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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) can be downloaded from GOV.UK: https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—https://webarchive.nationalarchives.gov.uk/search/—by restricting searches to https://europeanmemoranda.cabinetoffice.gov.uk/

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Contents

1 Trade and Cooperation Agreement: UK-EU electricity trading arrangements[1]

This EU document is politically important because:

- it concerns improvements to the trading of electricity between the UK and the EU, which should have both economic and environmental benefits; and
- the Minister accepts that the new trading arrangements need to be developed at the same time as commercial and regulatory frameworks and may require an amendment to energy data access provisions set out in the UK-EU Trade and Cooperation Agreement.

Action

- Report to the House.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee.

Overview

1.1 The UK-EU Trade and Cooperation Agreement's Energy Title establishes a number of commitments, including the development of post-Brexit trading arrangements for the efficient use of electricity interconnectors between Great Britain (GB), on the one hand, and the EU and the Single Electricity Market on the island of Ireland, on the other (I-SEM). This is closely linked to the expansion of offshore wind energy in the North Sea, considered by both the UK and EU as a central element of their efforts to move away from fossil fuels—intensified since the Russian invasion of Ukraine—and to deliver their climate change goals.

1.2 One effect of the UK's withdrawal from the EU was to decouple GB's electricity market from that of the EU. A coupled market makes greater use of an interconnected market, reduces day to day price volatility and should—through a more efficient market—keep the costs of energy down. The EU and UK agreed in the TCA to introduce 'multi-region loose volume coupling' (MRLVC), where electricity and cross-border transmission capacity on an interconnector are auctioned together on a 'day ahead' timeframe. These new arrangements were meant to be in place by April 2022, but are yet to be finalised. As we reported on 25 January 2023,[2] this delay has been due in part to disagreements around the Northern Ireland Protocol.

1 Proposal for a Council Decision on the position to be taken on behalf of the European Union within the EU-UK Specialised Committee on Energy established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, concerning the EU-UK electricity trading arrangements; COM(22) 651; Legal base: Articles 194(1) TFEU and Article 218(9) TFEU, QMV; Department: Business and Trade; Devolved Administrations: Consulted; ESC number: 42147.

2 Thirteenth Report (2022–23) HC 119–xii, chapter 1 (25 January 2023).

1.3 There has, however, been some progress recently. On 7 February, the UK-EU Specialised Committee on Energy adopted a Recommendation[3] to the Transmission Systems Operators (TSOs, such as National Grid) and respective regulators that they prepare an analysis to address outstanding issues. Those issues were first highlighted in a Cost-Benefit Analysis (CBA) of certain possible MRLVC designs, published in April 2021.[4]

1.4 We considered the draft Recommendation at our meeting of 25 January and wrote[5] to the Minister for Energy and Climate (Rt Hon. Graham Stuart MP) raising outstanding questions concerning the interaction between the new trading arrangements and offshore renewable energy cooperation in the North Sea. In his response, which we have summarised below, the Minister agrees that MRLVC offers the best route to deliver efficient trading across current and future North Sea interconnectors and that commercial and regulatory frameworks for future North Seas energy infrastructure must therefore be considered alongside the development of MRLVC. The Minister implicitly accepts that it may be necessary to amend data access provisions enshrined in the TCA in order that MRLVC can effectively support North Sea offshore renewable expansion.

1.5 We have no further queries to raise at this stage but will follow policy development in this area closely.

UK Government position—letter dated 27 February

1.6 The Government, says the Minister, recognises the potential of the North Seas in helping the UK to meet its offshore wind, interconnection and net zero ambitions. MRLVC, he says, offers the best route to deliver efficient trading across current and future interconnectors.

1.7 The Government agrees that commercial and regulatory frameworks for future North Seas energy infrastructure must be considered alongside the development of MRLVC. The Minister recalls the recent signature of a Memorandum of Understanding between the UK and the North Seas Energy Cooperation (NSEC) group. This, he says, will enable the sharing of information related to North Seas infrastructure projects and collaborative work to establish an appropriate commercial and regulatory environment. The Government is also working on a range of domestic policies to support these aims and to ensure that potential interactions with MRLVC are considered as these frameworks are developed.

1.8 Responding to our query about whether the data access provisions set out in Annex 29 of the TCA could limit the effectiveness of North Sea offshore renewable energy cooperation, the Minister notes that the TSOs have been asked to consider this interaction. While the Minister does not confirm whether the UK would support an amendment to Annex 29, the Minister notes that it is the role of the SCE to make recommendations and decisions as necessary to ensure the effective implementation of the articles of the Energy

3 Recommendation No 1/2023 of the Specialised Committee on Energy established by Article 8(1)(l) of the Trade And Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part of 7 February 2023 to each Party concerning their requests to transmission system operators for electricity in view of preparing technical procedures for the efficient use of electricity interconnectors

4 The EU and UK TSOs MRLVC group, 'Cost Benefit Analysis of Multi-Region Loose Volume Coupling (MRLVC)' (April 2021).

5 Letter from Sir William Cash MP to Rt Hon. Graham Stuart MP regarding electricity trading arrangements, dated 25 January 2023

Title for which it is responsible, including Annex 29.[6] He adds that, at the most recent meeting of the Specialised Committee, both the UK and EU committed to discharging these obligations.

Our assessment

1.9 We welcome the Minister's response, which recognises the linkages between the trading framework, the development of multi-purpose interconnectors and the significant expansion of offshore renewable energy in the North Sea to reduce reliance on fossil fuels. We look forward to the further analysis requested from the TSOs and regulators and will monitor closely how these policies develop.

Action

1.10 We require no further information from the Government.

1.11 We are drawing the Minister's response to the attention of the Business, Energy and Industrial Strategy Committee.

6 We note that Article 329(2) TCA gives the Specialised Committee on Energy the power to amend Annex 29.

2 North Seas Energy Cooperation[7]

This EU document is politically important because:

- it represents a positive step forward in post-Brexit UK-EU cooperation; and
- cooperation on offshore renewable energy is strategically important to move away from energy generated by fossil fuels.

Action

- Report to the House.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee and the Environmental Audit Committee.

Overview

2.1 As both the EU and UK strive to move away from energy generated by fossil fuels, exploitation of the North Sea's offshore renewable energy capacity is seen as key. To exploit the resource as effectively as possible requires cooperation to develop projects linking offshore wind farms and electricity interconnectors. Known as hybrid projects or multi-purpose interconnectors (MPIs), these reduce the amount of offshore grid infrastructure required and maximise the use of offshore wind, thereby reducing cost, minimising environmental impact and limiting carbon emissions.

2.2 The UK-EU Trade and Cooperation Agreement (the 'TCA') commits the UK and EU to cooperate in the development of offshore renewable energy and enable the creation of a specific forum for technical discussions regarding offshore grid development. This should be between the UK and participants in the North Seas Energy Cooperation grouping.[8] A Memorandum of Understanding (MoU) was signed on 18 December 2022 between the UK and NSEC participants to set the framework for the UK's cooperation with NSEC.

2.3 In his Explanatory Memorandum (EM), the Minister for Energy and Climate (Rt Hon. Graham Stuart MP) says that exploiting the "enormous resources of the North Sea will be crucial if we are to meet our net zero ambition, enhance our domestic energy production and enhance our energy security."

2.4 The Minister—who also sent a separate letter[9] confirming the MoU's signature—says that the cooperation will, in particular, help the UK to meet its targets to: deliver at least 18 Gigawatts (GW) of electricity interconnector capacity by 2030; produce 50 GW of offshore wind by 2030; and develop 10 GW of low carbon hydrogen production capacity by 2030.

2.5 To deliver the UK's targets and ambitions in an efficient and sustainable manner, says the Minister, the UK needs to work with North Seas partners to develop a future

7 Memorandum of Understanding on offshore renewable energy cooperation between the UK and the participants of the North Seas Energy Cooperation; Legal base: Article 321, TCA; Department: Business and Trade; Devolved Administrations: Consulted; ESC number: 42163.

8 NSEC comprises: Norway, Sweden, Denmark, Netherlands, Germany, Belgium, France, Luxembourg and the EU.

9 Letter from Rt Hon. Graham Stuart MP to Sir William Cash MP regarding Offshore Renewable Energy Cooperation Memorandum of Understanding, dated 30 January 2023

vision for offshore low carbon infrastructure with a focus on new innovative technology, specifically MPIs. The MoU on cooperation with NSEC provides a framework for energy cooperation at regional level and, in particular, facilitates the development of joint offshore projects such as MPIs. It also provides opportunities for collaboration on hydrogen and the development and deployment of carbon capture, usage and storage (CCUS).

2.6 The Minister expects the cooperation to begin early in 2023. The UK will not be a full member of NSEC, but will be invited to attend NSEC meetings to discuss specific topics or projects of "direct common interest" to the UK and NSEC participants. Information will be exchanged by both sides to enable these specific topics or projects to be identified. The cooperation will cover all the NSEC work streams, which include hybrid projects, maritime spatial planning and onshore and offshore grid planning.

Our assessment

2.7 The signing of the Memorandum of Understanding represents a positive step forward in UK-EU post-Brexit cooperation. We are engaging separately with the Government on technical issues relating to electricity trading, including through MPIs. We have no further issues to pursue relating to the MoU but we will monitor its implementation with strong interest, noting that cooperation is yet to officially begin.

2.8 We are drawing this chapter to the attention of the Business, Energy and Industrial Strategy and the Environmental Audit Committee.

3 Trade and Cooperation Agreement: possible amendment to reflect changes to the 'Prüm' rules on cross-border police cooperation[10]

This proposed 'Prüm II' Regulation is legally and politically important because:

- it would amend the current framework for cross-border police cooperation and data exchanges ('Prüm I') within the EU and include new categories of data—digital facial images, police records and (possibly) driving licences;
- Part Three of the UK/EU Trade and Cooperation Agreement (TCA) establishes a new legal framework for law enforcement cooperation between the UK and the EU post-Brexit which broadly replicates the Prüm I rules; and
- if the changes in the proposed Prüm II Regulation are agreed, the corresponding provisions in the TCA on cross-border police cooperation and data exchanges will also need to be amended to ensure that UK law enforcement authorities can continue to exchange biometric information (DNA profiles, fingerprints and, in the future, facial images) and additional categories of data with EU counterparts.

Action

- We have written to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) requesting further information on the implications of the proposed changes for the UK, the process for amending Part Three of the TCA, and assurances about Parliamentary scrutiny of any changes to the TCA before they are formally agreed to by the Government.
- We have drawn this chapter to the attention of the Home Affairs Committee and the Justice Committee.

Overview

3.1 During its membership of the European Union, the UK participated in a set of EU rules on cross-border police cooperation ('the Prüm I rules') which enabled law enforcement authorities to access anonymised biometric information (DNA profiles and fingerprints) held in the national police databases of other EU countries to see if there was a 'hit' or match. A Government motion on UK participation in Prüm was debated and agreed on the floor of the House in December 2015.[11] In advance of the debate, our predecessor Committee published a Report, *Cross-border law enforcement cooperation—UK participation in Prüm*

10 Proposal for a Regulation on automated data exchange for police cooperation ("Prüm II") amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2109/818; COM(21) 784; Legal base—Articles 16(2), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV; Home Office; Devolved Administrations "will be consulted regarding implications for law enforcement in their jurisdictions once the proposals are finalised"; 41968.

11 HC Deb, 8 December 2015, vol 603, cols 914 to 963

which examined the evidence presented by the Government to support UK participation. The Committee noted in its Report that the "paucity of evidence on the outcome of Prüm exchanges was troubling", making it difficult to measure the 'added value' of Prüm and ensure that an appropriate balance was being struck between the public interest in the prevention, investigation and detection of crime and the individual's right to privacy.[12]

3.2 Similar concerns arise in relation to the proposed Prüm II Regulation (presented by the European Commission in December 2021) which would substantially amend the existing Prüm framework. The changes would establish a central router for exchanging biometric data, allow automated searches of two new categories of data (facial images and police records), and include Europol—the EU's crime-fighting agency—and its databases in the Prüm system.

3.3 Although the UK is no longer bound by the EU rules establishing the Prüm framework following its exit from the EU, they are largely replicated in Title II of Part Three of the UK/EU Trade and Cooperation Agreement (TCA) which governs the post-Brexit relationship between the UK and EU. As a result, the exchange of DNA profiles and fingerprint data between UK law enforcement authorities and their counterparts in the EU has continued post-exit, subject to an evaluation (concluded in June 2022) confirming that the UK met the TCA's requirements.[13] The Prüm I rules and the TCA also provide for automated searches of national vehicle registration databases but the exchange of vehicle registration data between the UK and EU Member States has not yet begun.

3.4 The TCA anticipates that its provisions on Prüm data exchanges and cross-border law enforcement cooperation may need to be amended if the EU makes substantial changes to the underpinning Prüm I rules and sets out the procedures to be followed. Shortly after the proposed Prüm II Regulation was published, we wrote to the Government asking it to set out its position on the proposal and possible consequences for future police cooperation between the UK and EU Member States.[14]

3.5 The Government has now deposited the proposed Prüm II Regulation for scrutiny, following a request made by the Chairman of the House of Lords European Affairs Committee (The Earl of Kinnoull). It has also submitted an Explanatory Memorandum in which the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) acknowledges that the TCA will need to be amended if the Prüm II proposals are agreed and the UK wishes to continue to participate in Prüm.

3.6 In this chapter, we consider the changes that the proposed Prüm II Regulation would make to the existing Prüm framework, the possible implications for the UK under the TCA, and the Government's position.

12 European Scrutiny Committee, Twelfth Report (2015–16) HC 342–xii (4 December 2015)

13 Council Decision (EU) 2022/1014 on the position to be taken on behalf of the Union vis-à-vis the UK regarding the determination under Article 540(2) of the Trade and Cooperation Agreement of the date from which personal data relating to DNA profiles and dactyloscopic data as referred to in Articles 530, 531, 534 and 536 of that Agreement may be supplied by Member States to the UK (adopted on 17 June 2022).

14 See our letters dated 12 January 2022, 25 May 2022 and 7 September 2022 and the Government's responses dated 29 April 2022 (from the then Security Minister, Damian Hinds MP), 25 July 2022 (from the then Minister for Delivery at the Home Office, Baroness Williams of Trafford) and 10 October 2022 (from the then Immigration Minister, Tom Pursglove MP).

The Prüm II proposals

3.7 The proposed Prüm II Regulation is part of a wider package of measures which would constitute a new EU Police Cooperation Code. The other parts are:

- a non-binding Council Recommendation (agreed by the EU Council in June 2022) which is intended to strengthen operational police cooperation within the Schengen Area, especially at internal borders, by removing the technical, legal and other impediments to effective cross-border cooperation; and

- a proposed Directive which would require each EU Member State to establish a 'one-stop shop'[15] for the exchange of law enforcement information, a single channel[16] for communicating this information securely, and time limits for processing and responding to requests for information. It would also require information concerning a criminal offence which is available in one Member State to be made available to other Member States' law enforcement authorities under the same conditions, subject to some limited exceptions, and further strengthen Europol's role as the EU's criminal information hub.[17]

3.8 The proposed Prüm II Regulation is the third and most relevant part of the package for the UK as it would build on and make substantial changes to the current Prüm framework for cross-border police cooperation within the EU, necessitating comparable changes to the TCA if the UK wishes to continue its participation. In particular, the proposed Regulation would provide for the automated searching of digital facial images held in national police databases, in addition to DNA profiles and fingerprint data, and specify the "core data" that should be exchanged within 24 hours of confirming a match.[18] It would also provide for the setting up of a central router to exchange biometric information which would be developed and maintained by the EU's justice and home affairs IT agency, eu-LISA, and connected to national police databases.[19]

3.9 The inclusion of Europol and its databases within the revised Prüm framework would enable Member States to check biometric data shared with Europol by third countries (such as the UK) and Europol to check the same data received from these third countries against Member States' national databases.[20] Europol would also be responsible for the development and technical management of a separate European Police Records Index System ('EPRIS')—a central infrastructure which would be used to carry out automated searches of police records for those Member States that decide to participate.[21] Under the Prüm II arrangements, participation in the exchange of police records would remain

15 A Single Point of Contact operating around the clock as the national information hub for exchanging information with other countries and with EU agencies such as Europol or international organisations such as Interpol.

16 The Secure Information Exchange Network Application (SIENA) which is managed by Europol.

17 The proposed Directive would repeal and replace the so-called 'Swedish Framework Decision' (2006/960/JHA) which established the principles of availability and equivalent access.

18 Name; date, place and country of birth; nationality; gender.

19 The central router would not store any data. Member States would retain ownership and control of their data.

20 Europol would also have access to vehicle registration data held in national databases and to police records in those Member States that allow access.

21 This does not include the exchange of criminal record information which is covered by separate provisions in the TCA (Articles 643 to 651).

voluntary but law enforcement authorities would only be able to query police records databases in other EU Member States if their own database can be similarly searched. By contrast, participation in the automated exchange of biometric data would be mandatory.

3.10 The Prüm rules do not specify *whose* biometric information should be included in national police databases, only that the information held in them (in compliance with national laws) should be searchable. However, in the case of police records, the searches would only extend to the biographical data of criminal suspects or convicted criminals. They would not, for example, include information on witnesses or victims of crime. While the main purpose of Prüm is to assist police in preventing, detecting and investigating crime, the proposed Prüm II rules would also allow the exchange of data to search for missing persons or to identify human remains.

3.11 The European Commission anticipates that the development of a new central router for Prüm II and a separate EPRIS should be completed in 2026, with both systems becoming operational in 2027. They would be interoperable with other EU justice and home affairs databases so that relevant data available to law enforcement authorities in one EU country could be accessed by their counterparts in another EU country.

3.12 The EU Council agreed its general approach on the proposed Prüm II Regulation and the other elements of the EU Police Cooperation Code package in June 2022. The European Parliament has not agreed its negotiating position, so trilogue discussions with the EU Council and European Commission to agree a final compromise text have not yet begun.

Police cooperation under the Trade and Cooperation Agreement

3.13 The TCA establishes a new framework for law enforcement cooperation following the UK's exit from the EU. It provides for continued close cooperation and exchange of information with Europol[22] and with Eurojust (the EU's criminal justice agency), mutual assistance in combating crime, the exchange of criminal record information, and the provision of operational information if permitted under domestic law. The TCA also contains detailed provisions on automated transfers of DNA profiles, fingerprints and vehicle registration data which replicate the EU's current (Prüm I) rules.[23]

3.14 The TCA anticipates that an amendment of its provisions may be necessary if the EU laws underpinning Prüm cooperation (the Prüm I rules) are "substantially" amended or are "in the process of being amended substantially".[24] The EU must notify the UK that it wishes to agree a formal amendment of the relevant TCA provisions. The act of notification would trigger an initial nine-month period of consultations which could lead to the suspension of Prüm cooperation (in full or in part) if the EU and UK were unable to agree on a formal amendment of the TCA. The suspension could be extended for a further nine months while consultations continue. If there was still no agreement, cooperation would then cease in those areas covered by the suspension. Prüm and all other forms of law enforcement cooperation under Part Three of the TCA are also conditional on the

22 This includes access to Europol's secure messaging system (SIENA).
23 Articles 527 to 541 and Annex 39 of the TCA.
24 Article 541 of the TCA.

UK and EU Member States continuing to adhere to the European Convention on Human Rights and ensuring a high level of protection of personal data, with fundamental rights and data protection safeguards given effect in domestic law.[25]

The Government's position

3.15 In earlier correspondence, the Government told us that the changes in the proposed Prüm II Regulation were "substantive in nature", might require the UK to "revisit the relevant provisions of the TCA" if they were agreed by the Council and European Parliament, and that "we would expect formal notification from the EU via the governance structures established in the TCA (the Specialised Committee for Law Enforcement and Judicial Cooperation)".[26]

3.16 In his Explanatory Memorandum of 2 February 2023, the Security Minister describes Prüm as "a vital investigative tool for law enforcement", adding "As Prüm II will introduce new methods of exchange using more advanced technical infrastructure, it is likely that the UK will not be able to participate in data exchanges indefinitely using the existing infrastructure and processes."

3.17 He expects "detailed discussions with the EU on changes to the TCA" to begin as negotiations within the EU on the proposed Prüm II Regulation near completion—likely to be summer or autumn 2023 at the earliest—when "both sides have more clarity on what they would require". Before reaching a decision, the Government will "consult widely to determine the scale of change and potential benefits to the UK in participating", including seeking the views of law enforcement partners, biometrics practitioners, the Forensic and Information Database Services Board, the Forensic Science Regulator and Information Commissioner, and the devolved Governments.

Analysis

3.18 As the Minister intimates, changes to the TCA would be necessary to enable the automated exchange of facial images and/or police records between the UK and EU national law enforcement authorities as they are not included in the current Prüm framework. The general approach agreed by the EU Council would also include driving licence data.

3.19 Even if the UK does not wish to take part in the exchange of these new categories of data, sticking with the status quo is unlikely to be an option. The proposed changes would require all biometric data to be channelled through a new central router connecting to each national database. This would likely have cost implications for the UK in adapting or upgrading its current IT systems to connect to the new router and (if the UK also wishes to have automated access to police records) to the European Police Records Index System. As the Minister notes, the full cost implications can only be assessed once the Prüm II proposals have been agreed.

3.20 Further changes to the proposed Prüm II Regulation are possible as the European Parliament, in developing its negotiating position, is likely to be mindful of the Opinion

25 See Articles 524 and 525 of the TCA.

26 Letter dated 29 April 2022 from the then Security Minister (Rt Hon. Damian Hinds MP)

issued by the European Data Protection Supervisor ('EDPS') in March 2022.[27] The EDPS questioned the necessity and proportionality of the Prüm II proposals, stating that "with stronger powers should always come stronger oversight", and highlighting:

- the significant extension of the scope of the automated exchange of data;
- a lack of precision about the *type* of criminal offending that would justify an automated search—he suggests that automated searching of DNA profiles and facial images should be limited to the investigation of serious crimes (rather than any criminal offence);
- a failure to distinguish between *different categories of data subjects* whose data may be included in searchable national police databases (convicted criminals, criminal suspects, witnesses, victims of crime);
- the need for stringent safeguards for the automated searching of facial images and common standards to ensure they are of sufficient quality to prevent false matches;
- serious concerns about the inclusion of police records within the Prüm framework, as well as Europol's ability to identify and manage all the data protection risks (not least the potentially low-quality data sources being searched) in developing EPRIS:[28] and
- greater clarity in the relationship between the data protection rules set out in the proposed Prüm II Regulation and the EU's existing legal framework on data protection.[29]

3.21 Non-governmental organisations have expressed similar concerns, with the European Digital Rights (EDRi) network suggesting that the proposed Prüm II Regulation "fails to demonstrate the necessity and proportionality of its measures, in particular its vastly expanded categories of personal data".[30]

3.22 The Minister does not say whether the EU has notified the UK that it wishes to seek a formal amendment of the Prüm provisions in Part Three of the TCA, though it seems more likely the EU would do so once the Council and European Parliament are closer to agreeing a final compromise text. Given that the Prüm II proposals would significantly affect the categories of personal data that can be searched by automated means, the speed at which national law enforcement authorities would be able to obtain "core" biographical data, the risk of false matches and the implications for the fundamental rights of individuals, we consider it vital that the Government facilitates meaningful parliamentary scrutiny of any formal amendment of the relevant TCA provisions.

Recommended action

3.23 We have written to the Security Minister to:

27 Opinion 4/2022 on the proposal for a Regulation on automated data exchange for police cooperation ('Prüm II').
28 For further information on Europol's involvement, see the EDPS Opinion on a pilot project for a European Police Records Index System (EPRIS), 25 April 2022 (Case 2022–0265).
29 The Law Enforcement Directive (EU) 2016/680 and the Data Protection Regulation (EU) 1725/2018.
30 EDRi position paper on the EU's proposed Regulation on automated data exchange for police cooperation ("Prüm II"), published 7 September 2022.

- remind him of the Government's commitment to inform us as soon as the EU notifies the UK that it is seeking a formal amendment of the provisions on exchanges of DNA, fingerprint and vehicle registration data in Title II of Part Three of the TCA;
- clarify the process for agreeing to an amendment of the TCA;
- explain how he anticipates any amendments to the TCA will be scrutinised by Parliament; and
- set out the information that we expect the Government to make available to Parliament before agreeing to any formal amendment of the TCA.

Letter from the Chair to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP)

Thank you for your Explanatory Memorandum (EM) on the proposed 'Prüm II' Regulation and the changes it would make to the current ('Prüm I') framework for the automated exchange of DNA profiles, fingerprint and vehicle registration data between law enforcement authorities within the EU.

You state in your EM that, if the UK wishes to participate in Prüm II, it will be necessary to amend the provisions in Title II, Part Three of the TCA which largely replicate the Prüm I rules. Please can you confirm our understanding that simply sticking with the status quo, as currently set out in the TCA, will not be an option if the proposed changes are agreed by the EU—the UK will either have to agree to the new arrangements through a formal amendment of the corresponding provisions in Title II, Part Three of the TCA or lose the cooperation that it currently enjoys.

We continue to welcome the assurance given by your predecessors in earlier correspondence to inform us if the EU notifies the UK that it is seeking a formal amendment of the TCA provisions on exchanges of DNA, fingerprint and vehicle registration to match those agreed internally by the EU.[31] We would be grateful if you could clarify the process for agreeing the terms of any formal amendment of the TCA. In particular, the TCA envisages that there will be time-limited "consultations" between the EU and the UK. How do you propose to inform Parliament of the progress of these consultations? Do you expect a decision amending the TCA be taken by the EU/UK Partnership Council or by the Specialised Committee on Law Enforcement and Judicial Cooperation? Do you agree with us that the Partnership Council would be more appropriate as the amendment is likely to affect the rights of individuals and the safeguarding of their personal data and should be taken by a Minister rather than an official to ensure that there is proper accountability to Parliament?

You will recall that the Government in office in 2015 published a detailed Business and Implementation Case to "assess fairly the impact on the UK, including the potential practical benefits, the potential negative impacts and the steps that would be necessary" for the UK to participate in Prüm, followed by a Command Paper which concluded that

31 See our letters dated 12 January 2022, 25 May 2022 and 7 September 2022 and the Government's responses dated 29 April 2022 (from the then Security Minister, Damian Hinds MP), 25 July 2022 (from the then Minister for Delivery at the Home Office, Baroness Williams of Trafford) and 10 October 2022 (from the then Immigration Minister, Tom Pursglove MP).

participation would be in the national interest.[32] This recommendation was put to a debate and vote in the House of Commons in December 2015 *before* the Government confirmed the UK's participation in Prüm.

The proposed changes to Prüm would increase the amount of personal data that could be searched by automated means and shared with the UK's law enforcement counterparts in the EU and with Europol. We note the value you attach to Prüm as "a vital investigative tool for law enforcement" but, as the pool of searchable data increases, so too does the risk of false matches and wrongful incrimination. We therefore ask you to confirm that you will publish a full impact assessment setting out the benefits and costs of UK participation in any enhanced Prüm arrangements, with sufficient time for interested stakeholders and Parliament to consider and comment on the assessment before the Government reaches a decision on participation.

32 Cm 9149, November 2015.

4 Northern Ireland Protocol: standards for equality bodies[33]

The two proposed EU Directives are legally and politically important because:

- they would set binding standards relating to the role and independence of national equality bodies tasked with combating discrimination under six core EU equal treatment laws covering sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- the affected EU laws are listed in Annex 1 of the Protocol on Ireland/Northern Ireland and underpin the commitment in Article 2 of the Protocol to ensure that the UK's withdrawal from the EU does not diminish protection against discrimination as set out in the 1998 Belfast/Good Friday Agreement;
- the UK has made a commitment to ensure that equality laws in Northern Ireland keep pace with changes made post-exit to the EU's six core equal treatment laws;
- the initial view of Northern Ireland's equality and human rights commissions is that the proposals are within the scope of Protocol Article 2 and that the UK's 'keeping pace' commitment applies;
- while the Government is clear that Protocol Article 2 is "not controversial", and it would not in any event be amended by the changes set out in the 'Windsor Framework', the Government has not yet completed its analysis of the proposed Directives to determine whether it also considers them to be within the scope of Protocol Article 2; and
- a key question is likely to be whether procedural changes (intended to make it easier for individuals to assert their rights under the EU's core equal treatment laws) count as a substantive enhancement of those rights and should be matched in Northern Ireland.

33 (a) Proposal for a Directive on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU; COM(22) 688; Article 157(3) TFEU, ordinary legislative procedure, QMV; ESC number 42164.
(b) Proposal for a Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC; COM(22) 689; Article 19(1) TFEU, special legislative procedure, unanimity and EP consent; ESC number 42165.

Action

- We have written to the Secretary of State for Northern Ireland (Rt Hon. Chris Heaton-Harris MP) requesting an initial response by the end of April to the questions raised in our letter (reproduced at the end of this chapter), with a fuller update to follow once the Government has completed its analysis of the proposed Directives and their relevance to the implementation of Protocol Article 2.
- We have drawn this chapter to the attention of the Northern Ireland Affairs Committee, the Joint Committee on Human Rights, and the Women and Equalities Committee.

Overview

4.1 The right of women and men to receive equal pay for equal work is one of the EU's founding principles.[34] It has developed over the years into a broader right encompassing equal opportunities and equal treatment for women and men in matters of employment.[35] The EU can also adopt measures to combat discrimination in other policy areas where the EU Treaties give it powers to act, not only on grounds of sex, but also racial or ethnic origin, religion or belief, disability, age or sexual orientation.[36] There are six "core" EU equal treatment Directives which seek to combat discrimination on these grounds.

4.2 The European Commission considers that the effective application and enforcement of these core Directives has been hampered by "significant differences" in the way that national equality bodies are structured and resourced, the scope of their powers, and the way they operate. It says:

> Levels of discrimination remain high, and victims' awareness of their rights remains low. Underreporting is still a considerable problem; public awareness about and knowledge of discrimination remain limited. Many equality bodies are not properly equipped, in terms of powers and resources, to assist victims effectively.[37]

4.3 Rather than propose substantive changes to existing EU equality laws, the European Commission has instead proposed two new Directives which are intended to strengthen the role and independence of national equality bodies ("the proposed equality bodies Directives"). It anticipates that a set of binding common standards would bolster the contribution these bodies can make in ensuring that individuals are aware of their rights and that these rights can be effectively enforced.

4.4 Although the proposed equality bodies Directives will not apply in the UK if they become EU law, the Government has deposited them for scrutiny under new arrangements

34 See Article 119 of the Treaty of Rome establishing the European Economic Community which provided: Each Member State shall [...] ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers.

35 See Article 157 of the Treaty on the Functioning of the European Union.

36 See Articles 10 and 19 of the Treaty on the Functioning of the European Union.

37 See p.3 of the European Commission's explanatory memorandum accompanying the proposed Directives.

agreed with us and with the Lords European Affairs Committee in October 2022.[38] It has done so because they may be relevant to the implementation of Article 2 of the Protocol on Ireland/Northern Ireland ("Protocol Article 2") which is intended to ensure that the rights and equality protections set out in the 1998 Belfast/Good Friday Agreement are not diminished as a result of the UK leaving the EU. The proposed equality bodies Directives would apply to the six "core" EU equal treatment Directives that are referred to in Article 2 and listed in Annex 1 of the Protocol ("the Annex 1 Directives"). Protocol Article 2 and Annex 1 would not be amended by the proposed changes to the Protocol and its operation which are set out in the 'Windsor Framework'.[39]

4.5 The Government has not yet determined whether it considers that the proposed equality bodies Directives are within the scope of Protocol Article 2. Nor has the European Commission informed the UK of its view through the bodies set up by the UK/EU Withdrawal Agreement to oversee the implementation of the Northern Ireland Protocol. Understanding whether the proposals are within the scope of Protocol Article 2 and affect the Annex 1 Directives is important. As we explain below, the Government has said it will match any enhancement of the substantive rights contained in these Annex 1 Directives so that rights protection in Northern Ireland does not fall behind the standards set by the EU.

4.6 In this chapter, we briefly examine the main elements of the proposed equality bodies Directives, their relevance to Protocol Article 2 and the Annex 1 Directives, and the Government's position on their legal and policy implications.

The proposed equality bodies Directives

4.7 The EU's Racial Equality Directive was the first of the EU's core equal treatment Directives to require EU Member States to designate a body to combat discrimination on grounds of racial or ethnic origin, specifying that it could be part of a body responsible for combating discrimination on a variety of grounds (an example within the UK would be the Equality Commission for Northern Ireland), or a broader organisation tasked with protecting and promoting equality and human rights (such as the Equality and Human Rights Commission in Great Britain or the Northern Ireland Human Rights Commission). Another three of the six Annex 1 Directives make similar provision.

4.8 The proposed equality bodies Directives would establish minimum standards for the functioning of equality bodies tasked with ensuring that individuals are aware of and able to enforce their rights under all six of the Annex 1 Directives. This would require amendments to the four Annex 1 Directives that already include a reference to equality bodies and an extension of the mandate of these bodies to include discrimination on the grounds set out in the remaining two.[40]

38 See our First Special Report (2022–23) HC 721 (18 October 2022)

39 See the Government's policy paper and related documents on the Windsor Framework.

40 The two EU equal treatment Directives which do not already include a reference to equality bodies are the Employment Equality Directive and the Gender Equality Directive in matters of social security.

4.9 The first proposed Directive concerns rights and obligations under the EU's Gender Equality Directives relating to employment and self-employment.[41] The second proposed Directive concerns rights and obligations under the EU's Racial Equality Directive, Employment Equality Directive (covering discrimination on the grounds of religion or belief, disability, age or sexual orientation), and Gender Equality Directives relating to social security and access to and the supply of goods and services.[42] Two separate proposals are deemed necessary, even though their content is broadly the same, as different legal bases and decision making rules apply for the adoption of EU laws on gender discrimination in employment and on other grounds or in different areas of discrimination.

4.10 The purpose of the proposed Directives is to ensure that equality bodies tasked with combating discrimination in areas covered by EU equal treatment laws:

- are independent and free from external influence, particularly as regards their legal structure, accountability, budget, staffing and organisation;
- have adequate human, technical and financial resources to fulfil their tasks;
- are able to provide advice and assistance to victims of discrimination free of charge;
- take active steps to prevent discrimination, promote equal treatment, and raise awareness of their role;
- are empowered to investigate allegations of discrimination, issue non-binding opinions or legally enforceable decisions (depending on the choice of each Member State), take part in legal proceedings in court, and offer other forms of dispute settlement such as conciliation or mediation; and
- collect equality data and publish regular reports on the state of equal treatment and discrimination within their home Member State.

4.11 The proposed Directives would also require EU Member States to promote awareness of the services provided by their national equality bodies, targeting those most at risk of discrimination, and ensure that these bodies are consulted on laws and policies which may affect the rights protected by the EU's core equal treatment Directives.

Article 2 of the Northern Ireland Protocol

4.12 Protocol Article 2 recognises that certain provisions of the 1998 Belfast/Good Friday Agreement on Rights, Safeguards and Equality of Opportunity were (until the UK left the EU) underpinned by EU law. The six core EU equal treatment Directives listed in Annex 1 to the Protocol were included to allay concerns that the UK's exit from the EU could lead to a reduction in rights and equality protections in Northern Ireland.

41 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and Directive 2010/41/EU 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.

42 Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security; and Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

4.13 These Annex 1 Directives no longer apply to the UK, though they continue to form part of the retained EU law that was incorporated into the UK's domestic law by the European Union (Withdrawal) Act 2018. While it is now possible for the UK to diverge from the minimum requirements set out in these Directives, the freedom to do so in relation to Northern Ireland equalities law is constrained by the provisions in Protocol Article 2(1) which require the UK to ensure "no diminution" in the protection against discrimination afforded by the Annex 1 Directives.

4.14 The Government's position on Protocol Article 2 is set out in an Explainer published by the Northern Ireland Office in August 2020.[43] It states that Protocol Article 2 is "binding on the UK Government and Parliament, the Northern Ireland Executive and the Assembly as a matter of international law" and that the UK's international obligations under the EU/UK Withdrawal Agreement (of which the Northern Ireland Protocol forms part) "became UK domestic law when Parliament passed the EU (Withdrawal Agreement) Act 2020 in January 2020".

4.15 While the Annex 1 Directives represent "only a subset of the protections in scope of the wider 'no diminution' commitment" in Protocol Article 2, they provide "an important supporting framework" for the anti-discrimination commitments contained in the rights and equality provisions of the 1998 Belfast/Good Friday Agreement. As such, the Government has also committed to ensuring that:

> […] if the EU decides to amend or replace the substantive rights in those Directives to improve the minimum levels of protection available, the corresponding substantive rights protections in Northern Ireland will also develop to take account of this. This will ensure that Northern Ireland will not fall behind minimum European standards in anti-discrimination law.[44]

4.16 Despite many concerns with the general functioning of the Northern Ireland Protocol which the Government and EU have sought to address in the 'Windsor Framework' proposals, the Government considers that Protocol Article 2 is "not controversial".[45] As the Government's Explainer makes clear, Protocol Article 2 does not entail the direct application of EU law in Northern Ireland. Nor does it give the European Commission a direct role in supervising its implementation or allow direct recourse to the EU Court of Justice to enforce the commitment.[46] Instead, it creates "dedicated mechanisms" which involve the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI). They are required to advise the Secretary of State for Northern Ireland and the Executive Committee of the Northern Ireland Assembly of any legislative or other measures which they consider ought to be taken to implement

43 HM Government, 'Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland' (7 August 2020)

44 See paragraph 12 of the Government's Explainer.

45 See the HM Government, 'Northern Ireland Protocol: the way forward' CP 502 (July 2021)

46 Under Article 12(4) of the Northern Ireland Protocol, the jurisdiction of the EU Court of Justice and the European Commission's enforcement powers under the EU Treaties extend only to Articles 5 and 7 to 10 of the Protocol, not the rights and equality provisions in Article 2.

the commitment in Protocol Article 2.[47] The Commissions can also bring or intervene in legal proceedings in Northern Ireland's domestic courts if they believe that Protocol Article 2 has been, or may be, breached.

4.17 The ECNI and NIHRC have published their own Short Guide on Protocol Article 2 in which they make clear their view that keeping pace with changes to the Annex 1 Directives made after the UK's exit from the EU is a core part of the commitment entered into by the UK and that a failure to do so would put the UK in breach of its obligations under the Protocol. The ECNI and NIHRC are entitled to raise directly "any matter of relevance to Article 2" in the UK/EU Withdrawal Agreement Specialised Committee on the implementation of the Northern Ireland Protocol. This Committee reports to the overarching UK/EU Joint Committee which is responsible for deciding whether new laws which the EU agrees post-exit are within the scope of the Protocol and should be added to the relevant Annex.

4.18 The UK/EU Joint Committee also has an important role to play in resolving any disputes concerning the interpretation and application of the Withdrawal Agreement and the Protocol. This means that there are two routes to enforcing the Article 2 commitment: legal proceedings brought in Northern Ireland's domestic courts and/or the use of the dispute settlement provisions in the Withdrawal Agreement.

The Government's position

4.19 In his Explanatory Memorandum dated 7 February 2023 on the proposed equality bodies Directives, the Secretary of State for Northern Ireland (Rt Hon. Chris Heaton-Harris MP) notes that equalities law is an area of devolved competence in Northern Ireland and that officials in the Northern Ireland Executive are "considering the possible impacts in conjunction with Whitehall counterparts".

4.20 He explains that:

- the proposed Directives concern the procedural functioning of equality bodies and "do not alter substantive discrimination protections" in the Annex 1 Directives;
- the UK Government has not yet been informed of the proposals in the official-level Joint Consultative Working Group—this is the body established by the Northern Ireland Protocol as "a forum for the exchange of information and mutual consultation" in which the EU, amongst other things, must "inform the UK about planned EU acts within the scope of [the] Protocol, including EU acts that amend or replace EU acts listed in the Annexes to [the] Protocol";[48] and
- the UK Government is still considering whether the proposals do fall within the scope of Protocol Article 2 and will continue to consult with the Northern Ireland Executive.

47 See Schedule 3 of the European Union (Withdrawal Agreement) Act 2020 which gives both bodies powers to monitor, supervise, enforce and report on the Government's implementation of Protocol Article 2. Schedule 3 of the 2020 Act amends the Northern Ireland Act 1998 to include new provisions on the functions and powers of the NIHRC and ECNI in relation to Protocol Article 2.

48 Article 15 of the Protocol on Ireland/Northern Ireland.

4.21 The Minister notes that the ECNI will be the relevant equality body for Northern Ireland if the proposed Directives are found to be within the scope of Protocol Article 2. While ECNI and NIHRC are both still reviewing the proposals in detail, their initial view is that "the proposed Directives do amend provisions of a number of the Annex 1 equality Directives and it is therefore important that NI equality law is amended to keep pace with any changes to these equality Directives, if the proposals are introduced."[49] He says he will continue to discuss the proposals with ECNI and NIHRC as negotiations within the EU continue but, based on their current wording, he anticipates that any changes to the structure and functioning of the ECNI "would likely be minimal".

4.22 The Minister undertakes to update us as the Government develop its analysis further.

Our assessment

4.23 The Government has not yet reached a firm view on whether the proposed equality bodies Directives are within the scope of Protocol Article 2 and caught by the 'keeping pace' commitment described in the Government's Explainer.

4.24 Under Article 13(3) of the Northern Ireland Protocol, any reference made in the Protocol (and its Annexes) to an EU act "shall be read as referring to that Union act as amended or replaced". As the proposed equality bodies Directives would amend four of the Annex 1 Directives, the commitment to keep pace would therefore seem to apply to the four Annex 1 Directives *as amended*, ensuring a stronger role for equality bodies in their application and enforcement.

4.25 Article 13(3) is not relevant to the remaining two Annex 1 Directives which are not directly amended or replaced by the proposed equality bodies Directives. However, Article 13(4) of the Protocol requires the EU to inform the UK if it considers that the proposals, once formally adopted by the EU Council and European Parliament, fall within the scope of the Protocol. The EU may decide that they do (or should) because the common standards they introduce for equality bodies are intended to apply equally to *all* the Annex 1 Directives. In that case, the EU would need to seek the UK's agreement to add them to the relevant Annex (in this case Annex 1) by means of a decision taken by the UK/EU Withdrawal Agreement Joint Committee.

4.26 Given the ECNI's and NIHRC's statutory obligations in relation to Protocol Article 2 under the Northern Ireland Act 1998,[50] their analysis of the scope of Article 2 is likely to be an important factor informing the Government's own assessment. Based on the information provided in the Minister's Explanatory Memorandum, any difference in approach may well depend on the distinction he makes between *substance* and *procedure*. According to the Minister, the proposed equality bodies Directives do not alter "the substantive discrimination protections" contained in the Annex 1 Directives and their focus is "the procedural functioning of equality bodies". A key question is therefore likely to be whether procedural changes which are intended to make it easier for individuals to assert their rights under the Annex 1 Directives count as a substantive enhancement of those rights and related equality protections which Protocol Article 2 is intended to safeguard.

49 Para 14 of the Minister's Explanatory Memorandum.

50 See sections 78A and 78B of the Act.

4.27 The outcome of the analysis which the Government and, separately, ECNI and NIHRC are undertaking will only matter in practice if there is a material gap in the standards for equality bodies which the European Commission has proposed and those which already govern the functioning of ECNI as the relevant equality body for Northern Ireland. The Government's Explainer on Protocol Article 2 states that Northern Ireland in any event "routinely exceeds" the minimum standards of protection set out in the Annex 1 Directives and the Minister anticipates that any gap "would likely be minimal".

Action

4.28 We have written to the Secretary of State for Northern Ireland (Rt Hon. Chris Heaton-Harris MP) requesting an initial response to the questions raised in our letter (set out below) by the end of April, with a fuller update to follow once the Government has completed its analysis of the proposed Directives and their relevance to the implementation of Protocol Article 2.

4.29 We have drawn this chapter to the attention of the Joint Committee on Human Rights, the Northern Ireland Affairs Committee, and the Women and Equalities Committee.

Letter to the Secretary of State for Northern Ireland (Rt Hon. Chris Heaton-Harris MP)

Thank you for your Explanatory Memorandum (EM) on two proposed EU Directives which are intended to strengthen the role and independence of national equality bodies tasked with combating discrimination under the EU's core equal treatment Directives which cover discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. These Directives are listed in Annex 1 of the Protocol on Ireland/Northern Ireland and underpin the commitment in Article 2 of the Protocol to ensure that the UK's withdrawal from the EU does not diminish protection against discrimination as set out in the 1998 Belfast/Good Friday Agreement. Protocol Article 2 and Annex 1 would not be amended by the proposed changes to the Protocol and its operation which are set out in the 'Windsor Framework'.

We note that you have consulted the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC), part of the "dedicated mechanisms" entrusted with ensuring that Protocol Article 2 is implemented. As the proposed Directives amend provisions of some of the Annex 1 equality Directives, their initial view is that Northern Ireland equality laws would also need to match these changes in line with the 'keeping pace' commitment described in the Government's Explainer on Protocol Article 2.[51] You indicate that the Government has yet to reach a view and is consulting officials in the Northern Ireland Executive. You also note that the proposed Directives "do not alter substantive discrimination protections in the Annex 1 Directives but concern the procedural functioning of equality bodies".

We welcome your offer to update us as you develop your analysis of the proposed Directives and their legal and policy implications under Protocol Article 2. Meanwhile, we would be grateful if you could provide the following information to assist with our scrutiny.

51 See HM Government (n 11)

When do you expect the ECNI and NIHRC to complete their detailed review of the proposed Directives? What weight will their advice have in reaching your own view on whether the proposed Directives are within the scope of Protocol Article 2 and in determining whether changes to Northern Ireland law are necessary?

Do you intend to ask the European Commission whether it considers that the proposed Directives are within the scope of Protocol Article 2 and/or raise the matter within the Specialised Committee on the implementation of the Protocol on Ireland/Northern Ireland or the Joint Consultative Working Group?

When do you expect to complete your analysis to determine whether the proposed Directives are within the scope of Protocol Article 2 and how will the requirements set out in Article 13(3) and (4) of the Protocol inform that analysis?

Do you consider that procedural or structural changes intended to facilitate the more effective implementation and enforcement of rights and obligations under the Annex 1 equality Directives can constitute a "substantive enhancement" of the protections that those Directives afford, even if the rights themselves remain unchanged?

You anticipate that, if any changes are needed to ensure Northern Ireland equality laws keep pace with the minimum standards set out in the proposals, they "would likely be minimal". Is this because you consider that Northern Ireland equality bodies already meet these minimum standards? Where might there be differences or gaps and how difficult or costly would they be to remedy?

We would welcome your initial response to these questions by the end of April, with a fuller update to follow once you have completed your analysis.

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

(42180) — Commission Delegated Regulation amending Regulation (EC) 273/2004 and Regulation (EC) 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances

C(22) 8440

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: North Seas Energy Cooperation [Memorandum of Understanding][SC]; Trade and Cooperation Agreement: UK-EU electricity trading arrangements [Proposed Council Decision[SC]

Environmental Audit Committee: North Seas Energy Cooperation [Memorandum of Understanding][SC]

Home Affairs Committee: Trade and Cooperation Agreement: possible amendment to reflect changes to the 'Prüm' rules on cross-border police cooperation [Proposed Regulation][SNC]

Northern Ireland Affairs Committee: Northern Ireland Protocol: standards for equality bodies [Proposed Directives][SNC]

Joint Committee on Human Rights: Northern Ireland Protocol: standards for equality bodies [Proposed Directives][SNC]

Justice Committee: Trade and Cooperation Agreement: possible amendment to reflect changes to the 'Prüm' rules on cross-border police cooperation [Proposed Regulation] [SNC]

Women and Equalities Committee: Northern Ireland Protocol: standards for equality bodies [Proposed Directives][SNC]

Formal Minutes

Wednesday 29 March 2023

Members present:

Sir William Cash, in the Chair

Geraint Davies

Margaret Ferrier

Mr David Jones

Gavin Robinson

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 5 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Sixteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 19 April 2023 at 1.45 pm

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.

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)

Tahir Ali MP (*Labour, Birmingham, Hall Green*)

John Baron MP (*Conservative, Basildon and Billericay*)

Jon Cruddas MP (*Labour, Dagenham and Rainham*)

Geraint Davies MP (*Labour, Swansea West*)

Allan Dorans MP (*Scottish National Party, Ayr Carrick and Cumnock*)

Richard Drax MP (*Conservative, South Dorset*)

Margaret Ferrier MP (*Independent, Rutherglen and Hamilton West*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

Dame Margaret Hodge MP (*Labour, Barking*)

Adam Holloway MP (*Conservative, Gravesham*)

Mr David Jones MP (*Conservative, Clwyd West*)

Stephen Kinnock MP (*Labour, Aberavon*)

Craig Mackinlay MP (*Conservative, South Thanet*)

Gavin Robinson MP (*Democratic Unionist Party, Belfast East*)

Greg Smith MP (*Conservative, Buckingham*)