



House of Commons
European Scrutiny Committee

Thirty-first Report of Session 2019–21

Documents considered by the Committee on 3 December 2020

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Digital and Data: Commission strategies¹

These EU documents are politically important because:

- they set-out the Commission’s high-level aims and ambitions in the digital and data spheres over the next 5–10 years; and
- they serve as important comparator documents for the UK’s own plans in these areas and the individual actions they detail could potentially have implications for the UK as a non-EU Member State.

Action

- Write to the Minister responsible for the Commission’s ‘European Strategy for Data’, Rt Hon. John Whittingdale MP, requesting further information on: the EU’s plans for the creation of ‘data spaces’ in key economic sectors and what this could mean for the UK; and the potential revision of Article 20 of the GDPR—on data portability—and if the Government will look at this itself.
- Draw to the attention of the Digital, Culture, Media and Sport Committee, and the Business, Energy and Industrial Strategy Committee.

Overview

1.1 The two documents under scrutiny—[document \(a\)](#) (Shaping Europe’s digital future) and [document \(b\)](#) (a European Strategy for Data)—set-out the Commission’s high-level aims and ambitions in the digital and data spheres over the next 5–10 years.

1.2 They provide details of the legislative, policy and funding initiatives that the Commission intends to bring forwards and place digital and data—and associated technologies, services and infrastructure—at the heart of its vision for the EU.

Document (a) (41087) (Shaping Europe’s digital future)

1.3 The Commission’s strategy covers two main areas: data and artificial intelligence. The strategy’s overarching aim is to ensure that an enabling policy and legislative framework is in place so that Europe can reap the benefits of new digital technologies while giving citizens, businesses and governments control over the ‘digital revolution’.

1.4 The Commission’s approach is two-fold: it focusses on creating trust among EU citizens and business in digital technologies; and aims to develop European digital capabilities and strengthen the European digital single market.

¹ Document (a)—Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Shaping Europe’s digital future; Council and COM number: 6237/20 and COM(20) 67; Legal base:—Dept: Culture, Media and Sport; Devolved Administrations: Consulted; ESC number: 41087. Document (b)—Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European strategy for data; Council and COM number: 6250/20 and COM(20) 66; Legal base:—Dept: Culture, Media and Sport; Devolved Administrations: Consulted; ESC number: 41088.

1.5 The strategy is divided into three main parts: technology that works for people (focussing on the development, deployment and uptake of technology that makes a difference to people’s lives); a fair and competitive economy (where companies of all sizes, and in any sector, can compete on equal terms); and an open, democratic and sustainable society (with a trustworthy environment in which citizens are empowered in how they act and interact, and the data they provide both online and offline).

1.6 Under each part, future policy, legislative and investment actions are outlined. These cover multiple areas and are not specific to the data or digital spheres.

1.7 Those that are listed and are of particular interest include:

- a White Paper on Artificial Intelligence (AI) (setting-out options for a legislative framework for trustworthy AI);
- accelerating investments in Europe’s Gigabit connectivity (through a revision of the Broadband Cost Reduction Directive);²
- 5G corridors for connected and automated mobility;
- an initiative to improve labour conditions for platform workers;
- a Digital Services Act (to ensure that markets characterised by large platforms with significant network effects acting as gate-keepers, remain fair and contestable for innovators, businesses and new market entrants);
- an Industrial Strategy Package;³
- a media and audio-visual Action Plan; and
- a revision of the eIDAS Regulation (to improve its effectiveness, extend its benefits to the private sector and promote trusted digital identities).⁴

1.8 These and other actions will be subject to separate scrutiny in the coming months.

Document (b) (41088) (Communication on a ‘European Strategy for Data’)

1.9 The ‘European Strategy for Data’ is one of the key actions outlined in the Commission’s ‘digital future’ Communication (document (a)) and sets-out a series of policy and legislative proposals and funding commitments with the overall aim of creating a ‘single European data space’ (or ‘single market for data’). The measures outlined in the Strategy are intended to form part of a comprehensive approach to the EU’s ‘data economy’ to increase the use of, and demand for, data and data-enabled products and services throughout the Single Market.

2 [Directive 2014/61/EU](#) of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks Text with EEA relevance.

3 The strategy was first considered by the Committee in its Sixteenth Report HC 229–xvii (2019–21), [Chapter 1](#) (9 July 2020).

4 [Regulation \(EU\) No 910/2014](#) of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

1.10 The Communication argues that concerted action in the digital sphere is required based on the growth of data volumes and the rapidity of technological change, the increasing importance of data for the economy and society, and a desire to position the EU as a leader in the use of data, its regulation and governance, and the development of data products and services. The Commission also highlights the problems that it perceives are holding the EU back from realising its full potential in the data economy. These include: the availability of data between the public, businesses and governments; imbalances in market power between small start-ups and multi-nationals; issues surrounding poor data interoperability and quality; weaknesses in data governance; EU technological dependence in areas of strategic importance (e.g. cloud computing); a lack of awareness on the part of individuals regarding their data rights; gaps in skills and data literacy; and a need to improve cybersecurity.

1.11 The Commission's Data Strategy is built around four pillars with individual policy and legislative proposals and funding commitments set-out under each.

Pillar 1 (A cross-sector governance framework for data access and use)

1.12 The Commission will legislate to put in place an enabling framework for the governance of 'common European data spaces'. The Strategy describes data spaces as sector specific—or including groups of linked sectors e.g. transport and environment—with specific rules and governance mechanisms for each (including on data ownership, use and reuse, and interoperability). Information on future regulation in this area reads as being facilitative and setting common parameters within which more detailed and prescriptive rules will be set.

1.13 Through the data spaces approach, the Commission hopes to improve data quality, allow for its employment in pursuit of linked EU objectives, and better respect individual rights (e.g. on ownership and onwards usage).⁵

1.14 Key forthcoming actions include:

- a legislative framework for the governance of common European data spaces (expected Q4 2020);
- an implementing act on high-value data-sets (Q1 2021);
- a European Data Act (2021); and
- an analysis of the importance data in the digital economy, and a review of the existing policy framework in the context of the Digital Services Act package (Q4 2020).

Pillar 2 (Enablers: Investments in data and strengthening Europe's capabilities and infrastructures for hosting, processing and using data)

1.15 The Commission will utilise EU funding programmes and bring private investors onboard to support the development of key industry standards, tools, best practices, and next generation infrastructure for data processing.

⁵ As an example, data collected from autonomous and connected vehicles could be used to reduce greenhouse gas emissions with cars being rerouted away from traffic jams thus limiting the amount of time spent idling.

1.16 As an example, funding will be directed through a ‘high impact project’ at cloud computing technologies with the aim of creating ‘world class’ infrastructure in the EU.⁶ The Commission views this as a way of bolstering the EU’s role in an area of key strategic importance and bringing the benefits of cloud computing to the public sector, research institutions, and areas of the economy that may currently have limited access to related technologies due to high costs (e.g. small and medium sized enterprises).

1.17 Key forthcoming actions include:

- investment in a high impact project on European data spaces (with a view to facilitating combined investments of €4–6 billion) (2022);
- the conclusion of a Memoranda of Understanding with Member States on the creation of a ‘cloud federation’ (Q4 2020);
- the launch of a European cloud services marketplace (Q4 2022); and
- the creation an EU(self-)regulatory cloud rulebook (Q2 2020).

Pillar 3 (Competences: Empowering individuals, investing in skills and SMEs)

1.18 The Commission will act to support individuals in enforcing their rights with regard to the data they generate, and invest in skills and general data literacy programmes, and capacity building initiatives for small and medium sized enterprises.

1.19 Key forthcoming actions include:

- reviewing data portability rights to give individuals greater control over who can access and use data generated with their permission (likely to be covered in the proposed Data Act) (Q1 2021).

Pillar 4 (Common European data spaces in strategic sectors and domains of public interest)

1.20 Linked to Pillar 1, the Commission will promote the development of common European data spaces in strategic economic sectors and areas of public interest.

1.21 The Commission will support the establishment of the following spaces:

- industrial (manufacturing);
- Green Deal;
- mobility;
- health;
- financial;
- energy;

⁶ Cloud computing can be understood as the on-demand availability of computer system resources, especially data storage (cloud storage) and computing power, without direct active management by the user.

- agriculture;
- public administration; and
- skills.

1.22 As discussed above, specific policies and legislation will be forthcoming in these sectors/areas—potentially including others not listed—proposing actions and governance frameworks and standards tailored to the particular requirements of each.

1.23 The final section of the Data Strategy is dedicated to international data flows—from Europe—and outlines the Commission’s aim for the EU to lead and support international cooperation, shape global standards and to be a key player in the creation of international data spaces. At the same time, the Commission is clear that international cooperation will not be pursued at the expense of European values and asserts that EU-based companies should be treated fairly abroad and that access to EU citizen’s data and sensitive EU public data should be processed in accordance with EU standards (or those that are deemed to provide equivalent levels of protection).

1.24 To better understand how EU data is transferred to and used abroad, the Commission will create a European analytical framework for measuring data flows (this is expected to be published in the latter part of 2021).

The Government’s position

1.25 The Government wrote to us on both documents by Explanatory Memorandum (EM) after their publication in the first quarter of the year. Both provide an overview of the Commission’s plans and summaries of their legal and political importance.

1.26 In the [EM on document \(a\) \(shaping Europe’s digital future\)](#), Minister of State for Digital and Culture, Caroline Dinenage MP, acknowledges the broad scope of the Commission’s strategy for digital and draws parallels between it and the Government’s own forthcoming plans for “regulating and governing new digital technologies”.

1.27 The Minister helpfully divides her analysis of the potential policy implications of the Commission’s plans for the UK into four main categories: competition in digital markets; the EU’s approach to cyber security; online harms; and disinformation.

1.28 On competition, the Minister provides information on the steps that the Government has taken towards examining how domestic regulation can be developed to support competitiveness (in similarity to one of the stated objectives of the EU’s proposed Digital Services Act). Furthermore, mention is also made of the ‘Furman Report’—on ‘unlocking digital competition’—and the Government and the Competition and Markets Authority’s work on how data and the development of new standards and frameworks for regulation can be designed to protect and benefit consumers as well as small and medium sized businesses.

1.29 On the EU’s approach to cybersecurity, the Minister recognises the importance of the EU’s planned actions—such as the establishment of a ‘Joint Cybersecurity Unit’ and states the Government’s commitment to improving cybersecurity and protecting the interests

of consumers and businesses. In this regard, she mentions legislation the Government has passed—including the NIS Regulations 2018—and states that her department will consider the Commission’s individual plans when they are published.⁷

1.30 The Minister’s final two categories—online harms and disinformation—do not map neatly onto the Commission’s strategy. This having been said, the Minister discusses the Commission’s audiovisual Action Plan and signifies that the Government would welcome future EU measures to promote the quality of online content.

1.31 In the EM on [document \(b\) \(European strategy for data\)](#), Minister of State for Digital, Culture, Media and Sport, Rt Hon. John Whittingdale MP, makes only a fleeting assessment of the Commission’s headline initiatives.

1.32 The Minister’s analysis does not follow the clear pillar structure outlined in the Commission’s Strategy rather it is based around the headings of: data spaces and the cloud; government use of data; data protection, portability, availability and concentration; cyber security; environmental implication; and international approach.

1.33 On the Commission’s most ambitious policy proposal, that of creating distinct data spaces, the Minister states only that the EU’s plans are at an early stage and that the Government will monitor progress and assess implications as more detail emerges.

1.34 Under the heading of data protection, the Minister rehearses the Commission’s plans to look more closely at regulating for greater data portability, through the EU’s proposed Data Act, but does not offer a view on whether the need for similar legislation in the UK has been considered.

1.35 With regard to the Commission’s plans for international data flows (that respect European values and protect EU citizens and businesses), the Minister states that the Government will be seeking data clauses in Free Trade Agreements that reduce barriers to data flows and will also pursue this in multilateral forums like the WTO.

Action

1.36 We have written to the Minister responsible for the Commission’s ‘European Strategy for Data’, Rt Hon. John Whittingdale MP, requesting further information on:

- the EU’s plans for the creation of ‘data spaces’ in key economic sectors and what this could mean for the UK; and
- the potential revision of Article 20 of the GDPR—on data portability—and if the Government will look at this itself.

1.37 We have drawn this chapter to the attention of the Digital, Culture, Media and Sport Committee, and the Business, Energy and Industrial Strategy Committee.

⁷ For further information on the Regulations, see HM Government, [‘The NIS Regulations 2018’](#) (15 September 2020).

Letter from the Chair to the Minister of State for Media and Data (Rt Hon. John Whittingdale MP), Department of Culture, Media and Sport

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

The Commission's 'European Strategy for Data' covers a considerable number of linked areas and the legislative proposals, policy actions, and funding initiatives that it outlines are directly relevant to the UK as a third country. These will be assessed individually by the Committee as and when they are published.

With regard to the Commission's headline initiatives, we are especially interested in its plans for the creation of European 'data spaces' in key economic sectors and request further information on the work the Government has undertaken in this area.

In light of the Commission's plans to review the operation of Article 20 of the General Data Protection Regulation, we would also welcome an update on any work the Government is undertaking regarding regulating for greater data portability for individuals.

We require a response to this letter within 14 working days.

2 UK-EU-Norway Fisheries Agreement⁸

This EU document is politically important because:

- it relates to the UK’s future fishing relationship with the EU and Norway, covering important fish stocks and waters for the UK.

Action

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

Overview

2.1 Following the UK’s withdrawal from the EU, a number of fish stocks previously shared between the EU and Norway are now shared also with the UK. In accordance with international law, it is necessary to cooperate on the management of shared stocks. The EU therefore seeks to conclude a trilateral fisheries framework agreement with the UK and Norway.

2.2 In her original [Explanatory Memorandum](#) (EM), the Minister acknowledged the desirability of such a trilateral agreement, but preferred in the short term to focus on bilateral arrangements and the annual negotiations for 2021 on total allowable catches (TACs).

2.3 We [wrote](#) to the Minister for Farming, Fisheries and Food (Victoria Prentis MP) seeking clarity on what she saw—in principle—as the best governance arrangement to deliver sustainable fishing in the North Sea and asking about stakeholder engagement.

2.4 In her [response](#), the Minister confirms that trilateral negotiations are indeed anticipated between the UK, EU and Norway to focus on a new North Sea governance arrangement. Such an arrangement, she says, is still in development and—from the UK’s perspective—should focus on promoting best practice in international fisheries management as well as providing a stable foundation for the longer-term sustainable management of key shared stocks. The Minister considers that significant time will be required to develop such a management regime with the UK’s partners around the North Sea. This need not involve the Faroe Islands too as the UK, Norway, EU and Faroes do not share jointly managed stocks.

2.5 For 2021 specifically, though, the Minister is clear that annual negotiations on total allowable catches (TACs) can take place without a trilateral fisheries framework agreement (FFA) in place. The UK anticipates opening those annual negotiations with the EU and Norway on the TACs for the shared North Sea stocks “imminently”. Given the time available, she says, it is important to commence these negotiations first before returning to trilateral negotiations on an FFA.

8 Recommendation for a Council Decision to authorise the Commission to open negotiations on behalf of the EU for the conclusion of the Fisheries Agreement with the UK and Norway; [COM\(20\) 637](#) + [Annex](#); Legal base: Article 218 TFEU; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41565.

2.6 The Minister confirms that UK fishing industry representatives have been consulted throughout the process of negotiating both the Faroese and Norwegian FFAs. The Government has also been working closely with stakeholders from across the UK concerning the end of year negotiations on TACs to understand and represent their interests, including representatives of fishing organisations, environmental NGOs and the retail sector.

Action

2.7 We note the Government's commitment to a trilateral agreement in the North Sea and look forward to further discussion on that. We require no further information at this stage and so we are content to close this strand of correspondence.

We are reporting the Minister's response to the House and drawing it to the attention of the Environment, Food and Rural Affairs Committee.

3 Northern Ireland Protocol: application of tariff rate quotas and other import quotas⁹

The proposed Regulation is legally and politically important because:

- it is intended to prepare for the end of the post-exit transition period and concerns the implementation of EU customs laws in Northern Ireland under the Protocol on Ireland/Northern Ireland.

Action

- Write to the Minister for International Trade (Ranil Jayawardena MP) asking him to: (i) confirm our understanding of the Government’s objection to the proposed Regulation; (ii) share with us the Government’s assessment of the potential costs for businesses in Northern Ireland; (iii) indicate whether the Government considers it legally possible for Northern Ireland to benefit both from the UK’s *and* the EU’s quotas; and (iv) if so, explain whether this is a policy objective the Government supports.
- Draw to the attention of the Committee on the Future Relationship with the European Union, the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

3.1 The [proposed Regulation](#) concerns the treatment of EU tariff rate quotas under the Protocol on Ireland/Northern Ireland (“the Protocol”) which forms part of the [EU/UK Withdrawal Agreement](#).¹⁰ The proposal is intended to resolve possible ambiguities in the interpretation and application of the Protocol arising from the fact that Northern Ireland remains part of the UK’s customs territory but, unlike the rest of the UK, is bound to apply EU customs laws as if it were part of the EU’s customs territory when the post-exit transition period ends on 31 December 2020.¹¹

3.2 As we explained previously in our [Twenty-second Report](#),¹² under World Trade Organisation (WTO) rules, each WTO member (or, in the case of the 27 EU Member States, the EU) has its own set of legally binding tariffs and market access commitments which are set out in its Schedule of goods agreed under GATT (the General Agreement on Tariffs and Trade). The Schedule includes import tariffs, quotas, and tariff rate quotas which take the form of “concessions” and allow certain goods below the specified quota to enter the

9 Proposal for a Regulation on the application of Union tariff rate quotas and other import quotas; Council number:—; COM(20) 375; Legal base—Article 207(2) TFEU, ordinary legislative procedure, QMV; Dept—International Trade; Devolved Administrations—consulted; ESC number 41467.

10 Treaty Series No.3 (2020), Command Paper 219.

11 Article 4 of the Northern Ireland Protocol states that Northern Ireland is part of the customs territory of the United Kingdom. Article 5(3) of the Protocol provides that EU customs laws apply “to and in the United Kingdom in respect of Northern Ireland”.

12 Twenty-second Report HC 229–xviii (2019–21), [chapter 3](#) (24 September 2020).

market at a lower than normal tariff. Some of the EU’s preferential trade agreements with third countries also include additional tariff rate quotas. These agreements, and the EU’s WTO Schedules, continue to apply to the UK until the end of 2020.¹³

3.3 Article 4 of the Protocol on Ireland/Northern Ireland states that:

- Nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries, provided that those agreements do not prejudice the application of this Protocol; and
- Nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of its Schedules of Concessions annexed to the General Agreement on Tariffs and Trade 1994.

3.4 Article 5 of the Protocol provides, however, that EU customs laws will continue to apply in Northern Ireland after transition. The arrangements set out in the Protocol operate bilaterally between the EU and the UK—they do not give rise to rights and obligations for third countries.¹⁴ The proposed Regulation is therefore intended to clarify what constitutes EU customs territory when applying EU tariff rate quotas. It says that, for these purposes, EU tariff rate quotas apply only to goods released into free circulation in the territory of the EU’s 27 Member States, *not* Northern Ireland. The proposed Regulation also states that (if adopted) it will apply “to and in the United Kingdom in respect of Northern Ireland”, citing Articles 5(3) and (4) and 13(3) of the Protocol,¹⁵ and take effect on 1 January 2021. The Commission considers that the Regulation is necessary to counter the risk that goods might be routed through Northern Ireland for free circulation within the EU Single Market without counting towards the EU quotas.

3.5 The Government accepts that the EU’s Customs Code will continue to apply in Northern Ireland after transition and recognises that the purpose of the proposed Regulation is to “clarif[y] the relationship between the EU and third countries in relation to EU tariff rate quotas and other import quotas”. While the Government has been clear that Northern Ireland is and will remain part of the UK’s customs territory and benefit from preferential tariffs agreed with third countries in the same way as the rest of the UK, the Minister for International Trade (Ranil Jayawardena MP) has also told us that the full implications of the proposed Regulation for UK trade depend on wider negotiations taking place in the Withdrawal Agreement Joint Committee on the application and implementation of the Protocol on Ireland/Northern Ireland.¹⁶ He has highlighted, in particular the decision yet to be taken by the Joint Committee on the criteria for determining which goods entering Northern Ireland from outside the EU are “at risk of subsequently being moved” into the EU Single Market and are thus subject to EU customs duties.¹⁷

3.6 In [our letter of 21 October 2020](#), we expressed concern that the Minister appeared reluctant to address some of the questions we had raised with him, given the possibility that the Regulation (over which the UK would have no say or vote) might be adopted before

13 See the [Government’s communication to the WTO Secretariat on the UK’s Withdrawal from the EU](#).

14 See recital (6) of the proposed Regulation.

15 See recital (10) of the proposed Regulation.

16 See the Minister’s [Explanatory Memorandum of 4 September 2020](#) and [his letter of 8 October 2020](#) to the Chair of the European Scrutiny Committee.

17 See Article 5(2) of the Protocol on Ireland/Northern Ireland.

wider negotiations with the EU have concluded. In particular, we asked why he was unable to form a view on the correct mechanism for the Regulation (once adopted) to apply “to and in the United Kingdom in respect of Northern Ireland” when the relevant provisions of the Protocol cited in the proposal itself—Article 5(3) and (4) and Article 13(3)—were not, to our knowledge, a matter for negotiation within the Withdrawal Agreement Joint Committee or part of the wider future relationship negotiations.

3.7 The Minister reiterates in his [response of 9 November 2020](#) that Northern Ireland will remain part of the UK’s customs territory and will benefit from Free Trade Agreements (“FTAs”) concluded by the UK, adding:

That includes TRQs [tariff rate quotas] that the United Kingdom agrees for imports from relevant third countries. This is unaffected by the EU proposals, which have no impact whatsoever on the scope or nature of our FTAs.¹⁸

3.8 He says the Government is “committed to making sure that there are no tariffs on goods remaining within the customs territory of the United Kingdom” and to implementing the Protocol on Ireland/Northern Ireland in a way that minimises as much as possible any additional burdens on people and businesses in Northern Ireland. The proposed Regulation nonetheless gives rise to “a potential difficulty”:

For goods at genuine and substantial risk of moving to the EU via Northern Ireland, the United Kingdom will collect the EU tariff. The EU proposals mean that in such cases where the good entering from a third country is ‘at risk’ and could ordinarily pay a lower EU tariff under a TRQ, it will not be able to do so. This is clearly likely to be a limited issue in practice, but I am happy to raise it for completeness in explaining our position.

We do think this consequence is unfortunate and aim to offset this through the Withdrawal Agreement Joint Committee negotiations on ‘at risk’ goods.

In these discussions, we are actively seeking to ensure the EU respects the unique circumstances on the island of Ireland, including in respect of supply chains operating between Northern Ireland and Ireland. We first conveyed our displeasure over these proposals to the EU during talks in July and have continued to do so, most recently at a meeting of the Ireland/Northern Ireland Specialised Committee on 9th October. Regrettably, the EU has thus far failed to accept our position and has chosen instead to legislate.

3.9 Until these Joint Committee discussions have concluded, the Minister says he will be unable to provide a “definitive position” on the proposed Regulation, while adding that these wider discussions are “matters for the Cabinet Office” and suggesting that we write to the Chancellor of the Duchy of Lancaster to seek his views. Similarly, the Minister says he cannot express a final position on the correct mechanism or legal base for the Regulation (once adopted) to apply in Northern Ireland, even though the Regulation itself clearly identifies Article 5(3) and (4) and Article 13(3) of the Protocol on Ireland/Northern Ireland. According to the Minister:

¹⁸ The Minister’s response takes the form of a [covering letter](#) and an [Annex](#).

Article 5 of the Northern Ireland Protocol contains a number of strands that are subject to negotiation within the Withdrawal Agreement Joint Committee. Specifically, Article 5(3) and (4) and Article 13(3) have complex interactions with the different elements of the Protocol, which are being discussed and worked out at the Withdrawal Agreement Joint Committee.

3.10 The Minister adds that these strands are being led by the Chancellor of the Duchy of Lancaster and the Chancellor of the Exchequer whom we may wish to approach to seek their views.

Action

3.11 Write again to the Minister asking him to: (i) confirm our understanding of the Government's objection to the proposed Regulation; (ii) share with us the Government's assessment of the potential costs for businesses in Northern Ireland; (iii) indicate whether the Government considers it legally possible for Northern Ireland to benefit both from the UK's *and* the EU's quotas; and (iv) if so, explain whether this is a policy objective the Government supports.

Letter to the Minister for International Trade (Ranil Jayawardena MP)

Thank you for [your letter of 9 November 2020](#) concerning a [proposed Regulation](#) on the treatment of EU tariff rate quotas under the Withdrawal Agreement Protocol on Ireland/Northern Ireland. Under the proposed Regulation, only goods released into free circulation in the territory of the EU's 27 Member States, *excluding* Northern Ireland, would be eligible for these quotas. As we understand it, the legislation is intended to resolve possible ambiguities in the interpretation and application of the Protocol which stem from the fact that Northern Ireland is part of the UK's customs territory but, unlike the rest of the UK, will remain bound by EU customs laws as if it were part of the EU's customs territory when the post-exit transition period ends on 31 December 2020.¹⁹ Without this legislation, the European Commission fears that goods which do not count towards fulfilment of the EU's quotas might be routed through Northern Ireland for onward movement and free circulation within the EU Single Market.

There is a degree of frustration in your letter that the Committee continues to raise questions which you consider you have adequately addressed in previous correspondence. The reason we do so is because we do not fully understand the nature of the Government's objection to the proposed Regulation. As we have stated in our earlier Reports, the proposed Regulation appears to be consistent with the approach set out in the Government's [Command Paper on *The UK's Approach to the Northern Ireland Protocol*](#)²⁰ that Northern Ireland will remain an integral part of the UK's customs territory after transition and benefit from any preferential tariffs and quotas negotiated by the UK with third countries.²¹

It is clear from the information you have shared with us so far that the Government's position on the proposed Regulation is bound up with wider discussions in the Withdrawal

19 Article 4 of the Northern Ireland Protocol states that Northern Ireland is part of the customs territory of the United Kingdom. Article 5(3) of the Protocol provides that EU customs laws apply "to and in the United Kingdom in respect of Northern Ireland".

20 Command Paper 226, *The UK's Approach to the Northern Ireland Protocol*.

21 See our [Twenty-second Report](#) and our [Twenty-sixth Report](#) of Session 2019–21.

Agreement Joint Committee on Article 5 of the Protocol and the application of the criteria on “at risk” goods which determine whether EU customs duties are due on goods considered to be at risk of moving from Northern Ireland into the EU Single Market. The problem you identify in your letter is that the standard EU tariff rate would apply to goods entering Northern Ireland from outside the EU rather than a reduced or zero tariff rate as the goods would not qualify for the EU’s tariff rate quotas. You indicate that this might have a negative effect on the competitiveness of supply chains operating in the island of Ireland. It would greatly assist us if you could:

- confirm that this is the basis of your objection to the proposed Regulation;
- share with us your assessment of the potential costs for businesses in Northern Ireland;
- indicate whether you consider that it would be legally possible for Northern Ireland to benefit both from the UK’s *and* the EU’s tariff rate quotas; and
- explain whether this is a policy objective the Government supports.

Finally, you suggest that we may wish to address our questions (variously) to the Chancellor of the Duchy of Lancaster and the Chancellor of the Exchequer. As you will appreciate, our questions are addressed to the Government and we trust that cross-Whitehall coordination mechanisms are sufficiently connected and robust to deliver a unified Government position.

We look forward to receiving a response at the earliest opportunity.

4 UK participation in the Schengen Information System²²

These EU documents are legally and politically important because:

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

Action

- No further action on these documents. As an agreement on UK access to SIS II or equivalent capabilities after transition now seems unlikely, write to the Security Minister (Rt Hon. James Brokenshire MP) requesting his assessment (once the outcome of EU/UK future relationship negotiations is known) of the implications for the operational effectiveness of cross-border law enforcement cooperation and the sharing of criminal information and intelligence between the UK and EU Member States from 1 January 2021.
- Draw to the attention of the Home Affairs Committee, the Justice Committee, the Committee on the Future Relationship with the European Union and the Northern Ireland Affairs Committee.

Overview

4.1 The [Schengen Information System](#) is the most widely used and largest information sharing system for security and border management in Europe. The UK participates in the ‘second generation’ Schengen Information System (SIS II) for law enforcement purposes. It gives police real-time access to data (in the form of ‘alerts’) which can be vital in tackling crimes which have a cross-border dimension and in identifying and apprehending criminals seeking to evade justice in the border-free Schengen area. The Government would like to retain access to SIS II or to a mechanism delivering similar capabilities, but without oversight by the EU Court of Justice, after the post-exit transition period ends on 31 December 2020.²³ In August, the Security Minister (Rt Hon. James Brokenshire MP) told us:

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

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

We remain of the view that an agreement to cooperate on capabilities similar to SIS II is possible if the political will exists and that there is no legal barrier to this.²⁴

4.2 By contrast, the EU considers that the UK’s future status as “a non-Schengen third country that does not provide for the free movement of persons” precludes UK participation in SIS II after transition.²⁵ The European Parliament has taken the same approach and must give its consent to any deal agreed between the EU and the UK.²⁶

4.3 The documents under scrutiny concern the operation of SIS II in the UK (the UK continues to participate in SIS II until the end of 2020) and preparations for a planned upgrade. The first, a [Council Implementing Decision](#) adopted on 5 March 2020, makes a series of recommendations to rectify deficiencies in the UK’s implementation of SIS II—25 of the 34 recommendations concern (in the Council’s view) “very serious deficiencies” requiring immediate action. The second document, a [Commission report](#) published in February 2020, examines the progress made by countries currently connected to SIS II in preparing for its phased upgrade by the end of 2021. Our [Thirteenth](#) and [Seventeenth](#) Reports of Session 2019–21 provide further information on both documents.²⁷

4.4 We retain an interest in these documents because of the importance that UK law enforcement attaches to SIS II and the risk that the serious deficiencies identified in the Council Implementing Decision, as well as the UK’s preparations for the planned upgrade of SIS II, might materially affect the prospects for reaching an agreement with the EU on arrangements approximating as far as possible SIS II capabilities.

4.5 When the Minister wrote to us in August, he told us that the Government did not agree with the legal reasoning behind nine of the 34 recommendations contained in the Council Implementing Decision. He said that seven recommendations had been met in full and several more had been partially addressed. There were, however, technical limitations affecting the UK’s ability to implement some of the recommendations as they would require “existing legacy IT systems currently used by UK Law Enforcement and Border Force” to be replaced. He added:

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

24 See the Minister’s [letter of 7 August 2020](#) to the Chair of the European Scrutiny Committee.

25 See para 117 of the [EU’s negotiating mandate](#) and para 80 of the [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#).

26 See the [European Parliament Resolution adopted in February 2020](#) (and reiterated in a further [Resolution adopted in June 2020](#)) stating that UK access to SIS II as a third country is not feasible.

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

4.6 The Minister considered nonetheless that the Government was “well placed to accelerate delivery of the principal technical platform if cooperation on SIS II capability forms part of the UK-EU future relationship”.

4.7 We asked the Minister to provide a further update in October on the progress made in addressing the deficiencies identified in the Council Implementing Decision, as well as the Commission’s evaluation of the adequacy of the measures taken by the UK, the recommendations that remained outstanding, and the prospects for reaching an agreement on capabilities broadly replicating those provided by SIS II or on other means of sharing criminal information and intelligence to take effect at the end of the post-exit transition period.²⁸

4.8 In his [response of 17 November 2020](#), the Minister says the European Commission accepts that the UK has fully implemented 12 of the Council’s 34 recommendations and that “several more” have been partially completed. He highlights, in particular, the action taken by the Government to end the unlawful copying of SIS II by “de-amalgamating” SIS II data from the UK’s Border Watchlist—a key Commission concern. The Minister reiterates that further action to implement all the recommendations is dependent on the replacement of legacy IT systems, adding:

The Commission has recognised this dependency and acknowledges that there are no temporary measures which the UK could put in place.

4.9 The Minister is nonetheless confident that if the UK were to retain access to SIS II after transition, “the operation of our new ‘service layer’ would address the majority of remaining concerns”. Meanwhile, as an ongoing user of SIS II (until the end of the transition period), the UK will “engage positively with the Commission to fulfil our obligations” under the Schengen evaluation process.

4.10 The Minister is not optimistic that the EU and the UK will reach an agreement on capabilities post-transition which broadly replicate those provided by SIS II.

Although we remain of the view that there is a mutual interest in providing capabilities similar to SIS II, and we have continued to make clear during negotiations that we seek to approximate the capability, the EU has maintained its position that this is not possible as a third country that is not part of Schengen. We regret this and continue to maintain our offer to the EU.

4.11 The Minister recognises that, without access to SIS II, there will be “a mutual loss of capability”. He adds, however, that “Interpol channels provide a tried and tested mechanism for exchanging alert information”, were the primary means for exchanging “warnings alerts” with EU Member States as recently as 2015 (when SIS II went ‘live’ in the UK), and remain the primary means for EU Member States to share information with partners who do not have access to SIS II. He continues:

We are committed to making our use of Interpol channels as effective as possible. All Interpol circulations received by the UK are now routinely made available at the front-line for police and border officers. There has

28 See [our letter of 10 September 2020](#) to the Minister for Security and our Twentieth Report HC 229–xvi (2019–21), [chapter 10](#) (10 September 2020).

been extensive engagement, moreover, with EU Member States on their ability to use Interpol channels if no agreement can be reached on SIS II. We will continue to also make good use of bilateral channels and other multilateral mechanisms outside the EU structures, including for counter-terrorism cooperation.

Action

4.12 No further action on these documents. We note that the Minister does not expect the EU and UK to reach agreement on UK access to SIS II after transition or, it seems, to capabilities which would broadly replicate those provided by SIS II. We ask the Minister to report back to us on the outcome of negotiations with the EU once they have concluded with his assessment of the implications for cross-border law enforcement cooperation and the sharing of criminal information and intelligence between the UK and EU Member States from 1 January 2021.

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

Thank you for your letter of 17 November 2020 on these documents: the first, a Council Implementing Decision setting out a series of recommendations to address “very serious deficiencies” in the UK’s implementation of the Schengen Information System (“SIS II”); the second, a Commission report examining the progress made by countries currently connected to SIS II (including the UK during the transition period) in preparing for its phased upgrade by the end of 2021.

Our interest in these documents stems from the importance UK law enforcement attach to SIS II as tool for tackling crime which has a cross-border dimension. From the outset of negotiations on the EU/UK future relationship, the EU has been clear that the UK cannot retain access to SIS II after transition because the UK (unlike other third countries with access to SIS II, such as Iceland, Norway, Switzerland and Liechtenstein) will not be part of Schengen and will not allow free movement for EU citizens. The Government nonetheless held out the prospect of agreeing arrangements with the EU, short of direct access to SIS II, which would provide broadly similar capabilities. It seems from your letter that this outcome is now considered to be unlikely and that Interpol will become the primary mechanism for exchanging information and law enforcement alerts. You acknowledge that this will result in a mutual loss of capability for the UK and the EU.

Once negotiations with the EU have concluded and the outcome is clear, we ask you to report back to us with your assessment of the implications that the deal (or a no deal) will have on the operational effectiveness of cross-border law enforcement cooperation and the sharing of criminal information and intelligence between the UK and EU Member States from 1 January 2021. We have no further questions to raise on the Council Implementing Decision and the Commission report which you may now consider cleared from scrutiny.

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

Department for Business, Energy and Industrial Strategy

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| 41623 12491/20 COM(20) 675 | Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment. |
| 41665 13023/20 + ADD1 COM(20) 732 | Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee assessing the implementation of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on the safety of offshore oil and gas operations and amending Directive 2004/35/EC. |

Cabinet Office

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| 41549 10918/20 + ADD1 COM(20) 561 | Report from the Commission on the application in 2019 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. |
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Foreign, Commonwealth and Development Office

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| (41559) — — | Council Decision (CFSP) 2020/1269 of 10 September 2020 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. |
| (41570) — — | Council Implementing Regulation (EU) 2020/1367 of 1 October 2020 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. |
| (41571) — — | Council Decision (CFSP) 2020/1368 of 1 October 2020 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. |
| (41597) — — | Council Decision (CFSP) 2020/1467 of 12 October 2020 amending Decision (CFSP) 2019/1720 concerning restrictive measures in view of the situation in Nicaragua. |

- (41613) Council Decision (CFSP) 2020/1515 of 19 October 2020 establishing a European Security and Defence College, and repealing Decision (CFSP) 2016/23.
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- (41629) Council Decision (CFSP) 2020/1556 of 23 October 2020 amending Decision 2010/638/CFSP concerning restrictive measures against the Republic of Guinea.
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- (41630) Council Implementing Regulation (EU) 2020/1578 of 29 October 2020 implementing Regulation (EU) 2015/1755 concerning restrictive measures in view of the situation in Burundi.
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- (41631) Council Decision (CFSP) 2020/1585 of 29 October 2020 amending Decision (CFSP) 2015/1763 concerning restrictive measures in view of the situation in Burundi.
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- (41643) Council Implementing Regulation (EU) 2020/1655 of 6 November 2020 implementing Regulation (EU) 2019/1890 concerning restrictive measures in view of Turkey’s unauthorised drilling activities in the Eastern Mediterranean.
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- (41644) Council Decision (CFSP) 2020/1657 of 6 November 2020 amending Decision (CFSP) 2019/1894 concerning restrictive measures in view of Turkey’s unauthorised drilling activities in the Eastern Mediterranean.
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HM Treasury

- 39888 InvestEU Programme 2021–27.
9980/18
+ADDs 1–5
COM(18) 439
41324 Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Programme + 5 Annexes.
8411/20
+ADDs 1–5
COM(20) 403

Home Office

- (40953) Court of Auditors Special Report No. 2019/24: Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results.
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Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

Business, Energy and Industrial Strategy: Digital and Data: Commission strategies [Commission Communications (SNC)]

Digital, Culture, Media and Sport Committee: Digital and Data: Commission strategies [Commission Communications (SNC)]

Environment, Food and Rural Affairs Committee: UK-EU-Norway Fisheries Agreement [Recommended Council Decision (SC)]

Committee on the Future of the European Union: Northern Ireland Protocol: application of tariff rate quotas and other import quotas [Proposed Regulation (SNC)]; UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SC)]

Home Affairs Committee: UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SC)]

International Trade Committee: Northern Ireland Protocol: application of tariff rate quotas and other import quotas [Proposed Regulation (SNC)]

Justice Committee: UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SC)]

Northern Ireland Affairs Committee: Northern Ireland Protocol: application of tariff rate quotas and other import quotas [Proposed Regulation (SNC)]; UK participation in the Schengen Information System [(a) Council Implementing Decision, (b) Commission Report (SC)]

Formal Minutes

Thursday 3 December 2020

After consulting all Members of the Committee, the Chair was satisfied that the Report represented a decision of the majority of the Committee and reported it to the House.

(Order of the House of 24 March 2020).

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

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

[Richard Drax MP](#) (*Conservative, South Dorset*)

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[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*)

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