



House of Commons  
European Scrutiny Committee

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**Thirtieth Report of  
Session 2019–21**

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Documents considered by the Committee on 25 November 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](http://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/>.

## Staff

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# 1 Fishing opportunities 2021<sup>1</sup>

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## This EU document is politically important because:

- it relates to the fishing opportunities for the UK’s fishing industry in 2021 and links to the ongoing negotiations concerning the long-term future fisheries relationship between the UK and EU.

## Action

- Write to the Minister.
- Draw to the attention of the Environment, Food and Rural Affairs Committee.

## Overview

1.1 The Commission has published its annual proposal setting out fishing opportunities in EU waters, and for EU vessels in certain other waters, during 2021. It is relevant to the United Kingdom as it covers stocks shared by the EU and UK, but the allocation of those stocks remains subject to the outcome of the ongoing negotiations regarding cooperation on these stocks, including fishing opportunities, quota shares and access to the UK waters. The value of the UK’s fishing opportunities in 2020 was estimated to total £726.5 million.

1.2 In her [Explanatory Memorandum](#), the Minister for Farming, Fisheries and Food (Victoria Prentis MP) provides little detail of the Government’s negotiating objectives for the 2021 fishing opportunities, the first such round of negotiations when the UK will be negotiating as an independent coastal state since 1983. She does, though, identify some factors which will inform the UK’s approach.

1.3 At a high level, the Government shares the Commission’s ambition to achieve long term sustainable fisheries. The Government is taking forward a review of the method used to assess if UK-relevant Total Allowable Catches (TACs) are being set consistent with scientific advice on capture at MSY (Maximum Sustainable Yield) level. The finalised method will inform the development of UK negotiating positions on TACs for 2021 and will be published to promote a more transparent and accessible approach to MSY reporting. This will allow external observers to understand how the UK is setting quotas in line with progress towards long-term sustainable fisheries.

1.4 The Minister identifies “omissions” from the Commission’s proposal, which the UK intends to raise during negotiations on the annual fishing opportunities, such as:

- the omission of remedial measures (fishing gear and spatial restrictions) for Celtic Sea whiting and cod, unlike those imposed this year; and
- the omission of remedial measures for North Sea cod, although this is probably because that stock is now jointly managed between the EU, UK and Norway and so such measures would probably be included within trilateral negotiations.

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1 Proposal for a Regulation fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters; Council and COM number: [12189/20](#), COM(20) 668; Legal base: Article 43(3) TFEU, QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41612.

1.5 Like the Commission, the UK's approach will also be informed by the North Sea and Western Waters Multi-Annual Plans, versions of which are being brought into EU retained law. The MAPs define target ranges of mortality for fishing at MSY and will therefore offer a degree of flexibility under specific conditions for a range of targeted fish stocks.

1.6 The Commission's proposal retains and rolls over the sole recovery zone in the western English Channel to end now in February 2022. The UK is also currently looking to extend the same measures for the sole recovery zone for UK waters to February 2022.

1.7 On the regulation of bass captures, the UK is not ready with a bespoke UK management approach to apply in UK waters and so the UK position will be to stay within the current management approach shared with the EU for 2021. The UK supports a basic rollover of the position adopted last year to reflect the very similar total removals range recommended by scientific advice. The Minister is clear that the UK would still have some flexibility in its implementation of any such shared management agreement with the EU.

1.8 Finally—and in response to an earlier [letter](#) from this Committee—the Minister acknowledges the Committee's request for an update on the timings of the UK's upcoming negotiations on fishing opportunities for 2021. Due to the ongoing UK-EU fisheries framework negotiations, the Government is unable to confirm exact timings. However, the Minister assures us that she will provide an update on this issue as soon as there is more clarity.

## Our assessment

1.9 The setting of fishing opportunities for the forthcoming year is unique on this occasion. In terms of stocks shared between the UK and the EU, the EU framework no longer applies and, as yet, there is no agreement on a replacement framework. In past years, when scrutinising this process within the EU framework, we would have expected to receive by now a relatively detailed stock-by-stock UK approach to setting fishing opportunities, prior to agreement within the EU. That depth of analysis is missing from the Minister's EM. While it is regrettable that Parliament is in this position, we understand this unique situation. We will request that the Minister provide further detail at the earliest possible opportunity.

1.10 We note with some interest the alignment of approach between the UK and the mechanisms developed under the Common Fisheries Policy and will continue to monitor the extent to which the UK's fisheries policy represents a genuine break from the past or whether it is substantially a re-packaging of the status quo.

1.11 Finally, we note that—even at the end of November—the Government does not know when it will be meeting other coastal states to negotiate fishing opportunities to apply from 1 January. This is due to the uncertainty over the future EU-UK relationship, but it is clearly unsatisfactory. We note the risk that there will simply be insufficient time left and that coastal states will ultimately act unilaterally with the consequence that combined catch levels will be unsustainable.

## Action

1.12 We have written to the Minister as set out below. We are reporting the document and our letter to the House and drawing them to the particular attention of the Environment, Food and Rural Affairs Committee.

### ***Letter from the Chair to the Minister for Farming, Fisheries and Food (Victoria Prentis MP)***

We considered your Explanatory Memorandum on the above document at our meeting of 25 November 2020.

We appreciate the constraints under which the Government is approaching negotiations on fishing opportunities in 2021, but we are nevertheless mindful that this is a matter of great urgency and importance for coastal communities around the country.

When the UK was negotiating as an EU Member State, we would have expected by this stage of the year a detailed stock-by-stock assessment of the UK's concerns and priorities. We appreciate why that is not possible at this stage, but we do require it at the earliest possible opportunity.

We note that existing elements of the Common Fisheries Policy will inform the UK's negotiating approach. We will continue to monitor the extent to which the UK's independent fisheries policy represents a genuine break from the past.

Finally, we understand that there are no precise dates for negotiations given the uncertainties over the future EU-UK relationship. That said, to be in this situation at the end of November, with no schedule for fixing fishing opportunities from 1 January is clearly unsatisfactory. We note the risk that there will simply be insufficient time left and that coastal states will ultimately act unilaterally with the consequence that combined catch levels will be unsustainable.

We look forward to receiving further detail on the Government's intended approach, and information on timings, as soon as you can provide it.

## 2 European Education Area and skills action plan<sup>2</sup>

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These EU documents are politically important because:

- they concern the Commission’s high-level plans to support education and training over the next 5 years, in particular, the actions that it intends to take to complete the ‘European Education Area’ and provide for the up- and re-skilling of EU workers in light of the Covid-19 pandemic; and
- they serve as comparators for the Government’s own education and skills programmes.

### Action

- Write to the Minister responsible for documents (a) and (b) and the Minister responsible for document (c) expressing the Committee’s disappointment at the quality of Explanatory Memoranda provided and highlighting the relevance of such documents to the UK as a non-EU Member State.
- Draw to the attention of the Education Committee.

### Overview

2.1 The documents under scrutiny form part of the Commission’s “reinforced approach” to achieving the European Education Area and delivering a ‘bold’ and ‘new’ skills agenda to “...drive the green and digital economic transitions”. The European Education Area is a major EU policy objective that comprises headline initiatives aimed at “harnessing the full potential of education and culture as drivers for job creation, economic growth and improved social cohesion, as well as a means to experience European identity in all its diversity”.

2.2 [Document \(a\)](#)—a Communication on Achieving the European Education Area by 2025—sets out the Commission’s intentions to consolidate ongoing efforts and further develop the EU’s Education Area over the next 5 years. [Document \(b\)](#)—a Communication on the EU’s Digital Education Action Plan for 2021—27—further fleshes-out the digital aspects of the Commission’s European Education Area proposals. [Document \(c\)](#)—a Communication on the EU’s Skills Agenda—complements the two aforementioned

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2 Document (a)—Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025; Council and COM number: 11406/20 + Add 1 and COM(2020) 625; Legal base:—Dept; Education; Devolved Administrations: Consulted; ESC number: 41575. Document (b)—Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Digital Education Action Plan 2021—2027 Resetting education and training for the digital age; Council and COM number: 11420/20 + Add 1 and COM(2020) 624; Legal base:—Dept; Education; Devolved Administrations: Consulted; ESC number: 41574. Document (c)—Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Skills Agenda for sustainable competitiveness, social fairness and resilience; Council and COM number: 9349/20 + Adds 1—2 and COM(2020) 274; Legal base:—Dept; Education; Devolved Administrations: Consulted; ESC number: 41378.

documents and focusses on the up- and re-skilling of EU workers to drive the green and digital economic transitions and recovery from the socio-economic impact of the Covid-19 pandemic.

2.3 Taken together, these documents serve as important comparators for the Government's own education and skills programmes, in particular, addressing the future needs of employers and the economy, the opportunities and support facilitated and offered to students and workers, and the UK's involvement in European and international coordination and mobility programmes. The headline policy and legal actions detailed in each document are briefly outlined in the following sections.

### **Document (a) (41575) (Communication on Achieving the European Education Area by 2025)**

2.4 The Communication on Achieving the European Education Area by 2025 has been published by the Commission pursuant to President von der Leyen's Political Guidelines—made before she formally took office—in which she vowed to make the area a reality by 2025.<sup>3</sup> The Communication notes the importance of education for personal fulfilment, employability, and active and responsible citizenship and the role that it can play in recovery from economic and societal shocks such as the Covid-19 pandemic.

2.5 The Communication sets out concrete steps to be taken towards the achievement of the European Education Area by 2025. These steps are focussed around six 'dimensions': quality; inclusion & gender equality; green & digital transitions; teachers & training; higher education; and a 'geopolitical' dimension.

2.6 Under each dimension, a considerable number of initiatives are listed. These include:

- for 'quality', Commission plans to support Member States in strengthening cooperation between European stakeholder organisations, teacher associations and teacher education providers;
- for 'inclusion & gender equality', the convening of an expert working group to develop proposals aimed at creating supportive learning environments for groups at risk of underachievement and for fostering well-being at school, and dedicated research funding under the Horizon Europe programme for exploring the role of gender in education and training policy;
- for 'green & digital transitions', the Commission will promote—and work with the European Investment Bank and encourage through the InvestEU programme—the 'greening' of education infrastructure (where expenditure on energy is said to account for 8% of all school- and education-based outgoings);
- for 'teachers & training', the launch of Erasmus Teacher Academies to create networks of teacher education institutions and teacher associations, and the establishment of a European Innovative Teaching Award to recognise the work of teachers (and their schools);

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3 Ursula von der Leyen, ['A Union that strives for more: My agenda for Europe'](#) (October 2019).

- for ‘higher education’, the development of a European degree (based on teaching and learning at multiple institutions across Member States), and the creation of a European student card; and
- for ‘geopolitical’ considerations, expanding the international dimension of Erasmus to focus on providing tertiary education opportunities outside of the EU.

2.7 The Communication outlines an enabling framework for further developing and giving effect to these initiatives and the targets that will be used to measure their success.

### **Document (b) (41574) (Communication on Digital Education Action Plan 2021—27)**

2.8 The EU’s last framework for digital education was published in 2018 and the Communication under scrutiny details its successor. The Digital Education Action Plan is trailed in the European Education Area Communication and provides further information on how the EU intends to use digital technologies to aid educational attainment.

2.9 The Action Plan focusses on supporting high quality and inclusive digital education through two main priorities: (1) fostering the development of a high performing digital education ecosystem in Europe; and (2) enhancing digital skills and competences for the digital transformation.

2.10 Under each priority, supporting actions are outlined. For priority 1, these include: a proposal for a Council Recommendation on enabling factors for successful digital education; a proposal for a Council Recommendation on online and distance learning for primary and secondary education; the development of a European Digital Education Content Framework and European Exchange Platform; support for connectivity and digital equipment for education; digital transformation plans and supporting digital pedagogy and expertise in the use of educational tools for teachers; and ethical guidelines on artificial intelligence (AI) for educators.

2.11 For priority 2, supporting actions include: tackling disinformation and promoting digital literacy through education and training; updating the EU’s Digital Competence Framework; developing a European Digital Skills Certificate; a proposal for a Council Recommendation on improving the provision of digital skills in education and training; introducing a digital competence benchmark; introducing a Digital Opportunity Traineeship to incentivise advanced digital skills development; and encouraging women’s participation in STEM subjects (science, technology, engineering, and maths).

2.12 In order to improve coordination and cooperation between Member States and stakeholder engagement on digital education at EU-level, the Commission will also establish a European Digital Education Hub.

### **Document (c) (41378) (Communication on European Skills Agenda)**

2.13 The Commission Skills Agenda complements the two documents outlined above and seeks to prepare the EU and its workforce for the twin challenges of the digital and green industrial revolutions and recovery from the Covid-19 pandemic.

2.14 The Agenda is based on 5 ‘building blocks’ that are intended to: foster collective action on the part of all stakeholders; define a clear strategy to ensure skills lead to jobs; help people build skills throughout their lives; identify the financial means to foster investment in skills; and set ambitious objectives for up- and re-skilling to be achieved within the next 5 years.

2.15 In furtherance of these blocks—or key objectives—the Agenda defines 12 headlines actions. These are:

- Action 1—a Pact for Skills bringing together stakeholders to sign a Charter defining key workplace principles with the objective of up- and re-skilling Europe’s workforce.
- Action 2—strengthening skills intelligence including support from the Commission at regional and sectoral levels and involving social partners in labour market projections and identifying training needs.
- Action 3—EU support for national up-skilling actions.
- Action 4—a proposal for a Council Recommendation on Vocational Education and Training for sustainable competitiveness, social fairness and resilience.
- Action 5—rolling-out the European Universities Initiative.
- Action 6—promoting skills to support the twin green and digital transitions including setting indicators for monitoring and statistical analysis of developments in green skills and developing a European competence framework on education for climate change, environmental issues, clean energy transition and sustainable development. With regard to the digital transition, this will include updating the Digital Action Plan and implementing the Digital Europe Programme.
- Action 7—increasing the number of STEM graduates and fostering entrepreneurial and transversal skills. The Commission will launch a European action on Entrepreneurship Skills and provide a strategic framework for the recognition of transversal skills to support validation practitioners in Europe.<sup>4</sup>
- Action 8—the Commission and Member States will work on new priorities for the European Agenda for Adult Learning to complement the renewed European cooperation framework in education and training, and to support the achievement of the United Nations’ Sustainable Development Goals.
- Action 9—the Commission will assess how a possible European initiative on individual learning accounts can help access to training for working age adults and empower them to manage labour market changes.
- Action 10—the Commission will work on a European approach to micro-credentials for small volumes of learning. The Commission will propose a new initiative to support the take-up of micro-credentials across the EU.<sup>5</sup>

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4 Transversal skills are skills that can be used in a variety of roles or occupations, for example, basic digital skills.

5 Micro-credentials are mini-qualifications that demonstrate skills, knowledge, and/or experience in a given subject area or capability.

- Action 11—introducing a new Europass platform geared towards supporting people to manage their careers with modernised tools and information on learning and working in Europe.
- Action 12—improving the overall skills enabling framework to unlock Member State and private investment in skills.

2.16 Linked to these objectives, the Commission sets the following targets:

- by 2025, 120 million adults in the EU should participate in learning every year (this is roughly 50% of the EU’s adult population);
- by 2025, 14 million adults with low-level qualifications in the EU should participate in learning every year (this accounts for roughly 30% of adults);
- by 2025, 2 million jobseekers—or one in five—should have a recent learning experience; and
- by 2025, 230 million adults should have at least basic digital skills (accounting for 70% of the EU’s adult population).

## Government’s position

2.17 We received Explanatory Memoranda (EM) on [documents \(a\)](#) and [\(b\)](#) from Michelle Donelan MP, Minister of State for Universities, on 22 October 2020, and on [document \(c\)](#) from Gillian Keegan MP, Parliamentary Under Secretary of State for Apprenticeships and Skills, on 20 July 2020.

2.18 For the most part, the EMs are descriptive and provide little insight into the Government’s thoughts on the Commission’s plans for education and training over the next 5 years. There is little, if any, analysis of the potential legal and policy implications of the initiatives the Commission outlines for UK education law and policy. Elements of the documents are directly relevant to the UK as a third country (non-EU Member State) and we would have expected some acknowledgement of this and an indication of the Government’s future plans in this regard.

2.19 For example, the Commission’s initiative to add greater focus within the Erasmus programme to third country cooperation and mobility actions is directly relevant to the UK as a third country. In addition, under the Commission’s Skills Agenda, its initiative on a European approach to micro-credentials for small volumes of learning has potential implications for the UK as a close neighbour of the EU (and as the UK economy comprises a considerable number of mobile workers who quickly move between domestic and European or international employment).

2.20 At the same time, the Government does not appear to appreciate the significance of the documents under scrutiny as important comparators for the UK’s own education and skills programmes. We note that other Government departments have used the new Commission’s policy and legal proposals as an opportunity to inform us of the domestic work they are undertaking and how this follows or deviates from what is being planned at EU-level.

## Action

2.21 We have written to the Minister responsible for documents (a) and (b)—Michelle Donelan MP—and the Minister responsible for document (c)—Gillian Keegan MP—expressing our disappointment at the quality of Explanatory Memoranda provided and highlighting the relevance of these documents to the UK as a non-EU Member State.

2.22 We have drawn this chapter to the attention of the Education Committee.

### ***Letter from the Chair to Minister of State for Universities (Michelle Donelan MP)***

The Committee have asked me to thank you for your Explanatory Memoranda (EM) on the two above listed documents.

We were disappointed that your EMs are, for the most part, descriptive and provide little insight into the Government's thoughts on the Commission's plans for education and training over the next 5 years. There is no analysis of the potential legal and policy implications of the Commission's initiatives for UK education law and policy. Elements of the documents are directly relevant to the UK as a third country—non-EU Member State—and we would have expected some acknowledgement of this and an indication of the Government's future plans in this regard. For example, the Commission's initiative to add greater focus within the Erasmus programme to third country cooperation and mobility actions is directly relevant to the UK as a third country.

At the same time, we are concerned that you do not appear to appreciate the significance of the documents as important comparators for the UK's own education and skills programmes. We note that other Government departments have used the new Commission's policy and legal proposals as an opportunity to inform us of the domestic work they are undertaking and how this follows or deviates from what is being planned at EU-level.

If your officials should have any questions regarding what is expected of EMs on European documents, my secretariat is on hand to offer help and advice.

### ***Letter from the Chair to the Parliamentary Under Secretary of State (Gillian Keegan MP), Department of Education***

The Committee have asked me to thank you for your Explanatory Memoranda (EM) on the above listed document.

We were disappointed that your EM is, for the most part, descriptive and provides little insight into the Government's thoughts on the Commission's plans for skills and training over the next 5 years. There is no analysis of the potential legal and policy implications of the Commission's initiatives for UK law and policy. Elements of the documents are directly relevant to the UK as a third country—non-EU Member State—and we would have expected some acknowledgement of this and an indication of the Government's future plans in this regard. For example, the Commission's initiative on a European approach to micro-credentials for small volumes of learning has potential implications for the UK as

a close neighbour of the EU (and as the UK economy comprises a considerable number of mobile workers who quickly move between domestic and European or international employment).

At the same time, we are concerned that you do not appear to appreciate the significance of the documents as important comparators for the UK's own education and skills programmes. We note that other Government departments have used the new Commission's policy and legal proposals as an opportunity to inform us of the domestic work they are undertaking and how this follows or deviates from what is being planned at EU-level.

If your officials should have any questions regarding what is expected of EMs on European documents, my secretariat is on hand to offer help and advice.

## 3 Trade preferences for developing countries<sup>6</sup>

These EU documents are legally and politically important because:

- they are likely to inform the development of the UK’s own trade preference scheme for developing countries from 1 January 2021, using the powers conferred on the Secretary of State by the [Taxation \(Cross-border Trade\) Act 2018](#); and
- they concern an EU Regulation which will continue to apply to Northern Ireland once the post-exit transition period has ended under the terms of the Protocol on Ireland/Northern Ireland.

### Action

- Write to the Minister for Trade (Ranil Jayawardena MP) welcoming his offer to provide a further update in 2021 on the UK’s trade preference scheme and asking him to report back on the outcome of “ongoing negotiations” in the EU/UK Withdrawal Agreement Joint Committee on “at risk” goods and other matters affecting the continued application of EU law (including the EU’s trade preferences Regulation) after transition under the Protocol on Ireland/Northern Ireland.
- Draw to the attention of the International Development Committee, the International Trade Committee and the Northern Ireland Affairs Committee.

### Overview

3.1 These documents concern the operation of the EU’s trade preference scheme for developing countries. The first—a European Commission [report](#)—examines the application of the EU’s Generalised Scheme of Preferences (“GSP”) in 2018–19. The second—a [Commission Delegated Regulation](#)—temporarily withdraws some of Cambodia’s tariff preferences (with effect from August 2020) because of serious and systematic human rights violations. The UK is required to apply the EU’s GSP scheme until the post-exit transition period ends on 31 December 2020. The Government intends to introduce its own trade preference scheme for developing countries from 1 January 2021, using the powers conferred on the Secretary of State by the [Taxation \(Cross-border Trade\) Act 2018](#).<sup>7</sup>

6 (a) Report on the Generalised Scheme of Preferences covering the period 2018–2019; Council document 5949/20 + ADDs 1–10, JOIN(20) 3; Legal base—; Department for International Trade; Devolved Administrations not consulted; ESC number 41070.

(b) Commission Delegated Regulation amending Annexes II and IV of Regulation (EU) 978/2012 as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) 978/2012 in respect of certain products originating in the Kingdom of Cambodia; Council document 6020/20, C(20) 673; Legal base: Article 19(10) of Regulation (EU) 978/2012; Department for International Trade; Devolved Administrations not consulted; ESC number 41072.

7 See section 10 of the Act and Schedule 3.

3.2 The [Regulation establishing the EU’s GSP scheme](#)<sup>8</sup> is one of the measures listed in Annex 2 of the Protocol on Ireland/Northern Ireland which will continue to apply in Northern Ireland after transition under the EU/UK Withdrawal Agreement.<sup>9</sup> According to the Government, the Regulation will only apply to goods entering Northern Ireland from the EU’s GSP trading partners which are “at risk” of subsequently entering the EU’s Single Market, not to goods which are not at risk of onward movement to the EU.<sup>10</sup> Our [Third Report](#) and [Seventh Report](#) of Session 2019–21 provide further details on the EU’s GSP scheme and on the operation of the Protocol on Ireland/Northern Ireland.<sup>11</sup>

3.3 The Government told us earlier in the year that the market access arrangements under the UK’s own trade preference scheme would be no less generous than the EU’s GSP scheme, would seek to promote “universal human rights and sustainable development” globally, and would include a power to suspend a GSP beneficiary in the event of systematic human rights violations which could not be resolved through dialogue.<sup>12</sup> The Government was reluctant to respond to our questions on the practical operation of the Protocol on Ireland/Northern—in particular, the risk that differences in the tariff rates applied by the EU and the UK under their trade preference schemes might cause friction and give rise to a diversion of trade—stating only that these matters were under consideration in the Withdrawal Agreement Joint Committee and Specialised Committee tasked with implementing the Protocol on Ireland/Northern Ireland.

3.4 We asked the Government to report back to us once it had finalised the UK’s post-transition trade preference scheme with details of:

- all elements of conditionality forming part of the UK scheme and whether they replicate the EU’s GSP scheme (which includes labour rights, good governance and sustainable development);
- the grounds for suspending a country from the UK scheme or temporarily withdrawing preferences;
- the monitoring and reporting arrangements to ensure that any conditionality is effective; and
- any aspects of the UK scheme which differ from the EU’s GSP arrangements, including any improvements made by the Government.<sup>13</sup>

3.5 We also asked the Government to explain how decisions to be taken by the EU/UK Withdrawal Agreement Joint Committee on the detailed arrangements for implementing the Protocol on Ireland/Northern Ireland would affect the administration of the UK’s own tariff rates, including the UK’s future trade preference scheme, in Northern Ireland.

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8 Regulation (EU) No 978/2012 applying a scheme of generalised tariff preferences.

9 See Article 5(4) of the Protocol which provides: “The provisions of Union law listed in Annex 2 to this Protocol shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.”

10 See the [Explanatory Memorandum of 27 February 2020](#) submitted by the then Minister for Trade Policy (Rt Hon. Conor Burns MP).

11 Third Report HC 229–i (2019–21), [chapter 7](#) (26 March 2020) and Seventh Report HC 229–iv (2019–21), [chapter 7](#) (7 May 2020).

12 See the [letter of 15 April 2020](#) from the then Minister of State (Rt Hon. Conor Burns MP) to the Chair of the European Scrutiny Committee.

13 See the [letter of 6 May 2020](#) from the Chair of the European Scrutiny Committee.

3.6 In his [response of 30 October 2020](#), the Minister for International Trade (Ranil Jayawardena MP) confirms that the UK trade preferences scheme will replicate the EU’s GSP scheme, including its conditionality requirements. Monitoring will form part of the political and economic reporting carried out by the UK’s overseas network, informed by the reports of relevant treaty monitoring bodies (such as the United Nations and the International Labour Organisation) on rights, good governance and sustainable development and by the work undertaken by other government departments on implementation of the relevant conventions. More detailed requirements for monitoring the UK’s “enhanced framework” (equivalent to the EU’s GSP+ special incentive arrangement for economically vulnerable low and lower-middle income countries that implement 27 international conventions on human and labour rights, good governance and the environment) will be set out in 2021.

3.7 Turning to the Protocol on Ireland/Northern Ireland, the Minister says he is unable to provide further information at this stage as the application of tariffs is still subject to negotiation, adding:

We understand the public and the Committee’s interest in the operation and procedures for tariffs under the Protocol, and further details will be set out as soon as possible. HM Government will pursue an independent trade policy for the whole of the United Kingdom, including Northern Ireland. We are committed to resolving outstanding issues with the Northern Ireland Protocol through the Joint Committee process and are confident there will be a positive outcome.

3.8 Finally, the Minister says that the Government’s immediate priority is to ensure trade continuity with GSP beneficiaries from 1 January 2021, but that it remains committed to improving the UK’s trade preference scheme “for the benefit of developing countries, the British People and trading businesses on both sides”. He offers to provide a further update on the reporting requirements for the “enhanced framework” and on improvements to the UK’s trade preference scheme in 2021.

3.9 Shortly after writing to us, [the Government announced](#) that preferential tariffs for developing countries would continue on the same terms as the EU’s GSP scheme when the EU scheme ceases to apply to the UK at the end of the post-exit transition period.<sup>14</sup> The UK scheme will have three frameworks—Least Developed Countries Framework, General Framework, and Enhanced Framework—corresponding to the three types of arrangements available under the EU’s GSP scheme. [Additional Guidance](#) issued by the Government on trading with developing nations from 1 January 2021 makes no reference to the Protocol on Ireland/Northern Ireland, nor does it explain how any divergence from the EU’s GSP rules (for example on tariff rates and their suspension or removal, rules of origin, cumulation, and goods graduation) after 1 January 2021 would affect goods originating in GSP beneficiary countries on entering the Northern Ireland market.

14 See [www.gov.uk/transition](http://www.gov.uk/transition)—Preferential tariffs continue for eligible developing countries, 10 November 2020.

## Action

### 3.10 Write to the Minister:

- welcoming his offer to provide a further update in the new year on reporting requirements for the UK’s “enhanced” GSP framework and on any improvements made to the UK’s trade preference scheme; and
- asking him to report back on the outcome of the “ongoing negotiations” referred to in his letter, explaining (i) how they affect “the operation and procedures for tariffs” under the Protocol on Ireland/Northern Ireland, and (ii) and how any divergence in the rules and conditions underpinning EU’s and UK’s trade preference schemes after transition (the eligibility requirements as well as the GSP rates) would affect the operation of the Protocol in Northern Ireland.

### ***Letter to the Minister for Trade (Ranil Jayawardena MP), Department for International Trade***

Thank for [your letter of 30 October 2020](#) concerning the Government’s new trade preferences scheme for developing countries which will replace the EU’s Generalised Scheme of Preferences (“GSP”) from 1 January 2021. We have no further questions to raise on these documents—a European Commission [report](#) on the application of the EU’s GSP scheme in 2018–19 and a [Commission Delegated Regulation](#) withdrawing some of Cambodia’s tariff preferences (with effect from August 2020) because of serious and systematic human rights violations—which we have cleared from scrutiny.

We nonetheless retain a keen interest in the Government’s plans to introduce a UK trade preference scheme which “at least maintains the preferential market access” terms currently applied by the UK under the EU’s GSP scheme. We therefore welcome your offer to provide a further update in the new year once you have established detailed reporting requirements for the UK’s “enhanced” GSP framework and to inform us of any improvements the Government makes to the UK’s GSP scheme when it is no longer bound by the terms of the EU’s GSP scheme.

We note that negotiations on the application of tariffs under the Protocol on Ireland/Northern Ireland are “ongoing” and that you anticipate “a positive outcome” in the Withdrawal Agreement Joint Committee. On tariffs, we understand that the key issue yet to be resolved concerns the criteria for determining which goods entering Northern Ireland from outside the EU are “at risk of subsequently being moved into the Union” and are subject to EU customs duties. The interaction between “at risk” goods under Article 5(1) and (2) of the Protocol and the continued application of EU law (including the EU’s GSP Regulation) in Northern Ireland after transition under Article 5(4) of the Protocol is far from clear (most specifically, whether the provisions of 5(3) and 5(4) only apply to goods that are “at risk” of moving to the EU, as suggested by the Government, or instead apply to all goods). We have raised this issue with you in correspondence on other documents for which your Department is responsible. We look forward to hearing how this issue is resolved by the Joint Committee and would welcome your assessment of how the outcome agreed will affect the way in which the EU’s GSP Regulation will apply in Northern Ireland after transition.

While we appreciate, following the [announcement](#) made by the Government on 10 November, that the UK's trade preference scheme from 1 January 2021 will replicate the EU's GSP scheme, this may not always be the case. Indeed, you have indicated that the Government may wish to make further improvements to the UK's scheme. Depending on the policy choices made, the improvements might not only affect the tariff rates for certain goods but also the rules and conditions underpinning the EU's and UK's schemes (such as the eligibility requirements). Both types of changes could affect the operation of the Protocol on Ireland/Northern Ireland. We would therefore welcome further information on the Government's plans for managing regulatory divergence and mitigating any adverse effects which result from differences in the UK's domestic law and EU law applicable in Northern Ireland.

## 4 EU sanctions update: Russia, Belarus and Turkey<sup>15</sup>

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**These EU documents are politically important because:**

- they relate to certain EU sanctions regimes of geopolitical interest for the UK, namely against Russia, Belarus and Turkey; and
- the Government is also legally required to apply these new restrictive measures until the end of the post-Brexit transitional period on 31 December 2020.

### Action

- Draw the developments in the EU’s sanctions against Russia, Belarus and Turkey to the attention of the Committee on the Future Relationship with the EU, the Foreign Affairs Committee and the Defence Committee.

### Overview

4.1 Although the UK left the European Union on 31 January 2020, EU foreign policy sanctions remain of direct relevance to the UK. Not only is the Government required to apply them as a matter of international law until the end of the post-Brexit transition period on 31 December 2020,<sup>16</sup> even beyond then the EU’s approach to restrictive measures in its external relations will also remain of importance to the UK, given the overlap in its political and economic interests in Europe and further afield with those of the EU. The Government has rejected the need for a specific treaty-based arrangement with the EU for foreign policy cooperation and coordination of sanctions, to complement the trade agreement that it is currently negotiating. Instead, it prefers more informal discussions with the EU on a case-by-case basis.

4.2 Questions about alignment of the UK’s and EU’s restrictive measures—or lack thereof—against particular countries or individuals in response to geopolitical events will remain relevant and, at times, controversial. For example, the effect of asset freezes against those held responsible for human rights abuses is more effective if the UK, with its large financial sector, also imposes them. Conversely, trade sanctions and arms embargoes

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15 (a) COUNCIL DECISION (CFSP) 2020/1482 of 14 October 2020 amending Decision (CFSP) 2018/1544 concerning restrictive measures against the proliferation and use of chemical weapons and (b) COUNCIL IMPLEMENTING REGULATION (EU) 2020/1480 of 14 October 2020 implementing Regulation (EU) 2018/1542 concerning restrictive measures against the proliferation and use of chemical weapons; (a) Council and COM number—(b) Council and COM number—; Legal base: (a) Article 29 TEU; unanimity; (b) Article 12 of Regulation 2018/542; qualified majority; Department: Foreign, Commonwealth & Development Office; Devolved Administrations: Not consulted; ESC numbers: 41632, 41633.

(c) COUNCIL IMPLEMENTING DECISION (CFSP) 2020/1388 of 2 October 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus and (d) COUNCIL IMPLEMENTING REGULATION (EU) 2020/1387 of 2 October 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; (c) Council and COM number—(d) Council and COM number—; Legal base: (c) Article 31(2) TEU; unanimity; (d) Article 8a(1) of Regulation 765/2006, Department: Foreign, Commonwealth & Development Office; Devolved Administrations: Not consulted; ESC numbers: 41556, 41555.

16 Article 129(6) of the Withdrawal Agreement allows the UK to indicate that, “for vital and stated reasons of national policy”, it will not apply an EU Decision under the Common Foreign & Security Policy during the transition period.

will carry greater weight where they are given effect not just by the UK, but also by the entire European Union. While the UK can now impose sanctions more flexibly, it has lost the ability to formally shape the EU’s collective approach in this area (and the Common Foreign & Security Policy more broadly) and, of course, can no longer veto EU foreign policy measures.

4.3 In light of their on-going political relevance for the UK, the European Scrutiny Committee intends to continue periodically reporting key developments in EU foreign policy, including sanctions, to the House for information. In this Report, we have provided further information on the recent changes in the EU’s restrictive measures against:

- **Russia**, following the August 2020 chemical attack on Kremlin-critic Alexei Navalny.
- **Belarus**, in relation to its rigged presidential elections in August 2020 and subsequent human rights abuses.
- **Turkey**, in light of Ankara’s escalating maritime boundary conflicts with EU Member States Greece and Cyprus, as well as its unauthorised gas drilling in the latter’s Exclusive Economic Zone.

4.4 These are of course not the only changes in EU sanctions policy that have occurred in recent months.<sup>17</sup> The EU maintains restrictive measures against many countries, and those legal regimes are frequently updated and extended. In line with our approach while the UK was an EU Member State, we do not see the need to report every such legal modification to the House. However, we note that the European Commission has recently made a—currently confidential—proposal for an EU “Magnitsky Act”, a thematic EU sanctions regime targeted at perpetrators human rights abuses worldwide that follows similar steps taken by the US, Canada and the United Kingdom. As of 26 November 2020, this proposal is still being discussed by the EU’s remaining 27 Member States and is not yet European law. We intend to consider it further in due course when more information on the Act is publicly available.

## EU sanctions against Russia for the poisoning of Alexei Navalny

4.5 The EU has a complicated and fractious relationship with Russia, with which it shares a land border through Member States Poland, Finland, Estonia, Latvia and Lithuania.

4.6 Since 2014, the EU has maintained [trade sanctions](#) against Russia because of its illegal occupation of Ukraine’s Crimea peninsula.<sup>18</sup> In addition, at the UK’s request, in early 2019 it also [imposed](#) targeted sanctions on various Russian officials held responsible for the attempted assassination in Salisbury of defector Sergei Skripal and his daughter with the chemical agent Novichok in March 2018, which ultimately cost a British woman (Dawn Sturgess) her life after she accidentally came into contact with the substance.<sup>19</sup> The

17 For example, in recent months the EU has also updated or extended its sanctions regimes against Libya, Syria and Venezuela.

18 The EU’s sanctions in relation to Russia’s occupation of Crimea consist of a [trade embargo](#) with the peninsula itself, as well as [tier II sanctions](#) (asset freezes and travel bans) against specific individuals and organisations deemed to be undermining Ukraine’s sovereignty over the region. In addition, the EU has [imposed certain trade restrictions](#) on Russia itself, notably with respect to finance, defence equipment, energy and dual-use goods. The tier II sanctions were updated [most recently on 1 October 2020](#).

19 The only other country to have officials listed under the EU’s sanctions regime for chemical attacks is Syria.

Russian Government subsequently tried to hack into the systems of the Organisation for the Prohibition of Chemical Weapons (OPCW) conducting an investigation into the attack, leading to [additional restrictive measures](#) against various Russian officials under the EU’s sanctions framework aimed at persons responsible for State-sponsored cyber-attacks.

4.7 On 20 August 2020, Alexei Navalny, a prominent Russian political dissident, was hospitalised in Moscow after a sudden deterioration in his health. He was transferred to a hospital in Berlin two days later, and on 2 September the German Government announced that tests had shown Mr. Navalny had also been [poisoned with Novichok](#), the same nerve agent used by Russia in the Salisbury attack two years previously.<sup>20</sup> In response, the EU on 14 October 2020 [imposed](#) sanctions on six high-ranking Russian nationals alleged of involvement in the poisoning.

4.8 The Foreign, Commonwealth & Development Office (FCDO) [announced the following day](#) that the UK would be enforcing the EU sanctions as well, and in an [Explanatory Memorandum](#) submitted on 30 October, the relevant Minister at the Department (Nigel Adams MP) states that the measures “send a strong signal” to discourage the use of chemical weapons, and also notes they are intended to continue applying them under UK domestic law beyond the end of the transition period.<sup>21</sup>

## EU sanctions against Belarus

4.9 The EU has had formal ties with Belarus since the latter’s independence in 1991, [including](#) an agreement on trade in textiles. Since 2004 it has also maintained a regime of restrictive measures against officials in the government of Alexander Lukashenko, President since 1994, because of its “grave concern about the continued lack of respect for human rights, democracy and rule of law” in the country.<sup>22</sup> In February 2016, the EU Foreign Ministers lifted most of the restrictive measures, except an arms embargo and personal sanctions against four persons, “in acknowledgment of steps taken by Belarus that had contributed to improving” its relations with the EU.

4.10 On 9 August 2020, Belarus’ presidential elections took place. These were condemned by the international community as neither free nor fair, after Lukashenko was purportedly re-elected with 80 per cent of the vote. The election and the subsequent protests against the outcome were characterised by widespread repression of opposition to the government, including “intimidation and disproportionate police force” in the days following the ballot.<sup>23</sup> Since then, the situation has escalated further with large-scale arrests of protestors, while leaders of the opposition movement have been detained or fled the country.

4.11 The EU has taken a particular interest in the situation, not least because three of its Member States<sup>24</sup> share a border with Belarus. While the European Council agreed in

20 That finding was subsequently corroborated by laboratories in France and Sweden, announced on 14 September 2020.

21 The Explanatory Memorandum states: “These sanctions automatically apply to the UK under EU law until the end of December, and work is underway to transition them into UK law at the end of the Transition Period”.

22 See [Common Position 2004/661/CFSP](#) of 24 September 2004. For the same reason, a Partnership and Cooperation Agreement signed in 1995 [has not yet been ratified](#) by the EU.

23 OSCE, “[ODIHR gravely concerned at situation in Belarus following presidential election](#)” (10 August 2020).

24 Poland, Lithuania and Latvia.

principle to impose further sanctions [as early as 19 August](#),<sup>25</sup> the actual imposition of EU restrictive measures was delayed because of Cyprus’ veto in the absence of an agreed EU approach to Turkey (see below). Following the compromise reached on the EU’s dealings with Ankara on 1 October 2020, Cyprus lifted its block. Subsequently, the EU-27 moved quickly and formally approved an expansion of the sanctions regime against Belarus on 2 October 2020. This added forty individuals to the list of people subject to travel bans and asset freezes throughout the EU.<sup>26</sup> On 6 November, the EU [expanded this list further](#) with another 15 individuals, this time including Aleksander Lukashenko and his son Viktor.<sup>27</sup>

4.12 Given the delays in the EU agreeing its sanctions list against Belarus due to the Cypriot veto, the UK moved ahead—in cooperation with the Canadian Government—to impose restrictive measures—consisting of a travel ban and asset freezes—against eight individuals, including Alexander Lukashenko himself, on 29 September 2020.<sup>28</sup> However, now that the EU’s sanctions list is in place, the UK is also required under the terms of the Withdrawal Agreement to impose those measures until the end of the transitional period on 31 December 2020. Following the expansion of the EU’s measures on 6 November, all eight individuals originally targeted by the UK are now also covered by the EU’s restrictive measures.<sup>29</sup> This of course means the EU has also listed several dozen individuals that the UK did not. It is not clear at this stage whether the Government intends to maintain sanctions against those individuals in Belarus listed by the EU, but not by the UK unilaterally, beyond the end of the post-Brexit transition period.<sup>30</sup>

4.13 The Minister of State at the Foreign Office (Nigel Adams MP) submitted an [Explanatory Memorandum](#) on 16 November, summarising the background to the EU’s formal Decision of 2 October 2020 to impose sanctions on the fifty-five additional individuals associated with the Belarusian regime. The Memorandum does not, however, make clear if the UK intends to maintain the expanded list of individuals targeted for sanctions by the EU after the end of the post-Brexit transition period.

25 The need for further sanctions had already been agreed by videoconference of EU Foreign Affairs Ministers on 14 August 2020.

26 See [Council Implementing Decision \(CFSP\) 2020/1388](#) and [Council Implementing Regulation \(EU\) 2020/1387](#).

27 The escalation of repressive measures by the Belarusian authorities has also effectively halted, for now, the EU’s efforts to increase cooperation with the country’s government in areas including a new agreement on [visa facilitation](#) for short-stay visitors from Belarus and [readmission](#) of “irregular” immigrants; the country’s [accession to the World Trade Organization](#) (WTO); and [negotiations to address tobacco smuggling](#). It may also affect the [financial support](#) the EU provides for Belarus’ economic development under the “European Neighbourhood Instrument”. However, the European Council of 1 and 2 October 2020 invited the European Commission to “prepare a comprehensive plan of economic support for democratic Belarus” if there is a political transition.

28 FCDO, [“Belarus: UK sanctions 8 members of regime, including Alexander Lukashenko”](#) (29 September 2020). On 17 August 2020, the Foreign Secretary had already [said](#) that the Government would “work with our international partners to sanction those responsible, and hold the Belarusian authorities to account”. By contrast, Lukashenko has sought support from Russia to shore up his position, and Moscow has [pledged](#) to provide both financial and security assistance.

29 The EU’s original list of targets of 2 October only contained five of the individuals on the UK sanctions list. The three exceptions were Alexander Lukashenko; his son Viktor; and his Chief of Staff Igor Sergeenko. These were subsequently added to the EU sanctions list on 6 November 2020.

30 Under section 55 of the Sanctions and Anti-Money Laundering Act 2018, future unilateral UK sanctions—i.e. those not made pursuant to a UN Security Council Resolution—will be imposed by means of regulations which will typically be “made affirmative”, meaning they will come into force before having been scrutinised by Parliament. Prior to the UK’s exit from the EU, the European Scrutiny Committee was typically able to consider EU foreign policy sanctions before they were approved and took effect. This is no longer possible during the transition period because the EU no longer formally shares its draft sanctions legislation with the UK.

## EU sanctions against Turkey

4.14 The third and final recent development in the EU’s foreign policy we wish to draw to the House’s attention by means of this Report is the potential for changes in the EU sanctions regime against Turkey that was established in November 2019.

4.15 The immediate cause for the EU’s imposition of sanctions against Turkey—which has a complicated relationship with the EU<sup>31</sup>—was Ankara’s repeated violation of the sovereignty of Cyprus’s Exclusive Economic Zone (EEZ) to drill for hydrocarbon reserves.<sup>32</sup> Its drilling activities have intensified since the discovery of significant gas deposits in the eastern Mediterranean in 2018. At Cyprus’ insistence, on 11 November 2019, the EU’s Member States—the UK then still included—formally approved a [legal framework](#) enabling the EU to impose sanctions against Turkish citizens and companies involved in the continued unauthorised drilling for hydrocarbon resources in Cyprus’ territorial waters, in particular those working for the Turkish Petroleum Company (TPAO).<sup>33</sup> This Committee [reported](#) that EU sanctions framework to the House in April 2020.

4.16 However, the situation in the Eastern Mediterranean has not improved since and Turkey’s naval activities have continued to antagonise Greece and Cyprus.<sup>34</sup> A meeting of EU Heads of State and Government of 1 and 2 October 2020 therefore devoted significant time to “the situation in the Eastern Mediterranean and [the EU’s] relations with Turkey”.<sup>35</sup> As noted, the discussions on the EU’s approach to Turkey were, politically, closely linked to the separate talks on EU sanctions against Belarus (see above), due to Cyprus’ veto over the latter until it felt able to support the former.<sup>36</sup> Following many hours of talks, on 1 October EU leaders unanimously issued [conclusions](#) which envisaged a “positive political EU-Turkey agenda with a specific emphasis on the modernisation of the Customs Union and trade facilitation, people to people contacts, high level dialogues, [and] continued cooperation on migration issues”, provided Ankara made “constructive efforts to stop illegal activities vis-à-vis Greece and Cyprus”.

4.17 However, EU leaders at the insistence of the latter two Member States also resolved that, “in case of renewed unilateral actions or provocations in breach of international law

31 Turkey is a formal candidate for EU membership and forms a customs union with it. Its bid for membership has always been problematic, not least because it effectively occupies the northern half of Cyprus, whereas that country has been an EU Member State since 2004 and is seeking to regain sovereignty over the entire island. Ankara of course also has a tense relationship with Greece.

32 Turkey has not signed the UN Convention on the Law of the Sea (UNCLOS). The Convention gives Greece cover to claim most of the Aegean Sea as its Exclusive Economic Zone because it exercises sovereignty over many inhabited islands, even though Turkey’s coastline in the Aegean is extensive.

33 On 27 February 2020, this framework, which imposes an EU-wide travel ban and asset freeze against people and entities listed, was [specifically invoked](#) against two high-ranking employees of the government-owned Turkish Petroleum Corporation (TPAO).

34 Turkey has continued to increase its naval presence in the area, sending drilling ships accompanied by its navy. Since August 2020, its activities now in fact [cover a larger geographic area](#), including waters off Cyprus’ southern coast, near the Greek island of Kastellorizo (near the Turkish mainland) and those between Cyprus and Crete. The dispute has led Greece and Turkey to hold increased naval combat exercises, and on 27 August 2020 Athens signed a maritime boundary accord with Egypt, to which Ankara in turn objected.

35 EU leaders also discussed Covid-19; the armed conflict between Armenia and Azerbaijan; the poisoning of Aleksey Navalny by Russia; relations with China; the UK-EU trade negotiations; and the EU’s Single Market and industrial strategy, including reforms of EU competition policy.

36 At a meeting of EU Member State Permanent Representatives on 18 September 2020, the Cypriot representative blocked approval for new restrictive measures in respect of Belarus because “no progress has been achieved” on sanctions against Turkey, and criticised Germany—holding the Presidency—for having “chosen to proceed on this highly sensitive and complex matter” without following “the established practice of achieving political consensus amongst all Member States”.

[by Turkey], the EU will use all the instruments and the options at its disposal, including in accordance with Article 29 TEU and Article 215 TFEU, in order to defend its interests and those of its Member States”. These are references to potential further EU sanctions against Turkey, as they are the legal basis on which the EU can impose restrictive personal and economic measures against other countries, such as asset freezes for individuals or, more significantly, trade restrictions like an arms embargo or import restrictions.<sup>37</sup>

4.18 However, the European Council did not accept a Cypriot proposal to state that any such measures would flow automatically from continued Turkish incursions into its territorial waters. Instead, further EU sanctions against Turkey would require the formal, unanimous approval all Member States at a future date before they could take effect.<sup>38</sup> EU leaders are due to further discuss the bloc’s relationship with Turkey, and take “decisions as appropriate”, at the latest at the European Council meeting [on 10 and 11 December 2020](#). Turkey immediately condemned the possibility of sanctions, calling it “unconstructive”.<sup>39</sup> The Committee will consider the implications of that outcome of that meeting in due course, in particular if any decisions are taken with respect to further EU restrictive measures against Turkey.

4.19 The UK [supported](#) the original introduction of the EU sanctions framework against TPAO in November last year, and has told Parliament that it supports “Cyprus’ sovereign right to exploit the oil and gas in its internationally agreed Exclusive Economic Zone”, calling “for de-escalation and dialogue”. However, to our knowledge, Ministers have not confirmed if they intend to maintain those measures after the end of the post-Brexit transitional period.<sup>40</sup> The UK is in a somewhat difficult position as it is still finalising a new trade agreement with Ankara to replace the EU-Turkey Customs Union that the UK will leave at the end of the year.<sup>41</sup> Moreover, EU policy against Turkey is likely to remain relevant for the UK for the foreseeable future, for example as regards any knock-on effects for defence cooperation with NATO or implications of changes in the EU’s economic relationship with Turkey for UK trade with that country.<sup>42</sup> The EU, and Cyprus in particular, may also seek political support from the UK Government for any action undertaken against Turkey in the context of the new UK-EU relationship.

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37 Articles 29 TEU and 215 TFEU are the legal basis, for example, for the EU’s export restrictions for [Venezuela](#), [Yemen](#) and [Zimbabwe](#).

38 Article 31 TEU.

39 On 6 October 2020, Turkey raised tensions further by announcing that it intended to reopen the town of Varosha in occupied Northern Cyprus; the settlement was abandoned following the 1974 invasion, with its Greek Cypriot population fleeing south. Resettlement of the town by people from North Cyprus is considered unacceptable by the Cypriot Government.

40 On 7 May 2020, the Foreign Office [told us](#): “The transfer of each EU sanctions regime into UK law will be considered on a case by case basis, and designations transferred into UK autonomous sanctions regimes at the end of the Transition Period will be subject to a final ministerial decision-making process. We will look to come to a decision on each regime towards the end of this year. This applies to the EU Hydrocarbons sanctions regime, under which two employees of Türkiye Petrolleri Anonim Ortaklığı (TPAO) (Turkish Petroleum Corporation) are currently listed”.

41 When the EU imposed sanctions against the Turkish Petroleum Organisation earlier this year, the Government refused to be drawn on whether it intended to maintain those measures after the end of transition. [Letter](#) from Nigel Adams MP, FCO Minister, to Sir William Cash MP (7 May 2020).

42 For example, any EU trade restrictions on Turkey could disrupt trade flows of goods moved between Turkey and the UK. More generally, changes to the EU-Turkey Customs Union could also have implications for the UK’s trade relationship with Turkey.

## Conclusions

4.20 The Committee has taken note of recent developments in EU sanctions, in particular against Russia, Belarus and Turkey. The UK will be required to apply them until the end of the transition period on 31 December 2020. The UK’s independent foreign policy sanctions regime is implemented by the Government by means of regulations—typically by [made-affirmative](#) procedure—under the [Sanctions and Anti-Money Laundering Act 2018](#). There is no dedicated parliamentary scrutiny process for the imposition of sanctions under that Act, other than the routine process for approval of delegated legislation.

4.21 We also note that Cyprus’ blocking of EU sanctions against Belarus over an unrelated foreign policy issue has also reignited discussion about reform of the way in which the EU adopts sanctions and other measures under its Common Foreign & Security Policy (CFSP), which normally gives each EU country in the Council a veto over key decisions relating to the CFSP.<sup>43</sup> Because of the inflexibility inherent in this requirement, European Commission previously [recommended](#) a shift to “Qualified Majority” voting (QMV) in specific areas of the EU’s foreign policy.<sup>44</sup> The recent Cypriot veto has served to underline the political ramifications of the unanimity requirement.<sup>45</sup> European Commission President Ursula von der Leyen used her [“State of the Union”](#) speech to the European Parliament on 16 September 2020 to call on the EU Member States to “finally move to qualified majority voting—at least on human rights and sanctions implementation”.<sup>46</sup>

4.22 At this stage, there is no indication that the remaining Member States are willing to relinquish, even in a limited way, their national veto over EU foreign policy measures. However, any future shift in the decision-making procedures that apply to EU foreign policy measures are also relevant for the UK. The introduction of more Qualified Majority voting in this area could alter the substance of such EU policy measures, or the speed with which they can be adopted. The implications for the UK’s own geopolitical interests, and its engagement with the EU on the issues at stake, would depend on the specific circumstances of each case. The Committee will therefore continue to follow the debate around the unanimity requirement in the Common Foreign & Security Policy closely.

We draw the developments described in this Report to the particular attention of the Committee on the Future Relationship with the EU, the Defence Committee and Foreign

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43 Article 24 TEU reads: “The common foreign and security policy [...] shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise”. In certain circumstances, decisions relating to the CFSP are taken by Qualified Majority voting (QMV), for example the appointment of Special Representatives.

44 The Commission’s reasoning for recommending such a change is that the unanimity rule “slows down progress and in some cases prevents the EU from adjusting to changing realities”, while removing the national veto would “opens up more space for discussion and pragmatic outcomes that reflect the interests of all” Member States.

45 The European Commission paper of September 2018 in fact had also referred to cases of “a Member State opposing or delaying moving forward as regards one specific Common Security and Defence Policy file due to another Member State doing likewise on another one”.

46 While the EU Treaties contain several options for the use of QMV for measures under the CFSP, these have not been exercised to date for the adoption of new sanctions regimes or other substantive foreign policy measures. For example, the European Commission has urged the European Council to use its ability, to date unused, to adopt formal decisions by unanimity setting out the EU’s broad “strategic interests and objectives” in foreign policy vis-a-vis specific countries, regions or thematic issues, which would allow measures implementing those decisions to be approved by QMV.

Affairs Committee, should they wish to press the Government for further clarity on the potential continuation of the EU's sanctions against Belarus and Turkey under UK domestic law beyond the end of the post-Brexit transition period.

## 5 EU Single Customs Window for trade in goods<sup>47</sup>

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**This EU document is legally and politically important because:**

- it would create a statutory “Single Customs Window”, an electronic system linking all customs authorities in the EU to certain other regulatory databases relevant for trade in goods and make it easier for traders to submit documentation necessary to move goods across the EU’s external border. The aim is to streamline customs clearance processes for EU trade in goods with non-EU countries like the UK; and
- the Single Customs Window may also have to be implemented in respect of goods entering Northern Ireland from non-EU jurisdictions under the terms of the Northern Irish Protocol agreed as part of the UK’s exit from the EU, and therefore impact on administrative checks that may take place under that Protocol on goods moved between Northern Ireland and Great Britain.

### Action

- Write to the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP) requesting further information about the Government’s views on the proposal and its possible implications for the UK.
- Draw the proposal for the EU Single Customs Window to the attention of the Business, Energy and Industrial Strategy Committee, the Committee on the Future Relationship with the EU, the International Trade Committee, the Northern Ireland Affairs Committee and the Treasury Committee.

### Overview

5.1 There are no longer any border controls on goods moved between the EU’s Member States, with such formalities having been abolished with the introduction of the “Single Market” in the 1990s. However, EU law does require its Member States to conduct a range of documentary and physical checks on goods—for both customs and regulatory purposes, like product safety—which are traded with non-EU countries. Depending on the nature of the goods being traded, complying with these formalities can require traders to engage with multiple different public authorities.

5.2 To streamline the operation of the many border formalities applicable to the EU’s trade with non-EU countries, the European Commission in October 2020 presented a [legislative proposal](#) for a “Single Customs Window” (SCW). Part of a wider set of planned reforms under its [Customs Union Action Plan](#), this draft legislation would:

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<sup>47</sup> Proposal for a Regulation establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013; COM number: COM(2020) 673; Legal base: Articles 33, 114 and 207 TFEU; ordinary legislative procedure; QMV; Department: HM Revenue and Customs; Devolved Administrations: Northern Ireland Executive consulted; ESC number: 41624.

- require EU Member States' customs authorities to link their electronic systems to certain databases operated by other public bodies that hold relevant regulatory information necessary to clear a specific consignment of goods, rather than having to verify compliance with such non-customs formalities manually. This would enable customs, for example, to verify compliance with matters such as export licences for hazardous chemicals or the Common Health Entry Document for imports of animals more easily; and
- provide a single digital portal in each EU country where traders could submit many—but not necessarily all—of the customs and regulatory documentation and licences required for a specific import or export of goods electronically, with the option for individual EU countries to enable them to do so in a single filing.

5.3 The proposal is now with the European Parliament and the Member States in the EU's Council of Ministers for further consideration, and the timetable for its adoption—and therefore implementation of the Single Customs Window—is uncertain at this stage.

5.4 The UK left the European Union on 31 January 2020. However, the EU's legal formalities for goods crossing its external border do not yet apply to its trade with the UK, because—as set out in the Withdrawal Agreement—we remain part of the Single Market until the end of the post-Brexit transition period on 31 December this year. From 1 January, traders moving goods between the UK and the EU *will* need to begin submitting significant volumes of customs and regulatory documentation to ensure clearance of their shipments by the border authorities on both sides, with impacts on the costs of trade and flow of traffic through ports like Dover. Even if there is a UK-EU free trade agreement, the administrative burden associated with the documentation and licensing requirements required by EU law in this respect are unlikely to be mitigated in any meaningful way.<sup>48</sup> The Single Customs Window initiative, once operational, could therefore speed up the conduct of UK-EU trade in that new context, and reduce the associated burden on traders.

5.5 Moreover, this situation is complicated further by the Protocol on Ireland/Northern Ireland agreed between the UK and the EU as part of the Withdrawal Agreement. This keeps Northern Ireland in the UK's customs territory but simultaneously requires the application of EU customs and regulatory controls on goods moved through its ports in trade with Great Britain and other non-EU jurisdictions, to avoid the need for physical customs and regulatory infrastructure on the land border with Ireland. From the information available to us at this stage, it appears likely that the Regulation establishing the Single Customs Window—as and when adopted—would have to be implemented in Northern Ireland under the terms of the Protocol. It could therefore in due course impact on the formalities traders must observe to move goods between Great Britain and Northern Ireland, and how the Government will enforce those obligations.

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48 While a trade agreement with the EU might reduce for example the physical inspection rate applied to UK imports of animals and food products into the EU, it seems unlikely they will result in the removal of the requirement for traders to submit the relevant customs and regulatory documentation that must accompany every consignment. The EU has only waived the need for such documentation in its trade with specific non-EU countries to date on the basis of the latter's alignment with EU rules, for example Norway (whose trade with the EU does not involve regulatory formalities at the EU border because it aligns with EU Single Market rules on goods as part of the EEA Agreement). The UK Government is not pursuing such an arrangement and has specifically argued against any obligation to remain aligned with EU law beyond the end of the transition period.

5.6 In light of these implications, the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP) submitted an [Explanatory Memorandum](#) on the Single Customs Window proposal on 16 November 2020. While not commenting on the implications of the initiative for UK-EU trade generally—stating that it “do[es] not impact [on] Great Britain”—the Minister does acknowledge the potential legal relevance of the proposal under the Protocol. More specifically, the Minister’s Explanatory Memorandum notes the SCW *could* apply to goods flowing from Great Britain and the rest of the world to Northern Ireland, and describes the Government’s work to date on national “single window” initiatives for international trade as “a major step towards implementing the EU Single Window requirements” in the future. However, he also notes that implementation of the initiative at Northern Irish ports would be subject to further discussions between the UK and the EU in due course.

5.7 Given the clear implications of the Commission proposal for the UK, in particular in the context of the Northern Ireland Protocol, we consider its substance and potential ramifications in more detail below. The Committee has also written to the Financial Secretary to seek further information on the link between the initiative and the Protocol, and more generally on the Government’s plans for engagement with the EU on this initiative, as shown in the Annex.

### The proposal for a Single EU “Customs Window”

5.8 Within the EU’s Single Market, there are no border controls on goods as they pass from one EU Member State to another. Instead, EU countries operate checks on goods coming from non-EU jurisdictions (“third countries”) on the basis of harmonised European rules like the Union Customs Code. Individual Member States can also adopt national rules to restrict imports or exports of certain goods where justified in the public interest.<sup>49</sup>

5.9 As we set out in our [recent Report](#) on the European Commission’s “Action Plan” on the future of the EU Customs Union, the formalities applicable when goods cross the EU’s external border involve many different authorities.<sup>50</sup> This is because traders seeking to secure clearance of the goods by customs often have to submit not only customs declarations under the Union Customs Code (UCC), but—depending on the consignment—also provide additional documentation or licences under other EU legislation to a variety of different regulatory bodies relating for example to “health and safety, the environment, agriculture, fisheries, cultural heritage and market surveillance and product compliance”.<sup>51</sup> In many instances, these additional documents are submitted to, and stored, centrally at

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49 [Article 36 TFEU](#) states that Member States may institute “prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”.

50 Even for the EFTA-EEA countries Norway, Iceland and Liechtenstein, who participate in the EU’s Single Market, border formalities on trade in goods persist because they are not part of the EU Customs Union or its Single VAT and excise duty area.

51 These include, but are not limited to, “Common Health Entry Documents” for animals and plants, AGRIM and AGRIX import and export licences for certain agricultural goods, “REACH” licences for chemicals, and import licences for cultural goods.

EU-level, such as the [TRACES](#) database for imports of animal and food products.<sup>52</sup> In other cases, the licences are processed in national systems operated by each individual EU Member State, many of which are still paper-based.<sup>53</sup>

5.10 Only if all applicable formalities are complied with can customs authorities release the goods for import, export or transit through the EU. However, the European Commission acknowledges that the need for businesses to liaise with several different authorities, each with their own systems and procedures, when moving goods subject to regulatory control across the EU’s external border “is cumbersome and time-consuming for traders”. It is also concerned that the fragmentation of trade controls at the border “reduces the capacity of authorities to act in a joined-up way”<sup>54</sup> because “the authorities responsible for [...] non-customs regulatory formalities [...] and customs authorities often work in silos, creating [...] inefficient goods clearance processes conducive to error and fraud”. The aforementioned Action Plan therefore reiterated the Commission’s long-standing intention<sup>55</sup> to introduce new EU legislation to create a “Single Window Environment for Customs”.

5.11 In line with the WTO Trade Facilitation Agreement,<sup>56</sup> this “Single Window Environment” would be used for the “exchange of electronic information between different government authorities” in relation to the EU border clearance process, reducing the need for manual checks by customs officers to check if all non-customs regulatory formalities have been complied with and improving inter-agency cooperation. Moreover, individual traders could use the “Single Window” to “submit to a single point both customs and non-customs data required for goods clearance” for trade in goods with non-EU countries, reducing the administrative burden.<sup>57</sup> Following a pilot project involving a sub-set of EU

52 EU law requires consignments of animals, animal products, certain food and feed of non-animal origin and the majority of plants crossing its external border to be accompanied by official certificates, attesting compliance with the applicable animal and plant health or food safety requirements.

53 European Commission Impact Assessment [SWD\(2020\) 238](#), p. 106.

54 The Commission estimates that non-customs EU legislation which impose obligations relating to the import, export or transit of goods affect 39.7 million customs declaration each year, and “in most cases require additional documents than the customs declaration”.

55 The first digitalisation of EU customs procedures was the creation of the New Computerised Transit System (NCTS) in 1997. The 2008 “[E-Customs Decision](#)” subsequently foresaw a fully paperless environment for EU customs and trade, with major deadlines. While some progress has been made under the Union Customs Code to achieve the objectives of the 2008 Decision, for example by means of new electronic customs systems since 2016, the “Single Window” to incorporate non-customs related border clearance formalities into a unified electronic system remained the major exception. The EU’s Member States [endorsed](#) the establishment of a Single Window in December 2014 and the Commission confirmed its intention of pursuing this option in its 2016 [policy paper on the EU Customs Union](#).

56 Article 10 of the World Trade Organization [Trade Facilitation Agreement](#) (WTO-TFA) requires signatories, which include the EU, to “endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies”.

57 The Commission [has noted](#) that several EU countries are currently developing “national single window initiatives, which remain isolated and are characterised by different modalities based on the level of existing customs IT architecture, priorities and cost structures”.

countries,<sup>58</sup> on 28 October 2020 the Commission formally tabled a [draft Regulation](#) to create a Single Window Environment for Customs whose use would be mandatory for the relevant border-facing authorities of all EU Member States.<sup>59</sup>

### *The substance of the draft Regulation*

#### *The “Single Window Environments for Customs”*

5.12 The European Commission proposal foresees imposing a legal obligation on each EU country to establish a “national single window environment for customs” (SCW). These national ‘windows’ would be a digital service set up by each EU Member State to “enable information to be exchanged” electronically between its customs authorities and other relevant regulatory bodies with a responsibility pertaining to the movement of goods across the EU’s external border—referred to in the draft legislation as “partner competent authorities” (PCAs).

5.13 The Regulation would, secondly, task the European Commission itself to build, in cooperation with the Member States, a centralised EU-wide “Certificates Exchange System” (referred to as “CSW-CERTEX”). This would connect the national ‘windows’ with several existing European regulatory databases for non-customs formalities applicable to goods crossing the EU’s external border.<sup>60</sup> More specifically, this national ‘window’ would enable a Member State’s customs authorities to be informed electronically and automatically of decisions taken by partner authorities on whether other relevant regulatory requirements to clear a shipment of goods have been met, rather than having to check this manually.<sup>61</sup>

5.14 For example, national customs authorities in the EU are responsible for enforcing certain restrictions on trade in hazardous chemicals. Under EU law, some of these substances require a specific export notification and Prior Informed Consent (PIC) from the importing non-EU country.<sup>62</sup> Those procedures are managed by the European Chemicals Agency (ECHA) in Helsinki through its ePIC system. At present, when presented with a consignment of such chemicals, the relevant customs authorities should—but frequently do not<sup>63</sup>—conduct manual checks to verify if those requirements are met. Under the Single Customs Window, as and when the ePIC is connected to the CSW-CERTEX interface, this information would be communicated between ECHA

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58 The [first such pilot](#) was the “EU Customs Single Window-Common Veterinary Entry Document” (EU CSW-CVED). It aimed to enable the automated verification by five national customs authorities of three non-customs regulatory formalities for animal imports, submitted with the customs declaration as evidence of compliance. Its successor, the EU Customs Single Window Certificates Exchange System (EU CSW-CERTEX), expanded the scope of regulatory requirements—also encompassing for example documentation relating to forestry law, organic agri-food products, and plant health—and introduced new functionalities, such as quantity management.

59 The implications of the draft legislation for the HM Revenue & Customs, in the context of the Protocol on Northern Ireland, is unclear. This is explored further elsewhere in this chapter.

60 CWS-CERTEX stands for “EU Customs Single Window Certificate Exchange System”.

61 In practical terms, the proposal relies on an extension of the use of the Economic Operator Registration and Identification system (EORI). This is the EU’s centralised identification system for traders used by customs authorities in all Member States. Under the Single Window, the relevant regulatory authorities who will be connected electronically to customs via the CSW-CERTEX, would have access to the EORI system for validation purposes. This means they “can request the EORI number from economic operators in the context of their formalities and validate it against the EORI systems”.

62 Article 19 of [Regulation \(EU\) No 649/2012](#) concerning the export and import of hazardous chemicals.

63 A [recent study](#) by the European Chemicals Agency found that in 44% of cases, the specific export declaration for hazardous chemicals was not checked by customs.

and customs automatically. The specific regulatory formalities applicable to imports and exports of other types of goods under EU law could similarly be linked electronically to customs to speed up the compliance and clearance process.

5.15 The Commission also argues that its proposed arrangement would improve enforcement of import and export restrictions, because other regulatory authorities will be able to use “automated quantity management” to “avoid fraudulent use of supporting documents over the authorised quantities”. This applies where import of specific products into the EU requires a licence for a maximum permitted volume, as for example—in pursuit of environmental objectives—for ozone-depleting substances and hydrofluorocarbons. As the total quota under a single licence can be split into different consignments, and potentially brought into the EU via more than one Member State, customs authorities currently have to manually verify the quantities of such goods already brought in by the trader previously under the same licence.<sup>64</sup> The automatic exchange of information foreseen under the “Single Customs Window” would, instead, enable information on whether the quantitative terms of an import or export licence have been reached to be calculated in real time, and communicated automatically to the relevant customs and regulatory authorities.

### *Scope of the Single Customs Window*

5.16 While called a “Single Window”, the Commission proposal would not, in fact, connect customs authorities in the EU electronically with *all* regulatory databases and systems relevant for the clearance of goods presented for import or export at the EU’s external border. It would only achieve such an interconnection for a limited set of regulatory systems for which the data relevant to customs authorities is held centrally in an EU-level system.

5.17 This limitation results, first, from the fact that not all trade formalities for which documentation is to be stored centrally at EU-level already have fully functional centralised databases.<sup>65</sup> Secondly, and more importantly, many of the EU’s legal requirements applicable to trade in goods are performed using national, not EU-level, systems and databases. This is the case, for example, for export licences for firearms and documentation for trade in endangered species under the CITES Convention. Including these in the Single Window Environment would greatly increase the complexity of the work and, in effect, amount to their centralisation in order for them to operate smoothly with the CSW-CERTEX interconnection. It would also affect the work already undertaken by several Member States to connect their customs authorities electronically to some of

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64 The Commission Impact Assessment notes that, with respect to verification of import limits for hydrofluorocarbons into the EU, “only about 15% of customs offices (i.e. about 400 out of 2 600 customs offices in the EU), are registered in to verify the authenticity and validity of the documents”. In the case of ozone-depleting substances licenses, “only 70% of the licenses are currently verified; the remaining 30% are not checked”.

65 The European Commission Impact Assessment SWD(2020) 238, this is the case for example for catch certificates to Illegal, Unreported and Unregulated” (IUU) fishing, import and export licences for cultural goods, and waste shipment documentation.

their domestic trade-related regulatory databases.<sup>66</sup> However, the Commission does not rule out adding further systems used to fulfil trade formalities under EU law to the “Single Window” in the future, subject to an assessment “on a case by case basis”.

5.18 In addition, EU countries maintain a multitude of national restrictions on trade with non-EU countries in the public interest on the basis of [Article 36 TFEU](#), for example where “justified on grounds of public morality, public policy or public security [or] the protection of health and life of humans, animals or plants”. The applicable formalities to import or export goods caught by these national regulations consequently vary by Member State.<sup>67</sup> Separately, in a small number of cases, regulatory requirements for trade have no EU or national systems but rely on international certificates or licences.<sup>68</sup> Those systems are also out of scope for this initiative.

5.19 Instead, the Single Customs Window Regulation as proposed would contain an [Annex](#) designating specific “non-customs formalities digitalised at EU level”, namely those regulatory procedures for trade in goods where EU legislation already requires traders and the relevant public bodies to submit and store data in an EU-operated electronic system. Only these databases would be connected to the national ‘windows’ via CSW-CERTEX.<sup>69</sup> At first instance, the Commission has proposed that this interconnection should enable customs authorities to verify compliance with “sanitary and phytosanitary requirements” (namely health and food safety controls for animals, plants and food products), “rules regulating the import of organic products, environmental requirements in relation to fluorinated greenhouse gases and ozone depleting substances, and formalities related to the import of cultural goods”.<sup>70</sup> By means of Delegated Acts, a type of EU Statutory Instrument,<sup>71</sup> the Commission could connect national customs authorities to additional EU-level systems used for “non-customs formalities” in the future, such as the aforementioned ePIC system for the export of hazardous chemicals.<sup>72</sup>

66 The Commission states: “Austria, Spain, France, Italy, Lithuania and Sweden have connected their customs systems to national systems hosting either EU regulatory requirements, such as AGRIM, AGREX, CITES, dual use goods licences, surveillance documents and export authorisation of firearms, or national ones”.

67 While Article 36 TFEU also allows for restrictions on trade with other EU Member States, such regulations face a stricter test in that they may not “constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”. The Commission notes that “there is no comprehensive list of the existing national regulatory requirements, but they are multiple and disparate”.

68 The Commission cites the “Certificate of Origin, VI 1 document for wine imports and the Kimberley Process Certification for diamond imports”.

69 To operationalise this arrangement, terminology used across different EU customs and regulatory procedures will be aligned “where possible”, and data submitted for different legal reasons rendered compatible between the systems used by customs authorities and relevant regulatory bodies (for example through format or structural changes). The Commission also envisages that the national single window environments for customs could be used more generally to coordinate customs and regulatory controls in respect of specific consignments, for example physical checks of a particular transport. In the Union Customs Code, the EU’s main rulebook for customs formalities, this is referred to as a “one stop shop” approach (Article 47).

70 The draft Annex to the proposed Regulation lists the following “Union non-customs formalities covered by EU CSW-CERTEX”: [Common health entry documents](#) (CHEDs) for animals, products, non-animal feed and food and plants under TRACES; the TRACES [Certificate of Inspection](#) for products labelled as organic; [Ozone Depleting Licences](#) for trade in substances that affect the ozone layer; licences for the import or export of [fluorinated greenhouse gases](#); and import licences for [cultural goods at risk of being trafficked](#).

71 Delegated Acts, once laid by the European Commission, automatically take effect unless they are voted down by either the European Parliament or the Member States in the Council, preventing it from becoming law.

72 With respect to regulatory formalities that will not be covered by the CSW-CERTEX interconnection at first instance, the [impact assessment](#) produced by the Commission [shows](#) that, in addition to the regulatory systems proposed for inclusion at this stage, there are several others where EU-mandated regulatory controls related to trade in goods make or will make use of an EU-level system: Forest Law Enforcement, Governance and Trade; IUU catch for fish; [Prior Informed Consent](#) for chemicals; the PD-NEA tool for chemicals; export licences for cultural goods; the ICSMS system for non-food products; and the waste shipment documentation regulation.

### *A “single communication channel” for traders to submit customs and regulatory documents*

5.20 In addition to the automatic exchange of data between customs and regulatory authorities, the Single Window as proposed by the Commission would also form the basis for a “single communication point” for traders.

5.21 In other words, economic operators would be able to submit information necessary for customs *and* several non-customs procedures, as applicable to a particular consignment presented for import or export at the EU’s external border, via a single digital platform. As noted, the subsequent decision by these regulatory bodies in relation to a particular shipment—i.e. whether all formalities have been complied with, or whether further information or checks were necessary—would automatically be communicated to customs, who would then know if they had the green light to proceed with clearing the goods for onward transport. However, this “single communication point”, while providing a unified user interface, could still require traders to make multiple submissions to the different customs and regulatory authorities who must provide clearance for their consignment. While the Commission proposal foresees an *option* for individual EU countries to go a step further and allow them to make an “integrated declaration containing the PCA [regulatory] data set(s) together with the customs declaration”, this would not be mandatory.<sup>73</sup>

5.22 Moreover, as noted, the interconnection between customs authorities and other public bodies under the Single Window would not include all regulatory formalities applicable to goods crossing the EU’s external border. By extension, the digital platform for traders will also not cover all potential regulatory formalities with which they may need to comply to import or export a specific consignment of goods.

5.23 In particular, even for the sub-set of such formalities that will be included in the mandatory CSW-CERTEX interconnection between customs and regulatory authorities, the European Commission proposal does not make clear if they will *all* be covered by the ‘single entry’ functionality for businesses, at least initially.<sup>74</sup> Instead, the Commission would need to explicitly designate for which regulatory requirements this simplification would be available, based on their “relevan[ce] to trade facilitation as well as legal and

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73 Article 14 of the proposed Single Customs Window Regulation states: “National single window environments for customs may enable economic operators to submit an integrated declaration containing the PCA data set(s) together with the customs declaration lodged prior to the presentation of the goods in accordance with Article 171 of [the Union Customs Code]”.

74 In preparing this draft legislation, the Commission also considered “a single-entry point at EU level for all border formalities required for the clearance of goods”. While concluding this would have “major benefits in terms of increased efficiency of goods clearance and improved compliance”, it would “require wholesale changes” to the Union Customs Code and “radically change the regulatory and operational practices of the Customs Union”, with “substantial” costs to the Commission, Member States and economic operators. Member States were mostly against the idea, expressing concern about the costs and the fact that it would “remove the connections that have been built up over time between customs authorities and other national and local authorities in areas such as tax, excise and law enforcement” and “that restoring these connections would not be possible, due both to technical challenges and other issues such as data protection concerns”.

technical feasibility”.<sup>75</sup> The Commission has proposed that it could make changes to the list of non-customs formalities that could be fulfilled in this way by means of Implementing Acts, another type of EU Statutory Instrument.<sup>76</sup>

### **Legislative negotiations in Brussels**

5.24 The proposed Regulation to establish the EU’s Single Window Environment for Customs is subject to the ordinary legislative procedure, meaning that it can be amended by both the European Parliament and by a Qualified Majority of the 27 Member States in the Council of Ministers.<sup>77</sup> Ultimately, to become European law, the proposal needs to be approved jointly by the Parliament and Council.

5.25 Given the ambition of what it is trying to achieve, the Commission [has acknowledged](#) that its legislative proposal is only “the first step” towards a Single Customs Window, and accepts that it “will entail significant investment at both EU and Member State level” It has [previously noted](#) that the aims of the proposal are “significantly complex” because of the “involvement of a high number of authorities and the multiplicity of their respective procedures” which will need to be amalgamated or linked into a single system.

5.26 Against this background, negotiations on the final shape of the legislation are unlikely to be rapid. There is no timetable at present for its formal adoption, entry into force and implementation. If and when the Regulation is in place, the Commission foresees implementation of the Single Customs Window to take place gradually “over the next decade or so”, meaning no changes to the way the EU’s external customs and regulatory border operates are imminent. Initial discussions on the proposal between customs experts of the 27 Member States [began](#) in the Council’s Customs Union working party on 17 November 2020.

### **Implications of the Single Customs Window for the UK**

5.27 The UK of course left the European Union on 31 January 2020. It ratified a Withdrawal Agreement governing the terms of its exit, which—among other things—established a post-Brexit transitional period maintaining the pre-existing trading arrangements between the UK and the EU until 31 December 2020. This means that, until the end of the year, the UK remains part of the EU’s Customs Union and Single Market, and must apply EU legislation on trade in goods with non-EU countries as if still a Member State.

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75 More specifically, Article 12(2) of the proposed Regulation states that the Commission will determine whether a non-customs border formality will be included in the ‘single entry’ facilitation based. It will take into account whether “there is an overlap between several data required for the application for supporting documents and the customs declaration”; the volume of documentation issued for the specific formality; the ability of the relevant EU non-customs system to identify the economic operator; and whether the applicable EU non-customs legislation allows the fulfilment of the specific formality through the “Single Window”. In a [press release](#), the Commission did state that “ultimately, the aim is that national Single Windows will replace the multitude of different portals used by the different authorities responsible for border checks”.

76 Unlike Delegated Acts, Implementing Acts must normally be actively approved by qualified majority of the EU Member States before they can take effect. However, the Commission has in this instance proposed use of the “advisory procedure” under Article 4 of [Regulation 182/2011](#), meaning it would only have to “taking the utmost account of the conclusions drawn” by a Committee of Member State experts. In addition, the European Parliament cannot block Implementing Acts.

77 The legal base for the proposed Regulation is [Article 33 TFEU](#) (customs cooperation), [Article 114 TFEU](#) (the EU internal market) and [Article 207 TFEU](#) (the Common Commercial Policy).

5.28 While the new Single Window Environment for Customs as proposed by the European Commission will obviously not take effect before the end of this transition period, it is still of relevance for the UK.

### ***Impact of the Single Customs Window on UK-EU trade***

5.29 First, the EU’s Member States combined in their Single Market remain the UK’s largest trading partner. According to the Office for National Statistics, UK exports of goods to the EU totalled £172 billion in 2018,<sup>78</sup> although the EU’s share of total UK exports has declined in recent years from 54 per cent in 2006 to 46 per cent in 2019.<sup>79</sup> Imports of goods into the United Kingdom from the 27 EU Member States that year were valued at £265.7 billion. At the end of the transition period, these trade flows with the EU will become subject to customs and regulatory controls which have been absent while the UK has been in the Single Market. Even if there is a UK-EU free trade agreement, the administrative burden associated with the documentation and licensing requirements required by EU law for imports and exports is unlikely to be mitigated in any meaningful way.<sup>80</sup>

5.30 Therefore, any changes to how businesses involved in UK-EU trade have to submit the necessary documentation and licences to the border authorities on the EU side will have an impact here. Since the aim of the Commission proposal for a Single Customs Window is to “facilitate trade” by making it easier to comply with those formalities, and decreasing the time taken by EU customs authorities to release goods, the draft legislation would appear to be of benefit to the UK. However, given the complexity of interconnecting the various systems as proposed by the Commission, and the fact that legislative deliberations on the SCW have only just begun, any on-the-ground changes to how the EU’s external border for goods is operated are a long way off. Close monitoring of progress in the legislative deliberations in Brussels will be key to anticipate how the Single Customs Window might affect UK trade with the EU.

### ***Impact of the SCW under the Protocol on Ireland/Northern Ireland***

5.31 Secondly, and perhaps more pressingly, the proposed EU Single Customs Window is of direct pertinence under the aforementioned [Protocol on Ireland/Northern Ireland](#) as set out in the Withdrawal Agreement.

5.32 This Protocol aims to avoid the need for any customs and regulatory infrastructure on the land border on the island of Ireland, by requiring the UK to apply EU legislation on goods in and to Northern Ireland for at least six years beyond the end of the transition

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78 Compared to £177.4 billion in UK goods exports to non-EU countries.

79 [UK Trade in Numbers](#) (February 2020), p. 8.

80 While a trade agreement with the EU might reduce for example the physical inspection rate applied to UK imports of animals and food products into the EU, it seems unlikely they will result in the removal of the requirement for traders to submit the relevant customs and regulatory documentation that must accompany every consignment. The EU has only waived the need for such documentation in its trade with specific non-EU countries to date on the basis of the latter’s alignment with EU rules, for example Norway (whose trade with the EU does not involve regulatory formalities at the EU border because it aligns with EU Single Market rules on goods as part of the EEA Agreement). The UK Government is not pursuing such an arrangement and has specifically argued against any obligation to remain aligned with EU law beyond the end of the transition period.

period on 31 December 2020.<sup>81</sup> In principle, that means that the EU border formalities, insofar mandated by European law as listed in the Protocol, must also be applied to goods moving through Northern Irish ports on their way to or from Great Britain and other non-EU countries.<sup>82</sup>

5.33 Crucially, in the context of the proposal for a Single Customs Window, the alignment provisions of the Protocol are “dynamic”. This means that many *future changes* to EU rules on goods listed will also need to be implemented in Northern Ireland as the existing legislation is “amended or replaced”. The Government, of course, no longer has formal input into the EU legislative process leading up to such amendments, but they will nonetheless apply automatically in Northern Ireland without the need for UK Government consent.<sup>83</sup> Where the EU wants to add an entirely new area of EU legislation to the Protocol that does not ‘amend or replace’ existing rules already listed, it will need the UK Government’s consent first. Should the Government refuse such consent, the Protocol allows the EU to take “appropriate”—but unspecified—“remedial measures”.<sup>84</sup>

5.34 Neither the proposed Regulation to establish the SCW or the European Commission’s explanatory notes accompanying it refer directly to its potential implications for the UK or Northern Ireland under the Protocol. In a strict legal sense, the Single Customs Window would be a stand-alone arrangement, with its establishing Regulation making only consequential amendments to the Union Customs Code (which is listed in the Protocol as continuing to apply in and to Northern Ireland beyond the end of the transition period). However, the effect of that consequential amendment is to insert a reference to the SCW into Article 5(2) of the Customs Code, which defines—including for the purposes of the Northern Ireland Protocol<sup>85</sup>—the rules that make up EU customs legislation.<sup>86</sup> In addition, the clear intention of the proposal is to *replace* existing ways in which customs and regulatory authorities subject to EU law cooperate to clear goods moving into or out of the Single Market and how traders engage in those processes, rather than introducing entirely new formalities.

5.35 As such, it is likely the Commission would see the Single Customs Window as EU legislation which ‘amends or replaces’ existing rules as applicable under the Protocol.<sup>87</sup>

81 The legislative alignment provisions of the Protocol will remain in effect indefinitely unless the Members of the Northern Ireland Assembly vote against their continued operation. The first such vote is to take place by the end of 2024, and a vote against the alignment provisions would cause them to lose legal effect after a further two-year period, i.e. the end of 2026. Further votes on the continued operation of the alignment provisions will take place every four or eight years for as long as they are in effect.

82 This is why the Government is [expanding port infrastructure](#) in Northern Ireland, in particular by funding the construction of Border Control Posts where incoming consignments of animals and food products shipped from Great Britain will undergo the sanitary controls required by EU law. EU tariffs might also be applied to certain goods shipped from the rest of the UK to Northern Ireland if the Government and EU, in their wider negotiations on a new economic relationship, do not agree on a zero-tariff, zero-quota free trade agreement.

83 There is a Joint Consultative Working Group under the Protocol where the EU “shall inform the United Kingdom about planned Union acts within the scope of this Protocol, including Union acts that amend or replace the Union acts listed in the Annexes to this Protocol”. However, this does not give the UK any decision-making role in relation to such “planned Union acts”.

84 Article 13 of the Protocol.

85 Article 5(3) of the Protocol.

86 Article 23 of the draft Regulation establishing the Single Customs Window.

87 We note that a “[roadmap](#)” produced by the European Commission setting out its proposed approach to the Single Customs Window in 2018—so well after the UK’s notification to exit the EU—repeatedly refers to “28” national customs administrations that would benefit from the initiative. Although this is most likely a result of the proposal having been under preparation since well before the UK voted to leave, in the context of the Protocol as ratified it nevertheless underlines the potential implications of the draft Regulation for the UK.

If the Government agreed with that interpretation, it would then—as a matter of international law—have to apply the Single Customs Window to goods moved between Northern Ireland and Great Britain,<sup>88</sup> provided the alignment provisions of the Protocol are still in effect at that point. However, the question of whether the SCW would ‘amend or replace’ existing EU customs rules already applicable under the Protocol is not a decision for the EU to make unilaterally. If the Government disagrees, it could initiate a dispute resolution procedure under the Withdrawal Agreement to determine whether the SCW would *need* to be applied to trade in goods between Northern Ireland and Great Britain as a matter of international law.<sup>89</sup>

5.36 If the future Single Customs Window legislation were automatically applicable in and to Northern Ireland, this still leaves uncertainty about how it would actually need be applied in that context. In particular, some of the formalities which the SCW aims to streamline may not be applicable to the movement of goods between Northern Ireland and Great Britain. The Protocol stresses the importance of “maintaining the integral place of Northern Ireland in the United Kingdom’s internal market”, which the Government is seeking to use to secure certain derogations from some EU rules otherwise applicable under the Protocol that could pose a barrier to intra-UK trade. Where there is a specific legal basis to do so, such measures can be adopted with the mutual agreement of both the UK and the EU in the Joint Committee established by the Withdrawal Agreement.

5.37 For example, the Government wants to waive the need for export declarations on goods shipped from Northern Ireland to Great Britain, and sanitary checks on shipments of food products from Great Britain for sale in Northern Irish supermarkets, both of which are trade formalities within the proposed scope of the Single Customs Window.<sup>90</sup> The Government has of course also included clauses in the [Internal Market Bill](#) that would give it the power to unilaterally dis-apply certain provisions of the Protocol if the EU does not agree to such derogations, and will reportedly include further such clauses in the forthcoming Finance Bill.

5.38 It is important to remember in this context the purpose of the Single Customs Window proposal: to speed up customs and regulatory formalities on goods entering or leaving the EU’s Single Market, and make it easier for businesses to fulfil their legal requirements in that respect. Insofar as those formalities may also apply on trade between Great Britain and Northern Ireland under the Protocol in due course, such movements of goods would also benefit from a simplification of customs and regulatory procedures. It would, nevertheless, entail further changes to the operation of administrative formalities for goods moved between Northern Ireland and Great Britain (and other non-EU jurisdictions), and also require the Government to shoulder part of the costs of any new electronic systems for only part of the UK.

5.39 As of 26 November 2020, the Internal Market Bill has not yet received Royal Assent and discussions are on-going between the Government and the EU in the Joint Committee to establish the practical implementation of the Protocol. As such, the exact way in which

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88 And between Northern Ireland and other non-EU jurisdictions.

89 If the SCW was seen as ‘new’ legislation which can only be incorporated into the Protocol with the UK Government’s consent, a refusal to apply it would permit the EU—as noted—to apply “remedial measures”.

90 However, the EU does not appear to share the Government’s broad interpretation of the scope of derogations from the EU’s normal border formalities the Joint Committee is legally empowered to establish.

EU customs and regulatory formalities will apply in and to Northern Ireland—and by extension how the Single Customs Window might affect them—remains unclear at this stage.

## The Government’s position

5.40 The Financial Secretary to the Treasury, Rt Hon. Jesse Norman MP, submitted an [Explanatory Memorandum](#) on the draft Regulation to establish the EU’s Single Window Environment for Customs on 16 November 2020. After summarising the substance of the Commission proposal, the Minister argues that “the legislative changes in the EU’s proposal are expected to take effect after 1 January 2021 and therefore do not impact Great Britain”.

5.41 The Memorandum does state, however, that “the proposal could [...] have direct effect under the Northern Ireland Protocol” because “customs legislation as defined in the Union Customs Code will apply to the UK in respect of Northern Ireland after the end of the Transition Period”. In practice, the Minister says, this means the UK “may have to support [Northern Irish] businesses in adapting to the [Single Customs Window] as it is implemented over time and be expected to upload relevant information [...] onto the EU CSW CERTEX for goods flowing from [Great Britain] and [the] Rest of World to [Northern Ireland]”.<sup>91</sup> However, as discussed above, he notes that “this is, of course, subject to future decisions within the UK-EU Joint Committee or other discussions” about the implementation of new EU legislation under the Protocol.<sup>92</sup>

5.42 Indeed, the Memorandum does not reject the SCW proposal, and its potential benefits for the UK in this regard, out of hand. The Minister describes it as an “ambitious project that will entail substantial investment at both EU and Member State level [...] in transforming national legislation, processes and IT systems”. Noting that the Protocol means “there will be some new administrative requirements” for movements of goods between Great Britain and Northern Ireland, the Minister adds that the Government is committed to ensuring that “electronic processes are streamlined and simplified to the maximum extent”. This would dovetail with the purposes of the Single Customs Window proposal.<sup>93</sup> The Memorandum also notes that the UK has already developed a national “single window” system for imports of animals, animal products and fish, and is working on similar initiatives for plants, seeds and horticultural products, which the Minister—tellingly—calls a “a major step towards implementing the EU Single Window requirements for the future”.<sup>94</sup>

91 An earlier, erroneous version of the Explanatory Memorandum referred to the UK maybe having to “support NI businesses in adapting to the CSW as it is implemented over time and be expected to upload relevant information [...] onto the EU CSW CERTEX for goods flowing from NI to the EU”.

92 The Minister’s Memorandum also refers to the Government’s new Trader Support Service (TSS) to give “businesses [...] guidance on what the Protocol means for them, including the steps they need to comply with the Protocol. Traders will also be supported to understand the information they will need to collect about their goods, including their description, value and any supporting documentation required”.

93 The Minister’s Memorandum also notes that, to the extent that costs for the implementation of the Single Window are borne by Member States, “these may apply to the UK to ensure that Northern Ireland remains aligned with EU legislation”.

94 Although the Minister also noted that the UK’s international trade environment “is already highly automated and uses sophisticated electronic port inventory systems to control the movement of cargo as well as fully electronic declaration processing systems to handle Customs Declarations, calculate customs charges and collect revenue”, he does not refer to the November 2020 [report by the National Audit Office](#) that found “HMRC must make significant further changes to its customs systems” by the end of 2020 “to enable it to handle the projected increase in customs declarations”.

5.43 Finally, the Financial Secretary notes that, because “Northern Ireland has an interest in the impact of the Customs Single Window, the Executive Office has been consulted in the preparation of this explanatory memorandum”. There is no indication in the document about the Executive’s position on the proposal or how it might impact on Northern Ireland’s position in the UK’s internal market, nor about the Government’s plans—if any—for engagement with the EU to ensure that the eventual legislation for the Single Window reflects the UK’s interests, including under the Northern Ireland Protocol, to the extent possible.

## Conclusions and action

5.44 The European Commission’s proposal for a Single Customs Window is a major and ambitious undertaking to streamline the operation of the EU’s customs and regulatory border for trade with non-EU countries. It would require, as the Minister rightly notes, significant investment by EU Member States in “transforming national legislation, processes and IT systems”. Its implications for the UK, both as a major trading partner of the EU and under the terms of the Northern Ireland Protocol, remain unclear as discussions on the statutory framework—in which the UK of course no longer takes part—have only just begun.

5.45 The envisaged changes to the operation of the EU’s customs border, insofar as they result in a speedier clearance process for goods entering or leaving the EU, could be of benefit to British traders. However, there would also, as the Minister rightly notes, be adaptation costs. Our exit from the EU has already required substantial changes to the operations of the UK customs border, necessitating large-scale investment by both the Government and the private sector. While the Single Customs Window is of course a less drastic change, it could still require traders to make further adjustments to their operations for trade with the EU in the coming years, when the new arrangements following the UK’s withdrawal from the EU have only just bedded in. We therefore disagree with the Minister’s assertion that the proposal “do[es] not impact Great Britain”. Rather, any changes to the way the EU operates its external border for goods should be monitored closely so that the practical implications for UK-EU trade in due course can be anticipated and the necessary preparations made.

5.46 The situation is of course complicated further by the unprecedented arrangements foreseen by the Protocol on Ireland/Northern Ireland, which keeps Northern Ireland in the UK’s customs territory but simultaneously requires the application of EU customs and regulatory controls on goods moved through its ports in trade with Great Britain and other non-EU jurisdictions. From the information available to us at this stage, it appears likely that the Regulation establishing the Single Customs Window—if approved by the European Parliament and the Council broadly in the form proposed by the Commission—would have to be implemented in Northern Ireland under the terms of the Protocol. The Minister’s Explanatory Memorandum notes the SCW *could* apply to goods flowing from Great Britain and the rest of the world to Northern Ireland, and describes the Government’s work to date on national “single window” initiatives for international trade as “a major step towards implementing the EU Single Window requirements” in the future. However, this would be subject to further discussions between the UK and the EU in due course.

5.47 In light of these uncertainties, the Committee will expect the Government to follow the discussions on the Single Customs Window proposal closely and engage with the EU where necessary, not least given the obvious link to the operation of the Northern Ireland Protocol and the legal, administrative and operational implications for the movement of goods between Great Britain and Northern Ireland in due course. We have therefore written to the Financial Secretary to the Treasury to clarify the Government’s assessment of the implications of the SCW proposal under the Protocol, and whether it has—or intends to—communicate any concerns to the EU over its substance. A copy of that letter is annexed to this Report.

5.48 In the meantime, we draw the Commission proposal to the attention of the Business, Energy and Industrial Strategy Committee, the Committee on the Future Relationship with the EU, the Northern Ireland Affairs Committee, the International Trade Committee and the Treasury Committee.

***Letter from the Chair to the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP)***

Thank you for your Explanatory Memorandum of 16 November 2020 on the recent European Commission proposal for a “Single Customs Window” (SCW), to improve cooperation between customs authorities and other public bodies in the EU involved in the verification of regulatory controls on goods entering or leaving its Single Market and Customs Union.<sup>95</sup>

We are not convinced by your assertion that the proposal has “no impact” on Great Britain, given that it could materially affect the practicalities of the UK’s day-to-day trade with the EU. However, we note that you do envisage the possibility that the Government may have to implement the SCW under the Protocol on Ireland/Northern Ireland. In particular, if adopted, the initiative could alter how traders would submit information on goods moved between Northern Ireland and Great Britain<sup>96</sup> insofar required under the Protocol as implemented by the UK, and how HM Revenue & Customs and other relevant public bodies would verify compliance with those obligations on such intra-UK trade. You note that the Government’s work to date on several domestic “single window” schemes for international trade already constitutes “a major step towards implementing the EU Single Window requirements” in the future.

As you are aware, future EU legislation within the scope of the Protocol will only apply to and in Northern Ireland automatically insofar as it ‘amends or replaces’ EU rules already listed in that Protocol. In particular, customs legislation as defined in Article 5(2) of the Union Customs Code (UCC) “shall apply to and in the United Kingdom in respect of Northern Ireland”.<sup>97</sup> In this context, we would be grateful if you could:

- confirm whether the Government is of the view that, by inserting a reference to the Single Customs Window into Article 5(2) of the UCC, the proposed SCW Regulation—if adopted broadly as proposed by the Commission—would indeed ‘amend or replace’ the implementation of existing EU customs and regulatory

95 European Commission document COM(2020) 673.

96 As well as movements of goods between Northern Ireland and other non-EU jurisdictions.

97 Article 5(3) of the Protocol on Ireland/Northern Ireland.

formalities already applicable under the Protocol (without prejudice to any future Decisions of the UK-EU Joint Committee to modify how these operate in the unique context of the Protocol); and

- therefore, the facilitations and electronic systems foreseen by the Single Customs Window initiative would, in principle and subject to the further “discussions” with the EU to which your Memorandum refers, need to be implemented in the UK with respect to goods moved between Northern Ireland and Great Britain (and between Northern Ireland and other non-EU jurisdictions).

By extension, given the strong possibility that this EU legislation if adopted could apply to and in Northern Ireland under the Protocol, and in any event impact on the conduct of UK trade with the EU more generally, it would be helpful if you could set out:

- what the Government’s view is of the merits of the proposal in terms of its objective of streamlining EU customs procedures and making it easier for traders to fulfil their legal obligations; and
- what plans it has to engage with the EU institutions—including via the Joint Consultative Working Group under the Withdrawal Agreement—to ensure that any final legislation to establish the Single Customs Window reflects, to the extent possible, the UK’s economic and political interests, especially in relation to Northern Ireland.

We intend to monitor the legislative deliberations on this proposal in Brussels closely and will consider the implications of the SCW proposal for the application of administrative processes to the movement of goods between Northern Ireland and Great Britain in both directions further in due course and when there is more clarity about the practical implementation of the Protocol.

We look forward to receiving your reply before the Christmas recess.

## 6 Preventing the dissemination of terrorist propaganda online<sup>98</sup>

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**The proposed Regulation is legally and politically important because:**

- it concerns an area of policy which is “inherently cross-border in nature” and in which the Government is keen to ensure alignment of EU and UK law after the post-exit transition period ends on 31 December 2020; and
- it is relevant to the Government’s own plans to legislate on “online harms”.

### **Action**

- Write to the Minister for Security (Rt Hon. James Brokenshire MP) requesting a further update on the outcome of trilogue negotiations on the proposed Regulation and reiterating our interest in wider EU developments (such as the proposed EU Digital Services Act) which may affect businesses, consumers and other online users in the UK, inform the regulatory choices available to the Government as it introduces its own legislation to tackle online harms, and assist in our understanding of the consequences of regulatory divergence.
- Draw to the attention of the Home Affairs Committee, the Justice Committee, the Digital, Culture, Media and Sport Committee and the Joint Committee on Human Rights.

### **Overview**

6.1 This [proposal for a Regulation](#), first put forward in September 2018, is intended to transform the handling of online terrorist content by empowering national authorities to order its removal within an hour of its appearance on the web and requiring online platforms to take active steps to detect and prevent the dissemination of terrorist propaganda. Applying a uniform set of rules would, the European Commission believes, be far less burdensome for companies operating within the EU’s digital Single Market than the current patchwork of national rules. The Council agreed its [general approach](#) on the proposed Regulation in December 2018, with the European Parliament deciding on its [negotiating position](#) in April 2019.<sup>99</sup> Progress in agreeing a compromise text has been hampered by the Covid-19 pandemic and by concerns that the safeguards needed to strike the right balance between public security and the protection of fundamental rights do not go far enough.<sup>100</sup>

6.2 The Government has followed the negotiations closely, recognising that there are important synergies between the proposed Regulation and its own domestic agenda to

98 Proposal for a Regulation on preventing the dissemination of terrorist content online; Council number 12129/18 + ADDs 1–3, COM(18) 640; Legal base—Article 114 TFEU, ordinary legislative procedure, QMV; Department—Home office; Devolved Administrations consulted; ESC number 40069.

99 See our predecessor Committee’s Seventy-third Report HC 301–lxxi (2017–19), [chapter 6](#) (4 September 2019) for further details on the European Parliament’s position. See also ESC’s Forty-sixth Report HC 301–xlv (2017–19), [chapter 16](#) (28 November 2018) and Fiftieth Report HC 301–xlix (2017–19), [chapter 5](#) (9 January 2019).

100 See the Committee’s earlier Reports: Forty-first Report HC 301–xl (2017–19), [chapter 6](#) (24 October 2018) and Twenty-third Report HC 229–xix (2019–21), [chapter 7](#) (1 October 2020).

legislate on a broader range of online harms, as set out in the Government’s [Online Harms White Paper](#) published in April 2019. The Government has made clear that this is an area in which it would want to ensure alignment of EU and UK law after the post-exit transition period has ended because the challenges posed by online harms are “inherently cross-border in nature”.<sup>101</sup>

6.3 In his [letter of 14 September 2020](#), the Minister for Security (Rt Hon. James Brokenshire MP) informed us that the German Presidency was keen to restart negotiations with a view to agreeing a compromise text. Since then, EU home affairs ministers have called for negotiations to be completed “by the end of the year”, stating:

The aim is to enable [the] issuing [of] removal orders with cross-border effect to create a new and rapid and effective instrument to counter terrorist content online within an hour or less of its being reported, while maintaining effective safeguards for the protection of fundamental rights.<sup>102</sup>

6.4 In his [latest update of 3 November 2020](#), the Minister responds to our request for a progress report on the negotiations and to questions we raised about the timescale for introducing domestic legislation to counter online harms and how that legislation might be affected by the EU’s regulatory framework. Noting first that the UK no longer has direct knowledge of the trilogue negotiations taking place between the Council, European Parliament and Commission, the Minister identifies three “key concerns” which are the focus of discussions: the cross-border jurisdiction of removal orders, the use of automated tools by online platforms to identify and take down terrorist content proactively (without waiting for a removal order), and the protection of material disseminated for educational, journalistic, artistic or research purposes. He indicates that it is too early to say how these issues will be resolved in the final compromise text.

6.5 Turning to the Government’s timetable for domestic legislation on online harms, the Minister expects the Government’s full response to its White Paper (setting out the basis for future UK legislation) to be published “later in the autumn, with a view to introducing Online Harms legislation when parliamentary time allows”. The Government response is therefore likely to be available before trilogue negotiations on the proposed Regulation are concluded, but domestic legislation is likely to follow after the EU framework for regulating online terrorist content has been agreed. The Minister continues:

We do not assess that the scope or content of the EU’s Regulation will affect or constrain the UK’s ability to legislate on online harms. The UK’s proposed legislation is more ambitious than the EU’s TCO [terrorist content online] Regulation in many ways: it is not specific to any one single online harm and includes ‘legal but harmful’ material within its scope, including (but not limited to) cyberbullying and pro-anorexia content. The EU’s TCO Regulation applies solely to terrorist content, as defined in the EU’s Terrorism Directive of 2017, so is much more narrowly-focussed. The UK’s proposed legislation is also more ambitious in its intention to establish a

101 See the [letter of 24 July 2019](#) from the then Minister for Security and Economic Crime (Rt Hon. Ben Wallace MP) to the Chair of the European Scrutiny Committee.

102 See the [Joint Declaration issued by EU home affairs ministers on the recent terrorist attacks in Europe](#), 13 November 2020.

duty of care for platforms to take reasonable steps to protect their users from harms, whilst the EU’s TCO Regulation is centred more around a notice and takedown regime.

6.6 The Minister draws our attention to proposals (currently being finalised by the Commission) for an EU Digital Services Act which will be broader in scope than the proposed Regulation on online terrorist content and address “user safety in the context of a broader set of online harms”. The Government intends to monitor the proposals as they develop and how they may affect internet users in the UK. He concludes:

I am clear that constructive engagement with the EU, as a friendly, likeminded partner, on a range on policy issues, including online harms, will remain important in the future. Officials within the Home Office and the UK Mission to the EU in Brussels are in regular dialogue to facilitate engagement where needed and promote a positive bilateral relationship.

## Action

6.7 Write to the Minister:

- requesting a further update on the outcome of trilogue negotiations on the proposed Regulation;
- welcoming his assurance that the Government intends to monitor wider EU developments, such as the proposed EU Digital Services Act, which may affect the regulatory framework within which businesses, consumers and other online users in the UK operate; and
- reiterating our interest in areas of EU regulation which are “inherently cross-border in nature” with a view to assessing their impact on or implications for the UK’s own regulatory domestic agenda and the consequences of regulatory divergence.

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

Thank you for your letter of [3 November 2020](#) updating us on the progress of trilogue negotiations on a proposed Regulation to prevent the dissemination of terrorist content online. We note that, since you wrote, EU home affairs ministers have called for the negotiations to be concluded by the end of the year.<sup>103</sup> They have also urged the European Commission to present “an ambitious Digital Services Act” which would strengthen the obligations on internet companies to remove other forms of illegal online content and introduce new penalties while also ensuring respect for fundamental rights, including freedom of expression and opinion.

As I noted in [my letter of 1 October 2020](#), the Committee recognises that there may be important synergies between the EU’s approach to regulation in this important area and the Government’s domestic agenda, as set out in the [Online Harms White Paper](#) published

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103 See the [Joint Declaration issued by EU home affairs ministers on the recent terrorist attacks in Europe](#), 13 November 2020.

in April 2019.<sup>104</sup> Indeed, the Government has previously made clear that it would “want to ensure alignment of UK and EU law, particularly in an area which is inherently cross-border in nature”.<sup>105</sup> We therefore look forward to receiving a further update on the outcome of trilogue negotiations on the proposed Regulation.

We agree that it will be important to monitor wider EU developments, such as the proposed EU Digital Services Act, to help inform the regulatory choices available to the UK as it introduces its own legislation to tackle online harms, to understand how the EU’s regulatory framework may affect businesses, consumers and other online users in the UK, and to manage the consequences of regulatory divergence. We look forward to discussing future scrutiny arrangements with the Government, as well as its role in facilitating effective scrutiny by Parliament, as the end of the post-exit transition period approaches.

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104 See Command Paper 57. In February 2020, the Government published an [initial response](#) to the consultation launched by the White Paper. It said that legislating on Online Harms was a key priority for the Government but has yet to publish a draft Bill.

105 See the [letter of 24 July 2019](#) from the then Minister for Security and Economic Crime (Rt Hon. Ben Wallace MP).

## 7 Documents not considered to be legally and/or politically important

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### Department for Environment, Food and Rural Affairs

(41625) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Sugar Council concerning the accession of the United Kingdom to the International Sugar Agreement, 12383/20 1992.  
COM(20) 671

### Department for Transport

(41607) Council Recommendation (EU) 2020/1551 of 22 October 2020 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction.  
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(41616) Communication from the Commission Covid-19 Guidance on persons exempted from the temporary restriction on non-essential travel to the EU as regards the implementation of Council Recommendation 12400/20 2020/912 of 30 June 2020.  
COM(20) 686

(41619) Communication from the Commission to the European Parliament, the European Council and the Council upgrading the transport Green Lanes to keep the economy going during the Covid-19 pandemic resurgence.  
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COM(20) 685  
+ADD 1

(41634) Report from the Commission to the European Parliament and the Council on the implementation of Directive 2014/47/EU on the technical roadside inspection of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC.  
12544/20  
COM(20) 676

(41636) Council Recommendation (EU) 2020/1632 of 30 October 2020 on a coordinated approach to the restriction of free movement in response to the Covid-19 pandemic in the Schengen area.  
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### Home Office

(41256) Communication from the Commission Covid-19 Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls.  
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C(20) 3250

(41603) Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.  
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COM(20) 661

## Ministry of Housing, Communities and Local Government

(41566) Communication from the Commission to the European Parliament and the Council A Union of Equality: EU Roma strategic framework for equality, inclusion and participation.  
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COM(20) 620

+ ADDs 1–2

(41567) Proposal for a Council Recommendation on Roma equality, inclusion and participation.  
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COM(20) 621

# Annex

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## *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:** EU Single Customs Window for trade in goods [Proposed Regulation (SNC)]

**Defence Committee:** EU sanctions update: Russia, Belarus and Turkey [Council Decisions and Regulations (SC)]

**Digital, Culture, Media and Sport Committee:** Preventing the dissemination of terrorist propaganda online [Proposed Regulation (SNC)]

**Education Committee:** European Education Area and skills action plan Commission Communications (SC)]

**Environment, Food and Rural Affairs Committee:** Fishing opportunities 2021 [Proposed Regulation (SNC)]

**Foreign Affairs Committee:** EU sanctions update: Russia, Belarus and Turkey [Council Decisions and Regulations (SC)]

**Committee on the Future of the European Union:** EU sanctions update: Russia, Belarus and Turkey [Council Decisions and Regulations (SC)]; EU Single Customs Window for trade in goods [Proposed Regulation (SNC)]

**Home Affairs Committee:** Preventing the dissemination of terrorist propaganda online [Proposed Regulation (SNC)]

**Joint Committee on Human Rights:** Preventing the dissemination of terrorist propaganda online [Proposed Regulation (SNC)]

**Justice Committee:** Preventing the dissemination of terrorist propaganda online [Proposed Regulation (SNC)]

**International Development Committee:** Trade preferences for developing countries [(a) Report, (b) Commission Delegated Regulation (SNC)]

**International Trade Committee:** EU Single Customs Window for trade in goods [Proposed Regulation (SNC)]; Trade preferences for developing countries [(a) Report, (b) Commission Delegated Regulation (SNC)]

**Northern Ireland Affairs Committee:** EU Single Customs Window for trade in goods [Proposed Regulation (SNC)]; Trade preferences for developing countries [(a) Report, (b) Commission Delegated Regulation (SNC)]

**Treasury Committee:** EU Single Customs Window for trade in goods [Proposed Regulation (SNC)]

# Formal Minutes

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**Wednesday 25 November 2020**

Members present:

Sir William Cash, in the Chair

Jon Cruddas	Mr David Jones
Allan Dorans	Craig Mackinlay
Richard Drax	Anne Marie Morris
Margaret Ferrier	Charlotte Nichols
Mrs Andrea Jenkyns	Greg Smith

Scrutiny Report

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 7 read and agreed to.

*Resolved*, That the Report be the Thirtieth Report of the Committee to the House.

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

[Adjourned till Thursday 3 December at 4.00 p.m.]

## Standing Order and membership

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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](http://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*)