



House of Commons
European Scrutiny Committee

Twenty-fifth Report of Session 2019–21

Documents considered by the Committee on 15 October 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 Research Programme: Horizon Europe¹

This EU document is legally and politically important because:

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

Action

- Report to the House, re-iterating our request for further information on the progress of negotiations.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee, the Science and Technology Committee and the Committee on the Future Relationship with the EU.

Overview

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

1.2 We have consistently sought information from the Government on the progress of negotiations. We [wrote](#) to the Minister for Science, Research and Innovation (Amanda Solloway MP) on 16 July 2020 to seek an update on the EU-UK negotiation and on the progress in the EU institutions of agreeing the Horizon Europe Regulation, including arrangements for the association of third countries to the Programme. This re-iterated our earlier [request](#) of 26 March 2020 for the same information.

1.3 The Minister [responded](#) on 30 September. While her letter does not provide any substantive new information, as was the case with her earlier [letter](#) of 11 June, she highlights the important development in July 2020 that the European Council agreed its position on the 2021–27 EU multi-annual budget. Once the European Parliament has granted its consent to that Budget, EU legislators will be able to finalise the legal texts for the various financial Programmes, including Horizon Europe. Arrangements for third country participation will also need to be finalised and incorporated into those texts.

1.4 The Minister adds that negotiations on potential UK participation in EU Programmes (including Horizon Europe) have been constructive, with progress being made on certain practical elements of the UK’s potential association. Discussions on other areas, including the financial elements of the agreement, have not yet concluded. The Government has been clear that any arrangement relating to the UK’s participation should contain fair terms including fair treatment of UK participants, a fair and appropriate financial contribution, provisions allowing for sound financial management by both parties, and appropriate

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

governance and consultation. It is the UK's hope that the UK and EU can agree fair and balanced terms for UK participation, but the UK will make a final decision once it is clear whether such terms can be reached or not.

Action

1.5 We note that negotiations are ongoing and so we re-iterate our earlier request for information in due course once discussions both at the EU level, and in negotiations between the UK and the EU, have made further progress.

1.6 We are drawing the Minister's response to the attention of the Business, Energy and Industrial Strategy Committee, the Science and Technology Committee and the Committee on the Future Relationship with the EU.

2 Critical Raw Materials²

This EU document is politically important because:

- the supply of critical raw materials is an important strategic issue for the UK as well as the EU; and
- despite the Minister’s contention that there are no direct policy implications for the UK, we consider that direct implications may arise from partnership working between the UK and the EU in this area, from research collaboration and from regulatory requirements under the Ireland/Northern Ireland Protocol.

Action

- Write to the Minister to clarify the policy implications for the UK.
- Draw to the attention of the Committee on the Future Relationship with the EU, the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

2.1 Critical raw materials—such as tungsten and lithium—are those raw materials that are most important economically and have a high supply risk. They are used in many products, including mobile phones. The Commission’s document updates the EU’s list of critical raw materials and sets out the Commission’s plans to ensure supply chain resilience in light of the COVID-19 pandemic, and environmental and sustainability targets. It is relevant to the UK as the UK will be similarly reliant on the imports of critical raw materials and may benefit from a partnership approach and as Northern Ireland may be affected under the terms of the Ireland/Northern Ireland Protocol.

2.2 The Commission adds four raw materials (bauxite, lithium, titanium and strontium) to its list of critical raw materials and removes one (helium), leaving a total of 30. Helium remains a concern as far as supply concentration is concerned, but is removed from the 2020 critical list due to a decline in its economic importance.

2.3 The supply of many critical raw materials is highly concentrated, notes the Commission. For example, China provides 98% of the EU’s supply of rare earth elements (REE), Turkey provides 98% of the EU’s supply of borate, and South Africa provides 71% of the EU’s needs for platinum and an even higher share of the platinum group metals iridium, rhodium, and ruthenium. The EU relies on single EU companies for its supply of hafnium and strontium. Demand is also likely to increase as new “greener” technologies—such as batteries, wind generators and electric vehicles—rely on some critical raw materials rather than fossil fuels.

2 Commission Communication—Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability; [10435/20](#), COM(220) 474; Legal base:—; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Informed; ESC number: 41515.

2.4 The Commission aims to achieve resource security by diversifying supply from primary and secondary sources, reducing dependencies, and improving resource efficiency and circularity. Suggested actions include:

- develop strategic international partnerships and associated funding to secure a diversified and sustainable supply of critical raw materials, including through undistorted trade and investment conditions, starting with pilot partnerships with Canada, interested countries in Africa and the EU’s neighbourhood;
- promote responsible mining practices for critical raw materials through the EU regulatory framework;
- launch critical raw materials research and innovation on waste processing, advanced materials and substitution;
- develop Horizon Europe research and innovation projects on processes for exploitation and processing of critical raw materials to reduce environmental impacts;
- launch an industry-driven European Raw Materials Alliance, initially focussing on rare earths and magnets before extending to other raw material areas;
- map the potential supply of secondary critical raw materials from EU stocks and wastes and identify viable recovery projects; and
- identify mining and processing projects and investment needs and related financing opportunities for critical raw materials in the EU that can be operational by 2025, with priority for coal-mining regions.

2.5 In his [Explanatory Memorandum](#), the Minister for Business and Industry (Nadhim Zahawi MP) says that, since the Communication relates to EU policy after the end of the transition period, there are no direct implications for the UK.

2.6 The Minister draws attention to the suggested action point to develop strategic international partnerships and suggests that this represents an opportunity for the UK.

2.7 He says that the references to helping countries develop mineral resources through improved local governance and dissemination of responsible mining practice raise the potential of examining how Overseas Development Assistance funds can be used to exploit developing countries’ mineral resource responsibly and sustainably.

2.8 The Department of International Trade, says the Minister, is leading a project that forms a key part of the Government’s work to strengthen the UK’s supply chain resilience. The project is analysing critical supply chains for a range of non-food items, in addition to medical supplies. It has also developed a framework that supports Departments to define strategies and actions to ensure we have resilient and diverse critical supply chains in place. The UK’s approach to developing supply chain resilience balances the need to develop domestic resilience in some critical supply chains, with a vision for the UK as a champion of free trade, with diverse international supply chains and trading partners.

2.9 The Minister confirms that the Commission’s analysis of the supply of critical materials will be considered as part of the Government’s approach to securing access to a resilient critical minerals supply that adheres to free, fair and open international trade.

Our assessment

2.10 We take note of the Minister’s conclusion that no direct implications arise for the UK because the Communication relates to EU policy after the end of the transition period. We are uncomfortable with the apparent assertion that none of the EU policy set out here will directly affect the UK after the end of the transition period.

2.11 First, the Minister himself acknowledges that the EU’s development of strategic international partnerships represents an opportunity for the UK. While the nature of that work is unclear, it seems to us that it could have direct—and potentially welcome—implications for the UK in the future. We note that there could be advantages to the UK of working alongside, rather than in competition with, the EU on access to critical raw materials.

2.12 Second, the UK and EU are seeking to negotiate an ongoing relationship in the area of research. We will ask the Minister to confirm whether or not the EU’s research priorities would have direct implications for the UK if the UK and EU agreed future cooperation in the area of research.

2.13 Third, the Commission says that it will promote responsible mining practices for critical raw materials through the EU regulatory framework. It sets out its current regulatory framework around responsible sourcing, drawing particular attention to the EU Regulation on Conflict Minerals³—covering tin, gold, and the critical raw materials tantalum and tungsten—and applying to EU importers as of 1 January 2021. Under the terms of the Ireland/Northern Ireland Protocol (“the Protocol”) annexed to the EU-UK Withdrawal Agreement, Northern Ireland must maintain alignment with that Regulation. While the Commission signals no intention to suggest legislative changes to that Regulation, it does mean that the UK in respect of Northern Ireland will be obliged to maintain alignment with the Regulation and will not be free to pursue a different path.

2.14 The Commission highlights its intention to propose a “Batteries Regulation” to address the responsible sourcing of battery raw materials. Any such Regulation would likely be a new EU legislative act and, if so, would not automatically apply to Northern Ireland under the terms of the Protocol. It is noteworthy, however, that the existing Batteries Directive⁴ does fall within the scope of the Protocol and so the Government should at least be aware of the possibility that the Commission may suggest the Regulation’s eventual addition to the Protocol. In that instance, and should both the UK and EU agree to add the Regulation to the Protocol, it would have direct implications and we do not consider that it is a development that should be precluded by the Minister at this stage.

2.15 The same issue applies to the Commission’s possible “horizontal regulatory proposal on due diligence” to cover due diligence in the supply chain across sectors. While there is

3 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

4 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC.

little detail about the timing and scope, it will—if realised and agreed—affect the goods’ supply chain and its addition to the Protocol should not be precluded given that the Protocol applies primarily to the trade in goods.

Action

2.16 We have written to the Minister as set out below seeking further clarity on his contention that no direct policy implications arise for the UK.

2.17 We are reporting the document, and our letter, to the House and we draw them to the attention of the Committee on the Future Relationship with the EU, the International Trade Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Minister for Business and Industry (Nadhim Zahawi MP)

We have considered your Explanatory Memorandum on the above Communication.

We are not convinced by your assertion that there are no direct policy implications for the UK arising from the Communication and would welcome further elaboration on your position with specific reference to the points below.

First, would you not agree that there could be direct policy implications for the UK in the event that the EU were to propose a strategic partnership in this area with the UK, in line with the Commission’s suggestion of that type of international engagement? In your EM, you note that such engagement could represent an opportunity for the UK. We ask you to set out more detail on those opportunities.

Second, the Commission makes a number of suggestions for research priorities in this area. Would you not agree that there could be direct policy implications for the UK in the event that—in line with the respective negotiating objectives—the UK and EU agree to cooperate in research and innovation?

Third, the Commission recalls its intention to propose a “Batteries Regulation” and, possibly, a horizontal act on due diligence. Given that the current Batteries Directive is applicable under the Ireland/Northern Ireland Protocol (“the Protocol”), we do not consider it wise for the Government to preclude future inclusion of any such new Regulation in the Protocol. Clearly, any inclusion would be subject to the agreement of both the UK and the EU within the Joint Committee. The same principle applies, we consider, to a possible horizontal act on due diligence, affecting the goods’ supply chain. Would you agree that there are at least potentially direct policy implications for part of the UK arising from that policy set out in the Communication?

Finally, the Commission draws attention to the EU Regulation on Conflict Minerals, which is included in the Protocol. While no amendments to it are suggested, it is the case that—for as long as the terms of the Protocol apply—the UK in respect of Northern Ireland would not be able to depart from the requirements of the Regulation. The UK’s future approach to critical raw materials will need to take that limitation into account.

We request a response within ten working days.

3 Northern Ireland Protocol: Illegal timber arrangements⁵

These EU documents are legally and politically important because:

- they cover an area with which Northern Ireland must maintain alignment after the end of the post-Brexit Transition Period, but the UK and EU disagree on how the legality of timber imports into Northern Ireland from certain countries should be guaranteed.

Action

- Report to the House, re-iterating the Committee’s request for information.
- Draw to the attention of the Northern Ireland Affairs Committee, the Environment, Food and Rural Affairs Committee and the Committee on the Future Relationship with the EU.

Overview

3.1 The EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan encouraged trade in timber that is harvested legally and verified as such by partner countries. This system is governed by Voluntary Partnership Agreements (VPAs) between the EU and partner countries. Once a VPA has been agreed, partner countries can issue FLEGT licences to verify the legality of timber harvest.

3.2 When we first considered these documents on the conclusion, and signature, of a VPA between the EU and Honduras, we noted a difference of opinion between the EU and the UK as to whether Northern Ireland should be covered by UK VPAs or by EU VPAs. We set out detail of the issue in our [Report](#) of 16 September 2020.⁶

3.3 We [wrote](#) to the Minister of State (Rt Hon. The Lord Goldsmith of Richmond Park) seeking further information on the Government’s position, including whether the Government would be willing to give a legally binding commitment to replicate the EU’s VPAs in order to resolve the issue.

3.4 The Minister has [responded](#), noting that discussions with the Commission on this matter are ongoing and promising to write again once the outcome of further technical discussions is known. He reassures us that, no matter which VPA applies in Northern Ireland, checks will continue to take place away from the border.

5 (a) Proposal for a Council Decision on the conclusion of the Voluntary Partnership Agreement between the EU and Honduras on forest law enforcement, governance and trade in timber products to the EU (b) Proposal for a Council Decision on the signing, on behalf of the Union, of the Voluntary Partnership Agreement between the EU and Honduras on forest law enforcement, governance and trade in timber products to the EU; (a) [COM \(20\) 340](#), (b) [COM \(20\) 341](#); Legal base: (a) Articles 207(3), 207(4), 218(6)(a)(v) and 218(7) TFEU, QMV (b) Articles 207(4) and 218(5) TFEU. QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; (a) 41439 (b) 41440.

6 Twenty-First Report HC 229–xvii (2019–21), [chapter 3](#) (16 September 2020).

3.5 The Minister re-affirms the UK's commitment to replicating VPAs with partner countries. He adds that it is in the UK's interest to negotiate its own VPAs with partner countries, which will improve forest governance and encourage trade in legally sourced timber. As such, the UK does not see a need to grant a legally binding guarantee.

Action

3.6 We note that discussions with the Commission are ongoing. We re-iterate our earlier queries and look forward to receiving clarity on this matter once the outcome of the technical discussions is known.

3.7 We are drawing the Minister's response to the attention of the Northern Ireland Affairs Committee, the Environment, Food and Rural Affairs Committee and the Committee on the Future Relationship with the EU.

4 Multiannual Financial Framework 2021–27: Connecting Europe Facility⁷

This EU document is legally and politically important because:

- it relates to the EU’s next ‘Multiannual Financial Framework’ (which may be relevant to the UK if the transition period—as provided for under the UK/EU Withdrawal Agreement—is extended beyond 31 December 2020); and
- the Government have confirmed that they will not seek to participate in the Connecting Europe Facility programme after the end of the transition period.

Action

- No action is necessary at this time. This chapter is provided as an update on a file that the Committee has chosen to retain a watching brief over.

Overview

4.1 The [Connecting Europe Facility \(CEF\)](#) is the EU’s dedicated infrastructure funding programme for the ‘trans-European Networks’ (‘TENs’). Trans-European networks exist in the areas of [transport \(TEN-T\)](#), [energy \(TEN-E\)](#) and [telecommunications \(eTEN\)](#). Financing of ‘projects of common interest’ on TENs is made through CEF by way of grants, guarantees and project bonds. The Commission—in cooperation with stakeholders—selects ‘projects of common interest’ based upon their ability to improve infrastructure connections between Member States.

4.2 The [proposal](#) sets a budget of €42.2 billion (£36.9 billion) for CEF between 2021–27 and outlines the objectives of the programme, its structure and priorities, mechanisms for the delivery of funding and arrangements for monitoring and evaluation. In each of these areas, the proposal is broadly similar to the current iteration of CEF but with small tweaks suggested to improve the delivery of funding—and the effectiveness of outcomes—and changes designed to exploit synergies between the programme and EU-level objectives in other areas.

4.3 A full background on the proposal—including a detailed exposition of the programme’s objectives and, importantly, in the context of the UK’s withdrawal from the EU, the conditions for ‘third country’ association to CEF—can be found in our predecessor Committee’s [Thirty-ninth Report of Session 2017–19](#).⁸

4.4 The Committee last considered CEF in its [Fourth Report of Session 2019–21](#).⁹ We outlined the details of the partial General Approach that had been reached on the proposal in late 2018 and the subsequent partial provisional agreement that was finalised following interinstitutional negotiations. We requested that the Minister keep the

7 Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014; Council and COM number: 9951/18 + ADDs 1–2 and COM(18) 438; Legal base: Articles 170–172 and 194 TFEU; ordinary legislative procedure: QMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 39885.

8 [Thirty-ninth Report](#) HC 301–xxxviii (2017–19) chapter 6 (10 October 2018).

9 [Fourth Report](#) HC 229–ii (2019–21), chapter 4 (23 April 2020).

Committee updated on the progress of negotiations on the proposal, mainly, due to the outside possibility of the UK paying into the next EU budget—the Multiannual Financial Framework (MFF)—and participating as a non-Member State in all or parts of CEF.¹⁰ The Minister, Rachel Maclean MP, has since written (dated 24 July 2020) with an update.¹¹

Minister’s update of 24 July 2020

4.5 The Minister explains that negotiations on the proposal have only recently restarted (this is primarily due to the impact of the COVID-19 pandemic on the EU’s business). The Minister informs us that at its 17–18 July meeting, the Council, in recognition of the important role that transport will play in the EU’s recovery from COVID-19, modified the amounts to be allocated within CEF as follows: transport—€11.4 bn (plus the transfer of €10 bn from the Cohesion Fund) out of which €1.4 bn will be earmarked for major cross-border railway links between cohesion countries; energy—€5.2 bn; and digital—€1.8 bn.

4.6 In a resolution of 23 July 2020,¹² the European Parliament welcomed the revised MFF as a positive step forwards but regretted, among others concerns, cuts in grant components (such as CEF) and announced that it will withhold its consent until a better arrangement is found.

4.7 Our predecessor Committee pressed the Government on a number of occasions regarding whether it would seek to participate in all or parts of CEF after the end of transition period, however, a firm answer was not forthcoming.

4.8 The Minister now confirms that the Government will not be seeking future participation in CEF and that it does not believe that it is in the UK’s best interests for it to do so. The Minister justifies this decision against the limited surface transport connections that the UK has with mainland Europe—being of relevance to the CEF transport programme—and the market-led approach that it adopts towards infrastructure projects (which is of greatest relevance to the CEF energy component).

Action

4.9 No action is necessary at this time.

4.10 The Committee retains a watching brief over the proposal and we ask that the Minister keep us informed of any important developments.

10 With the UK being required to contribute to the next EU budget a likely consequence of extending the transition period beyond 31 December 2020 and, respectively, participation as a non-Member State in CEF a possible outcome of future relationship negotiations.

11 Letter from Rachel Maclean MP to Sir William Cash MP, 24 July 2020.

12 [European Parliament resolution of 23 July 2020 on the conclusions of the extraordinary European Council meeting of 17–21 July 2020 \(2020/2732\(RSP\)\)](#).

5 Shipping: emissions monitoring and reporting¹³

This EU document is politically important because:

- it concerns an EU policy proposal that has recently been amended by the European Parliament to include binding emission reduction targets for maritime shipping and, if adopted in its present form, would have direct implications for UK vessels sailing from/between EU ports.

Action

- Draw to the attention of the Transport Committee, the Environment, Food and Rural Affairs Committee, and the Environmental Audit Committee.

Overview

5.1 The [legislative proposal under scrutiny](#) would revise the EU’s system for monitoring, reporting and verifying CO2 emissions from maritime transport.

5.2 The current system—provided for by Regulation (EU) 2015/757 (the ‘MRV’ Regulation)—requires ships over 5,000 gross tons, travelling from and between EU ports, to monitor and report fuel consumption and CO2 emissions.¹⁴ Other relevant information to be reported under the MRV Regulation includes: distance travelled; time spent at sea; details of cargo carried; transport work; and average energy efficiency (expressed in fuel consumption or carbon emissions per distance or per transport work). Data is reported on an annual as well as per-voyage basis.¹⁵

5.3 The main objective of the MRV system is to ensure the collection of robust and verified CO2 emissions data at individual ship level to stimulate the uptake by operators of energy efficiency solutions and, furthermore, to provide a strong evidence basis for future policy-making at EU-level.

5.4 The MRV system covers all ships calling at EU ports irrespective of where they are flagged. This means that any change to the EU’s MRV system will have implications for UK vessels departing from and between EU ports after the end of the transition period.

5.5 The Commission’s proposal aims to align the EU’s MRV system with that of the International Maritime Organisation (IMO). The IMO system is similar to the EU’s, however, technical differences exist between the two. For example, under the IMO system, ‘hours underway’ are reported by operators, whereas, under the EU system, the relevant

13 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2015/757 in order to take appropriate account of the global data collection system for ship fuel oil consumption data; Council and COM number: 6117/19 + ADDs 1–3 and COM(19) 38; Legal base: Article 191–193 TFEU, ordinary legislative procedure, QMV; Department: Transport; Devolved Administrations: consulted; ESC number: 40360.

14 [Regulation \(EU\) 2015/757](#) of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (Text with EEA relevance).

15 Reports are made to accredited ‘verifiers’—that authorise recorded data—and are submitted to the Commission yearly.

parameter is ‘time at sea’. The proposed revision of the MRV Regulation would align the EU and IMO systems with the aim of reducing administrative burden and associated costs for covered ships.

5.6 Due to a file handling error, the proposal was not considered by our predecessor Committee upon it being deposited for scrutiny. In the original [Explanatory Memorandum](#) on the proposal, the Government were broadly supportive of its objectives. Former Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani MP, wrote to our predecessor on 2 July 2019 with an update on the progress of negotiations on the proposal.¹⁶ The former Minister’s update included a brief explanation of the informal positions adopted by Member States on the proposed revisions to the MRV system and information on the European Parliament Committee assigned the dossier (the Environment, Public Health and Food Safety (ENVI) Committee). Until recently, there had not, however, been any significant developments to report to the House.

Current state of play

5.7 The European Parliament ENVI Committee appointed Jutta Paulus (Greens/EFA, Germany) as rapporteur for the proposal in late 2019.

5.8 Ms Paulus’ report on the proposal of 24 January 2020 suggested significant changes to the EU’s MVR system. These included amending the Commission’s proposal to provide for: binding CO₂ emissions reductions targets of 40% for shipping companies by 2030; maritime shipping to be brought within the scope of the EU’s Emissions Trading System (known as ETS);¹⁷ the creation of a ‘Maritime Transport Decarbonisation Fund’; and the establishment of binding targets for Member States to ensure an adequate supply of shore-side electricity in ports.

5.9 On 16 September 2020, the European Parliament adopted amendments to the proposal based on the ENVI Committee’s report.¹⁸ These amendments are as described above but with the inclusion of methane and other greenhouse gases—besides CO₂—within the proposed 40% emissions reduction target.

5.10 It is expected that interinstitutional negotiations (trilogues) will begin shortly.

Action

5.11 We have drawn this Report chapter to the attention of the Transport Committee, the Environment, Food and Rural Affairs Committee, and the Environmental Audit Committee. We retain a watching brief over the proposal.

¹⁶ [Letter from Nusrat Ghani MP to Sir William Cash MP](#), 2 July 2020.

¹⁷ The EU’s ETS is a carbon ‘cap-and-trade’ system where emission ‘allowances’ are issued and steadily decreased over time. Allowances are awarded centrally free-of-charge to operators and can be traded on an open marketplace. Supply and demand is driven by the emissions profiles of users, for example, an operator may emit less CO₂ than it has allowances for as a result of utilising CO₂ reduction strategies. These leftover allowances can then be sold to ‘heavier’ users; for whom reducing CO₂ emissions is either not possible or, versus the cost of buying extra allowances, not considered to be economically viable.

¹⁸ [Amendments adopted by the European Parliament on 16 September 2020 on the proposal for a regulation of the European Parliament and of the Council amending Regulation \(EU\) 2015/757 in order to take appropriate account of the global data collection system for ship fuel oil consumption data \(COM\(2019\)0038—C8-0043/2019—2019/0017\(COD\)\)](#).

6 EU Health Programme¹⁹

This EU document is politically important because:

- it concerns an EU Programme in which the UK is eligible to participate and which is designed, among other objectives, to support the efforts of EU Member States and other participating countries in responding to cross-border health challenges; and
- following a change in the proposed level of EU budget, the Government is still considering the UK's position on participation.

Action

- Report to the House, re-iterating the Committee's previous request for information.
- Draw to the attention of the Health and Social Care Committee, the Northern Ireland Affairs Committee and the Committee on the Future Relationship with the EU.

Overview

6.1 The EU adopts multi-annual health funding programmes in order to support cooperation among EU countries and underpin and develop EU health activities. The Commission's proposal for the fourth programme, the 'EU4Health Programme' recognised the need to significantly boost the EU's capability to respond effectively to major health threats, such as Covid-19, and consequently proposed a substantially higher budget for the period 2021–27. We summarised the Programme in our [Report](#)²⁰ of 2 July 2020.

6.2 Since we considered the Commission's proposal, and since the Government took its decision not to participate in the future Programme, the European Council has agreed its position on the EU's long-term budget for the period 2021–27,²¹ subject to the consent of the European Parliament. The agreement included a reduction in the planned Health Programme budget from €9.4 billion (£8.42 billion) to €1.67 billion (£1.5 billion). The final levels are still subject to change as they must be agreed with the European Parliament.

6.3 In our [letter](#) to the Minister of State for Health (Edward Argar MP) of 2 July 2020, we sought clarity on the grounds for the Government's decision not to seek participation in the future Health Programme. We also asked about interaction with the Ireland/Northern Ireland Protocol.

6.4 In his [response](#), the Minister of State for Health (Edward Argar MP) acknowledges the changed circumstances but says that the Government will need to await the publication of

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

20 Fifteenth Report HC 229–xi (2019–21), [chapter 3](#) (2 July 2020).

21 Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020)—[Conclusions](#).

a revised proposal for the EU4Health Programme, based on the revised budget announced in July, before reviewing and updating the Committee accordingly, including answering, in more detail, our questions.

6.5 He says that the original decision not to participate in the future Health Programme was based on careful consideration of the benefits of participation to the UK and the EU in the EU's Third Health Programme and on the expectation that the EU4Health Programme would be similar in scale and scope to its predecessor.

6.6 The Minister expects that, following the decision of the European Council, changes will need to be made to the Programme but there has been no further detail since then on the breakdown of spending within the Programme nor has there been any decision on funding mechanisms used to calculate UK contributions.

Action

6.7 We take note of the Minister's response and re-iterate our request for information on the Government's position and the reasons for it, as well as interaction with the Ireland/Northern Ireland Protocol. We ask for further information within four weeks.

We are drawing the Minister's response, and this chapter, to the attention of the Health and Social Care Committee, the Northern Ireland Affairs Committee and the Committee on the Future Relationship with the EU.

7 UK partnership with the European Investment Bank: potential participation in the InvestEU programme²²

This EU document is politically important because:

- it forms the basis for a planned EU scheme to leverage billions in additional investment from the European Investment Bank (EIB) in the aftermath of the COVID-19 pandemic. Although the scheme is open for participation by non-EU countries like the UK, the Treasury has now informed us that the Government is not pursuing this option because “it is not clear that participation in InvestEU would represent value for money for the UK taxpayer”; and
- the Government has yet to make public any alternative proposals for a new UK partnership with the EIB, although it has repeatedly said it is “open to exploring options” for a new arrangement with the Bank.

Action

- Write to the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) to request further information on the Government’s proposals, if any, for a new UK relationship with the European Investment Bank.
- Draw the Government’s decision not to seek participation in the InvestEU Programme to the attention of the Committee on the Future Relationship with the EU, the Business, Energy and Industrial Strategy Committee and the Treasury Committee.

Overview

7.1 While the European Commission spends the majority of the EU’s €167 billion (£152 billion) annual budget in the form of grants, for example via agricultural subsidies or research funding, the EU also operates a substantial system of “financial instruments” and budgetary guarantees which either require no up-front spending or are made in expectation of the funds eventually being paid back.²³ Both types of arrangement essentially serve to increase the availability of financing for activities which contribute to EU public policy objectives in areas like research, climate change or employment, but

22 (a) [Proposal for a REGULATION establishing the InvestEU Programme](#) (2018); (b) Replacement [Proposal for a REGULATION establishing the InvestEU Programme](#) (2020); Council and COM number: (a) 9980/18, COM(18) 439; (b) 8411/20, COM(20) 403; Legal base: Article 173 and the third paragraph of Article 175 TFEU; ordinary legislative procedure; QMV; Department: HM Treasury; Devolved Administrations: Not consulted; ESC number: (a) 39888; (b) 41324.

23 Financial instruments refer to arrangements where the EU budget is used directly to provide loans or equity investment for a recipient, in pursuit of an EU public policy objective in areas like infrastructure, employment and climate change. Budgetary guarantees are offered to intermediaries like the European Investment Bank to make such loans or investment decisions themselves, but with the ability to tap financial support from the EU budget if the venture makes a loss.

at low or no cost to the EU budget. Budgetary guarantees, the EU's preferred approach, aim to leverage private sector investment in such cases, in particular from the European Investment Bank (EIB), in effect by offering the Bank partial indemnity if the venture is financially unsuccessful.

7.2 At present, use of financial instruments and guarantees to increase finance for projects within the EU²⁴ is fragmented across 16 individual schemes covering sectors as varied as scientific research, small businesses, education and the creative industries.²⁵ In addition, in 2015 the EU also launched its post-crisis [European Fund for Strategic Investments](#) (EFSI), which offers the EIB a guarantee capped at €26 billion (£24 billion)²⁶ to mobilise investments across all EU Member States in sectors like digital and transport infrastructure, education and research, and renewable energy.²⁷ In view of the size of the EFSI and the increased risk associated with its operations, the European Commission is also required to maintain a guarantee fund, financed primarily by the EU budget, which can be used to pay the EIB where its guarantee under the Instrument is triggered.²⁸

7.3 Under the so-called “Multiannual Financial Framework” (MFF), the EU's next 7-year budgetary cycle from January 2021 onwards, the European Commission wants to amalgamate the existing financial instruments and EFSI into a single “InvestEU” programme.²⁹ Its purpose, building on that of the current crop of schemes, would be to offer financial guarantees to offer partial indemnity³⁰ to the European Investment Bank (EIB) and other banks when they invest across five “policy windows” which cover key sectors of the European economy, including infrastructure, research and small businesses. Support would be targeted at leveraging investment that might otherwise be

24 The EU also operates additional financial instrument programmes to support investment and lending operations outside the EU: the External Lending Mandate, the Guarantee Fund for External Action, and the European Fund for Sustainable Development.

25 They include for example the “[InnovFin Equity](#)” programme under [Horizon 2020](#) (the EU's current main research funding programme) or the “[Cultural and creative sectors Guarantee Facility](#)” for banks which lend to the creative industries.

26 The total permitted exposure of the EFSI guarantee was increased in 2017 to €26 billion from the original €16 billion.

27 Because of its broad scope, EFSI has a degree of overlap with financial instruments operated under other EU programmes. The EIB [says](#) the total investment guaranteed under EFSI has passed €500 billion, but it is [not clear](#) how much of this is “additional” (i.e. investment that would not have been made without the EFSI guarantee). An [independent evaluation of the EFSI](#), published in June 2018, concluded that the EU guarantee was an “efficient way of increasing the volume of riskier operations”, but highlighted the need to “strengthen synergies with other EU funding programmes”. The evaluation also found that, while EFSI funding provided by the EIB had a higher level of risk compared to its normal operations, further efforts should be made to reinforce its ‘additionality’ (i.e. ensure that investments made using financial instruments backed up by the Fund would not have been made otherwise).

28 The EFSI guarantee fund [amounted](#) to €6.7 billion at the end of 2019.

29 InvestEU would replace all EU financial instrument schemes that focus on supporting projects within the EU itself. The Commission argues that a single financial instruments programme would offer increased flexibility to adapt to changing economic circumstances, lower costs due to economies of scale, and a simplified set of rules. The EU's financial instrument and budgetary guarantees for operations outside the EU, the “external action financial instruments”, such as the [External Lending Mandate](#), would remain separate (but amalgamated, in turn, under the new [Neighbourhood, Development & International Cooperation \(NDICI\) Instrument](#)).

30 According to Article 18 of the draft Regulation establishing the InvestEU programme, “the implementing partner shall have appropriate exposure at its own risk to financing and investment operations supported by the EU guarantee, unless exceptionally the policy objectives targeted by the financial product to be implemented are of such nature that the implementing partner could not reasonably contribute its own risk-bearing capacity to it”.

lacking because of “market failures and sub-optimal”—namely high-risk—“investment situations”.³¹ The decision as to whether the EU budget guarantee would be available in individual cases would lie with an independent Investment Committee.³²

7.4 The European Commission published an [initial legislative proposal](#) to establish the InvestEU programme as described above in May 2018, which it [replaced in June 2020](#) as part of a broader overhaul of its plans for the EU’s next long-term budget in light of the coronavirus crisis. The key difference between the two proposals is that the newer version would insert a new “strategic investment facility” into the programme, leveraging investment specifically for “strategic activities” in the EU, including healthcare provision, critical infrastructure and manufacturing of information technology.³³ The European Investment Bank would remain the primary partner in implementing the programme, with the Commission proposing the Bank should be the beneficiary of 75 per cent of the total guarantee available.

7.5 For the scheme to become operational, the European Parliament and the Member States in the Council of Ministers must discuss and jointly approve the legal framework for InvestEU (as part of their broader negotiations about the EU’s next long-term budget). The key issue is the maximum level of risk the EU budget can be exposed to in the form of financial guarantees offered to the EIB and other intermediaries, and how much funds need to be set aside (“provisioned”) from the EU budget to cover reasonably foreseeable calls on the guarantee. The remainder of the exposure not covered by the resources in this “guarantee fund” would show on the EU accounts as a contingent liability.

7.6 In July 2020, EU leaders [backed a relatively small InvestEU scheme](#) with a maximum allocation from the EU budget for such a guarantee fund amounting to €8.4 billion (compared to the European Commission’s proposal of €34 billion, against a maximum exposure of €75 billion). The Member States’ position would seem to imply a total guarantee for the EIB via the scheme, and therefore target investment levels, at a lower level than the current EFSI programme.³⁴ However, the European Parliament is [seeking a larger budget](#) for InvestEU.

7.7 As of October 2020 the overall size of the programme, and its detailed legal framework, remain under negotiation. The aim is still for the scheme to become operational on 1 January 2021.

Option for UK participation in InvestEU and access to the European Investment Bank

7.8 While the UK was an EU Member State, the UK was eligible for investments by the EIB guaranteed against the EU budget under EFSI and other financial instruments. For

31 [European Council conclusions](#), 20 July 2020, paragraph 30.

32 The members of the Investment Committee would be appointed by the European Commission. The Commission would also perform a “policy check” on each proposal to use the InvestEU guarantee to ensure “the financing and investment operations proposed [...] comply with Union law and policies”. Presumably, if it concluded it did not, the Investment Committee would reject the proposal.

33 See for more information on the EU’s €750bn Coronavirus Recovery Fund our [Report of 23 July 2020](#).

34 The original European Commission proposal capped the EU guarantee at €38 billion, of which €15 billion would be provisioned for—mostly financed by the EU budget—to cover calls on the guarantee. The Commission’s revised plan two years later sought to increase the maximum guarantee exposure to €75.2 billion. To cover potential calls on the guarantee, this proposal foresaw a guarantee fund of €33.8 billion, which would have been funded almost entirely from the EU’s putative €750 billion Coronavirus Recovery Fund.

example, under EFSI the Bank [backed](#) the UK Energy Efficiency Investments Fund and the construction of the Galloper wind farm off the Suffolk coast. The EIB was also provider of substantial financial backing for major British infrastructure projects more generally, including contributions to the [Northern Powerhouse Investment Fund](#) and [social housing in Northern Ireland](#).

7.9 Following the 2016 EU referendum,³⁵ EIB investment in UK projects tailed off. At the moment of its withdrawal from the EU on 31 January 2020, the UK automatically ceased to be a shareholder in the Bank and therefore largely ineligible³⁶ for new EIB financial support, including under EFSI.³⁷ Similarly, UK projects no longer have access to other forms of financial support guaranteed against the EU budget in specific sectors like research or the creative industries.³⁸ Under the Brexit financial settlement set out in the Withdrawal Agreement, the Treasury has assumed certain contingent liabilities in relation to EIB financial operations agreed before the UK left the European Union on 31 January this year.

7.10 While the Government has not yet published the outcome of its “[Infrastructure Finance Review](#)” consultation, it still maintains that is open to “exploring options for a future relationship” with the European Investment Bank.³⁹ While the Bank does provide financial support to projects outside the EU, this is targeted primarily at lower-income states in the EU’s southern and eastern “neighbourhood” and at developing countries. However, it also operates the “[EFTA Loan Facility](#)” which since 1994 has supported projects for “closer economic ties” between the EU and the highly developed economies of Norway, Iceland, Switzerland and Liechtenstein. Even so, these four countries were the [recipient](#) of only €113 million in EIB loans in 2019, whereas the UK in that year alone, despite its imminent withdrawal, received €456 million.

7.11 As of October 2020, the UK Government has not made any public proposals for a new partnership with the EIB and it is unclear what, if any, discussions on this matter have taken place as part of the negotiations on the future UK-EU economic relationship. It is not known if the Government is pursuing an arrangement similar to the EIB’s EFTA Loan Facility.

7.12 It is noteworthy therefore that the draft legal framework for the InvestEU programme published by the European Commission provides for the possibility of participation by

35 EIB public records indicate investment projects in the UK which were approved in 2015 amounted to €7.036 billion, but nosedived to €456 million in 2019. The EIB has not recorded approvals for any UK projects in 2020.

36 The [EIB’s Statutes](#) provide that “the Bank shall grant finance [...] for investments to be carried out in the territories of Member States”, but its Board of Governors—i.e. the EU’s 27 Finance Ministers—“may grant financing for investment to be carried out, in whole or in part, outside the territories of Member States”. At the end of 2019, 9 per cent of the EIB’s stock of loans involved countries outside the EU (excluding, for the purposes of calculating this figure, the UK).

37 Under the Withdrawal Agreement, existing EIB projects in the UK are not affected by its withdrawal. The Treasury will receive back its €3.5 billion in paid-in capital with the European Investment Bank in twelve annual instalments, but it has also offered a guarantee to provide capital to the Bank if necessary for the latter to cover its financial obligations in relation to financial operations entered into before the UK left the EU on 31 January 2020. The Agreement does not provide for the UK to receive a share of the profits generated during its EU membership by the EIB.

38 While the Brexit financial settlement means that the UK remains eligible in principle to participate in EU funding schemes until the end of 2020, Article 137(2) of the Withdrawal Agreement states that “by way of derogation [...], the United Kingdom [...] shall only be eligible for financial operations carried out within financial instruments [...] guaranteed by the Union budget [...] provided that those financial operations were approved by the entities and bodies [...] before the date of entry into force of this Agreement” (i.e. 31 January 2020).

39 [Letter](#) from the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) to Sir William Cash MP, 9 June 2020.

non-EU countries like the UK. In return for a contribution to the scheme’s Guarantee Fund,⁴⁰ such countries would be eligible for EIB investment guaranteed under the InvestEU programme in line with the priorities and conditions to be set out in the applicable EU legislation, on the same terms as EU Member States. However, there appears to be no guarantee for a specific level of investment in return for such a financial contribution. The exact terms for “third country” participation in the programme are yet to be settled by the European Parliament and the EU Member States in the Council as part of the wider negotiations on the scheme’s legal framework.

7.13 Although the Government has, as noted, said that “the UK is open to exploring options for a future relationship with the EIB”, when the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) submitted an [Explanatory Memorandum](#) on the latest proposal for the InvestEU programme in July 2020, he did not refer to the possibility of UK participation in the scheme (and access EIB investment that way) at all. From this we inferred, in our [Report of 23 July 2020](#), that the Government had ruled out UK participation in InvestEU at this stage, noting that “it is not clear on what basis it decided not to pursue [this] option [to] establish a new relationship with the European Investment Bank” via this route. We noted in particular the Government’s efforts to secure continued UK participation in the EU’s general Framework Programme for Research for the 2021–27 period (“Horizon Europe”),⁴¹ meaning that involvement in InvestEU—part of which will focus on increasing financial support for scientific research—could potentially further strengthen the UK’s links with its European neighbours in this field post-Brexit.⁴²

7.14 We therefore wrote to the Minister to seek clarifications about the Government’s intentions, especially in view of the Government’s insistence that it remains “open to exploring options for a future relationship with the EIB as a non-EU country”⁴³ and the fact that negotiations on the final design of the scheme were on-going.

The Government’s position

7.15 The Chief Secretary to the Treasury, who has responsibility for questions relating to the financial contribution in return for any future UK participation in EU programmes, replied to our questions by letter dated 30 September 2020.

7.16 In his letter, the Minister states that “it is not clear that participation in InvestEU would represent value for money for the UK taxpayer” because “as a new programme, some terms, including those on which third countries would participate, the benefits for UK participants and the resulting contingent liabilities that the UK Government would need to take on, remain uncertain”. This, he says, means the Government is “not pursuing participation in this programme”. The Minister does not refer to a potential reassessment of that decision as and when the EU has agreed on the legal framework for InvestEU, at which point those uncertainties could be addressed. He concludes by repeating that

40 In other words, topping up the liquidity cushion that the EU can use to pay the EIB or other intermediaries in the event of a loss on a qualifying financial operation.

41 The Government has confirmed it is seeking continued UK participation in a number of EU programmes for the 2021–27 period. See for more information our Report of 8 October 2020 on the draft EU budget for 2021.

42 We note in this respect that InvestEU will replace the EU’s existing “InnovFin Equity” scheme under its current Framework Programme for Research (“Horizon 2020”) to leverage investment into research projects, which can be used for investments in non-EU countries that participate in Horizon 2020. The UK is automatically eligible for this scheme until the end of 2020 under the terms of the financial settlement in the Withdrawal Agreement.

43 [Letter](#) from the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) to Sir William Cash MP, 9 June 2020.

the Government “will pursue a relationship with the EIB only where it is in the UK’s interests to do so”, adding that “InvestEU would not be the only possible basis for such a relationship”.

Action

7.17 The Committee has taken note of the Government’s assessment that UK participation in the EU’s new InvestEU programme may not present value for money and that such participation is therefore not being pursued.

7.18 While the Committee has not taken a position on the overall merits of any UK involvement in the InvestEU scheme, which is in any event not possible until the legal framework is established. However, several issues would arise that would need to be addressed.

7.19 First, as the Committee has noted on several occasions—most recently in its Report of 8 October 2020—there are general concerns about the lack of clarity with respect to the UK’s financial contribution to participate in future EU programmes as a non-Member State. Secondly, it also shares the Minister’s concerns about the extent to which the Treasury could be exposed to contingent liabilities entered into by the EU under InvestEU if formal participation were sought.⁴⁴ Thirdly, even if it did agree to a contribution to the InvestEU scheme, the UK would still not have any formal representation in its governance bodies, nor within the European Investment Bank where the majority of funding proposals under the programme would originate. Lastly, if the modest budgetary proposals put forward by the remaining 27 Member States in July 2020 are carried over into the definitive legal framework for the programme, the potential investment flows such participation might generate for UK infrastructure or research projects would in any event be relatively small.

7.20 The Committee is not aware of any public announcements made by the Government as regards the possible alternatives for a new relationship with the EIB, having ruled out participation in InvestEU, despite its repeated statements it is willing to consider one. The impetus to present proposals in this regard lies very much with the UK Government, given the EIB’s limited appetite to date for investment in developed economies outside the European Union—as shown by the sums involved in the EFTA Loan Facility—and the fact that the [Political Declaration on the future UK-EU partnership](#) refers only the “United Kingdom’s intention to explore options for a future relationship with the European Investment Bank”.

7.21 In light of the Government’s decision not to seek a new relationship with the European Investment Bank via the InvestEU scheme, and the absence of any indication that it has presented alternative proposals in this area, it seems likely that the UK will, at least for the foreseeable future, have no formal arrangement to access new investment by the EIB at all. We have therefore written to the Chief Secretary to clarify what, if any, proposals the Government has made to the EU with respect to the EIB to date as part of the future relationship negotiations. A copy of that letter is shown in the Annex to this Report.

44 The guarantee fund to be financed by the EU budget and by “third country” contributions would not fully provision for the total financial exposure the EU is likely to face under the scheme, meaning that in extreme circumstances—where calls on the InvestEU guarantee to outstrip the resources of the guarantee fund—additional UK contributions to settle the EU’s financial obligations vis-à-vis the EIB might be required.

7.22 We also draw the Minister’s decision not to seek a new relationship with the European Investment Bank via the InvestEU programme to the attention of the Business, Energy and Industrial Strategy Committee, the Committee on the Future Relationship with the EU, and the Treasury Committee.

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

Thank you for your letter dated 30 September informing us of the Government’s decision not to pursue access to new investment for UK projects from the European Investment Bank (EIB) under the putative InvestEU scheme, because of concerns over whether it would deliver value for money for the British taxpayer and uncertainty surrounding the contingent liabilities this would require the Treasury to assume.

Your letter however also reiterated that “the Government remains open to exploring options for a future relationship with the EIB on non-EU country terms [...] where it is in the UK’s interests to do so”, and noted that “InvestEU would not be the only possible basis for such a relationship”. To our knowledge, the Government has not set out publicly what these options might be, or indeed whether the matter has been raised with the EU since the UK left the European Union on 31 January this year.

In light of this, I would be grateful if you could confirm if the Government has in fact identified any viable options for a future relationship with the EIB, and what mix of rights and (financial) obligations they might entail; what discussions have taken place with the EU and/or the EIB with respect to those options; and how these have been received by the other side. If the Government has not made any proposals as regards the UK’s access to the EIB as a non-EU country, or no discussions have taken place with the EU on this matter to date, it would be helpful if you could clarify why this is the case.

We look forward to receiving your response by 31 October 2020.

8 Strengthening the security of identity cards and residence documents⁴⁵

This EU Regulation is politically important because:

- it strengthens the security features of identity cards and residence documents issued to EU citizens and their non-EU family members;
- EU citizens covered by Part Two of the EU/UK Withdrawal Agreement on citizens' rights will still be able to use their identity cards to travel to and from the UK after the post-exit transition period ends on 31 December 2020; and
- it raises a wider question about the documents and other formalities that will apply at the border between Gibraltar and Spain from 1 January 2021.

Action

- Write to the Minister for Future Borders and Immigration (Kevin Foster MP) seeking further information on (i) the operation of post-transition border procedures to distinguish between “qualifying” EU citizens entitled to use their national identity cards to travel to and from the UK and those requiring a passport; and (ii) the respective positions of the UK Government and the Government of Gibraltar on reports that Gibraltar may wish to participate in the Schengen free movement area to avoid friction at its border with Spain.
- Draw to the attention of the Home Affairs Committee, the Foreign Affairs Committee and the Committee on the Future Relationship with the EU.

Overview

8.1 In June 2019, the EU Council agreed new rules to improve the security of identity cards and reduce the risk of document fraud in those Member States (26 of the EU's 27 member countries) that issue them to their citizens. The [new Regulation](#) also specifies the information that Member States must (as a minimum) include in residence documents issued to ‘mobile’ EU citizens (who are not nationals of the Member State in which they live) and requires the use of uniform format residence cards for third country family members of EU citizens.⁴⁶ The new rules will apply from 2 August 2021, after the post-exit transition period (during which most EU law continues to apply in the UK) will have ended. The Regulation will not therefore apply in the UK. The UK will, nonetheless, have an interest in ensuring that national identity cards issued to EU citizens are as secure and fraud-proof as possible as the EU/UK Withdrawal Agreement allows qualifying EU citizens (those who were resident in the UK before the end of 2020) to use their national

45 Proposal for a Regulation on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising the right of free movement; Council document 8175/18, COM(18) 212; Legal base Article 21(2) TFEU, ordinary legislative procedure, QMV; Home Office; Devolved Administrations consulted; ESC number 39646.

46 Regulation (EU) 2019/1157 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, adopted on 20 June 2019.

identity cards to travel to and from the UK until the end of 2025, and potentially beyond if the cards comply with International Civil Aviation Organisation (ICAO) standards on biometric identification.⁴⁷

8.2 Our predecessor Committee considered the Regulation shortly after it was first proposed by the European Commission in April 2018 and, in its Reports and correspondence with Ministers, requested further information on the likely impact of the proposal on movement across the Spain/Gibraltar border and the Government of Gibraltar’s position.⁴⁸ The Committee did so because Gibraltar does issue identity cards, they do not meet the standards envisaged in the (now agreed) Regulation, and it was anticipated that the Regulation might apply during the post-exit transition period.

8.3 In his [letter of 21 September 2020](#), the Minister for Future Borders and Immigration (Kevin Foster MP) apologises for “the considerable delay” in providing the information and progress report on negotiations requested by our predecessors. Although the UK was still a member of the EU and had a vote when the Regulation was formally adopted in June 2019, he says that the Government decided to abstain because the new rules would only take effect after the UK’s exit from the EU and would not place any new requirements on the UK.

8.4 The Minister confirms that the Regulation will only apply from 2 August 2021 and that it includes a longer phasing out period for identity cards which do not meet the new, more stringent requirements. He continues:

In principle, the Government of Gibraltar would be in favour of any proposal to improve the security features of identity cards if the purpose is to better facilitate free movement. The identity card is a useful document which is currently used to cross the Spain/Gibraltar border, however the Regulation will not apply until after the UK (and Gibraltar) has left the EU and the transition period ends. The legal regime which will then apply to the Spain/Gibraltar border is under negotiation, but the Government of Gibraltar will seek the best possible border crossing solution as it remains an important artery for the Gibraltar economy and allows over 14,000 Spanish residents (mostly Spanish nationals) to have employment in Gibraltar.

8.5 The Minister also confirms that the EU/UK Withdrawal Agreement preserves the right of EU citizens lawfully resident in the UK before the end of the post-exit transition to use their national identity card instead of their passport to travel to and from the UK up until 31 December 2025 and beyond if their identity cards meet the relevant ICAO biometric standards. The position is less clear-cut for EU citizens who are not covered by the Citizens’ Rights provisions (Part Two) of the Withdrawal Agreement. The Minister refers us to the [Government’s Guidance](#) issued in January 2020 (and updated in July)

47 See Article 14 of the [EU/UK Withdrawal Agreement](#).

48 See our predecessor Committee’s Twenty-ninth Report HC 301–xxviii (2017–19), [chapter 7](#) (23 May 2018) and Thirty-third Report HC 301–xxxii (2017–19), [chapter 7](#) (27 June 2018). The Committee also wrote to the then Minister for Immigration (Rt Hon. Caroline Nokes MP) on 12 September 2018 and 16 January 2019.

which says “our intention is to phase out the use of insecure national identity cards by new arrivals, giving fair notice of moving to a different arrangement and time to adjust”, with further details to be provided “in due course”.⁴⁹

8.6 Finally, the Minister notes that Member States have generally welcomed the longer timeframe for implementing the requirements set out in the Regulation given the costs likely to be incurred in bringing national identity cards in all issuing Member States up to the new EU standards.

Our analysis

8.7 The Government has made clear that the free movement of EU citizens to the UK will end on 31 December 2020. Part Two of the EU/UK Withdrawal Agreement protects for a potentially unlimited period the right of qualifying EU citizens to use their national identity cards to travel to and from the UK if (as we assume they are intended to) the standards set out in the Regulation remain in step with ICAO biometric standards. As our predecessor Committee noted, this means that it may well be necessary to have procedures in place at the UK border to distinguish between EU citizens entitled to enter the UK on production of an identity card and those required to produce a passport.

8.8 Procedures at the border between Spain and Gibraltar have long been a source of friction. Unlike the UK, Gibraltar has never been part of the EU customs union, so customs checks routinely take place at its border with Spain. Nor, like the UK, has Gibraltar taken part in the internal border-free Schengen area, so Spain’s border with Gibraltar is considered an external border of the Schengen area. EU rules on the free movement of persons do, however, apply in Gibraltar in the same way as they apply in the UK and will continue to do so until the post-exit transition period ends on 31 December 2020.

8.9 As the Minister states in his letter, Gibraltar has a clear economic interest in reducing any obstacles to the movement of EU citizens across its border with Spain and is seeking “the best possible border crossing solution” from 1 January 2021 when a new legal regime will apply at the border. The Minister provides no details of the possible solutions being contemplated. One option mooted in press reports is for Gibraltar to join the internal border-free Schengen area, a move which the Government of Gibraltar and Spain are both said to support.⁵⁰ This would remove one source of potential disruption at the border between Spain and Gibraltar, but at the risk of creating new obstacles to movement between the UK and Gibraltar.

Action

8.10 Write to acknowledge the Minister’s apology for the (much-delayed) response, note that we have no further questions to raise on the Regulation, but seek further information on (i) the operation of post-transition border procedures to distinguish between “qualifying”

49 New immigration system: what you need to know. The Guidance says: “Until at least January 2026 we’ll continue to recognise identity cards used for travel by EU citizens and their EU family members who are both resident in the UK before the end of the transition period and hold status under the EU Settlement Scheme. We will also recognise ICAO compliant identity cards from this group beyond 2026. For newly arriving migrants, we intend to phase out the use of insecure identity documents and will set out further details on this shortly”.

50 See the [Politico report on 15 September 2020](#) (Spain pushes for Gibraltar to join Schengen area after Brexit transition ends), the [schengenvisainfonews](#) website on 15 September 2020 (Spain wants Gibraltar to become part of the Schengen zone), and the [etias.info](#) website (Could Gibraltar join Schengen after Brexit?).

EU citizens entitled to use their national identity cards to travel to and from the UK and those requiring a passport; and (ii) the respective positions of the UK Government and the Government of Gibraltar on Gibraltar’s participation in the Schengen free movement area.

Letter to the Minister for Future Borders and Immigration (Kevin Foster MP), Home Office

Thank you for your [letter of 21 September 2020](#) responding to questions raised by our predecessor Committee on a proposed Regulation (adopted in June 2019) seeking to strengthen the security of identity cards and residence documents used by EU citizens and their non-EU family members to move more easily within the EU/EEA. As you acknowledge, there has been a “considerable delay” in providing the information requested. We expect Ministers to make good on the Government’s commitment to support effective and timely scrutiny of EU law and policy during the post-exit transition period and trust that there will be no further delays within your Department.

We have no further questions to raise on the Regulation itself (which you may therefore consider cleared from scrutiny), but would welcome your views on two related matters: (i) the operation of post-transition border procedures to distinguish between “qualifying” EU citizens entitled to use their national identity cards to travel to and from the UK and those requiring a passport; and (ii) the respective positions of the UK Government and the Government of Gibraltar on reports that Gibraltar may wish to participate in the internal border-free Schengen area after transition.

While the Government has made clear that the free movement of EU citizens to the UK will end on 31 December 2020, qualifying EU citizens who are within the scope of the citizens’ rights provisions set out in Part Two of the EU/UK Withdrawal Agreement will be able to use their national identity cards to travel to and from the UK at least until the end of 2025, and potentially longer if (as we assume the EU intends) the new safety standards introduced by the Regulation keep in step with ICAO biometric standards. This will not necessarily be the case for non-qualifying EU citizens. Do you anticipate that it will be necessary to have procedures in place at the UK border from 1 January 2021 to distinguish between EU citizens entitled to enter the UK on production of an identity card and those required to produce a passport?

Our predecessor Committee expressed an interest in the likely impact of the (then proposed) Regulation on border crossings between Spain and Gibraltar. You explain that the Regulation will apply from 2 August 2021, after the end of the post-exit transition period on 31 December 2020, and so will not take effect in the UK or in Gibraltar. You add that the legal regime which will apply at the Spain/Gibraltar border from 1 January 2021 is under negotiation and that the Government of Gibraltar “will seek the best possible border crossing solution” given the importance of this border crossing point for the Gibraltar economy. You will doubtless be aware of press reports suggesting that one solution mooted by Spain is for Gibraltar to join the internal border-free Schengen area.⁵¹ Whilst this would remove one source of potential disruption at the border between Spain and Gibraltar, it would also risk creating new obstacles to movement between the UK and

51 See the [Politico report on 15 September 2020](#) (Spain pushes for Gibraltar to join Schengen area after Brexit transition ends), the [schengenvisainfonews](#) website on 15 September 2020 (Spain wants Gibraltar to become part of the Schengen zone), and the [etias.info](#) website (Could Gibraltar join Schengen after Brexit?).

Gibraltar. We would welcome further information on the respective positions of the UK Government and the Government of Gibraltar on both the feasibility and desirability of Gibraltar seeking to participate in the Schengen free movement area.

We look forward to receiving the information requested within 10 working days.

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

Department for Environment, Food and Rural Affairs

(41520) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Tenth report on the implementation status and programmes for implementation (as required by Article 17 of Council Directive 91/271/EEC, concerning urban waste water treatment).
 10705/20
 + ADD 1
 COM(20) 492

Department for Transport

(41511) Proposal for a Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.
 10487/20
 COM(20) 499

(41531) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus.
 10942/20
 + ADD 1
 COM(20) 566

(41532) Proposal for a Council Decision on the conclusion of the Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus.
 109452/20
 + ADD 1
 COM(20) 567

Home Office

(41514) Proposal for a Regulation of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online.
 10682/20
 COM(20) 568

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 Research Programme: Horizon Europe [Proposed Regulation (SNC)]; UK partnership with the European Investment Bank: potential participation in the InvestEU programme [Proposed Regulations (SNC)]

Committee on the Future of the European Union: Critical Raw Materials [Commission Communication (SNC)]; EU Research Programme: Horizon Europe [Proposed Regulation (SNC)]; Northern Ireland Protocol: Illegal timber arrangements [Proposed Council Decisions (SNC)]; EU Health Programme [Proposed Regulation (SNC)]; UK partnership with the European Investment Bank: potential participation in the InvestEU programme [Proposed Regulations (SNC)]; Strengthening the security of identity cards and residence documents [Proposed Regulation (SNC)]

Environment, Food and Rural Affairs Committee: Northern Ireland Protocol: Illegal timber arrangements [Proposed Council Decisions (SNC)]; Shipping: emissions monitoring and reporting [Proposed Regulation (SNC)]

Environmental Audit Committee: Shipping: emissions monitoring and reporting [Proposed Regulation (SNC)]

Foreign Affairs Committee: Strengthening the security of identity cards and residence documents [Proposed Regulation (SNC)]

International Trade Committee: Critical Raw Materials [Commission Communication (SNC)]

Health and Social Care Committee: EU Health Programme [Proposed Regulation (SNC)]

Home Affairs Committee: Strengthening the security of identity cards and residence documents [Proposed Regulation (SNC)]

Northern Ireland Affairs Committee: Critical Raw Materials [Commission Communication (SNC)]; Northern Ireland Protocol: Illegal timber arrangements [Proposed Council Decisions (SNC)]; EU Health Programme [Proposed Regulation (SNC)]

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

Treasury Committee: UK partnership with the European Investment Bank: potential participation in the InvestEU programme [Proposed Regulations (SNC)]

Transport Committee: Shipping: emissions monitoring and reporting [Proposed Regulation (SNC)]

Formal Minutes

Thursday 8 October 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*)