate exports of UK seafood products to the EU.

25 For reasons likely to be both political and economic.

26 As noted on the [website of the Port de Calais](#). Making use of this derogation will require the seafood consignment to be placed under a customs transit procedure allowing it to be tracked, which will lead to additional costs. It also does not remove the need for full customs and regulatory controls before the goods can be released by the French customs authorities.

3.30 With respect to services, the European Commission has [announced](#) it will adopt a specific legal act giving market access to British “Central Counterparties” — a key part of the financial market infrastructure for derivatives trading — because the EU lacks its own capacity in this area (but it is actively putting pressure on the industry in the UK to relocate activities to the EU).²⁷ However, it is not reciprocating the UK’s approach of giving British financial firms more generally the continued ability to operate within the EU on the basis of their UK licence, forcing them to comply instead with the applicable domestic rules in every EU country where they want to operate when they lose their Single Market passport. Similarly, it is not yet clear if the EU will agree to an “adequacy” decision for the UK’s data protection regime by the end of transition, which has significant implications for flows of personal data from the EU to the UK and sectors that rely on such flows.²⁸

3.31 There is however a possibility that the EU may implement some further — limited — unilateral measures to mitigate disruption to UK-EU trade beyond the end of the transition period.

3.32 In particular, before the Withdrawal Agreement was ratified, the EU created a temporary legal framework giving UK [airlines](#) and [road transport operators](#) preferential access into its market.²⁹ This would have allowed UK firms to move goods and passengers to and from any EU Member State on a larger scale than would be the case for a “third country” without bilateral transport agreements with the EU, albeit without fully replicating the freedom to provide services those firms enjoy at present as part of the Single Market.³⁰ Moreover, this temporary preferential access was made conditional on continued UK compliance with EU employment, State aid and transport legislation, and was subject to unilateral revocation by the EU at its own discretion. Similarly, the EU put in place legislation for the temporary continued [recognition of UK-issued safety certificates](#) relating to certain aeronautical products, parts, appliances and companies in the aviation industry, which would otherwise lapse when the UK leaves the Single Market.

3.33 Aside from the transport services sector, where any disruption would naturally also have an impact on trade in goods, the EU also put in place contingency measures to deal with the UK’s withdrawal in two other areas: fisheries and financial services.

3.34 With respect to the former, in anticipation of the UK’s withdrawal from the Common Fisheries Policy without a new UK-EU fisheries agreement in place, a [new Regulation was adopted](#) that created a simplified framework to allow the EU to easily grant fishing authorisations to UK vessels to enter EU waters, should reciprocal access rights to waters be confirmed by the UK Government based on the quota allocation already agreed for the

27 The EU recently amended its Regulation of Central Counterparties with respect to derivatives trades, called EMIR, to make it more difficult for non-EU operators like those based in the UK to perform their activities in the EU without either the host country committing to regulatory alignment or the companies relocating operations into the EU. We will explore this issue further in the near future.

28 The Commission Communication of 9 July 2020 states: “The EU will use its best endeavours to conclude the assessment of the UK [data protection] regime by the end of 2020 with a view to possibly adopting a decision if the United Kingdom meets the applicable conditions. The Commission is currently conducting this assessment and has held a number of technical meetings with the United Kingdom to gather information in order to inform the process.”

29 Regulations (EU) [2019/502](#) (aviation connectivity) and [2019/501](#) (road connectivity).

30 For example, for UK-based road transport operators if there is no UK-EU agreement, the ability to carry goods to and from the EU will depend on a quota-based permit system operated by the European Conference of Ministers of Transport, heavily limiting how many journeys can be made and likely shutting certain operators out of the EU market altogether.

whole of 2019.³¹ The UK Government has made restrictions on access by EU boats to its fishing grounds one of the key objectives of its post-Brexit strategy, and Ministers have not confirmed whether they intend to grant such reciprocal access. The EU therefore also set aside additional reserves within its Maritime and Fisheries Fund to support fishing communities affected by a lack of access to UK waters.³²

3.35 In financial services, the EU's Brexit contingency measures focussed on the "post-trade" market infrastructure in which the UK is dominant and which EU-based companies could not feasibly replace at the necessary scale before the UK's withdrawal. This included the aforementioned, time-limited equivalence decision for British [Central Counterparties](#) to allow them to continue facilitating derivatives trades in the EU,³³ as well as equivalence for UK-based Central Securities Depositories.³⁴ It should be noted that, unlike the transport and fisheries measures described above, the legal framework for these arrangements already existed and the UK is not unique being able to secure preferential market access for these types of services in this way.³⁵ The Commission also used its paper on the end of the transition period to announce that it is not currently considering UK equivalence for a number of financial sectors as part of the new economic relationship *at all*, ostensibly because "the EU legal framework is not yet fully in place" for areas including investment services and prospectuses, accounting, statutory audits, and certain exemptions from the EU's market abuse and short-selling rules.³⁶

3.36 The above EU contingency measures, had they taken effect, would be time-limited to put further pressure on the Government to agree to bilateral arrangements with the EU in the areas they cover, which provide greater stability but could also 'lock in' a UK commitment to continued regulatory alignment with European rules. However, the EU's mitigating measures in the field of transport, fisheries and financial services automatically lapsed when the UK ratified the Withdrawal Agreement and the transitional period took effect. Their "reactivation" — or the introduction of similar unilateral measures not put in place previously — would require a formal proposal or legal act by the European Commission to that effect, as well as the agreement of qualified majority of the 27 Member States and — in certain cases — the approval of the European Parliament.³⁷

3.37 The Commission's paper of 9 July 2020 does not provide any clarity about its intentions in this regard, most likely as a way of applying additional political pressure on

31 [Regulation \(EU\) 2019/498](#). When the UK leaves the Common Fisheries Policy, and if there is no new UK-EU fisheries agreement in place by that date, default position would be that EU vessels would not be able to fish in UK waters and vice versa. Even under that scenario, both the EU and the UK would be required under international law to cooperate on the management of shared stocks.

32 [Regulation \(EU\) 2019/497](#). EU countries recently reached provisional agreement on a new €5bn "Brexit Adjustment Reserve" under its 2021–2027 long-term budget, which may be used in part for a similar purpose. See for more information our Report of 22 July 2020.

33 [Commission Implementing Decision \(EU\) 2018/2031](#) as amended. It would have expired on 31 January 2021.

34 Central Securities Depositories perform the registration and transfer of ownership of securities via digital means to settle a trade. UK-based CSDs would have obtained EU equivalence under [Commission Implementing Decision \(EU\) 2018/2030](#) as amended. Had it taken effect, this decision would have expired on 30 March 2021.

35 See "[Equivalence Decisions taken by the European Commission as of 22/06/2020](#)" (accessed 5 August 2020). This shows that equivalence decisions for CCPs are already in place for countries including the United States, Australia and Japan. There are currently no equivalence decisions for CSDs, with the — lapsed — decision in relation to the UK the first example.

36 European Commission, "Getting ready for changes Communication on readiness at the end of the transition period between the European Union and the United Kingdom", page 13 and footnote 21.

37 The precise procedural requirements to adopt any new mitigating measures will depend on their legal basis in the EU Treaties and whether they are secondary EU legislation (analogous to Acts of Parliament) or tertiary EU legislation (analogous to Statutory Instruments).

the UK by deferring any mitigating measures for as long as possible.³⁸ The sole exception is the aforementioned “equivalence” decision for UK-based Central Counterparties, which is expected to be published in the near future. The Commission has not made any commitments to reintroduce the special unilateral arrangements for transport or fisheries described above, nor confirmed whether it intends to reactivate the equivalence decision for UK-based Central Securities Depositories.³⁹

The Government’s position

3.38 During the post-Brexit transition period, the Government continues to submit to Parliament Explanatory Memoranda setting out its position on important EU documents and proposals produced by the European Commission.

3.39 The Cabinet Office [published such a Memorandum](#) on the Commission’s policy paper on 28 July 2020 which detailed the consequences of the end of the transition period. Signed by the Rt Hon. Michael Gove MP, the Chancellor of the Duchy of Lancaster, the Memorandum reinforces the message that the requirements for conducting trade between the UK and EU will change significantly on 1 January 2021 irrespective of the outcome of the trade negotiations. Although the Minister refuses to echo the Commission’s language about the UK’s exit from the Single Market and Customs Union creating “barriers” to such trade, focussing on the trade in goods element he “welcomes the infrastructure and resourcing preparations that the EU is making in respect of border requirements” and says the Government “would encourage further preparations and engagement to facilitate flow at the border”.⁴⁰

Conclusions

3.40 The UK’s exit from the Single Market and Customs Union on 31 December this year will have significant consequences for businesses and individuals in both the UK and the EU. The European Commission’s recent paper on the end of the transition period, like the notices issued by the UK Government, underlines the scale of the change.

3.41 The Committee will continue to closely follow any discussions at EU-level on specific measures to mitigate potential disruption at the end of the transition period. Such measures may include new bilateral arrangements agreed between the UK and the EU, for example a new system on market access for road and air transport or a gradual phase-in of the new customs and regulatory controls that will apply to UK-EU trade in goods. In the absence of bilateral agreements, it could also consist of unilateral measures the EU may adopt as it did in 2019 in anticipation of a potential “no deal” Brexit.

38 While the Commission document notes there were a “limited number of [EU] [legislative measures](#) adopted in 2019 in view of preparedness for any scenario in terms of the United Kingdom’s withdrawal from the EU” it goes on to refer only to those that “remain in force” — such as the relocation of the European Medicines Agency from London to Amsterdam — or “become applicable at the end of the transition period”, like the visa waiver for UK nationals visiting the EU.

39 The EU put in place a range of “Brexit preparedness” legal acts in advance of the UK’s withdrawal. Some of these it considered necessary irrespective of the outcome of that process, such as the relocation of EU agencies from London. Others related to specific issues that have since been addressed in the Withdrawal Agreement, such as the UK’s financial obligations to the EU and the rights of EU citizens in the UK (and vice versa). The final category related to measures relevant to the new UK-EU economic relationship, such as the temporary preferential access for British road and air transport operators after the UK had left the Single Market.

40 The Explanatory Memorandum notes: “We share the Commission’s assessment that there are [...] a number of guaranteed changes, for which businesses and citizens need to prepare.”

3.42 In particular, the Committee will focus on the potential reactivation of earlier EU contingency measures put in place before the Withdrawal Agreement was ratified and the current transitional arrangement took effect. Of particular note is that, should there be no UK-EU agreements on air and road transport in place by the end of the transition period and the EU ‘reactivates’ its earlier contingency measures to maintain traffic flows, the Government will face a politically difficult decision. It could stand by its rejection of any alignment with EU transport and employment rules, which the EU set as a precondition for continued preferential market access for British airlines and hauliers if it legislates to that effect unilaterally, or risk further disruption to cross-border supply chains and passenger transport between the UK and the EU.

3.43 We will continue to report any relevant developments with respect to the EU’s preparations for the end of the transition period to the House. In the meantime, we draw the European Commission’s paper, and our assessment thereof, to the attention of the Committee on the Future Relationship with the EU, the Business, Energy and Industrial Strategy Committee, the International Trade Committee, the Transport Committee, the Treasury Committee and the Northern Ireland Affairs Committee.

4 Common Agricultural Policy Reform⁴¹

These EU documents are politically important because:

- those elements of the Common Agricultural Policy reform relating to marketing standards will need to be applied by Northern Ireland under the terms of the Ireland/Northern Ireland Protocol; and
- the EU and UK must also — under the Protocol — agree a limit on permitted levels of agricultural support in Northern Ireland.

Action

- Report to the House.
- Draw to the attention of the Northern Ireland Affairs Committee and the Future Relationship with the EU Committee.

Overview

4.1 Following the UK’s withdrawal from the EU, the direct relevance of the EU’s reformed Common Agricultural Policy (CAP) is restricted to the impact on Northern Ireland. There are two specific impacts. First, Northern Ireland is required under the terms of the Ireland/Northern Ireland Protocol to continue to apply EU rules on the marketing of agricultural products. Second, the Protocol links the level of agricultural subsidies that may be paid in Northern Ireland to those available under the CAP.

4.2 In our [letter](#) of 11 June 2020, we looked forward to further information in due course on the decision concerning the level of agricultural subsidies that may be paid in Northern Ireland. We also pressed the Government for more information on the potential impact in Northern Ireland of changes to the EU’s rules on the marketing of agricultural products.

4.3 The Parliamentary Under-Secretary of State (Victoria Prentis MP) has [responded](#), noting that — while the UK no longer attends Council meetings — the Government is monitoring the CAP reform negotiations to ensure that they inform the UK’s approach to agricultural policy in respect of Northern Ireland, and indeed the rest of the UK.

4.4 The Minister adds that, in respect of the application of new legislative amendments to EU law applicable in Northern Ireland under the terms of the Protocol, Article 15(3) of the Protocol obliges the EU to inform the UK about plans to amend or replace legislation within the scope of the Protocol, and that would therefore be applicable to Northern Ireland beyond the end of the transition period.

4.5 Concerning agricultural marketing standards specifically, the Government understands that the proposed amendments to those parts of the Common Markets

41 Proposals for Regulations on (a) CAP Strategic Plans (b) CAP financing, monitoring and management (c) common organisation of the market in agricultural products; (a) Council document [9645/18](#) + ADD 1, COM(18) 392 (b) Council document [9634/18](#) + ADD 1, COM(18) 393 (c) Council document [9556/18](#), COM(18) 394; Legal base: (a) Articles 42 and 43(2) TFEU, ordinary legislative procedure; QMV (b) Article 43 (2) TFEU, ordinary legislative procedure; QMV (c) Articles 43(2), 114, 118 and 349 TFEU, ordinary legislative procedure; QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: (a) 39830 (b) 39831 (c) 39832.

Organisation (CMO) Regulation⁴² listed in the Northern Ireland Protocol, are primarily technical or provisions reflecting previously agreed policies; for example, the removal of export refunds or adjustments to wine quality arrangements. The Government does not, therefore, expect this Regulation, nor the wider CAP Reform programme, to impact Northern Ireland significantly, but the Government will continue to work closely with the Northern Ireland authorities in this regard.

Action

4.6 While we retain an interest in the matters raised in scrutiny of these files — notably the pending decision of the Joint Committee concerning the level of agricultural subsidies in Northern Ireland — we require no further information from the Government on the CAP reform negotiations. We are exploring elsewhere outstanding queries concerning the mechanism by which the EU informs the UK about plans to amend or replace legislation within the scope of the Protocol,

4.7 We are drawing the Minister's letter to the attention of the Northern Ireland Affairs Committee and the Committee on the Future Relationship with the EU.

42 Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products (the CMO Regulation).

5 Organic products⁴³

This EU document is politically important because:

- it will apply in Northern Ireland under the Ireland/Northern Ireland Protocol;
- it will, along with the overarching organic products Regulation, apply from 1 January 2022 at the latest and will create, therefore, divergence between Great Britain on the one hand and the EU and Northern Ireland on the other soon after the transition period; and
- it is in an area (organic products) identified by the Government as requiring particular arrangements under the future relationship.

Action

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

Overview

5.1 From 1 January 2022 at the latest, a new EU Regulation governing the production and labelling of organic products will apply.⁴⁴ While it was due to apply from 1 January 2021, the Commission has proposed⁴⁵ a one-year extension to assist preparations. Under the terms of the UK-EU Withdrawal Agreement, Northern Ireland (NI) will need to apply the Regulation, but the rest of the UK will not. The legal default in Great Britain (GB) will be the current EU regulatory framework,⁴⁶ enshrined as “EU retained law” and so, in the absence of appropriate amendments to that law, Great Britain will be divergent from 1 January 2022. To manage future trade between the EU and NI on the one hand and GB on the other, the Government seeks some form of “equivalence” agreement “broadly similar” to that currently in place between the EU and Chile.

5.2 The [letter](#) dated 15 June 2020 from the Parliamentary Under-Secretary of State (Victoria Prentis MP) responds to our [request](#) for further information concerning the proposed arrangements for this sector from the end of the Transition Period. The Minister expresses the Government’s confidence that an equivalence arrangement can be agreed with the EU under the terms of the new EU Regulation. It is too early, says the Minister, to elaborate on future regulatory changes as considerable analysis and consultation will

43 Commission Delegated Regulation of 13 January 2020 amending Annex II to Regulation (EU) 2018/848 as regards certain detailed production rules for organic products; [5227/20](#) + ADD 1, C(2020) 51; Legal base: Regulation (EU) 2018/848; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41039.

44 [Regulation \(EU\) 2018/848](#) (as amended) of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007. The main differences between the existing and new frameworks are summarised by the European Commission: “[The future of organics](#)”.

45 [COM\(20\) 483](#) Proposal for a Regulation amending Regulation (EU) 2018/848 on organic production as regards its date of application and certain other dates referred to in that Regulation

46 [Council Regulation \(EC\) No 834/2007](#) of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91.

be required before any such changes can be proposed. She recognises, though, the need for cooperation among the Devolved Administrations concerning future policy in this area and notes that a “Four Nations Working Group” has been set up to that end. Work is underway to consider specifically the impact on Northern Ireland of the requirement to maintain alignment with EU regulation.

Action

5.3 The Minister has addressed our queries as far as she is able at this stage. We have no further queries, but we draw the Minister’s response to the attention of the Environment, Food and Rural Affairs Committee, the Northern Ireland Affairs Committee and the Committee on the Future Relationship with the EU.

6 Fishing Opportunities 2021⁴⁷

This EU document is politically important because:

- it relates to the setting of fish quotas for the EU and the UK in the UK's first year outside the Common Fisheries Policy; and
- the future fisheries relationship between the UK and the EU — and thus the basis for agreeing quotas — is yet to be resolved.

Action

- Write to the Minister requesting a further update on preparations for the negotiation of fishing opportunities in 2021.
- Draw to the attention of the Environment, Food and Rural Affairs Committee.

Overview

6.1 The Commission's Communication presented its latest assessment of fish stocks and its intentions for the 2021 Total Allowable Catches (TACs). The UK's withdrawal from the EU will be an important factor when the TACs come to be set for 2021.

6.2 In our [letter](#) of 23 July 2020, we sought further information from the Parliamentary Under-Secretary of State (Victoria Prentis MP) concerning:

- the deteriorating sustainability of those North-East Atlantic stocks shared with non-EU countries, including future UK plans to manage that risk;
- future use of multi-annual planning in order to manage fish stocks shared by the UK and EU; and
- the approximate timeframe to which the Government is working for coastal state negotiations on the 2021 fishing opportunities.

6.3 In her [response](#), the Minister agrees with the Commission's conclusion that there are a number of stocks within the North East Atlantic which will not be fished at their Maximum Sustainable Yield (MSY) rate this year. She says that the Government's ambition is to achieve sustainable fisheries and that the UK looks forward to working with the EU and other neighbouring coastal States in both bilateral and multilateral fora to ensure a sustainable fisheries management approach across shared stocks. A joined-up approach, she says, will help guarantee the future health of these stocks going forward.

6.4 To that end, adds the Minister, the UK has held constructive discussions with Norway and the Faroe Islands on future bilateral fisheries relationships, including how to cooperate on the objectives for ensuring the long-term conservation and sustainable use of fish stocks. The UK is confident that framework agreements with both parties will be concluded prior to, and therefore underpin, the fisheries negotiations this autumn, independent of the UK concluding an agreement with the EU.

47 Commission Communication — Towards more sustainable fishing in the EU: state of play and orientations for 2021; [8871/20](#) + ADD 1, COM(20) 248; Legal base: —; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41347.

6.5 Concerning the future UK-EU Fisheries Framework Agreement, the Minister says that the UK continues to negotiate in good faith to reach an agreement. She recalls that the UK's draft legal text includes a proposal to create a new Fisheries Co-operation Forum with the EU to facilitate dialogue and co-operation on sustainable fisheries management.

6.6 In the absence of such an agreement, the UK would remain committed to acting as a responsible coastal State and to fulfilling its obligations under international law to cooperate with other coastal States on the sustainable management of shared stocks. The Fisheries Bill, says the Minister, provides an enabling framework so that — over time — the UK can replace existing Multi-Annual Plans with ones that meet the UK's specific priorities.

6.7 Concerning the timing and preparation for negotiations on the 2021 fishing opportunities, the Minister explains that the UK has already commenced preparation for the negotiations, following the publication of International Council for the Exploration of the Sea (ICES) advice for the majority of stocks in the North East Atlantic at the end of June, and will continue to consult the Devolved Administrations, scientists and external stakeholders over the coming months to develop the UK's priorities.

6.8 Coastal States negotiations are due to take place over October 2020, followed by the North East Atlantic Fisheries Commission (NEAFC) annual general meeting (which regulates fishing of these stocks in international waters) in November 2020.

6.9 The UK's bilateral negotiations with the EU, Norway and Faroes, and trilateral negotiations with the EU and Norway, will also take place this autumn. Exact timings for these negotiations are still to be confirmed, but the UK hopes to conclude them in enough time to provide certainty for industry ahead of the 2021 fishing year.

Action

6.10 We found the Minister's response helpful. We note the ongoing work over the coming months to develop the UK's priorities for the 2021 fishing opportunities and remain interested in that work. We are therefore writing to the Minister to request a further update within four weeks.

6.11 We have drawn the Minister's response, and our letter, to the attention of the Environment, Food and Rural Affairs Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Victoria Prentis MP), Department of Environment, Food and Rural Affairs

We have considered your letter of 18 August 2020 on the above Communication.

The information that you provided was very helpful. We note the ongoing work concerning preparation for the negotiation of the 2021 fishing opportunities and would welcome a further update on that preparation within four weeks, including any further information on the timetable.

7 Driver licensing changes⁴⁸

This EU document is legally important because:

- it will require transposition in the UK before the end of the transition period (as established under the UK/EU Withdrawal Agreement).

Action

- As the Government has provided an adequate response to the Committee's questions on its plans for the transposition of the Commission Directive, no further action is deemed necessary.

Background

7.1 The [proposal under scrutiny](#) was last considered by the Committee in its Eleventh Report of Session 2019–21.⁴⁹ The proposal, a Commission Directive, has already been adopted at EU-level and will have to be transposed into domestic law by Member States by 1 November 2020.⁵⁰ As this date falls before the end of the transition period (31 December 2020)—as established by the UK/EU Withdrawal Agreement—the Directive will also require transposition into UK law.

7.2 By way of background, the Commission Directive makes minor technical changes to Directive 2006/126/EC on driver licences.⁵¹ The Driver Licensing Directive establishes the model for driver licences in the EU and sets-out common standards for testing. These standards include the specification of vehicle categories, the minimum ages for licence acquisition, and test staging requirement. A full analysis of the proposal can be found in our Eleventh Report of Session 2019–21.

The Committee's questions and the Government response

7.3 The Committee wrote to Minister for Aviation, Maritime and Security, Kelly Tolhurst MP, on the proposal on 10 June 2020. We requested further information on the Government's plans for the transposition of the Commission Directive and were interested, in particular, in whether the Government will make use of the option to decide that restrictions to vehicles with an automatic transmission need no longer be recorded on driving licences when an applicant already holds a driving licence obtained on a vehicle with a manual transmission. This was considered to be the most important change made by the Directive to the UK's driver licensing framework.

48 Proposal for a Commission Directive (EU) .../... of XXX amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences; Council and COM number: 5166/20 + ADD 1 and Unnumbered; Legal base: Article 8 of Directive 2006/126/EC, special legislative procedure, majority voting in the European Parliament and QMV in the Council; Department: Transport; Devolved Administrations: Consulted; ESC number 41038.

49 Eleventh Report HC 229–viii (2019–21), [Chapter 4](#) (11 June 2020).

50 [Commission Directive \(EU\) 2020/612](#) of 4 May 2020 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences (Text with EEA relevance).

51 [Directive 2006/126/EC](#) of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast) (Text with EEA relevance) (the Driver Licensing Directive).

7.4 In response, Minister for Roads, Buses and Places, Baroness Vere of Norbiton, wrote on behalf of the Government on 11 August 2020.⁵² The Minister confirms that the automatic restriction will not be recorded on a driver's licence where existing entitlements are such that it is not required. The Minister provides further information on the domestic legislation that will be brought forwards to give effect to the Directive and the changes that the Driver and Vehicle Licensing Authority (DVLA) will make to its own testing processes to ensure compliance with its terms.

Action

7.5 As the Government has provided an adequate response to the Committee's questions on its plans for the transposition of the Commission Directive, no further action is deemed necessary.

52 Letter from Baroness Vere of Norbiton to Sir William Cash MP, 11 August 2020.

8 Gender equality: Commission strategy and stocktaking⁵³

These EU documents are politically important because:

- they outline the EU’s approach to gender equality over the next five years;
- they serve as an important marker for the Government’s own plans; and
- they raise questions regarding the future of new EU rights that are yet to be given effect to in the UK and have no domestic equivalent.

Action

- Write to the Minister for Women, Baroness Berridge of the Vale of Catmose, requesting further information on the Government’s views on the documents and the domestic actions that it is taking in the area.
- Draw this Report chapter to the attention of the Women and Equalities Committee, the Joint Committee on Human Rights, and the Work and Pension Committee.

Overview

8.1 The documents under scrutiny concern the EU’s approach to the promotion and protection of equality. Document (a)—‘[A Union of Equality: Gender Equality Strategy 2020–2025](#)’—sets out the von der Leyen Commission’s policy objectives and key actions for the coming five years. Document (b)—‘[Report on the implementation of the EU Action Plan 2017–2019 on tackling the gender pay gap](#)’—looks back at the success of the EU’s recent gender pay gap initiatives.

8.2 Taken together, these documents give a comprehensive overview of the EU’s progress and ambitions to combat all facets of direct and indirect gender-based discrimination (in terms of employment, pay, care, power and pensions, and continuing violence, harassment and gender stereotypes). They also provide an opportunity to interrogate the Government’s actions in the area: in terms of the EU-initiated work that it has undertaken whilst an EU Member State, and the complementary domestic initiatives that it has carried-over from the previous administration.

8.3 Both documents are briefly outlined below—focussing on the headline aspects of the EU’s strategy and stocktaking exercise—before the Government’s response is assessed. As a ‘roadmap’ for future action, document (a) details the Commission’s legislative and policy priorities for the coming five years and calls on Member States to take specific action in certain priority areas. These calls are directly relevant to the UK during the post-

53 Document (a) — Commission Communication: A Union of Equality: Gender Equality Strategy 2020–25; Council and COM number: 6678/20 and COM(2020) 152; Legal base: –; Department: Government Equalities Office; Devolved Administrations: Consulted; ESC number: 41124. Document (b) — Report from the Commission on the implementation of the EU Action Plan 2017–19 on tackling the gender pay gap; Council and COM number: 6648/20 + ADD 1 and COM(2020) 101; Legal base: –; Department: Government Equalities Office; Devolved Administrations: Consulted; ESC number: 41123.

exit transition period—when the UK is obliged to follow and give effect to EU law—and afterwards (when the legal and policy responses of the 28 EU Member States will serve as a comparator for the UK’s own approach to equalities).

Document (a) (41124) (A Union of Equality: Gender Equality Strategy 2020–2025)

8.4 The Commission Communication outlines the EU’s position as a global leader in gender equality (with 14 of the top 20 countries worldwide EU Member States). The EU’s prioritisation of gender equality is explained as a constitutional value of the Union; provided for in the Treaties, the Charter of Fundamental Rights of the EU and the recently adopted European Pillar of Social Rights. The pursuit of gender equality is also explained as an important focal point of the EU’s green and digital transitions strategies with gender equality positively associated with higher productivity.

8.5 The Communication does, however, note slow progress on the behalf of Member States towards full gender equality with only marginal improvements since 2005. The Commission recognises that full equality is not inevitable and, indeed, that gains made over the last three decades are reversible. With this in mind, the Commission has committed to give new impetus to securing gender equality through targeted measures and strengthened gender mainstreaming.⁵⁴

8.6 The Communication identifies six priority areas which, in the interests of brevity, are summarised below. Specific focus is directed towards forthcoming legislative and major non-legislative (policy) actions and where the Commission makes direct calls on Member States to address particular issues.

54 The idea of gender mainstreaming was pioneered by the EU and refers to the systematic inclusion of gender considerations in all stages of policy design and, for the EU, relations with third countries.

1. Being free from violence and stereotypes

Ending gender-based violence:

- The EU to accede to the Istanbul Convention (the benchmark for international standards in the area)
- Extend crimes—where harmonisation is possible—to specific forms of gender-based violence in accordance with Article 83(1) TFEU (known as ‘Eurocrimes’)
 - To the extent that they are already covered, introduce additional measures to prevent and combat specific forms of gender-based violence including sexual harassment, abuse of women and female genital mutilation (FGM)
- Table a Recommendation on the prevention of harmful practices
- Present a ‘Victims’ Rights Strategy’ building on the Victims’ Rights Directive⁵⁵
- Launch an EU network on the prevention of gender-based violence and domestic violence bringing together Member States and stakeholders to exchange best practices
- Propose a ‘Digital Services Act’ to clarify online platforms’ responsibilities with regard to user-disseminated content and facilitate the development of a new framework for cooperation between internet platforms
- Present a new EU strategy on the eradication of human trafficking and an EU strategy on ‘a more effective fight against child sexual abuse’
- Commission an EU-wide survey on the prevalence and dynamics of violence against women and other forms of interpersonal violence

Challenging gender stereotypes:

- Continue to support projects promoting gender equality under Creative Europe, including under Music Moves Europe, and present a gender equality strategy to the audio-visual industry as part of the next MEDIA sub-programme
- Launch an EU-wide communication campaign combatting gender stereotypes

The Commission calls on Member States to:

- Ratify and implement the Istanbul Convention
- Ratify the International Labour Organisation (ILO) Convention on combating violence and harassment in the world of work
- Implement existing EU rules e.g. Directive 2006/54/EU on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)⁵⁶
- Implement the Victims’ Rights Directive, the Child Sexual Abuse Directive and other relevant EU laws protecting victims of gender-based violence⁵⁷

55 [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

56 [Directive 2006/54/EC](#) of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

57 [Directive 2011/93/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

2. Thriving in a gender-equal economy

Closing gender gaps in the labour market:

- Continue to monitor gender equality metrics through the European Semester
- Develop guidance for Member States on how national tax and benefits systems can impact financial incentives or disincentives for second earners
- Develop targeted measures promoting the participation of women ‘in innovation’ under the Horizon Europe ‘European Innovation Council’
- Promote the presence of women in decision-making positions in private equity and venture capital funds through the InvestEU programme

Achieving equal participation across different sectors of the economy:

- Update the ‘Digital Education Action Plan’ to take better account of female underrepresentation in training and the digital economy
- Use the ‘Women in Digital’ scoreboard more systematically
- Ensure that the ‘Updated Skills Agenda for Europe’, Youth Guarantee and various policies on education—i.e. the forthcoming Council Recommendation on vocational education and training and Communication on the European Education Area—take account of gender-balance and correcting measures in education and training
- Promote women’s and girl’s participation and leadership in sport and physical activity through the renewed strategic framework for gender equality in sport

Addressing the gender pay and pensions gap:

- Table binding measures on pay transparency
- Launch a consultation on equal pay for equal work
- Explore with Member States the provision of pension credits for care-related career brakes in occupational pensions schemes

Closing the gender care gap:

- Propose to revise the Barcelona targets for the provision of early childhood education and care arrangements for children
- Launch a proposal for a ‘Child Guarantee’ focussed on addressing the most significant barriers preventing access to services
- Work with Member States on improving the availability and affordability of quality care services for children and other dependents
- Publish a ‘Green Paper on Aging’

2. Thriving in a gender-equal economy

The Commission calls on Member States to:

- Correctly transpose and implement the Work-Life-Balance Directive⁵⁸
- Follow-up on the Council conclusions of June 2019 ‘Closing the Gender Pay Gap: Key Policies and Measures’
- Ensure adequate investments in early childhood education and care services
- Implement the Ministerial declaration of commitment on ‘Women in Digital’

3. Leading equality throughout society

Achieving gender balance in decision-making and politics:

- Push for the adoption of the 2012 proposed Directive on improving the gender balance on corporate boards⁵⁹
- Launch the ‘EU Platform of Diversity Charters’ as a network for the exchange of best practices on addressing gender balance on executive boards and in managerial positions
- Promote the participation of women as voters and candidates in the 2024 European Parliament elections

The Commission calls on the Member States to:

- Transpose and implement the proposed Directive on improving the gender balance on corporate boards
- Develop and implement strategies to increase the number of women in decision-making positions in politics and policy-making

4. Gender mainstreaming and an intersectional perspective in EU policies

- Integrate a gender perspective in all major Commission initiatives
- Create a Commissioner for Equality and a ‘Task Force for Equality’
- Investigate and address the intersectionality of gender with other grounds of discrimination across EU policies

58 [Directive \(EU\) 2019/1158](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

59 [Proposal for a Directive of European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures.](#)

5. Funding actions to make progress in gender equality in the EU

- Ensure the integration of a gender dimension in programme funding through:
 - The European Social Fund Plus
 - The European Regional Development Fund
 - Creative Europe
 - The European Maritime and Fisheries Fund
 - The Cohesion Fund
 - The InvestEU Programme
 - Erasmus+
 - Horizon Europe
- Press ahead with the Common Provisions Regulation which includes specific gender equality enabling conditions as a precondition for funding
- Publish guidance on socially responsible public procurement targeted at fighting discrimination and promoting gender equality in public tenders
- Look more broadly at the gender impact of the EU’s activities under the EU budget

6. Addressing gender equality and women’s empowerment across the world

- Launch the next iteration of GAPII (GAPIII) (the EU’s action plan on gender equality and women’s empowerment in external relations)
- Launch the ‘#WithHer’ media campaign targeted at challenging harmful gender norms and stereotypes which perpetuate violence against women
- Adopt the EU Action Plan on Human Rights and Democracy
- Continue to implement the EU Strategic Approach and Action Plan on Women, Peace and Security 2019–2024
- Make use of the External Investment Plan to promote women’s entrepreneurship and labour market participation

8.7 The actions described under each of the priority areas will be taken forwards by the Commission over the next 5 years. It is expected that as a consequence of the COVID-19 pandemic those that were initially slated for late 2020 will be somewhat delayed. It is not though that the pandemic will lead to a change in priorities for the EU—as in other policy areas—but rather will necessitate faster and more radical action: as commentators have highlighted the disproportionate impact that the crisis is having on women and girls (in terms of lost employment and decreasing job opportunities, falling pay and reports of increases in incidents of domestic violence).⁶⁰

Document (b) (41123) (Implementation of the EU Action Plan 2017–2019 on tackling the gender pay gap)

8.8 The Commission report outlines the implementation of the EU action plan on tackling the gender pay gap reviews relevant legislative and non-legislative initiatives that were

60 The BBC, [‘Coronavirus: Domestic violence ‘increases globally during lockdown’’](#) (12 June 2020).

undertaken between 2017–19. The Commission notes that 24 action points were outlined in the plan and that the majority of these have been completed. The report is positive in tone; detailing how the work that the Commission has initiated supports the objectives of the EU and its commitment to tackling the gender pay gap.

8.9 This having been said, the figures provided in the report paint a disappointing picture of pay inequality in the Member States. During the implementation period of the plan, the average gender pay gap in the Member States decreased from 16 per cent in 2017 to 15.7 per cent in 2018 (a drop of only 0.3 per cent).

8.10 At the same time, the initiatives undertaken by the EU have been characterised by efforts at policy coordination, the creation of forums and networks, and the rearrangement of funding programmes to support reducing pay inequality. Very little legislative progress has been made. The exceptions are the adoption of the Work-Life-Balance Directive and the Transparent and Predictable Working Conditions Directive.⁶¹ These instruments, although important, are somewhat limited in terms of the rights that they give effect to and are not comparable to cornerstones of the EU equality framework such as the 2006 (recast) Equal Treatment Directive.

8.11 It is perhaps with this in mind that the incoming Commission has published document (a) (the EU’s Gender Equality Strategy 2020–25). As outlined above, an important plank of the EU’s strategy, with regard to gender pay disparities, will be the introduction of binding pay transparency measures.

The Government’s position

8.12 The Government wrote to the Committee on [document \(a\)](#) and [document \(b\)](#) by way of separate Explanatory Memoranda (EM) on 8 June 2020. Disappointingly, the EMs prepared by Baroness Berridge of the Vale of Catmose, Minister for Women, are of poor quality and, in places, read as though they have been copied *verbatim* from the Commission’s own documents.

8.13 Worthy of particular note is the ‘policy implications’ section of the EM on document (a). The Committee is of the opinion that such a significant document warrants full and considered analysis rather than the cursory information that has been provided. As mentioned above, at the end of the transitional period, the EU will become an important comparator for the UK’s own equality efforts.

61 [Directive \(EU\) 2019/1152](#) of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

8.14 More critically, the Ireland/Northern Ireland Protocol to the UK/EU Withdrawal Agreement lists six EU law equality Directives that must be complied with in Northern Ireland beyond 31 December 2020.⁶² Any suggested revisions to these instruments will be trialled in EU documents like the Commission Communication and report under scrutiny, speaking to the continued importance of this category of EU document after the end of the transition period.

Comment

8.15 The Commission’s Gender Equality Strategy is a significant document and conveys the seriousness with which the EU plans to treat the issue in coming years. Especially noteworthy is the Commission’s commitment to gender mainstreaming across all areas of EU action. The Minister does not offer any assessment of the merits of this approach nor does she explain the Government’s thinking on gender mainstreaming.

8.16 The documents under scrutiny, in particular, the Gender Equality Strategy, make direct calls on Member States to take action in a number of policy areas. The first covers ending gender-based violence. The Commission calls on Member States to ratify and implement the Istanbul Convention, and the ILO Convention on combating violence and harassment in the world of work. The Committee understands that the Government is working towards the ratification of both instruments. The Government has made ratification of the Istanbul Convention dependent on the progress of the Domestic Abuse Bill (which had its first reading in the House of Lords at the start of this Session). A timetable for the ratification of the ILO Convention has, however, not been forthcoming from the Government.

8.17 The Commission’s action areas for closing the gender pay gap are especially pertinent to the UK where, over the last decade or so, a number of reviews have been undertaken and new initiatives launched. In this regard, the Minister explains the introduction in 2017 of mandatory gender pay gap reporting for covered organisations.⁶³ The Commission’s suggestion of legislating for pay transparency measures would appear to go beyond what is currently required under UK law. Furthermore, linked EU plans for mandating a certain percentage of women on corporate boards would also be more onerous than current voluntary schemes—endorsed by Government—for large organisations based in the UK. In its 2019 ‘Gender Equality Roadmap’ the previous Government pledged to:

[Review] the enforcement of equal pay legislation to ensure [that] it is working as effectively as possible, including considering the circumstances where mandatory equal pay audits could be appropriate and proportionate.⁶⁴

62 [Council Directive 2004/113/EC](#) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; [Directive 2006/54/EC](#) of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupations; [Council Directive 2000/43/EC](#) of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; [Council Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; [Directive 2010/41/EU](#) of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC; and [Council Directive 79/7/EEC](#) of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

63 See [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#), SI 2017/172.

64 HM Government, [‘Gender equality at every stage: a roadmap for change’](#) (July 2019), pp 20.

The Minister does not mention any progress on this commitment or whether it remains a priority for the current Government.

8.18 In the previous Parliament, the Committee’s predecessor considered the negotiation and adoption of the Work-Life Balance Directive and the Transparent and Predictable Working Conditions Directive at EU-level. These instruments constituted the first update of the EU’s social *acquis* in a number of years and introduced new substantive employment rights in Member States. Both are covered in the Commission’s Gender Equality Strategy and are viewed by the EU as important mechanisms for furthering equality.

8.19 Notable rights not available in UK law covered by the Directives include: two months *paid* non-transferable leave per parent (set at a level to be determined by Member States); and the restriction of probationary work periods to six months. The Directives must be transposed by Member States by 2022 (after the end of the transition period under the UK/EU Withdrawal Agreement).

8.20 The Government consulted on aspects of the Work-Life-Balance Directive in response to the ‘Taylor review of modern working practices’.⁶⁵ As of yet, it has not outlined its findings or suggestions for the reform of pay and parental leave. In her EM, the Minister states that the UK will not be under an obligation to transpose either Directive—after the end of the transition period—and gives no indication of whether the Government will introduce paid parental leave.

8.21 Also of note in the Commission’s action plan is the priority given to promoting equality in the EU’s external action, in particular, the relationships it has with third countries (non-Member States). In terms of the UK’s future relationship with the EU, before the Council adopted its negotiating mandate on a future relationship agreement with the UK, the European Parliament stated that:

[An] ambitious chapter on trade and gender equality should be included, the consequences of the UK’s withdrawal from the EU on gender equality should be taken into account, including by ensuring a level-playing field for EU actions protecting and advancing the role of women in economy, for instance in terms of measures combatting the gender pay gap...⁶⁶

8.22 The Government’s view on including a chapter on trade and gender equality in a future UK/EU trade agreement is not known (such a chapter does not appear in the UK’s draft comprehensive trade agreement text).⁶⁷ Furthermore, the Committee is not aware of the Government having committed to promote and protect gender equality as an objective of future relationship negotiations with the EU.

Action

8.23 The Committee has written to the Minister thanking her for her EMs on the documents under consideration and has requested further information on:

65 Department for Business, Energy and Industrial Strategy, ‘Good work: the Taylor review of modern working practices’ (July 2017). Also see Department for Business, Energy and Industrial Strategy, ‘Good work plan: proposals to support families’ (July 2019).

66 [European Parliament resolution of 12 February 2020 on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland \(2020/2557\(RSP\)\)](#).

67 HM Government, ‘[Draft UK-EU Comprehensive Free Trade Agreement \(CFTA\)](#)’ (May 2020).

- the Government’s view of the EU’s approach to gender mainstreaming;
- the timetable that the Government is working towards for ratifying the ILO Convention on combating violence and harassment in the world of work;
- whether the Government will review current UK pay transparency measures;
- whether the Government is considering legislating to ensure that women are represented on the corporate boards of large UK-based companies;
- whether the Government will commit to give effect to those parts of the Work-Life-Balance Directive and the Transparent and Predictable Working Conditions Directive that are not currently provided for in UK law; and
- the Government’s view on including a chapter on trade and gender equality in a future agreement with the EU and whether it will commit to promote and protect gender equality as an objective of negotiations with the EU.

8.24 This Report chapter has been drawn to the attention of the Women and Equalities Committee, the Joint Committee on Human Rights, and the Work and Pensions Committee.

Letter from the Chair to the Minister for Women (Baroness Berridge of the Vale of Catmose)

The Committee have asked me to thank you for your Explanatory Memoranda (EM) on the two above listed documents of 8 June 2020. The Committee was somewhat disappointed with their content with neither EM providing a satisfactory assessment of the Commission’s plans for combating gender discrimination over the next five years. Indeed, in parts, it appears as though sections of the Commission’s documents have been copied *verbatim* in your EMs. We are sure you will agree this is not what is expected of Government Departments and falls short of what is required for effective Parliamentary scrutiny. Should your Officials have any queries regarding the expected content of EMs, the Committee secretariat is on hand to offer advice.

The Commission’s Gender Equality Strategy is a significant document and highlights the seriousness with which the EU intends to treat all facets of direct and indirect gender-based discrimination over the coming years. The importance of this document to the UK is clear: the calls for action it makes of Member States are directly relevant to the UK during the post-exit transition period—when the UK is obliged to give effect to EU law—and afterwards (when the legal and policy responses of the 28 EU Member States will serve as a comparator for the UK’s own approach to equalities).

More critically, the Ireland/Northern Ireland Protocol to the UK/EU Withdrawal Agreement lists six EU law equality Directives that must be complied with in Northern Ireland beyond 31 December 2020. Any suggested revisions to these instruments will be trialled in EU documents like the Commission Communication and report under scrutiny; speaking to the continued importance of this category of EU document after the end of the transition period.

The Commission's Gender Equality Strategy raises a number of questions concerning the EU-initiated work that the Government is undertaking whilst the UK remains bound by EU law, and the complementary domestic initiatives that it has carried-over from the previous administration. As such, we request further information on:

- the Government's view of the EU's approach to gender mainstreaming and whether it has considered adopting a similar policy for its own legislative and economic agenda;
- the timetable that the Government is working towards for ratifying the ILO Convention on combating violence and harassment in the world of work;
- whether the Government will review the operation of The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 and consider introducing new criteria such as reporting for organisations with fewer than 250 employees;
- whether the Government is considering, or will consider, legislating to ensure that women are represented on the corporate boards of large UK-based companies;
- whether the Government will commit to give effect to those parts of the Work-Life-Balance Directive and the Transparent and Predictable Working Conditions Directive that are not currently provided for in UK law i.e. two months *paid* non-transferable leave per parent, and the restriction of probationary work periods to six months; and
- the Government's view on including a chapter on trade and gender equality in a future agreement with the EU and whether it will commit to promote and protect gender equality as an objective of negotiations with the EU.

9 The cost of the Brexit financial settlement (update)⁶⁸

These EU documents are politically important because:

- they contain information on both the EU’s current long-term budget and pensions for EU civil servants, to which the UK has agreed to contribute for the foreseeable future under the terms of the financial settlement in the Withdrawal Agreement. The Treasury published its latest forecast of the cost of the settlement in July 2020, putting the total figure at £32.7 billion.

Action

- Draw the latest information on the cost of the Brexit financial settlement to the attention of the Committee on the Future Relationship with the EU, the Public Accounts Committee and the Treasury Committee.

Overview

9.1 Under the Withdrawal Agreement governing the UK’s exit from the European Union on 31 January 2020, the Treasury is required to make certain financial contributions to the EU to resolve residual obligations linked to the period of the UK’s membership from 1973 until 2020. These include a share of the EU’s spending under its 2014–2020 long-term budget, as well as a contribution to the pension entitlements built up by EU staff and a guarantee in relation to certain contingent liabilities on the EU’s books. In return, the UK also remains eligible for European funding until the end of 2020 and will receive a share of certain EU assets. In spring 2020, the European Commission issued several documents relating to the EU’s spending that are relevant to the financial settlement and its cost to the UK taxpayer.⁶⁹

9.2 Based on these latest figures, combined with its own internal modelling, the Treasury on 13 July published its latest annual “[EU Finances Statement](#)” on the UK’s contributions to the EU. This predicts that the net cost of the Brexit financial settlement to the UK taxpayer is now forecast to amount to €36.9 billion (£32.7 billion).⁷⁰ The majority of this is likely to have been paid by the mid-2020s. This latest estimate is substantially lower than the Treasury’s infamous initial forecast for the cost of the settlement of £39 billion, made in January 2018. This decrease is due to a large extent to the fact that the UK remained a Member State of the EU for ten months longer than initially anticipated after the Article

68 (a) [Consolidated Annual Accounts for the European Union for the Financial Year 2019](#); (b) [Annual Accounts for the European Union for the Financial Year 2019](#); (c) [Financial information on the European Development Fund](#) European Development Fund (EDF): forecasts of commitments, payments and contributions; (d) [Long-term forecast of future inflows and outflows of the EU budget \(2021–2025\)](#); (a) COM(2020) 288; (b) COM(2020) 289; (c) COM(2020) 235; (d) COM(2020) 298; Legal base: -; Department: (a), (b) and (d); HM Treasury; (c) International Development; Devolved Administrations: Not consulted; ESC number: (a) 41370; (b) 41369; (c) 41345; (d) 41373.

69 See footnote 1.

70 This includes an estimated £2.5bn UK contribution under the settlement to ‘off budget’ EU schemes like the European Development Fund, as we explain elsewhere in this chapter. This amount is not usually included by the Treasury in its headline figure for the cost of the settlement because this money does not flow into the general EU budget.

50 negotiating period was extended from 29 March 2019 to 31 January 2020. For reasons explained further below, this had the effect of reducing the amount for the UK to pay under the settlement *after* withdrawal.

9.3 However, the definitive cost of the settlement remains uncertain, driven in part by fluctuations in the value the UK's contribution to the pensions bill for EU civil servants (which amounts for £8.3 billion of the total estimate). The Treasury estimate also does not foresee any costs related to certain contingent EU liabilities for which the UK has assumed partial exposure under the Withdrawal Agreement.

9.4 In particular, the Government has granted a conditional guarantee to the European Investment Bank (EIB), capped at £35.2 billion. This requires the Treasury, when certain conditions are met, to share with the remaining Member States the cost of any capital injection considered necessary to stabilise the Bank in relation to its financial operations agreed before the UK left the EU. No call on any part of that guarantee has been made publicly to date, but the impact of coronavirus could make such an eventuality more likely. While materialisation of the need for the UK to pay the EIB the full amount for which it is theoretically liable under the settlement would only occur in extreme economic circumstances, we will continue to monitor the financial situation of the Bank — and its implications for the UK taxpayer — closely and expect the Government to keep Parliament informed promptly of any relevant developments.⁷¹

9.5 In this Report, we have summarised relevant developments relating to the different components of the financial settlement in more detail, drawing on information provided by the European Commission and the Treasury.

The financial settlement in the Withdrawal Agreement

9.6 The UK's contributions to the EU budget have long been controversial, and the net cost to the taxpayer of the membership dues played a prominent role in the 2016 referendum that led to the UK's withdrawal from the EU in January 2020.

9.7 However, exiting the European Union has not fully laid the issue to rest: the Withdrawal Agreement, ratified by the UK and European Parliaments, contains a complex financial settlement under which the UK has accepted it will pay the EU for a number of residual budgetary obligations for several years to come.⁷² The logic behind this settlement is that the Government approved successive EU long-term spending plans as a Member State, including the most recent “Multiannual Financial Framework” for the 2014–2020 period (which was agreed in 2013).⁷³ Therefore, in the words of the European Commission, the

71 The Treasury told us in June 2020 that it had received “no indication” that the Bank was considering a capital call that would involve the UK under the terms of the financial settlement, but the Withdrawal Agreement requires the Government to keep any such request confidential until the Bank itself makes it public. It should be noted however that the UK's maximum liability is capped at €39.2 billion, and will automatically decrease over time. This full sum could only be due in the extremely unlikely event that all the remaining 27 Member States also had to fully pay in their callable capital with the Bank.

72 The need for a financial settlement was one of the EU's first requests when the Government triggered the Article 50 process to withdraw from the European Union in March 2017, reflecting the significant financial consequences for the EU budget of the loss of the UK as a major net contributor.

73 The UK's vote in favour of the 2014–2020 Multiannual Financial Framework is recorded in [EU Council document 17253/13](#). Parliament also approved a separate “Own Resources Decision”, which establishes how the EU's spending over that period is financed by its Member States, by means of the [European Union \(Finance\) Act 2015](#).

UK committed itself “to fund a share of the [EU’s] obligations” and it should “honour its share of the financing of all the obligations undertaken while it was a member of the Union”.⁷⁴

9.8 The EU’s financial obligations “undertaken” during the UK’s membership from 1973 until 2020 are multifaceted and complex, and could not be definitively established at the point of its formal withdrawal on 31 January 2020. As such, the precise cost of the settlement is not explicitly set out in the Agreement. Instead, it establishes a methodology for calculating the UK’s contribution to five different types of EU financial obligations to which it has agreed to contribute.⁷⁵ This forms the basis on which the Government will make payments to the EU twice a year⁷⁶ until all residual obligations as set out in the settlement are extinguished.

9.9 The five components of the financial settlement are described briefly below. The subsequent sections of this chapter discuss the relevance of the recent EU budgetary developments for each of these components in more detail.

- The UK will pay into the EU budget as if still a Member State until the end of the EU’s current long-term budgetary cycle on 31 December 2020,⁷⁷ in return for which it remains eligible to be awarded almost all types of EU funding until that date (even if the money is only paid out in 2021 or later).⁷⁸ The UK’s contribution is calculated on the basis of the applicable budgetary legislation in force when it ceased to be a Member State on 31 January 2020, including its budget rebate.
- Linked closely to the above, from 1 January 2021 the UK will pay for a share of the *outstanding* financial commitments to recipients of EU funding made on or before 31 December 2020 (i.e. where a funding decision has been made under the current long-term EU budget, but the money has not yet been fully paid out by the end of this year).⁷⁹ This is known as the “*Reste à Liquider*” or RAL. The UK’s share will be calculated as its average share of contributions to the EU budget over the 2014–2020 period,⁸⁰ which the Office for Budget Responsibility (OBR) estimates to be 12.3 per cent.⁸¹ The UK will not have any obligation to contribute towards *new* EU spending commitments made under the latter’s new long-term budget from 1 January 2021 onwards.⁸²

74 European Commission, “[Position paper transmitted to the UK: essential principles on the financial settlement](#)” (12 June 2017).

75 The financial settlement is contained in [Part Five](#) of the Withdrawal Agreement.

76 Article 148 of the Withdrawal Agreement states that the “reference dates for payments by the United Kingdom to the Union or by the Union to the United Kingdom made after 31 December 2020 shall be 30 June and 31 October of every year”. It also contains specific rules for the payment of the amounts due under the different components of the settlement.

77 Article 135 of the Withdrawal Agreement.

78 Articles 137 and 138 of the Withdrawal Agreement.

79 Article 140 of the Withdrawal Agreement.

80 Article 139 of the Withdrawal Agreement.

81 OBR Economic Forecast: Fiscal Supplementary Tables, Expenditure (March 2020).

82 Discussions on the EU’s Multiannual Financial Framework for the 2021–2027 period are on-going, with a view to agreement by the end of the year. They are being held in parallel to negotiations on the EU’s €750 billion Coronavirus Recovery Fund. See for more information our Report of 22 July 2020.

- From 2021 onwards, the UK will also contribute towards the pension entitlements accrued by EU civil servants before 31 December 2020.⁸³ In return for paying for this liability, it will also receive a share of certain EU assets.⁸⁴ In particular, the UK will receive back its €3.5 billion paid-in capital with the European Investment Bank (EIB) in €300 million annual instalments over a 12-year period.⁸⁵
- The UK will contribute to several ‘off-budget’ EU programmes (meaning they are, for various reasons, funded by EU Member States directly rather than from their general contributions to the EU budget, but managed by the European Commission).⁸⁶ This category includes, for example, payments to the European Development Funds for development assistance, as well as the EU’s Trust Fund for Africa, the Facility for Refugees in Turkey, and the Common Security & Defence Policy. Before Brexit, the UK made specific funding commitments to these schemes,⁸⁷ which the Withdrawal Agreement requires it to honour.
- Lastly, the UK has accepted partial exposure to certain contingent liabilities on the EU’s books, meaning it will have to contribute if these crystallise in the future.⁸⁸ In particular, the UK has granted a guarantee that it will, under certain conditions, provide additional capital to the European Investment Bank (EIB) on the same basis as the remaining Member States if necessary in relation to the Bank’s pre-Brexit lending operations.⁸⁹

9.10 The payment of the financial settlement is now a legal obligation on the UK under international law, independent of the outcome of the Government’s negotiations on a new trade agreement with the EU. However, because of the methodology underlying the settlement, the total eventual cost of these various components to the UK is not yet set

83 See Articles 141 and 142 of the Withdrawal Agreement. The timing of payments varies for the different liabilities. For example, Article 142(6) states that the UK will be contributing to the pensions of regular EU staff from 30 June 2022.

84 See in particular Articles 145, 146 and 150 of the Withdrawal Agreement. The assets to be returned to the UK are fairly limited. They do not include, for example, a share of the money invested by the EU — using the UK’s contributions — to its space programme, or the returns generated by the European Investment Bank using its paid-in capital from EU countries including, until 31 January 2020, the UK.

85 The twelfth and final installment will amount to the residual €196 million.

86 Articles 152 to 157 of the Withdrawal Agreement.

87 See in particular the [“Internal Agreement”](#) of 6 August 2013 establishing the 2014–2020 European Development Fund.

88 Articles 143, 144 and 150 of the Withdrawal Agreement. Aside from the guarantee to the EIB these contingent liabilities include, for example, the EU’s macro-financial assistance loans to a number of non-EU countries like Ukraine and Moldova, and pending legal cases against the EU if these result in the need for compensatory payments. The UK also faces a different kind of contingent liabilities in relation to any financial obligations that may arise for the Government as the result of any EU Court of Justice judgments for failure to correctly apply EU law before the end of the post-Brexit transition period. Potentially the most significant such contingent liability relates to a pending case in which the European Commission is seeking recovery of over €2 billion in evaded duties as part of a claim the UK incorrectly applied EU customs rules to imports of Chinese textiles. This would not be part of the financial settlement, which relates to the UK’s share of the EU’s financial obligations to third parties.

89 This means the UK guarantee [relates](#) primarily to EIB lending operations which were approved on or before the UK’s withdrawal from the EU on 31 January 2020, and “other EIB risks as long as such risks are not related to post-withdrawal lending”. The Withdrawal Agreement refers to this as “other such risks that are not associated with specific financial operations and are not attributable to the stock of financial operations built after the date of entry into force of this Agreement”. The European Investment Bank has clarified that this liability exists only where “such risks are not related to post-withdrawal lending”.

in stone. We explore this further below, including an assessment of the latest estimate of the costs of the five different components of the settlement as described above in light of information provided by the European Commission and the Treasury.

The fluctuating cost of the financial settlement

9.11 As noted, the Withdrawal Agreement does not fix the overall cost of the settlement but sets out a methodology for establishing the UK's contributions under its various components. As a result, the net cost of the settlement to the taxpayer will be dependent on various factors, including in particular:

- the size of the EU's financial obligations for which the UK is partially liable under the Withdrawal Agreement. Here, the largest uncertainty relates to the eventual cost of the pension liability for EU staff accrued by 31 December 2020, as its final value will depend on a number of factors not yet known.⁹⁰ The size of the settlement is also affected by so-called “decommitments” (planned EU spending that is ultimately cancelled),⁹¹ as well as whether any of the EU's contingent liabilities to which the UK is exposed actually crystallise, in particular with respect to its guarantee to the European Investment Bank;⁹²
- the UK's precise *share* of its obligations in relation to the EU's outstanding funding commitments and its pensions liability from 1 January 2021. This will be calculated based on the UK's average share of contributions to the EU budget for each year of the 2014–2020 Multiannual Financial Framework. It can therefore only be definitively established after the end of 2020;⁹³
- the amount of money the Government and private sector organisations will ultimately receive back in receipts from the EU budget under the 2014–2020 Multiannual Financial Framework. This will reduce the gross cost of the settlement by, partially, offsetting contributions. Although the Government concedes that “the UK's revenues from the EU may change in the context of

90 These include, [in the words of the Treasury](#), “the final salaries of the employees [covered by the EU pension scheme], their years of service and the length of time they live in retirement”.

91 The UK's obligation in respect of outstanding EU budget commitments by the end of 2020 — the RAL — is based on money that actually needs to be paid out. As the RAL component is the difference between committed EU spending and what still needs to be paid out, decommitments — cancellation of planned EU spending — reduce outstanding budgetary commitments, leading to a lower RAL and therefore decreasing the amount to which the UK needs to contribute.

92 This is the case because the size of the pensions liability is partially out of the EU's control, for reasons described elsewhere in this chapter. By contrast, how much the EU can spend from its 2014–2020 budget on ‘routine’ funding like the Common Agricultural Policy before the end of the year, which determines the combined UK exposure under the first two components of the financial settlement, is fixed and can therefore not increase beyond the limits set out in the Multiannual Financial Framework for 2014–2020 as it stood immediately before the UK's withdrawal.

93 Article 139 of the Withdrawal Agreement provides that the UK's share will be definitively established on the basis of the information received by the Commission by 1 February 2022 on all contributions to the EU budget by the end of 2020.

withdrawal” — in other words, it may receive less since it is leaving — it notes that “this risk is mitigated because allocations for most EU expenditure in the UK have already been agreed”,⁹⁴ and

- fluctuations in the exchange rate from pound sterling to euro, as the UK’s payments under the financial settlement from 1 January 2021 onwards are legally denominated in the latter.⁹⁵ This affects not only the amount the UK pays to the EU each year, but also the value of payments made by the EU to the UK, such as the gradual repayment of the UK’s paid-in capital with the European Investment Bank.

9.12 In the following section, we have described the Treasury’s latest estimate of the cost of the various components of the settlement in light of recent developments and EU budgetary information published by the European Commission.

The cost of the financial settlement

9.13 When the components of the financial settlement were first [provisionally agreed](#) between the UK and the EU in the “Joint Report” of December 2017, the Treasury estimated that the net cost of the settlement would fall between £35 billion and £39 billion.⁹⁶ This was based on the information available at the time, including the scheduled UK withdrawal date of 29 March 2019, at the end of the two-year negotiating period foreseen for departing Member States under Article 50 of the EU Treaty initiated by the then-Prime Minister (Rt Hon. Theresa May MP) on 29 March 2017.⁹⁷

9.14 In its [latest annual EU Finances Statement](#) on the UK’s financial contributions to the EU, published on 13 July 2020, the Treasury has provided an update of this estimate. It now takes into account the extension of the UK’s EU membership from March 2019 to 31 January 2020 as [required by Parliament](#)⁹⁸ (which increased the amount the UK paid into the EU budget while still an EU Member State, and therefore decreased the size of the post-Brexit financial settlement). The Treasury also says it has improved its modelling with the Government Actuary Department, and factored in the financial information contained in the EU’s most recent accounts.

9.15 The Treasury now estimates that, had the UK left the EU on 29 March 2019 as originally planned, the net cost of the UK’s payments into the EU budget under the settlement would have been €42.5 billion or £37.6 billion, within the £35 billion to £39 billion range set out in the its initial estimate in January 2018.

9.16 Removing the contributions made by the UK as an EU Member State during the extension of the Article 50 period from March 2019 to January 2020, which amounted

94 HM Treasury, [EU Finances Statement 2019](#), p. 72. In particular, the Government notes that “Around three quarters of UK receipts are fixed automatically each year, through EU regulations or operational programmes [...] and generally less sensitive to year-by-year variation. The remaining quarter of receipts are received through competitive grant programmes such as Horizon 2020 [the EU’s Framework Programme for Research], and by nature vary from year-to-year”.

95 Article 133 of the Withdrawal Agreement.

96 [Letter](#) from Philip Hammond, then Chancellor, to Nicky Morgan, then Chair of the Treasury Committee (24 January 2018).

97 This figure excluded the cost of the UK’s contributions to the EU’s ‘off budget’ programmes to which we referred above.

98 [European Union \(Withdrawal\) \(No. 2\) Act 2019](#), in particular sections 1(4) and 3.

to €8.4 billion (£7.3 billion), its latest forecast is that the actual net cost of the financial settlement to the UK from its withdrawal from 31 January 2020 onwards will be €34.1 billion, or £30.2 billion.⁹⁹ By comparison, in March 2020 the independent Office for Budget Responsibility (OBR) estimated the cost of the settlement would be £32.9 billion. The Government ascribes the difference to the Treasury's access to non-public data, the OBR's use of a forecast of the euro-sterling exchange rate, and a different approach to calculating the EU's pension liability (see paragraphs 33 to 39 below).¹⁰⁰

9.17 However, the Treasury's forecasts of both January 2018 and July 2020 exclude the UK's continued contributions to the EU's 'off budget' schemes, principally the European Development Funds, since its definition of the settlement for the purposes of estimating its cost only covers those elements which involve payments into the general EU budget.¹⁰¹ Its latest EU Finances Statement does nevertheless include a separate estimate for the likely cost of this component of the settlement, amounting to €2.8 billion (£2.5 billion).¹⁰²

9.18 By including the July 2020 forecast for the UK's payments to the EU's 'off budget' programmes, the Treasury now estimates the total net cost of the Brexit financial settlement in the Withdrawal Agreement from 31 January 2020 onwards will be €36.9 billion (£32.7 billion).¹⁰³

9.19 We have elaborated on the cost of the different components of the financial settlement, including the 'off budget' components, further in the remainder of this Report, and how the likely cost of these separate elements have changed since the original Treasury estimate in January 2018.

The UK's contributions to the EU Multiannual Financial Framework 2014–2020

9.20 The first two components of the financial settlement cover the UK's contributions to EU spending made under its current long-term budget, the Multiannual Financial

99 Using the £1:€1.13 exchange rate applicable on 31 March 2020.

100 The Treasury says that, unlike the OBR, it "does not have a target for the Sterling exchange rate and does not generally comment on currency movements". Its estimate of the cost of the settlement therefore "uses the spot rate at the end of the 2019/20 financial year to align with the rate used in HMT departmental Resource Accounts". This difference, it says, means the OBR reduced the expected net cost of the settlement by £1.5 billion compared to the Treasury. This is offset by its increased estimates relating to the pensions liability, which adds £3 billion to the OBR's estimate compared to the Treasury's, and "modelling and data source differences", which adds £1.1 billion, resulting the OBR's overall forecast being £2.7 billion higher.

101 The Government also says that it does not expect to meet the costs of these contributions through authority granted by the European Union (Withdrawal Agreement) Act 2020, but under different statutory authority.

102 The bulk of this amount is accounted for by UK's outstanding contributions to the European Development Fund, estimated to be €2.7 billion (£2.3 billion). It is not possible to compare this to an earlier estimate because the Treasury's January 2018 forecast did not contain a specific figure for these payments. The National Audit Office noted in April 2018 that the Treasury, at that point, expected the "UK's commitments to the European Development Fund (EDF) [to] cost £2.9 billion after the UK leaves the EU", i.e. from 29 March 2019 onwards. If that figure is broadly correct, it can be inferred the UK paid approximately £400 million into the EDF between March 2019 and January 2020.

103 Taking into account the £2.9 billion estimate for the 'off budget' payments in spring 2018 (see previous footnote), the cost of the financial settlement including those payments, had the UK left on 29 March 2019, would have been £40.5 billion.

Framework 2014–2020.¹⁰⁴ They relate, respectively, to the UK’s payments for the remainder of 2020 (i.e. until the end of the current budgetary period) and its contribution to outstanding budget commitments made before 31 December 2020 but which are to be paid in 2021 or beyond.

UK contributions to the EU budget in 2020

9.21 The first component requires the UK to pay into the EU budget as if still a Member State until 31 December 2020. In return, the UK remains largely eligible to be awarded EU funding as if it was still in the EU until that date.¹⁰⁵ The UK’s payments into the EU budget in 2020 are calculated on the basis of the EU’s pre-withdrawal legislation on Member State contributions,¹⁰⁶ which Parliament approved by means of the [European Union \(Finances\) Act 2015](#). In particular, this means the UK rebate continues to apply to those contributions.¹⁰⁷

9.22 The UK’s eventual net contribution to the EU budget in 2020 will, as noted, depend on the flow of EU money back to the UK on the basis of funding decisions made by 31 December 2020.¹⁰⁸ It can therefore not yet be definitively established.¹⁰⁹ **However, the Treasury’s latest EU Finances Statement estimates that the UK net contribution to the EU budget from 1 February to 31 December 2020 — i.e. excluding contributions and receipts in the final month as a full Member State of the EU — will amount to €9.1 billion (£8.1 billion).**¹¹⁰ This takes into account the UK’s estimated receipts from the EU budget over that period.¹¹¹

104 Although Article 140 of the Withdrawal Agreement technically also makes the UK liable for a share of spending commitments outstanding by 31 December 2020 which were made under the EU’s previous Multiannual Financial Framework (for the 2007–2013 period), the European Commission estimates no such commitments will be outstanding.

105 The Withdrawal Agreement specifies, in Article 127(6), that until 31 December 2020, “any reference to Member States [...] shall be understood as including the United Kingdom”, which includes eligibility for receipt of EU funding. However, Article 127(7)(b) of the Agreement limits this “where acts of the [EU] provide for the participation of Member States, [...] in [a] procedure or programme which continues to be implemented or which starts after the end of the transition period, and where such participation would grant access to security-related sensitive information that only Member States [...] are to have knowledge of”. In such cases, the UK is excluded. In terms of programme participation, this bars the UK from receiving certain funding under the Galileo satellite navigation programme and the European Defence Industrial Development Programme. As of 31 January 2020, the UK is also no longer eligible to be treated as a Member State for the purposes of European Investment Bank (EIB) investment selection procedures since such investment is not funded by the EU budget.

106 As set out in the Own Resources Decision ([Decision 2014/335/EU](#)).

107 The Withdrawal Agreement also contains safeguards that prevent the EU from retroactively abolishing the rebate without the UK’s agreement.

108 The EU budget for 2020 estimated that the UK’s gross contribution for this year, including the final month of EU membership in January, would be €18.5 billion (£16.8 billion). See EU budget 2020, [Table 7](#).

109 The UK Government annual EU Finances Statement normally calculates the UK’s net contribution by only taking into account EU funding received by the public sector. The European Commission’s calculation also takes into account EU funding awarded directly to private sector entities in the UK, like research funding for universities. As a result, the UK’s estimate of the net contribution is typically higher than the EU estimate. For the calculation of the net cost of the overall financial settlement however, the Treasury appears to have taken into account both UK public and private sector receipts from the EU budget.

110 [EU Finances Statement 2020](#), Table E.1.

111 In March 2020, the Office for Budget Responsibility estimated that net UK payments to the EU budget in 2020 would amount to £8.9 billion.

The UK's contributions to the EU's 'Reste à Liquider' from 1 January 2021

9.23 From 1 January 2021 onwards, the UK will pay for a share of the EU's outstanding budgetary commitments made by 31 December 2020 (known as the 'Reste à liquider' or RAL). It will also still receive any funding due to UK recipients made by that date under the budget arrangements for 2020 (see above), but not yet fully paid out. The RAL is the difference between EU spending commitments made by the end of the current Multiannual Financial Framework, which are capped, and what it has actually paid out. It therefore decreases as such payments are made, and where the EU makes so-called 'decommitments', or cancellation of planned spending, meaning less money is required to be paid.

9.24 In June 2020, the European Commission [published](#) its latest long-term forecast for the RAL at the end of the EU's current long-term budget on 31 December 2020, estimating it will reach €308 billion (£280 billion), but with decommitments expected to reduce this amount by €9 billion (£8.2 billion) from 2021 to 2025.¹¹² The UK's share of the RAL, in other words what it must pay under the settlement, will be calculated as its average contribution to the EU budget from 2014 to 2020, as a proportion of all contributions by the UK and the 27 remaining Member States over that period. The Office for Budget Responsibility has estimated this share will be 12.3 per cent.¹¹³ The rebate will be factored into the payments due under this component of the settlement, because it is reflected in the average contributions used to calculate the UK's share.

9.25 In its latest EU Finances Statement the Treasury estimates that the UK's net contribution to the EU's outstanding budgetary commitments (the RAL) from 1 January 2021 onwards will be €23.2 billion (£20.6 billion), to be paid from 2021 to 2026. This takes into account residual receipts from the EU budget for UK recipients, which had already been awarded before the end of 2020, over that period.

9.26 The OBR in March 2020 estimated the RAL component of the settlement would represent a net cost to the UK of £19.2 billion.¹¹⁴ In January 2018, the Treasury itself estimated this net cost to fall in the range of €21 billion to €23 billion, meaning its latest forecast is somewhat higher. However, insofar as this increase is due to the larger estimate for the EU's RAL overall as indicated by the latest Commission figures, this would not

112 An increase in the RAL does not as such increase the UK's financial obligations under the settlement. The estimated outstanding budgetary commitments reflect EU spending decisions that have been (or will be) made by 31 December 2020, but not yet fully paid at that point. A larger RAL is therefore an indication that more of the money the EU, which is legally required to pay, will be disbursed later than anticipated, not that spending overall has increased. As such, an increase in the RAL in relation to EU funding awarded before the end of 2020 — to which the UK will contribute from 1 January 2021 onwards — also means there was a concomitant decrease in EU payments before that date.

113 Because Member State contributions to the EU budget for a given year can be adjusted ex-post, the definitive UK share will be calculated only after 1 February 2022.

114 The difference, [according to the Treasury](#), is due to the OBR using a forward-looking exchange rate forecast for the pound and euro, as well as "modeling and data source differences".

imply a higher overall cost of the settlement.¹¹⁵ Instead, it would reflect the fact that the UK paid commensurately less either as a Member State or under the settlement before 31 December 2020, leaving more to be paid from 2021 onwards.¹¹⁶

Increases in the EU budget for 2020 related to the coronavirus crisis

9.27 The total amount of spending commitments the EU can make by 31 December 2020, and by extension the maximum size of the RAL to which the UK will contribute under the financial settlement, is capped by the [2013 Regulation establishing the EU’s Multiannual Financial Framework](#) (which was approved unanimously by all Member States, then still including the UK).¹¹⁷ Moreover, the Withdrawal Agreement contains specific provisions that protect the Treasury from having to pay towards funding commitments in 2020 that are predicated on an increase in the EU’s spending limits agreed after the UK ceased to be a Member State.¹¹⁸

9.28 This safeguard has had practical consequences in the context of the current coronavirus crisis, which has led the EU to adjust its spending plans for 2020 significantly through seven ‘amending budgets’ and depletion of its financial reserves for the year. In particular, on 17 April 2020 the European Parliament and the 27 Member States in the Council of Ministers formally approved an [amendment](#) to the 2014–2020 Multiannual Financial Framework. This modified a reserve known as the ‘Global Margin for Commitments’. In essence, the change allowed the EU to commit an additional €2 billion (£1.8 billion) in funding in 2020 for healthcare-related purposes (whereas prior to the amendment, this money could only have been used for “policy objectives related to growth and employment, in particular youth employment, and to migration and security”). The bulk of this new money is to be used for EU-wide Advance Purchase Agreements for a future coronavirus vaccine, a scheme in which the Government has since [decided not to participate](#).

9.29 The EU has asserted that the UK will have to pay towards this additional €2 billion of EU spending under the financial settlement — irrespective of whether it chooses to participate in the vaccine purchase scheme — because the change is “limited to the purpose” of the Global Margin for Commitments. In other words, the EU argued that it could have decided to spend the additional money anyway *without* the recent legal modification, even if only for a more limited range of public policy purposes, and therefore any such expenditure is covered by the UK’s existing financial obligations under the settlement.

115 The UK’s net contribution to the EU’s RAL is also affected by other factors we described elsewhere in this Report, such as receipts from the EU budget from 2021 onwards or the exchange rate.

116 Since the RAL is a function of the difference between EU funds committed and actually paid out, where overall commitments are capped an increase reflects a delay in disbursement of EU funding to recipients that has already legally been awarded. Conversely, a lower RAL — assuming no change to the EU’s cap on spending commitments — would have indicated more of the money would actually have been paid out before the end of 2020 (to which the UK would also have contributed under the settlement).

117 The EU is on course to fully commit all its available remaining funds under the 2014–2020 Multiannual Financial Framework by the end of the year, due in part to the increased spending pressures caused by the coronavirus crisis which we describe further elsewhere.

118 More specifically, any changes introduced to the Multiannual Financial Framework spending limits after the UK’s withdrawal on 31 January 2020 — and therefore, without the Government’s approval — do not apply to the UK “insofar as those amendments have an impact on the United Kingdom’s financial obligations”.

9.30 When the Chief Secretary to the Treasury submitted an [Explanatory Memorandum](#) on these changes on 5 May 2020, he did not indicate whether the Government accepted this assertion and, by implication, the implied obligation for the UK to pay towards this increased EU expenditure.

9.31 We therefore [specifically asked the Minister](#) to clarify the Government’s position. On 4 June, before we had received the Minister’s reply, it became clear from press reports that the Government did *not* in fact agree with the EU’s interpretation of the UK’s obligations under the financial settlement with respect to the €2 billion of additional spending using the amended Global Margin for Commitments.¹¹⁹ We are awaiting information from the Treasury on the outcome of its discussions with the EU on whether the UK will need to contribute towards this extra EU spending.¹²⁰ The latest EU Finances Statement notes that “the financial effect” of the EU’s amendments to its 2020 budget — including the contested extra €2 billion of spending described above — is to increase the gross cost of the settlement to the taxpayer by “£307 million, with the net effect, after taking account of UK receipts, expected to be lower”.

9.32 Separately, the European Commission also proposed to increase EU spending in 2020 by a further €11.5 billion (£10.5 billion) for COVID-related support schemes as part of its overall €750 billion Coronavirus Recovery Fund. The Commission and the Treasury have confirmed that the UK will not have to contribute to this increase, which is yet to be formally approved by the Parliament and Council, and nor will it be eligible to receive funding from the EU schemes to which this additional money would be spent.¹²¹

The UK’s contribution to the EU’s pension liabilities

9.33 Under the financial settlement, the UK will pay towards certain EU liabilities and also receive certain assets. In this latter category are the return of the UK’s €3.5 billion paid-in capital with the European Investment Bank and the European Central Bank, and a share of the EU’s unused provisioning funds for its programmes where it offers a guarantee against its budget to leverage investment by other organisations such as the EIB.¹²² Many of the liabilities for which the UK has assumed a share are contingent and may not crystallise, as discussed further in paragraphs 43 to 48 below.

9.34 As a result, on the liabilities side, the largest definitive component relates to the EU’s bill for its staff pensions. Under the terms of the financial settlement, the UK will pay for a share of this liability — again calculated using its average proportion of Member State contributions to the EU budget over the 2014–2020 period, likely to be approximately 12.3 per cent — insofar as they relate to entitlements of EU civil servants “accrued on or before

119 At a meeting on 19 May of the Specialised Committee on Financial Provisions, a preparatory body for the UK-EU Joint Committee under the Withdrawal Agreement, the Treasury reportedly told the EU that “around two-thirds of what the EU is asking the U.K. to pay into the [Emergency Support Instrument] falls outside the scope of what was agreed in the Brexit deal”. This is clearly a reference to the share of the increased funding for the Instrument from the 2020 EU budget provided via the amended GMC.

120 In July 2020, the Treasury told us that discussions with the EU on this matter were on-going and the Government was hoping to “progress” them at a meeting of the UK-EU Joint Committee in autumn 2020.

121 More information on the EU’s coronavirus-related support schemes is set out in the Committee’s Report of 22 July 2020.

122 This includes the UK receiving a share of any return on these funds where they have been invested and they did not need to be fully depleted in the event the contingent liability to which they relate crystallised.

31 December 2020”.¹²³ It can pay for these costs as they fall due with yearly contributions likely to stretch into the 2060s, or — at the Government’s discretion — opt to settle the entire liability early in five large annual instalments.¹²⁴

9.35 The ultimate cost to the Treasury of paying for the UK’s share of the EU’s pensions bill is difficult to estimate in advance, as it is a long-term liability dependent on many factors. In particular, the EU’s post-employment benefits for its employees¹²⁵ are financed by a notional fund, where contributions, although not actually invested, are “considered to have been invested in the Member States’ long-term bonds” and registered in the EU’s annual accounts. This approach means that valuation of the cost of this liability is affected, among other things, by the yield on sovereign debt issued by EU countries, as well as by the expected rate of inflation.

9.36 In the EU’s annual accounts for 2019, the European Commission recorded the [estimated](#) net present value of the pensions liability as €97.7 billion. This is up from €80.5 billion in 2018 and €73.1 billion in 2017. Explaining this increase, the Commission notes that the real discount rate last year turned negative for the first time. In actuarial terms, this meant that “any given amount is worth more today than in the future”, which “significantly increases the size of the liability at year-end”.¹²⁶ As such, the amount recorded in the EU accounts is not definitive and therefore cannot be taken to represent the actual cost of the liability to which the UK will contribute under the financial settlement.¹²⁷ However, if the Government were to decide to make use of the option to settle the UK’s contribution to the EU’s pension liability early, the amount due would be calculated using the net present value at that point (meaning it is possible there would be a significant difference in the UK’s contribution if settled this liability early, or — the default option — as payments fall due in the coming decades).

9.37 In its initial forecast for the cost of the financial settlement in January 2018, the Treasury estimated that the cost to the UK of the EU pensions bill would amount to €8.7 billion.¹²⁸ In its latest estimate of July 2020, this has been revised to €9.3 billion (£8.3 billion), which it said relied on “more accurate and sophisticated modelling”, and is expected to be paid from 2021 until 2064. The OBR’s estimate in March 2020 for

123 Article 142 of the Withdrawal Agreement. For EU staff who retired on or before 1 January 2021, the UK will pay 100 per cent of its share of the cost. For those who retire subsequently, it will pay pro rata depending on the proportion of entitlements built up before 1 January 2021 and those built up thereafter. In other words, for EU staff who primarily build up their pension entitlement from 1 January 2021 onwards, the UK’s contribution will be proportionally lower.

124 Article 142(6) of the Withdrawal Agreement.

125 These include retirement, invalidity and survival pensions under the Pension Scheme of the European Officials (PSEO), as well as medical coverage provided under the Joint Sickness Insurance Scheme (JSIS).

126 The Commission’s accounts also attribute the increase in the liability to “the rights accrued during the year due to service are higher than the benefits paid out during the year, [...] an increase due to the annual interest cost (unwinding of the liability discounting) as well as actuarial losses from experience”. The lower discount rate has had a similar effect on the other smaller employment benefit schemes operated by the EU..

127 The unpredictability of the total cost of the UK’s contribution to EU staff pensions has been clear for some time. The UK-EU Joint Report of December 2017, in which the UK Government first signalled its provisional agreement for the different components of the financial settlement, noted that this particular liability “has a long time-span and the forecast of its net present value (NPV) depends on a number of assumptions and is sensitive to, in particular, the real discount rate, which has a historically low value at [this] time”. Similarly, in January 2018 the then-Chancellor (Rt Hon. Philip Hammond) told Parliament that there was “significant uncertainty over the actual value that will be paid”, in particular because of the “abnormally low Eurozone interest rates” which resulted in a “high valuation for the pension liability in the EU’s accounts”.

128 As recorded by the National Audit Office in its Report, “[Exiting the EU: the financial settlement](#)” (April 2018). In early 2018, the Treasury [forecast](#) the EU’s total pension liability to stand at €76.1bn by the end of 2020.

the cost of the pensions liability was significantly higher, putting the UK's share at £11 billion. The Treasury says the difference is primarily due to the OBR not having taken into account the likely lower actual cost of the EU pensions bill given the historically low current net discount rate,¹²⁹ whereas the Government has. Given the current high valuation of this liability, the Government has, prudently, not indicated it wishes to exercise its option to settle it early at present.

9.38 Taking into account the assets the UK will receive back from the EU, the Treasury estimates that the overall net cost of the component of the financial settlement relating to liabilities and assets — in essence, deducting the value of assets to be received from the EU from the cost of the pension liability — will be €1.7 billion (£1.5 billion). In January 2018, it had forecast the cost to be between €2 billion and €4 billion. Given that the estimated cost of the UK's contribution to the EU's pensions bill has risen, this presumably means the value of the assets the Government expects to receive back has also increased.

9.39 The OBR in March 2020 put the net cost of the assets and liabilities component of the settlement at £4.8 billion compared to the Treasury's £1.5 billion, the difference being due mostly to the divergence in the estimate of the pensions liability as described above.

UK contribution to the EU's "off-budget" programmes

9.40 Under the Brexit settlement, the UK has also agreed to resolve certain residual financial obligations to a number of EU programmes and bodies which are not funded by the general EU budget but, for a number of reasons, are financed by the EU's Member States directly. These are:

- the [European Development Fund](#);
- the [EU Emergency Trust Fund for Africa](#);
- the [EU Facility for Refugees in Turkey](#); and
- the EU's agencies and operations under the Common Security & Defence Policy, including the [European Defence Agency](#) (EDA), the [European Union Institute for Security Studies](#) (EUISS) and the [European Union Satellite Centre](#) (EUSC), as well as the liquidation of the defunct [Western European Union](#) (WEU).¹³⁰

9.41 Of these, the European Development Fund (EDF) constitutes by far the largest financial liability. The EDF is the EU's development assistance scheme for over 70 countries in Africa, the Caribbean and the Pacific, largely former colonies of the UK, France and the Netherlands. In 2013, under a [separate treaty](#) with the other 27 EU countries, the UK agreed to contribute €4.5 billion (£4.1 billion) to the Fund towards spending commitments over the 2014–2020 period. Article 152 of the Withdrawal Agreement obliges the Government to honour that commitment.

129 In its forecast in March 2020, the OBR took the latest available valuation of the pensions liability from the Commission — €97.6bn (£89.1bn) at [year-end 2019](#) — and applied the UK's estimated share of 12.3 per cent, resulting in a cost to the UK of £11bn.

130 The WEU was an organisation for military cooperation whose tasks have been taken over by the EU.

9.42 In its latest EU Finances Statement, the Treasury estimates that the combined net cost of the different elements of the ‘off budget’ EU schemes to which the UK will contribute is €2.8 billion (£2.5 billion), of which €2.7 billion (£2.3 billion) relates to the EDF.¹³¹ The Treasury’s initial estimate of the cost of the settlement in January 2018 did not include a figure for the overall ‘off budget’ component, meaning it is not possible to compare this latest forecast to an earlier iteration. The OBR’s March 2020 estimate also does not include the UK’s contributions to the above EU schemes.

UK exposure to the EU’s contingent liabilities

9.43 The final component of the financial settlement relates to the UK’s exposure to contingent liabilities, principally those that were entered into the EU’s accounts before the UK ceased to be a Member State on 31 January 2020.¹³² This, as the term implies, is different from the other elements described above because these liabilities may never crystallise, and therefore there would be no UK contribution required.

9.44 The contingent liabilities covered by this part of the settlement include, in particular, guarantees from the EU budget to support financial operations both inside and outside the EU like the External Lending Mandate, the European Fund for Strategic Investments (EFSI) and the European Fund for Sustainable Development (EFSD).¹³³ Similarly, it covers outstanding macro-financial assistance loans provided by the EU not only to Member States Ireland and Portugal,¹³⁴ but also to non-EU countries like Ukraine and Jordan.¹³⁵ The Withdrawal Agreement stipulates that the UK will receive a share of any associated funds the EU has set aside to meet potential calls on these guarantees, to the extent the UK’s share of these guarantee funds is not drawn upon.

9.45 In addition, as noted above, the UK has provided a guarantee in relation to certain financial activities of the European Investment Bank (EIB). The EIB is the EU’s main financial institution, providing support — primarily in the form of loans and equity — in large infrastructure projects. The Withdrawal Agreement states that the UK has a liability towards the Bank, primarily in relation to the latter’s financial operations approved before

131 The Treasury makes the following estimates for the other ‘off budget’ schemes: £102m for the Facility for Refugees in Turkey; £23m for the CSDP agencies and operations; £16.9m for the pension costs of staff of the EUSF and the liquidation of the WEU; and £1.7m for the EU Emergency Trust Fund for Africa. It also notes that there will be an “additional cost” for the UK’s share of the pension liabilities of the EDA and EUSC.

132 The Treasury’s [EU Finances Statement](#) notes that “the exception will be costs associated with legal cases related to the [EU] budget and linked policies and programmes, which will be limited to cases where the facts relate to the period of the UK’s participation in the EU budget (before the end of 2020)”.

133 Signed guarantees from the EU budget under these three schemes amounted to €53.4bn at end-2019, [according to the EU’s consolidated accounts](#). The aim of these Funds is to leverage high-risk investment by the European Investment Bank and other financial intermediaries in pursuit of EU public policy purposes by offering a guarantee from the EU budget, in effect partial indemnity, for certain investments. It also includes contingent liabilities related to EU guarantees for financial operations under its Multiannual Financial Framework 2014–2020, like the EU’s “[InnovFin](#)” investment facility for research conducted by small companies under the “Horizon 2020” Research Framework Programme.

134 Ireland and Portugal received financial support from the European Financial Stability Mechanism following the sovereign debt crisis, with the funds borrowed by the EU and guaranteed against its budget if these countries do not repay. €46.8bn of these loans was outstanding at the end of 2019. Other ‘bail-outs’ made to EU Member States, under the European Financial Stability Facility (used for Greece) and the European Stability Mechanism for the Eurozone, are not guaranteed against the EU budget and therefore the UK is not exposed to them under the financial settlement in the Withdrawal Agreement.

135 At the end of 2019, the EU’s outstanding macrofinancial assistance loans to non-EU countries [amounted to €4.7bn](#). Since then however, the EU has authorised a further €3bn assistance package under this programme for 10 non-EU countries to help them address the economic fall-out of the COVID-19 crisis.

the UK’s withdrawal on 31 January 2020 and “other EIB risks as long as such risks are not related to post-withdrawal lending”.¹³⁶ The effect of this provision is that the UK could be required to inject capital into the European Investment Bank if considered necessary in light of the Bank’s “payment obligations, the state of its assets and liabilities [or] its standing in capital markets”.¹³⁷ A decision to make such a capital call that includes the UK would be made by the Board of Directors of the EIB, without Government input.¹³⁸

9.46 We are aware of concerns that the economic damage caused by the coronavirus pandemic may jeopardise the financial position of the EIB to an extent that it requires a capital injection. However, it is important to note that the EIB’s ability to require additional capital at the expense of the British taxpayer are curtailed by three important legal safeguards in the settlement:

- First, as noted, the UK’s guarantee to the EIB cannot be called on in relation to the latter’s financial operations, like loans, that were agreed only after the UK left the EU on 31 January 2020.¹³⁹ It is for this reason that the UK is not contributing to, liable for or eligible to participate in the EIB’s new €25 billion ‘[Pan-European Guarantee Fund](#)’ established to help businesses struggling because of coronavirus.
- Second, the Withdrawal Agreement caps the maximum amount the UK could ever be asked to contribute to the EIB’s capital. The settlement precludes the money to be paid, if the conditions for the guarantee are met, from ever exceeding the value of the UK’s subscribed capital with the Bank when it was a Member State, which amounted to €39.2 billion (£35.2 billion).¹⁴⁰ Moreover, the maximum value of the guarantee will automatically decrease over time as the EIB’s outstanding operations predating the UK’s withdrawal from the EU amortise.¹⁴¹
- Third, the EIB cannot make a capital call on the UK without also making a similar call on the remaining Member States. The Bank could therefore not seek to boost its financial position at the expense of the UK while not requiring a capital contribution from the EU Member States themselves.

9.47 Moreover, the European Investment Bank has other means at its disposal before it makes a capital call on the UK and the remaining 27 Member States, for example by drawing on its accumulated financial reserves.

136 Such “other risks” may, for example, relate to asset-liability management risks and operational risks.

137 Article 150(6) of the Withdrawal Agreement.

138 Article 5 of the [Statute of the European Investment Bank](#).

139 Article 150(1) of the Withdrawal Agreement defines the UK’s liability towards the EIB as “financial operations approved by the EIB before the date of entry into force of this Agreement [...] and [...] other risks assumed by the EIB”. It goes on to state that “the liability of the United Kingdom shall extend to the EIB financial operations and to asset liability management risks and operational risks attributable to the EIB financial operations”, while “for other such risks that are not associated with specific financial operations” the UK only has a liability were these “are not attributable to the stock of financial operations built after the date of entry into force of this Agreement” (i.e. 31 January 2020).

140 This consists of the UK’s €3.5bn of paid-in capital with the EIB, which is being repaid in twelve annual installments, and its subscribed but uncalled capital of €35.7bn. See Article 150 of the Withdrawal Agreement, paragraphs 3 and 5.

141 Article 150(3) and (5) of the Withdrawal Agreement.

9.48 In June 2020 the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) told us that the Government had received “no indication” that the EIB was considering a capital call that would involve a UK contribution under the terms of the Withdrawal Agreement. It should be noted however that the Government is under a legal obligation to keep any such request confidential unless otherwise authorised by the EIB or the capital call is made public.¹⁴² While the impact of the coronavirus could make it more likely that the UK’s guarantee could be called on, materialisation of the need for the UK to pay the EIB the maximum amount for which it is theoretically liable under the settlement would only occur in extreme economic circumstances.

9.49 With respect to the totality of the EU contingent liabilities to which the UK is exposed under the financial settlement, the Treasury in its latest EU Finances Statement of July 2020 refers to them all — including the EIB guarantee — as “remote” and accordingly does not forecast any cost to the taxpayer associated with them.¹⁴³ It does indicate that the estimated maximum liability, in the unlikely event that they would all materialise in full, at March 2019 amounted to £40.5 billion (of which £30.6 billion related to the guarantee for the EIB).¹⁴⁴ The amounts involved will decrease over time with the underlying EU liabilities, given that the UK is not exposed to most new contingent liabilities created by the EU since 31 January 2020.¹⁴⁵

9.50 The Committee will continue to monitor any relevant developments in this regard closely, especially with respect to the financial position of the European Investment Bank.

Conclusions

9.51 The Treasury’s latest update on the estimated cost of the Brexit financial settlement compared to its original forecast in January 2018 demonstrates the need for continued vigilance on the part of Parliament in monitoring its implementation. In particular, the estimate of the EU’s pensions liability, and the Government’s option to settle the UK’s share of this liability early, deserve close scrutiny. Similarly, whether the Treasury’s assumption that none of the EU’s contingent liabilities to which the UK is exposed under the settlement are likely to crystallise is valid, will require regular reassessment, especially with respect to the financial position of the European Investment Bank in light of the UK’s £35.2 billion conditional guarantee to that institution.

142 Article 150(8) of the Withdrawal Agreement requires the EIB to “provide the United Kingdom with timely information regarding any upcoming triggering of the liability of the United Kingdom [...]. The United Kingdom shall treat that information as strictly confidential until the EIB lifts the confidentiality or until the liability of the United Kingdom is triggered, whichever occurs first”.

143 This position is unchanged from the Treasury’s original forecast in January 2018.

144 The remainder of the Treasury’s EU-related contingent liabilities as at 31 March 2019 was made up of £6.3bn for the European Financial Stability Mechanism (in relation to outstanding bail-out loans for Ireland and Portugal after the sovereign debt crisis); £2.1bn for outstanding EU macrofinancial assistance loans to non-EU countries; £875m relating to EU budget guarantees under the European Fund for Strategic Investments; £411m for the EU’s “Balance of Payments Facility”, which offers financial support to non-Eurozone EU countries; and £210m for ‘other’ EU contingent liabilities.

145 The exception is the aforementioned “costs associated with legal cases related to the [EU] budget and linked policies and programmes, which will be limited to cases where the facts relate to the period of the UK’s participation in the EU budget (before the end of 2020)”. The Treasury is due to provide further information on the contingent liabilities related to the financial settlement in its Departmental and Consolidated Fund Accounts for 2019–2020.

9.52 Given the overall cost of the Brexit financial settlement to the UK taxpayer, and the continued political salience of the implementation of the Withdrawal Agreement, the Committee draws this Report to the attention of the Committee on the Future Relationship with the EU, the Public Accounts Committee and the Treasury Committee.

10 UK participation in the Schengen Information System¹⁴⁶

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 law enforcement data sharing systems, after transition.

Action

- Write to the Minister for Security (Rt Hon. James Brokenshire MP) requesting a further update in October on the progress made by the UK in addressing the “serious deficiencies” identified and in advancing negotiations with the EU on future arrangements for sharing criminal information and intelligence after transition.
- Draw to the attention of the Home Affairs Committee, the Justice Committee and the Committee on the Future Relationship with the European Union.

Overview

10.1 The [Schengen Information System](#) is the most widely used and largest information sharing system for security and border management in Europe. The UK participates in the ‘second generation’ Schengen Information System (“SIS II”) for law enforcement purposes and would like to retain access to it after the post-exit transition period ends on 31 December 2020. SIS II gives 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.

10.2 We have previously 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. The second document, a [Commission report](#) published in February 2020, examines the progress made by countries currently connected to SIS II (including the UK during the post-exit transition period) in preparing for its phased upgrade by the end of 2021. Our [Thirteenth](#) and [Seventeenth](#) Reports of Session 2019–21 provide further information on both documents.¹⁴⁷

146 (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.

147 Thirteenth Report HC 229–ix (2019–21), [chapter 10](#) (18 June 2020) and Seventeenth Report HC 229–xiii (2019–21), [chapter 7](#) (16 July 2020).

10.3 As we explain in our earlier Reports, the Government is keen to retain access to SIS II or to a mechanism delivering similar capabilities, but without oversight by the EU Court of Justice, as part of a future relationship agreement with the EU.¹⁴⁸ How the Government responds to the serious deficiencies identified in the Council Implementing Decision and how it prepares for the planned upgrade of SIS II described in the Commission report may materially affect the prospects for reaching an agreement with the EU. For its part, 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.¹⁴⁹

10.4 In [our letter of 16 July 2020](#) to the Minister for Security (Rt Hon. James Brokenshire MP), we asked him to clarify how many of the recommendations in the Council Implementing Decision the Government intended to implement, the timescale for doing so, and which (if any) it considered to be without merit. We also reiterated our earlier request 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.

10.5 One element of the SIS II upgrade addressed in the Commission report concerned preparations for deploying the Automated Fingerprint Identification System (AFIS) for fingerprint searches in SIS II by the end of 2020. We asked the Minister whether the UK had already deployed the AFIS search functionality or expected to be ready to do so before the end of 2020.

10.6 In previous correspondence, the Minister cited EU agreements with Iceland, Norway, Switzerland and Liechtenstein to support the Government’s view that it would be legally possible for the EU and the UK to agree capabilities similar to SIS II as part of a new relationship after transition. We noted that all four countries were part of the Schengen free movement area (having lifted their internal border controls with EU/Schengen countries) and were 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.¹⁵⁰ The agreements include provisions to ensure “the most uniform possible application and interpretation” of the Schengen rule book, “as interpreted, where relevant, by the CJEU”.

10.7 We asked the Minister:

- whether provisions of this nature would 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”,¹⁵¹ and
- whether access to SIS II on the terms set out in the EU’s agreements with the four non-EU Schengen countries would be acceptable to the Government.

148 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.

149 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.

150 See the EU’s [Schengen Association Agreement with Iceland and Norway](#), its [Schengen Association Agreement with Switzerland](#) and its [Protocol with Liechtenstein](#).

151 See p.3 of [Command Paper 211](#).

The Minister's response

10.8 In his [letter of 7 August 2020](#), the Minister says that the Government does not agree with the legal reasoning behind nine of the 34 recommendations contained in the Council Implementing Decision. Work to remedy many of the deficiencies identified in that Decision began in February 2018, focussing primarily on the design of a new technical platform to resolve some of the core concerns regarding SIS II data management practices in the UK. He continues:

[...] addressing the recommendations fully is dependent on the replacement of existing legacy IT systems currently used by UK Law Enforcement and Border Force. These systems are not capable of supporting e.g. biometric data or facial imagery and are due to be phased out by 2022 as they are reaching the end of their operational lifecycle.

10.9 These technical limitations are reflected in the long-term nature of the action plan presented to the Commission in response to the Council Implementing Decision and explain why the Commission currently considers it to be “not adequate”.

Given the ongoing uncertainty surrounding future cooperation on the SIS II capability, the Government's focus has been to seek to resolve (partially or fully) as many of the recommendations as possible without additional investment. Officials therefore continue to engage constructively with the Commission on ‘interim’ proposals which seek to mitigate many of the issues raised — this includes, e.g. applying greater rigour to checking the consistency of data held on UK systems against that held on the central system in Strasbourg. In addition, efforts have been made to ‘de-amalgamate’ SIS II data from domestic datasets held on the Border watchlist, a key Commission concern.

10.10 The Commission accepts that seven recommendations have been met in full and, the Minister adds, several more can be considered as having been partially addressed. He says the Government is “well placed to accelerate delivery of the principal technical platform if cooperation on SIS II capability forms part of the UK-EU future relationship”. Meanwhile, the Commission's evaluation of the UK action plan is an iterative process, with the next assessment due “imminently”.

10.11 The Minister confirms that the UK “has not and does not intend to deploy the AFIS system for fingerprint searches in SIS II before the end of this year” and that any change in approach will be informed by the outcome of the ongoing future relationship negotiations with the EU.

10.12 Turning to the existing precedents for third country access to SIS II, the Minister reiterates the Government's position that “any agreement between the EU and UK must not constrain the autonomy of the UK's legal system in any way, nor provide any role for the CJEU in resolving UK-EU disputes” and that “any agreement providing for continued cooperation on capabilities similar to SIS II would have to be consistent with these principles”. He observes, however, that:

[...] the basis of the EU's current opposition to continued cooperation in this area appears to be their view that it is not possible to make an agreement

on the SIS II capability with a country outside the Schengen zone that does not provide for free movement of people, rather than because of any specific concerns relating to our clear and principled position in relation to the CJEU. We remain of the view that an agreement to continue to cooperate on capabilities similar to SIS II is possible if the political will exists and that there is no legal barrier to this.

10.13 Finally, noting our reference to a [European Parliament Resolution adopted in February 2020](#) (and reiterated in a further [Resolution adopted in June 2020](#)) stating that UK access to SIS II as a third country is not feasible, the Minister observes that “these are ostensibly matters that remain open for negotiation between the UK Government and the European Commission and our position remains that there is mutual interest in retaining such capabilities and no legal barrier to doing so”.

Action

10.14 Write to thank the Minister for his response and to request a further update in October on the progress made by the UK in implementing its action plan, the Commission’s evaluation of the adequacy of the measures taken and the recommendations that remain outstanding, and the prospects for reaching an agreement on capabilities broadly replicating those provided by SIS II or on other means of sharing criminal information and intelligence to take effect after transition.

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

Thank you for your [letter of 7 August 2020](#) responding to the issues raised in the European Scrutiny Committee’s [Thirteenth](#) and [Seventeenth](#) Reports of Session 2019–21 and providing the additional information requested in my [letter of 16 July 2020](#).

As you appreciate, UK access to the Schengen Information System (SIS II) or to a mechanism delivering similar law enforcement capabilities when the post-exit transition period ends on 31 December 2020 is an important part of the UK’s future relationship negotiations with the EU. We note the Government’s position that there is no legal barrier to maintaining SIS II capability after transition and that any technical obstacles can be overcome as part of a wider upgrade of the UK’s Law Enforcement and Border force IT systems.

We would welcome a further update from you in October on the progress made in implementing the UK’s action plan to address the deficiencies identified in the Council Implementing Decision, the Commission’s evaluation of the adequacy of the measures taken by the UK and the recommendations that remain outstanding, and the prospects for reaching an agreement on capabilities broadly replicating those provided by SIS II or on other means of sharing criminal information and intelligence to take effect after the post-exit transition period has ended.

11 Review of EU rules on the use of Passenger Name Record (PNR) data¹⁵²

These EU documents are politically important because:

- they illustrate differences in the European Commission’s approach to internal PNR policy, governed by the EU’s PNR Directive (which applies in the UK until the post-exit transition period ends on 31 December 2020), and its external PNR policy, governed by a series of agreements with third countries; and
- they are relevant to the future relationship negotiations between the EU and the UK which include arrangements for the continued transfer and processing of PNR data for law enforcement purposes.

Action

- Write to the Security Minister (Rt Hon. James Brokenshire MP) noting that we have not received the progress report requested by our predecessor Committee on the partial renegotiation of the EU’s proposed PNR Agreement with Canada and seeking further information on the prospects for an EU/UK PNR Agreement to take effect at the end of the post-exit transition period.
- Draw to the attention of the Committee on the Future Relationship with the European Union, the Home Affairs Committee and the Justice Committee.

Overview

11.1 This [European Commission report](#) — document (a) — sets out the findings of a review of the EU Passenger Name Record (“PNR”) Directive which Member States were required to implement in their national laws by 25 May 2018. The Directive, adopted in 2016, establishes common rules on the collection, processing and retention of PNR data so that they can be used by law enforcement authorities to combat serious crime and terrorism while also ensuring that there are robust safeguards to protect personal data and the right to privacy. The UK chose to participate in the PNR Directive and will remain bound by its provisions until the post-exit transition period ends on 31 December 2020. The EU and the UK are keen to establish reciprocal arrangements for exchanging PNR data after transition,¹⁵³ when the Directive will cease to apply to the UK, and both have included provisions on PNR in their draft legal texts on future law enforcement cooperation.¹⁵⁴

152 (a) European Commission report on the review of Directive (EU) 2016/681 on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; Council number 9954/20 + ADD 1; COM(20) 305; Legal base —; Dept: Home Office; Devolved Administrations: Consulted; ESC number 41425.

(b) Recommendation for a Council Decision authorising the opening of negotiations on an Agreement between the EU and Canada for the transfer of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime; Council number 13490/17 + ADD 1; COM(17) 605; Legal base: Articles 16(2), 87(2)(a) and 218(3) and (4) TFEU, QMV; Dept: Home Office; Devolved Administrations: Consulted; ESC number 39151.

153 See paragraph 84 of the [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#) agreed in October 2019.

154 See chapter three of the [amended draft text](#) presented by the Commission on 14 August 2020 and part three of the [UK’s draft agreement on law enforcement and judicial cooperation in criminal matters](#).

11.2 As well as examining how Member States have implemented and are applying the PNR Directive, the Commission also considers whether the scope of the Directive (currently limited to passenger data collected by air carriers) should be extended to other forms of international transport (maritime, road and rail) or to non-carrier economic operators (such as travel agencies and tour operators) and, in light of the COVID-19 pandemic, whether the purposes for which PNR data may be used should be expanded to assist in tackling the spread of infectious diseases and to protect public health.

11.3 The Commission concludes that the application of the Directive in the two years since Member States were required to implement it in their national laws has been generally “positive” and sees no need for it to be revised at this stage. Although the Directive only requires Member States to apply its provisions to flights to and from third (non-EU) countries, all but one have chosen to apply it to intra-EU flights (between two EU countries). The Commission therefore sees no need to make its application to intra-EU flights mandatory. It says that other possible changes, such as the inclusion of other modes of transport or economic operators, data quality improvements, or the use of PNR data for wider public health purposes, would require a thorough assessment of their legal, financial and technical impact and their implications for fundamental rights.

11.4 Any future changes will also need to take account of the outcome of two references to the EU Court of Justice (CJEU) for preliminary rulings relating to the PNR Directive, one from the Belgian Constitutional Court, the other from the Cologne District Court. The Commission recalls that a [CJEU Opinion issued in July 2017](#) led to the renegotiation of a proposed PNR Agreement between the EU and Canada because some of its provisions were found to be incompatible with the EU Charter of Fundamental Rights.¹⁵⁵ The time limits governing the retention of PNR data were one of the areas of concern highlighted by the Court. It determined that the systematic retention of the PNR data of *all* air passengers for up to five years, as envisaged in the draft Agreement, was not strictly necessary to protect public security. According to the Commission, negotiations on a revised draft Agreement have been completed and it is awaiting legal review and political endorsement by the Canadian authorities.

11.5 The PNR Directive also authorises the retention of the PNR data of all air passengers for up to five years. The Commission is careful to draw a clear distinction between the EU’s internal PNR policy, governed by the Directive, and its external PNR policy, governed by a series of agreements with third countries.¹⁵⁶ It considers that “the factual and legal circumstances of the PNR Directive are different” from those considered by the Court in its Opinion on the proposed EU/Canada Agreement, adding that:

[...] the PNR Directive clearly seeks the objective of ensuring security in the Union and its area without internal borders, where the Member States share responsibility for public security. In addition, unlike the draft agreement with Canada, the Directive does not concern data transfers to a third country, but the collection of passenger data on flights to and from the EU by the Member States. In this respect, the nature of the PNR Directive as secondary law means that it is applied under the control of

155 See Opinion 1/15 of the CJEU issued on 26 July 2017.

156 The EU has concluded PNR Agreements with Australia and the United States—both may require further review and evaluation in light of the CJEU’s Opinion on the proposed EU PNR Agreement with Canada. The Council has authorised the Commission to open negotiations with Japan. Negotiations with Mexico are “at a standstill”.

the national courts of the Member States and, in the final instance, of the Court of Justice. Furthermore, national laws implementing the [EU Data Protection] Law Enforcement Directive also apply to the processing of data provided for in the PNR Directive, including any subsequent processing by competent authorities.

The Government's position

11.6 In his [Explanatory Memorandum of 21 August 2020](#), the Minister for Security (Rt Hon. James Brokenshire MP) confirms that the UK remains bound by the EU PNR Directive until the end of the transition period and that it has been given effect in the UK by the [Passenger Name Record Data and Miscellaneous Amendments Regulations 2018](#).¹⁵⁷ He says that the Government “takes note” of the Commission’s findings resulting from its review of the PNR Directive but, as no amendments are proposed, considers that the report has no legal, policy or financial implications for the UK.

11.7 In a separate [letter of 1 September 2020](#), the Minister recalls that we continue to hold under scrutiny [a proposal for a Council Decision](#) (adopted in December 2017) authorising the Commission to renegotiate those elements of the proposed EU PNR Agreement with Canada that the CJEU determined were incompatible with the EU Charter of Fundamental Rights — document (b). He says that negotiations began in June 2018 and were completed at a technical (official) level in March 2019. The revised PNR Agreement “is currently pending Canada’s legal review and political endorsement of the text” and is unlikely to be finalised and take effect before the post-exit transition period ends on 31 December 2020. The Minister therefore asks us to clear the Council Decision from scrutiny, not least because further Council Decisions will be necessary to sign and conclude the Agreement.

Action

11.8 Write to the Minister noting that we have not received the progress report requested by our predecessor Committee on the partial renegotiation of the EU’s proposed PNR Agreement with Canada and seeking further information on the prospects for an EU/UK PNR Agreement to take effect at the end of the post-exit transition period.

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

The European Scrutiny Committee has considered the [Commission report](#) on Member States’ implementation and application of the EU PNR Directive, your accompanying [Explanatory Memorandum of 21 August 2020](#), and your [letter of 1 September 2020](#) concerning a Council Decision authorising the Commission to renegotiate parts of a proposed EU PNR Agreement with Canada which were found by the Court of Justice (CJEU) to be incompatible with the EU Charter of Fundamental Rights.¹⁵⁸

In your letter, you ask us to clear from scrutiny the proposed Council Decision which was last considered by our predecessor Committee in February 2018. We are content to do so while recalling that the (then) Government considered it “essential” for the UK to opt into

¹⁵⁷ As amended by the [Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019](#).

¹⁵⁸ See [Opinion 1/15](#) issued on 26 July 2017.

the proposal to influence the Council’s position on negotiations with Canada, given that the outcome could potentially set a precedent for a future PNR agreement between the EU and the UK.¹⁵⁹ Our predecessors decided to hold the proposed Council Decision under scrutiny (even though it had been adopted) in the expectation that the Government would provide progress reports on the negotiations. We have had none.

Turning to the Commission report, we are struck by the Commission’s view that “the factual and legal circumstances of the PNR Directive are different” from those considered by the Court in its Opinion on the proposed EU/Canada PNR Agreement and that (implicitly) a longer data retention period may be permissible for the sharing of PNR data amongst EU Member States than with non-EU third countries. **We would be interested to hear whether you share the Commission’s view, how it has affected the changes made to the revised EU PNR Agreement with Canada, and what implications these changes may have for the sharing of PNR data between the EU and the UK after transition.**

We note that the Commission does not support further changes to the EU PNR Directive at this stage, underlining the need to focus instead on its effective implementation and application by all Member States. **Do you consider that the Commission’s position makes it less likely that the EU will agree to the transfer and processing of PNR data collected by rail and sea transport operators, as envisaged in Part Three of the [UK’s draft agreement on law enforcement and judicial cooperation in criminal matters](#)?**

The [EU’s amended draft text on law enforcement and judicial cooperation in criminal matters](#) sets a number of conditions for the UK to meet before the EU will agree to the transfer of PNR data. They include obtaining two “data adequacy decisions”, one under the EU’s General Data Protection Regulation and one under the EU’s Law Enforcement Data Protection Directive, as well as agreeing to remain bound by the European Convention on Human Rights (ECHR) and continuing to give effect to its provisions in national law. **Do you consider that meeting these conditions would make it easier for the UK to secure a more ambitious PNR agreement with the EU, on terms similar to the EU PNR Directive, than has been the case for other third countries, such as Australia, Canada or the US?**

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

159 See our Thirteenth Report HC 301–xiii (2017–19), [chapter 2](#), 7 February 2018.

12 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Department for Business, Energy and Industrial Strategy

(41417) Communication from the Commission Guidelines on Seasonal Workers in the EU in the context of the Covid-19 outbreak.

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C(20) 4813

(41420) Report from the Commission to the European Parliament and the Council 2019 assessment of the progress made by Member States towards the national energy efficiency targets for 2020 and towards the implementation of the Energy Efficiency Directive as required by Article 24(3) of the Energy Efficiency Directive 2012/27/EU.

9810/20

COM(20) 326

(41438) Report from the Commission to the European Parliament and the Council Annual Report on Research and Technological Development Activities of the European Union and Monitoring of Horizon 2020 in 2019.

9278/20

COM(20) 316

Department for Education

(41377) Proposal for a Council Recommendation on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience.

9346/20

+ ADDs 1–2

COM(20) 275

Department for Environment, Food and Rural Affairs

(41403) Proposal for a Council Regulation opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the 2021–2023 period.

9548/20

+ADD1

COM(20) 322

(41423) Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control).

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COM(20) 334

- (41442) Proposal for a Council Regulation amending Regulation (EU) 2020/123 as regards certain fishing opportunities in 2020 in Union and non-Union waters.
9800/20
COM(20) 344
- (41449) Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive (EU)2015/2193 on the limitation of emissions of certain pollutants into air from medium combustion plants.
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COM(20) 351
- (41453) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Grains Council concerning the accession of the United Kingdom to the Grains Trade Convention, 1995.
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COM(20) 353
- (41457) Proposal for a Council Decision on the submission, on behalf of the European Union, of proposals to amend Annex IV to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal with a view to the 15th meeting of the Conference of the Parties, and on the position of the European Union on proposals by other Parties to amend Annex IV and other annexes.
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COM(20) 362

Department of Health and Social Care

- (39488) Proposal for a Regulation of the European Parliament and of the Council on health technology assessment and amending Directive 2011/24/EU.
5844/18
+ ADDs 1–2
COM(18) 51
- (40704) Report from the Commission to the European Parliament and the Council Evaluation of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2018.
10816/19
+ ADD 1
COM(19) 228

Department for International Trade

- (41421) Court of Auditors 2020 Special Report No.17: Trade defence instruments: system for protecting EU businesses from dumped and subsidised imports functions well.
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- (41441) Report from the Commission to the European Parliament and the Council on the review of Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
10041/20
COM(20) 343

Department for Transport

- (41460) Report from the Commission to the European Parliament And The
 10101/20 Council on the exercise of the power to adopt delegated acts conferred
 COM(20) 359 on the Commission pursuant to Regulation (EU) 2015/758 of the
 European Parliament and of the Council of 29 April 2015 concerning
 type-approval requirements for the deployment of the eCall in-vehicle
 system based on the 112 service.

Department for Work and Pensions

- (41386) European Economic and Social Committee on the application of
 9540/20 Directive 2014/50/EU of the European Parliament and of the Council of
 COM(20) 291 16 April 2014 on minimum requirements for enhancing worker mobility
 between Member States by improving the acquisition and preservation
 of supplementary pension rights.
- (41412) Proposal for a Council Recommendation on A Bridge to Jobs
 — Reinforcing the Youth Guarantee and replacing Council
 9338/20 Recommendation of 22 April 2013 on establishing a Youth Guarantee.
- + ADDs 1–2
- COM(20) 277

Foreign and Commonwealth Office

- (41371) Regulations Council Implementing Regulation (EU) 2020/897 of 29 June
 — 2020 implementing Regulation (EU) 2017/2063 concerning restrictive
 — measures in view of the situation in Venezuela.
- (41372) Council Decision (CFSP) 2020/898 of 29 June 2020 amending Decision
 — (CFSP) 2017/2074 concerning restrictive measures in view of the
 — situation in Venezuela.
- (41391) Council Decision (CFSP) 2020/902 of 29 June 2020 amending Decision
 — 2013/354/CFSP on the European Union Police Mission for the
 — Palestinian Territories (EUPOL COPPS).
- (41392) Council Decision (CFSP) 2020/901 of 29 June 2020 on Union support
 — for the activities of the Preparatory Commission of the Comprehensive
 — Nuclear Test-Ban Treaty Organisation (CTBTO) in order to strengthen
 its monitoring and verification capabilities and in the framework of the
 implementation of the EU Strategy against Proliferation of Weapons of
 Mass Destruction.

- (41397) Council Decision (CFSP) 2020/979 of 7 July 2020 in support of the development of an internationally recognised system for the validation of arms and ammunition management according to open international standards.
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HM Treasury

- (41158) Communication from the Commission to the European Parliament and the Council on identity of the asset manager for the common provisioning fund in accordance with Article 212 of Financial Regulation 2018/1046.
- 7016/20
- COM(20) 130
- (41360) Report from the Commission to the European Parliament, the Council and the Court of Auditors Annual report to the Discharge Authority on internal audits carried out in 2019.
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- COM(20) 268

Home Office

- (40924) Communication from the Commission to the European Parliament, the European Council and the Council Twentieth Progress Report towards an effective and genuine Security Union.
- 13682/19
- COM(19) 552
- (41149) Communication from the Commission to the European Parliament and the Council State of play as regards the situation of non-reciprocity in the area of visa policy.
- 6971/20
- COM(20) 119
- (41218) Communication from the Commission Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak.
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- C(20) 2051

Ministry of Justice

- (41399) Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions 2020 EU Justice Scoreboard.
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- COM(20) 306

Office for National Statistics

- (41380) Report from the Commission to the European Parliament and the Council on the 'Commitments on Confidence in Statistics' by Member States as required by Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009.
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- COM(20) 278

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 preparations for the end of the post-Brexit transition period [Commission Communication (SNC)]; EU Hydrogen Strategy [Commission Communication (SNC)]; EU Energy System Integration Strategy [Commission Communication]

Environment, Food and Rural Affairs Committee: Organic products [Commission Delegated Regulation (SC)]; Fishing Opportunities 2021 [Commission Communication (SNC)]

Committee on the Future of the European Union: Organic products [Commission Delegated Regulation (SC)]; Common Agricultural Policy Reform [Proposed Regulations (SC)]; The cost of the Brexit financial settlement (update) [(a), (b) Annual Accounts, (c) Financial Information, (d) EU Budget Forecast (SNC)]; EU preparations for the end of the post-Brexit transition period [Commission Communication (SNC)]; UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SNC)]; Review of EU rules on the use of Passenger Name Record (PNR) data [(a) Commission Report, (b) Recommended Council Decision (SNC)]

Home Affairs Committee: UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SNC)]; Review of EU rules on the use of Passenger Name Record (PNR) data [(a) Commission Report, (b) Recommended Council Decision (SNC)]

Joint Committee on Human Rights: Gender equality: Commission strategy and stocktaking [(a) Commission Communication, (b) Commission Report (SNC)]

International Trade Committee: EU preparations for the end of the post-Brexit transition period [Commission Communication (SNC)]

Justice Committee: UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SNC)]; Review of EU rules on the use of Passenger Name Record (PNR) data [(a) Commission Report, (b) Recommended Council Decision (SNC)]

Northern Ireland Affairs Committee: Organic products [Commission Delegated Regulation (SC)]; Common Agricultural Policy Reform [Proposed Regulations (SC)]; EU preparations for the end of the post-Brexit transition period [Commission Communication (SNC)]; EU Hydrogen Strategy [Commission Communication (SNC)]; EU Energy System Integration Strategy [Commission Communication]

Public Accounts Committee: The cost of the Brexit financial settlement (update) [(a), (b) Annual Accounts, (c) Financial Information, (d) EU Budget Forecast (SNC)]

Transport Committee: EU preparations for the end of the post-Brexit transition period [Commission Communication (SNC)]

Treasury Committee: The cost of the Brexit financial settlement (update) [(a), (b) Annual Accounts, (c) Financial Information, (d) EU Budget Forecast (SNC)]; EU preparations for the end of the post-Brexit transition period [Commission Communication (SNC)]

Women and Equalities Committee: Gender equality: Commission strategy and stocktaking [(a) Commission Communication, (b) Commission Report (SNC)]

Work and Pensions Committee: Gender equality: Commission strategy and stocktaking [(a) Commission Communication, (b) Commission Report (SNC)]

Formal Minutes

Thursday 3 September 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*)