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European Scrutiny Committee

Third Report of Session 2019–21

Documents considered by the Committee on 26 March 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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Contents

1 EU Research Programme: Horizon Europe[1]

This EU document is politically important because:

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

Action

- Write to the Government, as detailed below, to seek further information.

Overview

1.1 Research is one of the areas in which the EU and UK agreed in the Political Declaration to seek continued cooperation post-Brexit. Any such cooperation will take place within the context of the EU's Framework Programme for research, the ninth of which—beginning on 1 January 2021—will be known as "Horizon Europe". The Commission's proposal for Horizon Europe has been under scrutiny by this Committee since 2018. Arrangements for the association of non-EU countries to Horizon Europe have yet to be agreed.

1.2 EU research policy is designed to encourage cooperation across countries and across disciplines. Our predecessors summarised the Commission's proposal for the latest Framework Programme, Horizon Europe, in their Report of 21 November 2018.[2] The overall budget envelope proposed for Horizon Europe over the 2021–27 period is €94.1bn (£82.5bn), up from €77bn (£68bn) over 2014–20.

1.3 The predecessor Committee last considered the proposal at its meeting of 2 October 2019,[3] raising a series of questions about the Government's approach to continued research cooperation with the EU post-Brexit and about research funding under a "no-deal" Brexit.

1.4 Since the Committee last reported, the Government has written on two occasions. In his letter of 21 October 2019, the then Minister of State for Universities, Science, Research and Innovation (Rt Hon. Chris Skidmore MP) confirmed the Government's ongoing commitment to association with Horizon Europe. Regardless of whether association was agreed, he said, the "Government is committed to continuing to back UK researchers and innovators by supporting measures to enable world-class collaborative research, including support for small businesses".

1.5 In a later letter, of 21 December 2019, the Minister explained that the Government supported a Partial General Approach on the Horizon Europe Regulation at the EU's Competitiveness Council on 28–29 November even though the parliamentary scrutiny reserve remained in place. The Government took this decision, said the Minister, after much deliberation.

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

2 Forty-fifth Report HC 301–xliv (2017–19), chapter 3 (21 November 2018).

3 Seventy-fourth Report HC 301-lxxii (2017–19), chapter 1 (2 October 2019).

1.6 The main issue of interest to the UK in the ongoing EU negotiation regarding Horizon Europe is the matter of third country access, including the conditions of such access. This remains outstanding, along with the overall budget.

1.7 As the Committee reported in October, the European Parliament's position on the draft Regulation establishing Horizon Europe would require the scope of each EU-third country association agreement to take into account, in addition to the objective specified by the Commission ("driving economic growth in the Union"), the aim to "avoid the brain drain from the Union"—an addition which could potentially affect the scope of any UK association to the Programme.

Action

1.8 We note the outstanding matters in the negotiation and have therefore written to the Minister seeking an update on the arrangements for third country association.

Letter from the Chair to Amanda Solloway MP

We considered your predecessor's letters of 21 October 2019 and 21 December 2019 regarding the proposed Horizon Europe Regulation at our meeting of 26 March 2020.

We note that the matters of budget and third country participation remain outstanding but note the Government's continued commitment to research collaboration with the EU under the future relationship.

Based on the information available to you—which we appreciate will be more limited than it previously was—we would welcome information on the progress of the EU's deliberations concerning third country participation in Horizon Europe. We would ask that you explain how that progress is informing the UK's own position on association.

We look forward to receiving your response by the end of April 2020.

We are copying this letter to the Earl of Kinnoull, Chair of the EU Select Committee in the House of Lords and Christopher Johnson, Clerk of the Lords EU Select Committee; your Departmental EU Scrutiny team; and Les Saunders and Donald Harris in the Cabinet Office.

2 Privacy and Electronic Communications[4]

This EU document is legally and politically important because:

- just like the General Data Protection Regulation (GDPR), the proposal once operative will apply to providers outside the EU if they offer electronic communications services to EU end users. This 'extraterritorial' application will impact the UK regardless of whether the proposal becomes operative during transition (which seems unlikely) or afterwards;
- the UK's provision of equivalent protection of personal data relating to electronic communications will form part of the Commission's data adequacy assessment. Even if a data adequacy decision is adopted, the Commission is under a duty to keep it under review and repeal, amend or suspend a decision if a third country is no longer providing adequate protection of EU citizens' data; and
- any provisions relating to national security and combatting child protection could therefore have implications for the UK, even after transition.

Action

- To write to the Digital Secretary (Rt Hon. Oliver Dowden MP), asking him to share any information he obtains about the progress of the proposal and highlighting the issues above.
- To continue to monitor developments in the negotiation of this proposal and the extent to which in due course, if at all, they might raise issues concerning the UK's vital national interests.
- Draw to the attention of the Digital, Culture, Media and Sport Committee, the Science and Technology Committee, the Home Affairs Committee, the Justice Committee, the Joint Committee on Human Rights and the Committee on the Future Relationship with the EU.

Overview

2.1 This proposed ePrivacy Regulation was published in January 2017 to replace the current 2002 Directive on the privacy and protection of personal data relating to electronic communications (e-comms). E-comms can concern highly sensitive information about an individual. For example, medical conditions, sexual preferences, religious and political views, or commercially sensitive information about a business. Disclosure could result in personal and social harm, even economic loss.

4 Proposal for a Regulation of the European Parliament and the Council concerning the respect for private life and protection of personal data in electronic communications and repealing Directive 2002/58/EC Council document; 5358/17 + ADDs 1–6, COM (17) 10; Legal base: Articles 16 and 114 TFEU, ordinary legislative procedure, QMV; Dept: DCMS; Devolved Administrations; ESC number 38455.

2.2 Once adopted, the Regulation could have major implications for the way that sectors such as technology, digital advertising and publishing do business and for individual privacy. The current Directive[5] dates from 2002 and covers confidentiality of e-comms provided via traditional communication services (e.g. emails, SMS). The proposal will update the rules in the Directive to apply to "Over the Top" services, including internet-based messaging such as What's App and Voice over Internet Protocol (e.g. Skype). It will also govern the use of cookies, other tracking technologies as well as email marketing.

2.3 The Commission had planned for the proposed Regulation to come into force at the same time as the General Data Protection Regulation (GDPR) on 25 May 2018. However, the proposal has proved very controversial, resulting in slow progress in negotiations in the Council. So far the Council has been unable to agree a General Approach.

2.4 Contentious areas during the negotiation of the proposal (including for the UK) have been:

- inconsistency and unclear overlaps with the GDPR;
- when service providers can use e-comms content and metadata in the running of their business;
- rules governing cookies and other tracking technologies;
- how the Regulation would apply to emerging technologies (Machine-to-Machine (M2M)[6] and Internet of Things (IOT));[7] and
- clarification on processing for national security purposes and (separately) for combatting online sexual abuse and exploitation of children (CSEA).

2.5 An account of the scope and content of the proposed Regulation and the Government's view of it are set out in our predecessors' previous Reports.[8]

Application during and after the post-exit transition period

2.6 It remains unclear if and when the proposed Regulation will be adopted and therefore whether it would become applicable to the UK during transition.[9] The lack of progress and Member State support in the Council so far suggest that unless matters move very quickly, it seems unlikely that the Regulation would apply to the UK before the end of the transition. This is particularly the case as the original text of the proposal allowed for deferred application of the Regulation to allow Member States to prepare for application at domestic level.

5 Directive 2002/58/EC (Regulation on Privacy and Electronic Communications).

6 This describes the interaction of billions of devices and machines that are connected to the internet and to each other. For example, a remote-locking system enabling you to open the door to a visitor via your smart phone if you're not at home.

7 Essentially this includes any device connected to the internet and to each other e.g. wearable fitness watches, trackable dog collars.

8 Fifty first Report HC 301-I (2017–19), chapter 3 (16 January 2019); Twenty first Report, HC 301-xx (2017–19), chapter 1 (21 March 2018); Thirty first Report, HC 71-xxiv (2016–17), chapter 6 (8 February 2017); also see (38446), 5034/17: Sixteenth Report, HC 301-xiv (2017–18), chapter 3, (28 February 2018).

9 As far as we are aware, no new 'entry into force' or 'application' provisions have been drafted as yet into the Council text which has been under negotiation. The original text stated that "This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. 2. It shall apply from 25 May 2018".

2.7 However, the proposal could still have a significant impact on the UK after transition. This is because just like the General Data Protection Regulation (GDPR), the proposal once operative will apply to providers outside the EU if they offer electronic communications services to EU end users.[10] This 'extraterritorial' application will impact the UK regardless of whether the proposal becomes operative during transition (which is highly unlikely) or afterwards.

2.8 The UK's provision of equivalent protection of personal data relating to electronic communications will form part of the Commission's data adequacy assessment.[11] Even if a data adequacy decision is adopted, the Commission is under a duty to keep it under review and repeal, amend or suspend a decision if a third country is no longer providing adequate protection of EU citizens' data.

2.9 For these reasons, the Committee will be closely monitoring developments in the negotiation of this proposal and the extent to which, if at all, they might raise issues concerning the UK's vital national interests. We refer to the Committee's statutory role in this respect set out in Section 13A European Union (Withdrawal) Act 2018 (as inserted by Section 29 European Union (Withdrawal Agreement) Act 2020).

The Government's position

2.10 Since our predecessors' last Report, the Government has written to the Committee on the following occasions: 12 March 2019;[12] 4 November 2019; and 21 January 2020. The new Secretary of State for Digital, Culture, Media and Sport (Rt Hon. Oliver Dowden CBE MP) has also recently written to the Lords EU Committee on 6 March 2020.

2.11 These letters have not yet been reported to the House by this Committee or our predecessors. This is partly due to the lack of progress in the negotiations on the proposal and the intervention of dissolution and the post-election period. The full text of the letters can be accessed via the links provided. They should be read in conjunction with the letter we have written to the Government on this file (set out below).

2.12 The key developments set out in that previous correspondence are:

- The failure to adopt a General Approach as anticipated in December because of lack of Member State support at Committee of Permanent Representatives (CORPER) level in November. Eight Member States voted for a proposed General Approach text and 15 against (including the UK). The UK's principal objection concerned the direct negative impact the current text would have on tackling online sexual exploitation and abuse of children (CSEA) but the UK was also concerned about scope of the proposal and emerging technologies.

- The publication by the Croatian Presidency of a new compromise text on 21 February 2020. This was due to be discussed in Telecoms Working Party on 5 and 12 March.

10 See Article 3 "Territorial scope" which extends the Regulation to providers established outside the EU.

11 See Article 45 of the GDPR for the wide range of factors that the Commission can take into account in its data adequacy assessment.

12 Our predecessors responded by a letter of 20 March. In that letter, the then Committee simply noted the Government's update and the continuing uncertainty about a future possible General Approach and then adoption.

2.13 Other relevant developments either outlined in previous letters from the Government or otherwise in the public domain include:

- the Finnish Presidency's progress report following the abortive General Approach, addressing the processing of e-comms data for the purposes of prevention of child abuse imagery and the view of some Members States that the processing of that data for preventing other serious crimes, in particular terrorism, should also be allowed; the scope of the Regulation concerning processing of e-comms data by the end-users or third parties for the purpose of ensuring the security of the end-user's network and information systems; and the interaction of the Regulation with new technologies;

- the prioritisation of this dossier by the Croatian Presidency and the Commission (see the Annex to the Commission Work Programme);

- the emphasis in the EU negotiating mandate and EP resolution on the EU-UK future relationship on the need for equivalent data protection to be provided by the UK for the purposes of obtaining data adequacy decisions and any agreement concerning cooperation on internal security matters;

- the Court of Justice (CJEU) ruling on 1 October 2019 in Planet49 (C-673/17) that a controller who relies on a pre-ticked box does not legally obtain consent from end-users as this supports the Commission's case for alignment of the proposal's cookie rules with the GDPR requirement that consent be informed, specific, unambiguous and revocable; and

- the Advocate General opinion on 15 January 2020 in the Privacy International case[13] that bulk, indiscriminate processing of bulk communications data for national security purposes, including as required by the UK legislation in question,[14] falls within the scope of the current e-Privacy Directive, pending the final judgment of the CJEU.

Summary of Government's latest letter of 6 March 2020

2.14 The Secretary of State's recent letter of 6 March was written in response to the Lords' European Union Committee letter of 6 February. As the Lords' letter addressed similar concerns to those previously highlighted by our predecessors, it is worth summarising the Secretary of State's response (applying our own sub-headings):

13 The Advocate General's opinion in case C-623/17 was delivered on 15 January 2020. He opined that "Article 4 TEU and Article 1(3) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) should be interpreted as precluding national legislation which imposes an obligation on providers of electronic communications networks to provide the security and intelligence agencies of a Member State with 'bulk communications data' which entails the prior general and indiscriminate collection of that data". He also considered that "Access on the part of the security and intelligence agencies of a Member State to data transmitted by the providers of electronic communications networks must comply with the conditions established in the judgment of 21 December 2016, Tele2 Sverige and Watson (C-203/15 and C-698/15, EU:C:2016:970)". If the CJEU were to agree in its pending judgment, the Investigatory Powers Tribunal would then need to apply that judgment to the relevant UK legislation (see footnote below).

14 The relevant UK legislation is the Telecommunications Act 1984 and the Data Retention and investigatory Powers Act 2014 (now succeeded by the Investigatory Powers Act 2016).

Scope: National security and CSEA

- The Government considers that the current text of the proposed Regulation ensures that national security is excluded from the scope of the Regulation.
- The new Presidency text only proposes changes to Articles 6–8 with amendments to scope and the provisions yet to be made or negotiated.
- The Presidency has stated that it does not intend to discuss CSEA further at this stage.
- The newly formed UK Mission to the European Union (UKMis Brussels) is continuing to monitor the progress of the proposed Regulation and to understand emerging thinking.
- The Government will continue to seek to engage the EU as it develops its positions and where it is in UK national interests.
- The Government understands the importance of ensuring national security remains out of scope as well as preventing and removing CSEA content online.

Consistency and overlap with GDPR

- In relation to Articles 6 and 8, which more closely align with the GDPR, the Presidency has proposed 'legitimate interest' as a legal basis for the processing of metadata and for the processing and storing of information on end-users' terminal equipment.
- The new text might allow 'free of charge' websites and applications (for example, broadcasters, retailers and newspapers) which rely on advertisement revenue to rely on 'legitimate interests' as a legal basis for processing in order to plant cookies. The end-user's interests will be deemed to override the interests of the service provider in certain specified circumstances. For example, involving profiling or special categories of personal data (as defined in GDPR).
- Service providers such as websites sharing end-users' personal metadata with third parties cannot share that information unless anonymised. They would also have to carry out an impact assessment, inform the end-user of their right to object to the processing and provide technical protection such as pseudonymisation and encryption.
- The GDPR review is currently ongoing. The Government will carefully consider any implications for the proposed ePrivacy Regulation arising from the Commission's report, to be published by 25 May 2020.

Action

2.15 We have written to the Secretary of State and the text of that letter is reproduced below. We have asked him to keep us as updated as possible with the negotiations of the proposal and at the very least by the first meeting of the Committee after the Easter recess (29 April). We have also asked that any update take account of the concerns we and our predecessors have highlighted. The text of that letter is reproduced below.

Letter from the Chair to the Secretary of State for Digital, Culture, Media and Sport (Rt Hon. Oliver Dowden MP)

Thank you for sight of your letter of 6 March to the Chairman of the Lords' European Union Committee. We are also grateful for the previous letters received from your department before and since the election which the Committee has only now had chance to consider.

Your letter of 6 March was in response to a letter from the Lords' European Union Committee which raises similar concerns to those previously raised by our predecessor Committee. We note that at this stage, there is no certainty as to when the Regulation might be adopted or whether it would have to be applied by the UK before the end of the transition period. Nevertheless, the Committee still has concerns about the proposal which can summarised in the following three questions:

- Will provisions in an adopted ePrivacy Regulation relating to processing for national security and combatting online child sexual abuse and exploitation (CSEA) be compatible with UK national interests?
- If not, then after transition would the UK seek to diverge from the Regulation if this was necessary for national security reasons and to combat CSEA?
- Could a divergent UK approach after transition affect the ability of UK business to provide services based on electronic communications to EU end users, considering the extraterritorial reach of the proposed Regulation and the UK's goal of obtaining data adequacy decisions from the EU?

We would ask you to bear these questions in mind when you provide this Committee with your next update on any developments in the negotiation of the proposed Regulation. This is a legislative file which we will be scrutinising closely, not least because of the Committee's new statutory role to assess legislative proposals for matters of "vital national interest" to the UK during the transition period (see Section 13A European Union (Withdrawal) Act 2018).

In addition, we would ask you to also take into account further developments in the Privacy International case before the Court of Justice. We note the recent Advocate General opinion on 15 January 2020 that the bulk, indiscriminate processing of communications data for national security purposes falls within the scope of the current e-Privacy Directive. We look forward to the Government's comments on the Court of Justice judgment in due course and any implications for the UK and UK legislation, in terms of both the current Directive and the proposed Regulation as its successor.

The Committee is also very interested in your explanation in your letter about UK engagement with the EU on the negotiation of EU legislative proposals during the transition period. You said:

> "The newly formed UK Mission to the European Union (UKMis Brussels) is continuing to monitor the progress of the proposed Regulation and to

> understand emerging thinking. HMG will continue to seek to engage the EU as it develops its positions and where it is in our national interests, as we would other international organisations where possible".

In the interests of transparency, we would be grateful if you could be more specific about those means of engagement with the EU, in terms of any structure, fora, frequency and participants.

We ask that your next update be provided as soon possible and at the very least by 24 April. As a general guide, updates should be provided immediately to the Committee during the transition period if there is any expedition in the negotiations of the proposal which might mean that it would apply to the UK before the end of that period.

Please note that I am also copying this letter to the Chairs of the following other Committees of the House: Digital, Culture, Media and Sport Committee, the Science and Technology Committee, the Home Affairs Committee, the Justice Committee, the Joint Committee on Human Rights and the Committee on the Future Relationship with the EU.

3 Future of the Common Agricultural Policy[15]

This EU document is politically important because:

- it is relevant to the Northern Ireland Protocol;
- is relevant to the UK's future trading relationship with the EU; and
- is relevant to UK strategic objectives, such as climate change.

Action

- Write to the Government.

Overview

3.1 As a result of the UK's withdrawal from the EU, the future Common Agricultural Policy (CAP)—proposed by the European Commission in 2018—is of minor direct interest to the UK. That said, the approach taken is relevant to the continued trading relationship and there are specific ways in which it is relevant under the terms of the Withdrawal Agreement's Protocol on Ireland/Northern Ireland, insofar as the latter requires Northern Ireland to apply EU rules on the marketing of agricultural products and links the level of agricultural subsidies that may be paid in Northern Ireland to those available under the CAP.

3.2 Indirectly, the EU's plans are of interest to the UK as the EU will remain an important trading partner for agricultural products and as they pertain also to wider UK strategic interests, such as efforts to mitigate the impact of greenhouse gas emissions and adapt to a changing climate. The Commission proposed that 40% of CAP funds contribute to climate objectives.

3.3 In terms of the future trading relationship, it should be noted that agricultural direct payments constitute state aid, but are exempted from the EU's competition rules unless otherwise decided by the European Parliament and Council. Noting, however, the EU's concern about levels of future state aid affecting trade between the UK and EU and the reality that Norway has been denied duty-free access to the EU market because of the higher support it gives to farmers, agricultural support is an area which might arise in the negotiations on the future UK-EU relationship.

3.4 As the EU's direct payments for farmers for 2020 will be funded from the next multi-annual budget (2021–27), this is one of the few areas excluded from the transition period.

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

Consequently, domestic provision[16] has been made for those payments in the UK this year at the same level as in 2019. Thereafter, support will be covered by the terms of the Agriculture Bill (once enacted).

3.5 The European Commission has separately proposed the extension of the current CAP beyond the end of this year in order to allow time for agreement on, and implementation of, the future CAP. We are reporting those proposals separately.

3.6 Future domestic agricultural policy falls outside our remit. We are, however, particularly concerned to ensure that the interests of Northern Ireland are being taken into account, noting that the proposals make legislative changes that will apply under the Northern Ireland Protocol.

3.7 Our predecessors retained the documents under scrutiny pending further information from the Government. They received letters dated 17 July 2019 and 3 October 2019 updating them on the progress of negotiations.

Action

3.8 Noting that the future CAP remains directly relevant to Northern Ireland, we have written to the Department seeking a view on the implications for Northern Ireland and requesting information on how the Government is continuing to represent the interests of Northern Ireland as discussions progress on the future design of the CAP. We have also requested an analysis of the relevance of the future CAP to the future trading relationship between the EU and the UK, including in relation to state aid considerations, as well as its impact on the UK's strategic interests such as climate change.

Letter from the Chair to the Parliamentary Under Secretary of State (Victoria Prentis MP)

We considered your Department's earlier letters of 17 July 2019 and 3 October 2019 on the proposals concerning the future of the Common Agricultural Policy (CAP) at our meeting of 26 March 2020. Since then, the UK has withdrawn from the EU based on a Withdrawal Agreement, including a Protocol on Ireland/Northern Ireland.

We note that the future CAP remains directly relevant to Northern Ireland insofar as the Protocol requires Northern Ireland to apply EU rules on the marketing of agricultural products and links the level of agricultural subsidies that may be paid in Northern Ireland to those available under the CAP. The future CAP is also of indirect relevance to the trading relationship between the EU and the whole of the UK and it pertains to UK strategic interests, such as climate change.

We would welcome your analysis, by the end of April 2020, on:

- the implications for Northern Ireland of the proposals in the light of commitments under the Withdrawal Agreement's Ireland/Northern Ireland Protocol;
- how the Government is continuing to represent the interests of Northern Ireland as discussions progress on the future design of the CAP;

16 Direct Payments to Farmers (Legislative Continuity) Act 2020.

- the relevance of the future CAP to the future trading relationship between the EU and the UK, bearing in mind that Norway has been denied duty-free access to the EU market because of the higher support it gives to farmers; and
- the impact of the CAP on the UK's strategic interests such as climate change.

In terms of the future trading relationship, we would be interested to know if the UK will seek some sort of common understanding on the levels of agricultural support available to EU and UK farmers respectively, particularly in the event that the parties agree duty-free access to their markets.

4 Extension of the Common Agricultural Policy[17]

This EU document is politically important because:

- it will be applicable during the implementation period; and
- has post-Brexit policy implications given that it will delay the point of substantial divergence between EU and UK agricultural policies.

Action

- Report to the House.

Overview

4.1 As agreement on the terms of the Common Agricultural Policy (CAP) after 2021 has not yet been reached, the Commission has presented these proposals to extend the current CAP in order to allow time for discussions on the future policy to conclude and to ensure the continuity of CAP support to farmers and other beneficiaries in 2021. The Government and Commission consider that the proposals will have no substantial effect on the UK. It does serve to postpone, though, any substantial divergence between EU and UK agricultural policies.

4.2 While a seven year "agricultural transition period" will begin in England from 1 January 2021—allowing for gradual changes to current arrangements—the Government has pledged to maintain overall agricultural support at current levels until 2024. The Scottish Government introduced the Agriculture (Retained EU Law and Data) (Scotland) Bill in November 2019, proposing to keep farm support largely the same until 2024.

4.3 Two legislative proposals were presented by the European Commission. The first amends the rules on financial discipline and transfers of funds to reflect the extension. The second extends the applicability of the existing legal framework for one year and makes several technical amendments to existing legislation to reflect this extension.

4.4 The then Minister of State for Agriculture, Fisheries and Food (Rt Hon. George Eustice MP) identified no significant issues, noting that the European Commission also considered that these proposals would not have any meaningful effect on the UK.[18]

4.5 While these proposals will have a minimal impact on the UK in terms of required action, the EU's decision to preserve the status quo for at least one year—alongside the

17 (a) Proposal for a Regulation amending Regulation (EU) No 1306/2013 as regards financial discipline as from financial year 2021 and Regulation (EU) No 1307/2013 as regards flexibility between pillars in respect of calendar year 2020 (b) Proposal for a Regulation laying down certain transitional provisions for the support by the European Agricultural Fund for Rural Development (EAFRD) and by the European Agricultural Guarantee Fund (EAGF) in the year 2021; (a) Council document 13644/19 + ADD 1, COM(19) 580 (b) Council document 13643/19 + ADD 1, COM(19) 581; Legal base: (a) Article 43(2), QMV, Ordinary Legislative Procedure; (b) Articles 43(2) and 349 TFEU, QMV, Ordinary Legislative Procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: (a) 40947 (b) 40948.

18 Explanatory Memorandum and subsequent corrigendum.

effective retention of the CAP in the UK pending the development of new agricultural policy—means that the point of substantial divergence between EU and UK agricultural policies is delayed.

Action

4.6 We report the documents to the House as politically important given that they delay the point of substantial divergence between EU and UK agricultural policies, but we raise no queries with the Government.

5 Organic products[19]

This EU document is politically important because:

- it will apply in Northern Ireland under the Ireland/Northern Ireland Protocol;
- will, along with the overarching organic products Regulation, apply from 1 January 2021 and will create, therefore, immediate divergence between Great Britain on the one hand and the EU and Northern Ireland on the other on the first day after the transition period; and
- is in an area (organic products) identified by the Government as requiring particular arrangements under the future relationship.

Action

- Write to the Minister.

Overview

5.1 A new EU regulatory framework for organic products will apply from 1 January 2021.[20] Under the terms of the Withdrawal Agreement's Ireland/Northern Ireland Protocol, the new framework will apply in Northern Ireland but it will not apply in Great Britain, where—unless changes are made (see below)—the default law will be the current EU regulatory framework,[21] enshrined in the UK as "EU retained law". This document itself makes only minor amendments, but it is of particular interest as it highlights a policy area of immediate regulatory divergence between GB on the one hand and the EU and Northern Ireland on the other on "Day One" after the transition period.

5.2 The Prime Minister has made clear that the transition period will end on 31 December 2020, though this will only be legally certain under the terms of the Withdrawal Agreement on 30 June 2020—the deadline for the EU and UK to agree a one-off extension for up to one or two years.[22]

Post-transition divergence on organic standards?

5.3 The potential to manage that divergence by amending retained EU law is provided for in the Agriculture Bill, which gives Ministers the power to amend EU retained law concerning organic standards. Explaining this delegation of power, the Government

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

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

21 Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91.

22 Article 132 of the EU/UK Withdrawal Agreement empowers the EU/UK Joint Committee to agree an extension of the transition period. Section 15A of the European Union (Withdrawal) Act 2018 prohibits a Minister representing the UK in the Joint Committee from agreeing to an extension. For the UK to agree to an extension in the Joint Committee would require a statutory amendment.

acknowledges[23] that, from 1 January 2021, the UK would otherwise be "operating to standards different from those of one of our major trading partners". The power will allow the UK "to establish regulatory equivalence with the EU and other trading partners".

5.4 It is noteworthy that the power to amend EU retained law in this area extends to Northern Ireland ministers. A Briefing Paper from the Northern Ireland Assembly Research and Information Service[24] asked whether Northern Ireland ministers would actually be able to utilise these powers given the fact that, under the terms of the Withdrawal Agreement, Northern Ireland is not permitted to diverge from EU rules on organic production and labelling. The Briefing Paper also asked whether any assessment has been undertaken of the risk of regulatory divergence between GB and the EU in relation to organic standards and any likely impacts this could have on local (NI) producers and processors?

5.5 It is evident that facilitating trade in organic products between the EU and the UK is of importance to the Government. In its Command Paper[25] published in advance of the launch of negotiations on the future relationship, the Government proposed that the future EU-UK Comprehensive Future Trade Agreement should include an Annex on organic products:

> This annex should facilitate trade in organic products, by enabling products marketed as organic in one party to be marketed as organic in the other. It should contain provisions establishing equivalence between the UK and EU on technical regulation for organic products. It should also include provisions relating to labelling, the exchange of information, peer review, and control authorities. This annex should be broadly in line with the agreement on organics the EU has with Chile.

5.6 We note that the agreement on organics with Chile is based on the current EU legislative framework, which would not be possible as the basis for an agreement with the UK. Additionally, the scope of the agreement with Chile is limited as Chile does not have detailed production rules for certain products.

5.7 The new EU framework provides that organic products may be imported from third countries if they either a) comply with the new EU rules or b) comply with equivalence conditions laid down in a trade agreement. If the latter, the Union would need to recognise in the trade agreement that the third country has a system of production meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity as those of the Union. This differs from the status quo, under which the equivalent system of production needs to be capable of meeting the same objectives and principles.

5.8 In his Explanatory Memorandum on the document, the then Minister of State for Agriculture, Fisheries and Food (Rt Hon. George Eustice MP) chose not to comment on

23 Memorandum concerning the Delegated Powers in the Agriculture Bill for the Delegated Powers and Regulatory Reform Committee.

24 "UK Agriculture Bill 2019–20", Northern Ireland Assembly Research and Information Service, Paper 06/20, 19 February 2020.

25 "The Future Relationship with the EU: The UK's Approach to Negotiations", February 2020, CP211.

the wider issues relating to GB divergence from EU organic standards and instead focused narrowly on the policy differences that would apply when this Delegated Act is applied in Northern Ireland, but not in GB.

Action

5.9 We have written to the Government noting that this document highlights an area of potential immediate divergence between Great Britain on the one hand and the EU and Northern Ireland on the other with effect from 1 January 2021, but also noting the evidence that the Government wishes to minimise divergence and to facilitate trade in organic products. As set out in the letter, we have pressed the Government for detail on its approach, including assessment of the impact on Northern Ireland.

Letter from the Chair to the Minister of State for Agriculture, Fisheries and Food (Robert Goodwill MP)

We considered your Department's Explanatory Memorandum on the above document at our meeting of 26 March 2020.

While we acknowledge that the document itself is of minor importance, we consider it to be politically important as it highlights a policy area of potential immediate divergence between Great Britain on the one hand and the EU and Northern Ireland on the other with effect from 1 January 2021.[26] The powers sought in the Agriculture Bill as well as material in the negotiation mandate suggest that you are aware of this, that the Government wishes to minimise divergence and that the Government wishes to facilitate future trade in organic products.

We are interested in the detail of your plans. The Government's negotiation paper indicated that the UK was seeking an arrangement broadly similar to that enjoyed by Chile. We note, however, that the arrangement with Chile is limited in scope and is no longer available in any case under the new EU policy framework. Any equivalent regime would need to be closer to the EU rules than is currently permitted. What elements of the new EU rules does the Government consider it could not apply whilst successfully "meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity as those of the Union"?

Under the Withdrawal Agreement, Northern Ireland will be obliged to apply EU rules on organic production and labelling. The Northern Ireland Assembly Research and Information Service[27] posed two questions to which we would welcome your response:

- in what circumstances, if any, would Northern Ireland ministers be able to use their powers to amend EU retained law in this area?

26 Article 132 of the EU/UK Withdrawal Agreement empowers the EU/UK Joint Committee to agree an extension of the transition period of up to one or two years by 30 June 2020. Section 15A of the European Union (Withdrawal) Act 2018 prohibits a Minister representing the UK in the Joint Committee from agreeing to an extension. For the UK to agree to an extension in the Joint Committee would require a statutory amendment.

27 "UK Agriculture Bill 2019–20", Northern Ireland Assembly Research and Information Service, Paper 06/20, 19 February 2020.

- whether any assessment has been undertaken of the risk of regulatory divergence between GB and Northern Ireland in relation to organic standards and any likely impacts this could have on local (NI) producers and processors.

We look forward to your response [within ten working days].

6 Enforcement of international trade rules[28]

This EU document is legally and politically important because:

- it is likely to be agreed and apply to the UK during a post-exit transition/ implementation period;
- it will apply to Northern Ireland after transition under the Protocol on Ireland/ Northern Ireland;
- it raises questions about the interaction between the UK's domestic trade policy post-transition and its obligations under the Protocol on Ireland/Northern Ireland; and
- it is relevant to the operation of a future EU/UK trade agreement

Action

- Write to the Minister for Trade Policy (Rt Hon. Conor Burns MP) to clarify the Government's position on the proposed changes to the EU's 2014 Trade Enforcement Regulation, their application to the UK as a whole during the post-exit transition period and to Northern Ireland after transition, and their wider implications for the UK's future trade relationship with the EU.
- Draw to the attention of the Northern Ireland Affairs Committee, the International Trade Committee and the Committee on the Future Relationship with the European Union.

Overview

6.1 Resolving trade disputes before they escalate into disruptive and damaging trade wars is one of the core functions of the World Trade Organisation ("WTO"). WTO members have agreed to use the WTO's multilateral dispute settlement procedures to resolve disputes rather than resort to unilateral measures. If the countries involved in a trade dispute are unable to resolve their differences through consultations, the WTO's Dispute Settlement Body, consisting of all WTO members, may be asked to establish an independent panel of trade experts to draw up a report. The panel's ruling may be appealed to the WTO's Appellate Body on a point of law. The countries involved in the dispute must accept unconditionally the Appellate Body's report and findings once they have been adopted by the WTO's Dispute Settlement Body.

6.2 Since 11 December 2019, the WTO's Appellate Body has been inquorate and unable to function at a time when trade restrictions by WTO members are at historically high

28 (a) European Commission report reviewing the scope of the EU Trade Enforcement Regulation (Regulation No 654/2014); Council number 15090/19, COM(19) 639; Legal base—; Dept—International Trade; Devolved Administrations consulted; ESC number 40998.
(b) Proposal for a Regulation amending the EU Trade Enforcement Regulation; Council number 15088/19, COM(19) 623; Legal base—Article 207(2) TFEU, ordinary legislative procedure, QMV; Dept—International Trade; Devolved Administrations consulted; ESC number 40999.

levels.[29] Three of the Appellate Body's seven members are needed to hear an appeal. Only one remains, following a decision by the US Government to block appointments until its wider concerns with WTO dispute settlement are addressed.[30] Efforts to overcome the impasse continue. The EU has concluded an interim arrangement with Canada and with Norway to replicate the WTO appeal system through binding arbitration.[31] It is also seeking to agree a multi-party interim appeal arrangement with other WTO members which would apply until a reformed WTO Appellate Body becomes fully operational.[32] This substitute mechanism has to be agreed individually by each participating WTO member, so will take time to take root.

6.3 Meanwhile, by appealing an unfavourable WTO panel report to the Appellate Body (an "appeal into the void") and refusing any other form of binding arbitration under the WTO's dispute settlement procedures, countries who fail to comply with their obligations under trade agreements governed by WTO rules may ignore adverse panel findings and so avoid remedying any breach. The European Commissioner for Trade (Phil Hogan) has made clear that the paralysis of the WTO's Appellate Body comes at "a critical moment for multilateralism and for the global trading system":

> With the Appellate Body removed from the equation, we have lost an enforceable dispute settlement system that has been an independent guarantor that the WTO's rules are applied impartially. Whilst we seek to reform the WTO and re-establish a well-functioning WTO system, we cannot afford being defenceless if there is no possibility to get a satisfactory solution within the WTO.[33]

The EU's position

6.4 The proposed Regulation—document (b)—is the first legislative initiative put forward by the European Commission under its new President (Ursula von der Leyen) and reflects her determination to "ensure that we can enforce our rights, including through the use of sanctions, if others block the resolution of a trade conflict".[34] To reinforce the point, the Commission has also announced the creation of a new position—Chief Trade Enforcement Officer—to focus on compliance with and enforcement of EU trade agreements.

29 See the WTO Director General's annual report on developments in the international trading environment published on 29 November 2019.

30 Under the WTO's Understanding on rules and procedures governing the settlement of disputes, the WTO's Dispute Settlement Body is responsible for appointing members of the Appellate Body. It must act by consensus.

31 Article 25 of the WTO's Understanding on rules and procedures governing the settlement of disputes allows the parties to a trade dispute to agree by mutual consent to binding arbitration. The EU has agreed an interim appeal arbitration procedure with two of its trading partners, Canada and Norway. The appeals would be heard by three former members of the WTO Appellate Body in their capacity as arbitrators.

32 At a meeting in Davos, Switzerland, in January 2020 Trade Ministers from Australia, Brazil. Canada, China, Chile, Colombia, Costa Rica, Guatemala, South Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland and Uruguay agreed to "work towards putting in place contingency measures that would allow for appeals of WTO panel reports in disputes among ourselves, in the form of a multi-party interim appeal arrangement based on Article 25 of the WTO Dispute Settlement Understanding, and which would be in place only and until a reformed WTO Appellate Body becomes fully operational. This arrangement will be open to any WTO Member willing to join it".

33 See the European Commission's press release of 12 December 2019: *Commission reinforces tools to ensure Europe's interests in international trade.*

34 See the Political Guidelines for the 2019–24 European Commission published by the President, Ursula von der Leyen.

6.5 The main purpose of the proposed Regulation is to address potential blockages within the WTO's dispute settlement system by amending the EU's 2014 Trade Enforcement Regulation. The 2014 Regulation allows the EU to take counter-measures to enforce or safeguard its rights under international trade agreements, but the EU can only act once a binding adjudication in favour of the EU has been given following the completion of the WTO dispute settlement process. The counter-measures envisaged include the imposition of new or increased customs duties or quantitative restrictions on the import or export of goods, as well as the suspension of tariff concessions or concessions in the field of public procurement. The aim in each case is to coax a trading partner into compliance with international trade rules while seeking to mitigate the impact on businesses and consumers in the EU.

6.6 As the European Commission notes in its accompanying report—document (a)—the 2014 Regulation was designed to operate in tandem with a fully functioning dispute settlement process capable of delivering "a final and binding adjudication". This is no longer the case, given the possibility that WTO panel reports may be "appealed into the void", delaying indefinitely the prospect of obtaining a definitive, binding and enforceable decision.[35] The changes proposed to the 2014 Regulation would allow the EU, after obtaining a favourable ruling from a WTO panel, to proceed immediately to counter-measures if its trading partner then decided to appeal the panel ruling "into the void" and to obstruct binding independent adjudication by refusing to agree to arbitration.[36]

6.7 Similar problems of enforcement can also arise outside the WTO framework. A trading partner may block the effective operation of dispute settlement mechanisms provided for in the EU's many bilateral and regional free trade agreements; for example, preventing a final and binding adjudication by failing to appoint an arbitrator. The proposed Regulation seeks to address these weaknesses as well by allowing the EU to act in cases where a trading partner blocks the use of dispute settlement procedures to avoid a binding and enforceable ruling.

6.8 The European Commission says it has purposefully limited the scope of the amendments to the 2014 Regulation in the expectation that fewer changes will enable a swift and smooth passage through the Council and the European Parliament. The proposed Regulation makes clear that any counter-measures taken by the EU must be proportionate to the damage caused to the EU's economic interests by any breach of international trade rules. They would be based on an implementing act adopted by the European Commission following consultation of affected stakeholders.

The Government's position

6.9 In his Explanatory Memorandum of 7 January 2020, the Minister for Trade Policy (Rt Hon. Conor Burns MP) says that the changes proposed by the European Commission "would only insert new triggers for use of the [2014] Regulation with respect to the emergency arising in the WTO".[37] He anticipates that the amended Regulation is likely to take effect "by the middle of 2020". The UK would therefore remain bound by the 2014 Regulation, as amended, and by any counter-measures adopted under it, during a post-exit transition period lasting at least until 31 December 2020. The Minister then adds:

35 See p.2 of the Commission report.

36 The European Commission's infographic shows how the amended 2014 EU Enforcement Regulation would work.

37 See paragraph 34 of his Explanatory Memorandum.

> On exit the UK will operate an independent trade disputes function and retaliatory measures will be applied in accordance [with] domestic law, under section 15 of the Taxation (Cross-border Trade) Act 2018.

6.10 He states also that the 2014 Regulation, as amended, will continue to apply to Northern Ireland beyond the post-exit transition period under Article 5(4) and Annex 2 of the Protocol on Ireland/Northern Ireland which forms an integral part of the EU/UK Withdrawal Agreement.

Action

6.11 We ask the Minister to clarify the Government's position on the changes to the 2014 EU Trade Enforcement Regulation proposed by the European Commission, their application to the UK as a whole during the post-exit transition period and to Northern Ireland after transition, and their wider implications for the UK's future trade relationship with the EU.

Letter to the Minister for Trade Policy (Rt Hon. Conor Burns MP) at the Department for International Trade

We have considered your Explanatory Memorandum on a proposed Regulation that would allow the EU to take unilateral action to enforce or safeguard its rights under international trade agreements if a trading partner blocks the resolution of a trade dispute. The proposal is a response to the current paralysis of the WTO's Appellate Body. We would be grateful for further information on the following matters.

The UK's position and role in negotiations before exit

You state that the changes proposed by the European Commission "would only insert new triggers for use of the [2014] Regulation with respect to the emergency arising in the WTO".[38] Our understanding is that the amended Regulation would also apply to any dispute resolution mechanism provided for in the EU's bilateral or regional trade agreements with third countries, including a future free trade agreement with the UK. We ask:

- whether you support the changes proposed and accept the case made by the Commission for enhancing the EU's power to take counter-measures if a trading partner obstructs a dispute settlement procedure within the WTO or under a bilateral or regional trade agreement with the EU;
- whether you consider that the new wording proposed adequately describes (or circumscribes) the point at which the EU would be entitled to act;[39] and
- what involvement the UK had in negotiations on the proposed Regulation before its exit from the EU on 31 January 2020, including whether the UK attended any Council Working Group discussions, what (if any) changes it sought to the proposal and whether other Members States were receptive.

38 See paragraph 34 of his Explanatory Memorandum.

39 The proposal would allow the EU to take counter-measures "if adjudication is not possible because the third country is not taking the steps that are necessary for a dispute settlement procedure to function" (Article 3(bb)).

Application of the amended Regulation during a post-exit transition period

You expect the amended Regulation to take effect and apply to the UK during the post-exit transition period provided for in the EU/UK Withdrawal Agreement.[40] You also say that "on exit, the UK will operate an independent trade disputes function and retaliatory measures will be applied in accordance [with] domestic law, under section 15 of the Taxation (Cross-border Trade) Act 2018".

We note that section 15 of the 2018 Act is not yet in force. Under section 57 of the Act, it will be for the Secretary of State to determine the commencement date by Statutory Instrument. We ask you to confirm that the commencement date for section 15 will have to be the first day following transition to ensure that there is no conflict between the UK's domestic law and EU law on trade remedies and to avoid a breach of the EU/UK Withdrawal Agreement.

Application of the amended Regulation in Northern Ireland after transition

The 2014 Regulation, as amended, will continue to apply "to and in the UK in respect of Northern Ireland" after transition under Article 5(4) of the Protocol on Ireland/Northern Ireland. Article 4 of the Protocol recognises that Northern Ireland is part of the UK's customs territory and further provides (our emphasis) that:

> […] nothing in this Protocol shall prevent the UK 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.

We understand this to mean that any counter-measures introduced by the UK, such as increased tariffs on an imported good or restrictions on the volume of imports from a trading partner, to counteract a breach in the terms of its trade agreement with the UK, would apply throughout the UK, including in Northern Ireland, unless they would in some way prejudice the application of the Protocol. We ask you to explain how this proviso would apply if, for example, the EU is not applying any counter-measures, or different ones from the UK, in its trading relationship with the same trading partner. In particular:

- which counter-measures would Northern Ireland be required to apply, those authorised under domestic law or under EU law; and

- what means would be available to the EU and the UK to prevent any diversion of trade designed to circumvent EU or UK counter-measures?

Wider Brexit implications after transition

The 2014 EU Trade Enforcement Regulation and any counter-measures taken under it will cease to apply to the UK as a whole at the end of the post-exit transition period. Section 15 of the Taxation (Cross-border Trade) Act 2018 only gives the Secretary of State powers to make regulations varying the amount of duty applicable to imported goods, whereas the counter-measures available to the EU under the EU's 2014 Trade Enforcement Regulation are broader in scope. Do you agree that further domestic law provision will be

40 See Article 127 of the EU/UK Withdrawal Agreement.

needed to match the trade enforcement powers available to the EU under the 2014 Trade Enforcement Regulation and, if so, when and how does the Government intend to legislate to this end?

You state that the changes to the 2014 Regulation would "not have a direct economic, social or environmental impact and UK businesses are not impacted by being required to alter working practices". Whilst this remains the case during transition, we note that the amended 2014 Regulation would give the EU the authority to take counter-measures against the UK after transition if it considers that the UK is obstructing the resolution of a dispute within the WTO or under the terms of a future trade agreement with the EU. The impact on businesses and other stakeholders in the UK could be substantial. We ask you to set out the Government's approach to consultation and the preparation of impact assessments on EU proposals whose impact, as in this case, may only be felt after the post-exit transition period has ended.

Finally, the EU has agreed an interim arrangement with Canada and Norway to ensure that any WTO-related dispute between them will be resolved by binding arbitration if it proceeds beyond the panel stage. The EU is also developing a multi-party interim appeal arrangement which will be open to any WTO member willing to join it.[41] We ask you whether the Government intends, as a contingency, to agree a similar interim arrangement with the EU to take effect immediately after transition or to participate in the proposed multi-party arrangement.

As well as providing the information we have requested, we ask you also to update us on the progress of negotiations, including any changes made to the final agreed text which may affect the UK and/or the operation of the Protocol on Ireland/Northern Ireland.

41 See the Statement by Ministers meeting in Davos, Switzerland, on 24 January 2020.

7 Trade preferences for developing countries[42]

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 ("the 2018 Act"); 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 Policy (Rt Hon. Conor Burns MP) at the Department for International Trade to request further information on the trade preference scheme that the Government intends to introduce under the 2018 Act and on the implications of the Protocol on Ireland/Northern Ireland in determining the UK's preferential market access terms.

- Draw to the attention of the International Development Committee, the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

7.1 World Trade Organisation ("WTO") rules allow WTO members to offer more favourable terms of trade for developing countries without requiring them to open up their markets to the same extent or to make concessions which might hinder their development.[43] The EU has developed its own system of unilateral trade preferences—the Generalised Scheme of Preferences ("GSP")—which enables developing countries to export most of their products to the EU without paying any tariffs or a reduced tariff.[44] It operates on three levels, each offering a different degree of access to the EU market.

42 (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.

43 See the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries adopted under the General Agreement on Tariffs and Trade (GATT) in 1979.

44 See Regulation (EU) 978/2012 applying a scheme of generalised tariff preferences.

Type of GSP arrangement	Eligibility	Benefits	Number of beneficiaries at the end of 2019
Standard GSP	Low and lower-middle income countries45 which do not benefit from another arrangement (such as a free trade agreement) granting them more favourable preferential access to the EU market	Tariff-free access for "non-sensitive" products and tariff reductions for "sensitive" products, together accounting for around two thirds of product lines	15 countries
GSP+ special incentive arrangement	Low and lower-middle income countries considered to be vulnerable (because of a lack of diversification and low penetration of the EU market) and committed to sustainable development and good governance (through the ratification and effective implementation of "core" UN and ILO conventions on human and labour rights, and international conventions on the environment, drugs, and measures to combat corruption)	Tariff-free access for around two thirds of product lines	8 countries
Everything but Arms (EBA) arrangement	Least developed countries (LDCs) as defined by the UN	Duty- and quota-free access for all products except arms and ammunition	48 countries

7.2 Socio-economic status largely determines a country's eligibility for the EU's "standard" GSP or "Everything but Arms" (EBA) arrangement. Whilst also relevant for GSP+, additional criteria apply. Eligibility is not automatic—a beneficiary of the EU's standard GSP arrangement must apply for GSP+. To qualify, it must not only ratify and effectively implement 27 international conventions but also agree to ongoing monitoring by the European Commission.[46] If there is any backsliding on the international commitments it accepted to qualify for GSP+, tariff preferences for some or all of the products it exports to the EU may be withdrawn temporarily.

7.3 Trading preferences may also be temporarily withdrawn under *all* the EU's GSP arrangements if a beneficiary country is responsible for:

- "serious and systematic" violations of human rights or core labour rights;

45 Based on a World Bank classification.
46 As well as the 27 conventions listed in Annex VIII of the EU's GSP Regulation, all current GSP+ beneficiaries have signed the 2015 Paris Agreement on climate change.

- "serious shortcomings" in customs controls on drugs or in complying with international laws to counter terrorism and money laundering;
- "serious and systematic" unfair trading practices which have an adverse effect on industry in the EU;
- "serious and systematic" infringement of international arrangements for the conservation and management of fishery resources; or
- the export of goods made by prison labour.

7.4 A system of "graduation" enables countries to move from one type of GSP arrangement to another, or lose their GSP beneficiary status, to reflect changes in their level of economic development or market access arrangements. Preferences for specific product categories can be removed once they become sufficiently competitive. The EU can also take safeguard measures if a product entering its market on preferential terms from a GSP country causes (or threatens to cause) serious difficulties for EU producers.

7.5 The European Commission publishes a report every two years on the operation of the EU's GSP regime. In its report for 2018–19, the Commission underlines the importance of preferential market access, especially for the poorest countries, and says that GSP has helped to promote a "values-based economy" supporting economic growth, poverty reduction, good governance and sustainable development. Despite these advances, "civil society space is shrinking", freedom of association is increasingly at risk, and pressure for the reintroduction or implementation of the death penalty is mounting in some beneficiary countries. The 2012 Regulation establishing the EU's current GSP regime will expire at the end of 2023. The European Commission anticipates that the EU's future GSP regime will maintain a focus on human rights, good governance and sustainable economic, social and environmental development.

7.6 The Commission Delegated Regulation (adopted in February 2020) is the culmination of a process of monitoring by the European Commission to evaluate Cambodia's compliance with core international conventions on human and labour rights.[47] The Commission concludes that Cambodia (a beneficiary of the Everything but Arms trade preferences) is responsible for "serious and systematic violations" of the provisions of the International Covenant on Civil and Political Rights (ICCPR) concerning the right to political participation, freedom of expression, and freedom of association. It has decided temporarily to withdraw tariff preferences for certain products originating in Cambodia, to take effect in August 2020. This means that the EU's standard tariffs will apply to the affected products (garments and footwear, travel goods and sugar). The preferences withdrawn affect around one-fifth (or €1 billion) of Cambodia's annual exports to the EU. The Commission notes that all emerging industries in Cambodia, as well as high value-added garments and bicycles, and some types of footwear, will continue to enjoy duty- and quota-free access to the EU market.[48]

47 The European Commission is also closely monitoring the situation in Bangladesh (compliance with International Labour Organisation Conventions) and Myanmar (compliance with human and labour rights).

48 See the press release issued by the European Commission on 12 February 2020.

The Government's position

7.7 In his Explanatory Memorandum on the European Commission's GSP report, the Minister for Trade Policy (Rt Hon. Conor Burns MP) notes that the EU's GSP Regulation and any delegated acts made under it will to apply to the UK as a whole during the post-exit transition period. This means that "tariffs, quotas and relevant standards and regulations will remain aligned with the EU" in trade between the UK and GSP partners at least until the end of 2020. They will continue to apply to goods entering Northern Ireland from the EU's GSP trading partners *after* the post-exit transition period has ended if they are "at risk" of subsequently entering the EU's internal market, based on criteria to be agreed by the Joint Committee established under the EU/UK Withdrawal Agreement.[49] At risk goods include goods which are subject to "commercial processing" in Northern Ireland because, for example, they are used to form part of another good made in Northern Ireland.[50] The EU's GSP arrangements will no longer apply in the rest of the UK (Great Britain) after transition, nor will they apply in Northern Ireland for goods covered by the EU's GSP scheme which are not at risk of subsequent onward movement to the EU. Section 10 of the Taxation (Cross-Border Trade) Act 2018 makes provision for the Secretary of State (by Statutory Instrument) to establish the UK's own trade preference scheme for eligible developing countries listed in Schedule 3 to the Act. The Minister says that the Act "enshrines into UK law the commitment contained in the UN Sustainable Development Goals to provide duty free trade access for all goods (except arms and ammunition) to least developed countries".[51]

7.8 In his Explanatory Memorandum on the Commission Delegated Regulation, the Minister confirms that the temporary withdrawal of trade preferences for Cambodia will apply in the UK during transition and, potentially, beyond for "at risk" goods imported directly into Northern Ireland. He says that the UK's independent trade preference scheme will take effect on 1 January 2021 and that decisions on the suspension of trade preferences will require careful assessment. The Minister considers that the action taken by the European Commission is a proportionate and credible response to significant human rights concerns in Cambodia, designed to mitigate any negative lasting impact on Cambodia's economy and developments.[52] He adds that "the partial nature of the withdrawal is likely to safeguard against major impacts for UK businesses and consumers".[53]

7.9 The Government intends to keep under review how it will apply preferential tariffs from January 2021. Guidance published by the Department for International Trade at the end of January 2020 on trade with developing countries says that the UK scheme will be based on three frameworks—a general framework, an enhanced framework and a framework for least developed countries—which will "replicate the same market access as the EU's GSP" and "continue to provide preferences to the same countries as the EU's GSP".

49 See Article 5 of the Protocol on Ireland/Northern Ireland. The EU's 2012 GSP Regulation (EU) 978/2012 is one of the measures listed in Annex 2 of the Protocol as continuing to apply to Northern Ireland after the post-exit transition period has ended.
50 See Article 5 of the Protocol on Ireland/Northern Ireland.
51 Paragraph 27 of the Minister's Explanatory Memorandum.
52 Paragraph 8 of the Minister's Explanatory Memorandum.
53 Paragraph 29 of the Minister's Explanatory Memorandum.

Action

7.10 Ask the Minister to provide further information on the trade preference scheme that the Government intends to introduce from 1 January 2021 and on the implications of the Protocol on Ireland/Northern Ireland in determining the UK's preferential market access terms.

Letter to the Minister for Trade Policy (Rt. Hon. Conor Burns MP) at the Department for International Trade

We are grateful for your Explanatory Memorandums on the European Commission's latest report on the operation of the EU's Generalised Scheme of Preferences ("GSP") in 2018–19 and on the Commission's Delegated Regulation temporarily withdrawing some of Cambodia's trade preferences under the "Everything But Arms" arrangement which grants the least developed countries duty and quota-free access to the EU market for all products except arms and ammunition.

We note that 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 ("the 2018 Act"). Guidance issued by your Department in January 2020 stated that the UK scheme would "replicate the same market access as the EU's GSP" and "continue to provide trade preferences to the same countries as the EU's GSP".[54] We ask you whether this remains the Government's intention and whether this means that the UK will apply the same criteria as the EU to determine a country's eligibility for trade preferences.

Your comments on the Commission Delegated Regulation indicate that you support the Commission's "proportionate response" to serious and persistent human rights violations in Cambodia. You also say that future decisions on suspending trade preferences under the UK's scheme will need careful assessment and that the Government will "reach its own decision in due course about how it will apply preferential tariffs once the UK scheme enters into force in January 2021".

The 2018 Act would allow the UK to vary, suspend or withdraw trade preferences and, in doing so, to apply another rate that is lower than the UK's standard (Most Favoured Nation) tariff.[55] A recent Opinion piece in *Politico* suggested that the EU's ability to "effect positive change by leveraging and revoking trade preferences" would be diminished if the UK were to offer more favourable rates for goods imported from Cambodia post-transition or less stringent conditionality.[56] To mitigate this risk, we ask the Minister:

- whether the Government expects to apply the same conditionality on human rights, labour rights, good governance and sustainable development under the UK's scheme as the EU does under its GSP rules; and
- what form of monitoring and reporting the Government intends to put in place to ensure that GSP beneficiary countries comply with any human rights or other conditionality forming part of the UK's future trade preference scheme.

54 Guidance on *Trading with developing nations*, published on 30 January 2020. See https://www.gov.uk/guidance/trading-with-developing-nations-during-and-after-the-transition-period

55 See section 10(4)(b) of the Act.

56 Politico Opinion, *How Brexit could undermine human rights in Cambodia*, 23 February 2020.

We note, in any event, that the operation of the Protocol on Ireland/Northern Ireland may make it difficult, in practice, for the UK to apply a tariff rate that differs from the EU's to GSP beneficiaries, given the risk that any differential might cause friction in trade in the affected goods between Great Britain and Northern Ireland or give rise to a diversion of trade. We ask the Minister whether he acknowledges this risk and how significant it will be in shaping the UK's own trade preference scheme.

Finally, the European Commission considers the EU's GSP arrangements to be "the most progressive in terms of coverage and benefits".[57] We would welcome the Minister's views on this assessment and on the potential for a UK scheme to go further, for example, by reducing the number of products that are classified as sensitive (on which tariffs are still applied), offering more generous rules of origin and cumulation (to encourage sustainable regional supply chains), and mitigating the "cliff edge" that developing countries can face when graduating out of a trading preference scheme.

57 See the website of the European Commission's Directorate-General for Trade.

8 VAT threshold for small businesses[58]

This EU document is legally and politically important because:

- this Directive sets an EU-wide VAT registration requirement for small businesses with a turnover of approximately £74,000 or more a year (a significantly lower level than the UK's current £85,000 threshold), but it is not clear if it will need to be implemented in some form in Northern Ireland under the Irish Protocol in the Withdrawal Agreement.

Action

- Write to the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP) requesting further information.
- Draw this new EU legislation to the attention of the Northern Ireland Affairs Committee, the Treasury Committee and the Committee on the Future Relationship with the EU.

Overview

8.1 The EU's remaining 27 Member States have adopted a new Directive changing the way in which small businesses have to apply VAT law. In particular, this will set an EU-wide maximum limit on the VAT threshold for SMEs at €85,000 (£73,950), enabling individual EU countries to exempt small businesses from having to charge—and account for—VAT on their sales if their turnover is lower than this limit.[59] This is substantially lower than the UK's current VAT threshold of £85,000.[60] The new legislation will also enable SMEs from one Member State to make use of the VAT registration exemption when selling to customers in another EU Member State (provided their total turnover EU-wide is below €100,000 (£87,000), and their turnover in the country of the customer where they want to make use of the exemption is below the applicable national threshold).

The potential relevance of the new SME VAT Directive for Northern Ireland

8.2 The new VAT threshold, contained in Directive 2020/285/EU, will take effect in the EU from 1 January 2025. The UK has, of course, ceased to be a Member State of the EU as of 31 January 2020 and EU law will cease to apply at the end of the transition period, scheduled for 31 December 2020. As such, this new legislation—including the lower VAT threshold—would not automatically apply to the UK as a matter of EU law.

58 Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises; Council document 5334/18 + ADDs 1–3, COM(18) 21; Article 113 TFEU; special legislative procedure; unanimity; Department: HM Treasury; Devolved Administrations: not consulted; ESC number: 39449.

59 The new Directive permits variance of the threshold "for different business sectors based on objective criteria", but it can never exceed €85,000.

60 The VAT threshold varies by EU country, and EU law sets different limits for different Member States. The UK's threshold is higher than that of any EU country. In the 2018 Budget, the Chancellor announced that the UK's £85,000 threshold would be maintained until at least April 2022. The Office for Tax Simplification has previously recommended lowering the threshold.

8.3 However, under Article 8 of the Irish Protocol in the Withdrawal Agreement, EU VAT law "concerning goods" will remain applicable in Northern Ireland to avoid the need for VAT-related customs controls at the land border with Ireland.[61] It is unclear if this new Directive, and the harmonised maximum €85,000 VAT threshold in particular, would fall within the scope of the Protocol—at least insofar as Northern Irish businesses engaged in the supply of goods are concerned—and would therefore have to be implemented by HM Revenue & Customs in some form with respect to Northern Ireland.

The Government's position

8.4 In previous correspondence to the European Scrutiny Committee, the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP) was unable to offer a categorical assurance that the new Directive, including the maximum VAT threshold, will not have to be implemented in Northern Ireland (with attendant administrative implications for businesses there, and for their position within the UK internal market more broadly).

8.5 For example, in November 2019, he told our predecessors that the Government did not "consider" that Directive 2020/285 would have to be applied in Northern Ireland under the terms of the Protocol.[62] The Minister also noted at the time that the Treasury had, in the last months of the UK's EU membership, sought to increase the EU's maximum limit on the VAT threshold to an annual turnover of €100,000 (approximately £87,000, nearer the UK's current limit of £85,000). In a subsequent letter on the formal adoption of the Directive, dated 7 January this year, the Minister did not refer to the potential implications of the legislation for Northern Ireland at all.

Action

8.6 As of March 2020, the Committee has not received confirmation that the Government's interpretation of the Protocol with respect to the VAT threshold is shared by the EU. Troubling in this context is also the Treasury's own unsuccessful efforts to persuade the other Member States to raise the maximum VAT threshold to €100,000. It is unclear why this was considered necessary if it was clear the new Directive would not apply in any part of the UK.

8.7 Given the lack of clarity around the potential application of the new SME VAT Directive in Northern Ireland under the Protocol, especially with respect to the new turnover threshold, the Committee has written to the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP) to obtain further clarifications. The text of that letter is shown below.

61 If the post-Brexit transition period is not extended, the Irish Protocol will initially be in effect only from 1 January 2021 until 31 December 2024. For it to still be in force by 1 January 2025, when the new EU rules on the VAT threshold take effect, the Northern Irish Assembly must vote to approve the Protocol's continued application. If it declines to do so, Article 8—and with the continued application of EU VAT rules—would have ceased to have effect by the start of January 2025.

62 In support of this, the Minister appeared to rely firstly on the argument that the new legislation is out of the ambit of Protocol altogether because the threshold applies to firms irrespective of whether they sell goods or services (and therefore does not exclusively 'concern goods' in the words of Article 8). Secondly, the Government has implied the UK-EU Joint Committee could adopt "appropriate measures", an option foreseen by Article 8 to safeguard Northern Ireland's position within the UK's internal market, to avoid having to apply the new legislation under the Protocol.

Letter from the Chair to the Financial Secretary to the Treasury (Rt Hon. Jesse Norman MP), 18 March 2020

The EU VAT threshold for small businesses: potential application in Northern Ireland under the Irish Protocol

Thank you for your letters of 5 November 2019 and 7 January 2020 updating us on the adoption of the EU's new SME VAT Directive (Directive 2020/285/EU).[63] We note that the final legislation, approved by EU Finance Ministers on 18 February 2020, will set a maximum VAT turnover threshold for small businesses across the EU at €85,000 (£74,900) from 1 January 2025. It also allows SMEs from one EU country to benefit from the VAT exemption when selling into another Member State under certain conditions.

I am writing on behalf of the European Scrutiny Committee to seek further clarification from you on the implications of this new Directive, and in particular the maximum VAT threshold it contains, under the Ireland/Northern Ireland Protocol in the Withdrawal Agreement. As you know, Article 8 of the Protocol requires the UK to continue applying EU VAT legislation in Northern Ireland, insofar as those laws 'concern goods'. This includes the relevant provisions of Directive 2006/112/EC, as now amended to introduce the lower turnover limit in five years' time, provided the Northern Irish Assembly gives it support for extension of the Protocol when it is due for renewal in late 2024.

If the new Directive were to apply to firms in Northern Ireland engaged in the supply of goods under the Protocol, it would result in a substantial reduction of their VAT threshold from the current £85,000 to approximately £74,900. This would mean many more Northern Irish firms would have to start applying VAT rules and pay for the associated administrative costs; it could also potentially distort competition within the UK internal market if small businesses in Northern Ireland must comply with VAT-related administrative obligations at a lower turnover level than their competitors in Great Britain.[64]

In your letter of 5 November last year, you said the Government did not "consider" that Directive 2020/285/EU would have to be applied in Northern Ireland under the terms of the Protocol. In support of this, the Government appears to rely firstly on the argument that the new legislation is out of the ambit of Protocol altogether because the threshold applies to firms irrespective of whether they sell goods or services (and therefore does not exclusively 'concern goods' in the words of Article 8). Secondly, Treasury officials have implied the UK-EU Joint Committee could adopt "appropriate measures", essentially a waiver, to avoid having to apply the new legislation under the Protocol, an option foreseen by Article 8 to safeguard Northern Ireland's position within the UK's internal market.

It is not clear if the EU shares this interpretation of the basic scope of Article 8, or—if it did not—support special waivers for Northern Ireland. There has been no official confirmation that implementation of Article 8 is even to be discussed at the first meeting of the Joint Committee, scheduled for 30 March. However, it seems incongruous for the Government—as you noted in your letter of 5 November—to have unsuccessfully

63 The Directive was considered by the Committee as document (39449), 5334/18, COM(2018) 21.

64 This effect would be exacerbated if the VAT threshold in Great Britain were to be raised further in the future. We note in this respect that the long-term future of the VAT threshold was the subject of a report by the Office for Tax Simplification (OTS) in November 2017, but that no fundamental change of policy has been announced by the Treasury to date.

sought to raise the EU-wide VAT threshold under the new Directive to €100,000, which approximates the current UK turnover limit of £85,000, if it was confident the changes had no implications for Northern Ireland under the Protocol.

In light of the above, the Committee would like you to write by 1 April to clarify:

- if it is indeed the Government's formal position that Directive 2020/285/EU, and in particular the new VAT threshold, is in fact outside the ambit of Article 8 of the Irish Protocol, and confirm that the EU agrees with that interpretation;
- if not, what kind of "appropriate measures" the UK is proposing the Joint Committee adopt with respect to the new VAT threshold if it would otherwise be applicable in Northern Ireland in some form under Article 8 from January 2025; and
- whether the Government considers that small firms in Northern Ireland will be eligible for the new cross-border arrangements in the VAT Directive to benefit from the SME exemption in one of the EU-27 countries (and vice versa).

Depending on the nature of your reply, and in the context of any relevant discussions at the UK-EU Joint Committee meeting of 30 March, the Committee may follow up with you on the VAT-related implications of Article 8 of the Protocol for Northern Ireland more generally.

9 Possible UK participation in EU funding programmes post-Brexit[65]

This EU document is politically important because:

- it aims to set the EU's total budget for the 2021–27 period and its allocation to different policy priorities. The Government recently announced it may seek continued UK participation in five EU programmes to be funded from this budget, mostly related to scientific cooperation, whereas it appears to have ruled out involvement in EU programmes in certain other areas like the creative industries, development assistance and defence; and
- it provides the political context in which the remaining Member States and European Parliament are considering the detailed rules that would be applicable to the UK for participation in any individual EU schemes, including its financial contribution and a very limited role for the Court of Justice of the EU.

Action

- Write to the Chief Secretary to the Treasury (Rt Hon Steve Barclay MP) to seek further information on the terms and scope of possible continued UK participation in EU programmes.
- Draw the implications of the Government's position on EU programmes to the attention of the Business, Energy and Industrial Strategy Committee, the Education Committee, the Science and Technology Committee and the Committee on the Future Relationship with the EU.

Overview

9.1 Since May 2018, the EU's remaining Member States and the European Parliament have been locked in extremely difficult negotiations to establish the Union's long-term spending plans for the 2021–2027 period, known as the Multiannual Financial Framework or MFF.[66] This will finance, among other things, the next generation of EU schemes that fund scientific research, agricultural production, food safety and climate change adaptation measures.[67]

65 Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 27; 8354/18 + ADD 1, COM(18) 322; Legal base: Article 312 TFEU; special legislative procedure; unanimity; Department: HM Treasury; Devolved Administrations: consulted; ESC number: 39683.

66 Among the key issues under negotiation are the overall size of the EU budget for the 2021–27 period, where cuts may be made if there is a real-term reduction following the UK's exit, and the question of rebates for the largest net contributors.

67 The previous European Scrutiny Committee reported the proposed MFF to the House in its Report of 4 July 2018.

9.2 In return for a substantial financial contribution under the Withdrawal Agreement,[68] following its formal exit from the EU on 31 January 2020, the UK will only remain a participant in European funding schemes until the end of the EU's current budgetary cycle in December 2020.[69] However, Brexit does not mean that UK involvement in certain EU programmes of mutual interest has definitively come to an end: the EU typically allows for "association"—formal participation—by "third countries" in many of its funding programmes, an option of which the UK will be able to avail itself in the future.[70] Formal UK involvement would give British organisations and individuals the same eligibility to receive EU funding from a particular programme as counterparts based in the European Union itself, in return for a British financial contribution.

9.3 As of March 2020, the precise conditions for involvement in EU programmes by non-EU countries over the 2021–27 are yet to be decided as part of the broader budget negotiations.[71] However, a draft legal text prepared by the European Commission in March 2020 shows the EU intends to build on existing precedent, making UK "association" with specific programmes conditional on a yearly financial contribution and some limited powers for the EU institutions.[72] Notably, the EU will insist on jurisdiction for the Court of Justice (CJEU) in relation to dispute settlement between the European Commission and British funding recipients, and on investigatory powers for the EU's anti-fraud body OLAF.[73]

9.4 With respect to the UK's financial contribution, the European Commission has suggested in the draft agreement that:

- for every EU programme in which the UK participates, it would pay an annual "operational contribution". The amount would be calculated using the established methodology already applied to Switzerland for participation in the

68 The UK remains a participant in EU funding schemes until the end of 2020 because it has agreed to honour, in full, its share of the EU's 2014–20 Multiannual Financial Framework and a share of other EU liabilities accrued during the period of the UK's EU membership. On 11 March 2020, the Office for Budget Responsibility estimated that the total net cost of that settlement will amount to approximately £32,9 billion from 1 February 2020 until its resolution.

69 The UK is currently in a post-Brexit transitional arrangement during which EU law continues to apply. This transition is due to end on 31 December 2020. The Withdrawal Agreement foresees the option of an extension for one or two years, in which case the UK would have to make a further contribution to the EU budget additional to the settlement described in the footnote above, but it would not be automatically eligible for EU funding from 1 January 2021 unless the Government had negotiated specific participation agreements for particular EU funding programmes by that date. Section 15A of the European Union (Withdrawal) Act 2018 prohibits the Government from extending the transitional period beyond the end of 2020.

70 Participation by 'third countries' is granted on the EU's terms, and can become politicised. The EU can seek terms allowing it to suspend a country's participation in its programmes for unrelated political reasons, as Switzerland discovered in 2013. After the Swiss government refused to extend free movement rights to Croatian nationals, Switzerland's scientific community was denied full involvement in the 'Horizon 2020' research fund until the free movement issue was resolved in 2017.

71 The European Commission tabled a draft for the long-term budget in May 2018. Our predecessors reported it to the House on 4 July 2018. The European Council summit of 20 February 2020, convened especially to discuss the MFF, ended in failure.

72 European Commission, "Draft text of the Agreement on the New Partnership between the European Union and the United Kingdom" (12 March 2020), Part Four.

73 See for example the EU-Switzerland agreement on participation in the 'Horizon 2020' research programme, or the dispute resolution clauses of the European Commission's model grant agreement for funding awarded from that programme.

EU's research programme, where the amount to be paid is found by multiplying the annual budget for a particular EU programme[74] by a "contribution key" (the partner country's relative economic size compared to the EU's);

- the Commission's proposal is to calculate the UK contribution key by taking its GDP as a percentage of the EU-27's GDP (approximately 15.6%). By way of example, this would mean that for participation in an EU programme with an annual budget of €100 million, the UK would have to pay €15.6 million;[75]

- the UK would also pay a separate "participation fee" for each EU programme in which it is involved, calculated as a fixed percentage of the operational contribution referred to above; and

- lastly, the Commission has also proposed a new 'correction' mechanism that would automatically require the UK to pay more into EU-funded programme in which it participates if it the money it receives outstrips its contribution by a—yet to be specified—proportion.[76]

The Government's position on participation in EU programmes

9.5 The Government has long indicated the UK might seek continued involvement in specific EU schemes post-exit.[77] In October last year, the Political Declaration on the new UK-EU relationship specifically referenced possible British participation in "Union programmes" in areas as varied as "science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space".

9.6 However, by the time the Government laid its formal negotiating objectives for the new UK-EU relationship in Parliament on 27 February 2020, it had whittled the list of specific programmes in which British participation will be 'considered' under the EU's 2021–27 Multiannual Financial Framework down to five potential cases:

- "Horizon Europe", the EU's main fund for scientific research;[78]

74 The budget for individual EU funding programmes would of course be set under the Union's normal budgetary procedure, in which the UK no longer participates.

75 An alternative approach is used for Norway and Iceland as members of the European Economic Area. Their contribution key is calculated as the ratio between their GDP and GDP of the EU plus that country combined. This lowers the ratio and therefore the contribution, in the case of the UK yielding a contribution key of approximately 13.5%. The financial implications of this difference in methodology are potentially significant. For example, for "Horizon Europe"—the EU's new research programme in which the UK is interested—the Commission has proposed an annual average budget for the 2021–27 period of €12.4 billion. Depending on how the UK's contribution key is calculated, that could require a gross annual payment of either €1.93 billion (£1.75 billion) or €1.67 billion (£1.52 billion).

76 The UK as a Member State was a significant net contributor to the EU budget. From European Commission figures, it appears its share of receipts from specific EU programmes in a given year during the 2014–2020 budgetary cycle only outstripped its proportional contribution to the EU budget that year (which averages approximately 12.5 per cent of all Member States' contributions) in a limited number of cases, primarily for the Euratom research programme for nuclear power because of the presence of the EU-funded Joint European Torus fusion energy project in Culham, Oxfordshire.

77 See for example the July 2018 "Chequers" White Paper on the future UK-EU relationship, which called for UK associate status with various EU programmes, including not only the Framework Programme for Research, but also its Euratom nuclear research programme, the nuclear fusion project ITER and the Erasmus+ student exchange programme.

78 In January 2020, the Wellcome Trust published a report on, and template agreement for, UK association with 'Horizon Europe'.

- the Euratom programme for research into the civilian application of nuclear energy;
- "Copernicus", an earth observation service that is part of the EU space programme;[79]
- the "PEACE PLUS" programme, an EU-funded scheme for cross-border cooperation between communities in Northern Ireland and Ireland;[80] and
- the "Erasmus+" programme, the EU's student and teacher mobility scheme, for which UK participation would only be considered "on a time-limited basis, provided the terms are in the UK's interests".

9.7 It is unclear what the Government's specific concerns are with respect to Erasmus+, but it may be the interaction between its mobility component and the Government's new immigration policy.[81] More generally, with respect to UK participation in any EU programmes, the Government repeated the wording from the UK-EU Political Declaration that it would have to be on "fair terms", including "fair treatment of participants, a fair and appropriate financial contribution, provisions allowing for sound financial management by both parties, and appropriate governance and consultation". It is unclear whether the EU's likely insistence of a role for the Court of Justice and OLAF would breach the fundamental principle, articulated by the Prime Minister on 3 February 2020, that any agreement with the EU could not provide for "any jurisdiction for the CJEU over the UK's laws, or any supranational control in any area".

9.8 Moreover, from the wording of the command paper of 27 February, it appears that formal involvement in other EU schemes not explicitly mentioned has been ruled out for the time being (but perhaps not indefinitely). This means that the Government is not currently seeking UK participation in other programmes which would have seemed relevant under the terms of the Political Declaration, including notably the European Defence Fund for defence industrial development, the Creative Europe programme for the cultural industries, the Neighbourhood, Development & International Cooperation Instrument for development assistance, the Union Civil Protection Mechanism, and of course the Galileo satellite navigation programme.[82]

9.9 It is also unclear if the reference to the Euratom research programme means the UK is still seeking participation in the EU's 'Fusion for Energy' agency, its contribution

79 The Government also said it "will consider service access agreements" for—i.e. payment for specific services rendered by—the EU Space Surveillance and Tracking project, a ground-based orbital tracking system designed to track space debris and help protect space assets by preventing collisions, and the European Geostationary Navigation Overlay Service (EGNOS), which improves the accuracy of satellite navigation systems. The UK's negotiating objectives do not refer to possible continued participation in Galileo, the EU's satellite navigation programme.

80 The Government's position paper states: "The UK also notes its specific ongoing commitment to delivering the PEACE PLUS programme. The UK will deliver the PEACE PLUS programme as part of the UK's unwavering commitment to uphold the hard-won peace in Northern Ireland. The UK will work with the European Commission and the Irish Government to shape the programme, maintaining the current funding proportions for the future programme."

81 The Minister for Universities (Michelle Donelan MP) was pressed in the House of Commons on the Government's apparent hesitation to continue participation in Erasmus+ on 2 March 2020, but did not provide any substantive response.

82 In August 2018, the Government announced work to "design a national alternative to the EU's Galileo satellite system". However, in March 2020 it was reported that the future and scope of the project were uncertain.

to the international nuclear fusion research programme ITER.[83] Similarly, there is no explicit reference in the UK's negotiating objectives to potential use of co-funding from the EU's "Connecting Europe Facility", which funds cross-border infrastructure projects, despite the Government's ambition for "technical cooperation between electricity and gas network operators and organisations in the planning and use of energy infrastructure connecting their systems".

9.10 The Government has not yet publicly commented on the draft legal text on UK participation in EU programmes circulated by the European Commission in March, in particular as regards the financial mechanism, or provided its own alternative proposals.

Action

9.11 The Government has now confirmed that, as part of the negotiations with the EU, it will discuss UK participation in a limited range of EU spending programmes from January 2021 onwards as a 'third country', mostly related to scientific research. This Committee takes no position on the merit, or absence thereof, for seeking continued UK involvement in EU schemes. However, it notes that the reasons underpinning the Government's decision to rule out seeking involvement in other EU programmes, which were tentatively identified as of interest in the Political Declaration only five months ago, are unclear. Similarly, the specific concerns voiced by the Government about UK participation in Erasmus+ are yet to be fully explained.

9.12 As a precondition for any formal participation by the UK, or indeed by other non-Member States, the EU itself needs to agree on its long-term budget and the associated spending programmes. While those EU-level negotiations are on-going, preliminary discussions between the Government and the European Commission about UK participation in individual EU programmes began in March 2020. These will need to cover, among other things, a new financial contribution mechanism, and the limits of the specific powers of the EU institutions, notably the CJEU in relation to any European funding flowing to the UK.[84] With respect to any financial contribution, using the methodology for the calculation of the UK's contribution proposed by the European Commission in March 2020, we estimate the gross cost to the UK taxpayer could be in excess of £2 billion annually, with participation in the "Horizon Europe" the largest potential cost.[85] This should be set, of course, against the material and non-material value to the UK and its scientific community for continued involvement in these European schemes.

9.13 In light of the above, the Committee has written to the Chief Secretary to the Treasury—the Minister responsible for EU budgetary issues—to seek further information

83 In March 2019, the Government said that "on EU research funding programmes, the UK wishes to explore association in research and innovation programmes, including Horizon Europe, the Euratom Research and Training Programme, the Joint European Torus (JET) project and ITER".

84 The Government would also have to accept a much smaller role—and no formal vote—in relation to the detailed annual work programmes that determine how EU programmes, including any UK contribution, are managed.

85 This figure is necessarily highly speculative. However, the ultimate UK contribution would depend on whether formal participation is sought and secured, and the substance of the methodology to calculate the contribution, as discussed in an earlier section. For this figure we have used the methodology used in the EU-Switzerland agreement on Swiss participation in EU research schemes and applied it to the draft budgets proposed by the Commission for Horizon Europe, the Euratom research programme, Copernicus and Erasmus+. The Government is of course free to reject participation in any EU programme if it considers the financial cost too high relative to the benefits.

about the possible extent, and cost, of UK participation in EU programmes under the next Multiannual Financial Framework. The text of that letter is shown below. It will also continue to monitor developments in the EU's legislative process to establish the individual funding programmes for the 2021–27 period which are, or may become, relevant for the UK, and make further reports to the House in due course as appropriate.

Letter from the Chair to the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP), 18 March 2020

Possible UK participation in EU funding programmes from 2021

Since May 2018 the European Scrutiny Committee has kept a watching brief on the EU's negotiations for its next Multiannual Financial Framework (MFF) 2021–27, in anticipation of possible UK participation in specific EU programmes during that period as a 'third country'. In particular, we maintain the view that the EU's proposed budgetary allocation for programmes of interest to the UK under the new MFF will in turn directly impact on how much we may be asked to contribute to participate.

In the Government's command paper of 27 February on the UK's future relationship with the EU, it confirmed the UK will 'consider' seeking participation in four EU programmes: "Horizon Europe" research programme; the Euratom nuclear research programme (but without referring explicitly to continued involvement in the nuclear fusion research project ITER); the Copernicus earth observation project; and the "PEACE PLUS" cross-border cooperation scheme on the island of Ireland.

It also noted that continued involvement in the Erasmus+ student mobility programme could be an option "on a time-limited basis, provided the terms are in the UK's interests". There is no reference to the possibility of funding from the Connecting Europe Facility for cross-border energy projects between the UK and the EU, despite the ambition for "technical cooperation[…] in the planning and use of energy infrastructure" and the "integration of renewable power and investment in decarbonisation projects in the north seas".

The exact conditions under which the UK could seek participation in these programmes are yet to be finalised by the European Parliament and the remaining Member States as part of the MFF negotiations. However, based on the draft legal text on UK 'association' circulated by the European Commission in March 2020, we consider that the potential UK financial contribution in return for involvement, especially in the case of "Horizon Europe", could be significant. In particular, we have taken note of the Commission's proposed methodology for the UK's contribution key, which would be defined as the ratio between the UK's GDP and that of the EU (as is the case for Switzerland's participation in the EU's current research programme), and the new "rebalancing mechanism" to prevent the UK from becoming a substantial net beneficiary of EU programmes as a non-EU country.

In addition, the Government will need to clarify precisely the coherence between saying that under the new UK-EU partnership there cannot be "any jurisdiction by the CJEU over the UK's laws, or any supranational control in any area", while the EU's agreements on participation in its programmes with countries like Switzerland show that acceptance of some limited jurisdiction of the Court vis-a-vis recipients of EU funding, is generally a precondition for ‘association’ in EU funding schemes. Similarly, non-EU countries have to date also been asked to acknowledge the powers of the EU’s anti-fraud body OLAF to investigate potential irregularities in EU spending.

These technical and legal hurdles aside, the process of seeking “association” could also easily become politicised by developments in the wider negotiations between the UK and the EU on a new economic and security relationship. The example of Switzerland, which was suspended from significant parts of the EU’s research funding programme over its refusal to extend free movement to Croatian nationals after the country joined the EU in 2013, is instructive in this regard. UK and EU scientific cooperation could easily become a casualty of the wider negotiations even if participation in the relevant EU programmes is in both sides’ interest.

In light of the above, we ask you to write to us by 3 April, in consultation with other relevant Government Departments, to:

- provide us with your initial assessment of the European Commission’s draft legal text on UK participation in EU programmes of 12 March 2020, especially the proposals related to the methodology for the UK’s financial contribution and the rebalancing mechanism;

- clarify whether the Government’s consideration of UK participation in EU programmes means it would be willing to accept some limited role for the CJEU, OLAF and the Court of Auditors, as for example Switzerland has done in return for participation in EU research programme for the 2014–2020 period, despite the Prime Minister’s statement of 3 February 2020, in which he excluded “any jurisdiction for the CJEU over the UK’s laws [and] any supranational control” under UK-EU agreements;

- explain which specific concerns Erasmus+ led the Government to say that any UK participation in this mobility scheme for students would only be “on a time-limited basis, provided the terms are in the UK’s interests”;

- clarify if the Government, as part of any continued involvement in the Euratom research programme, would also seek formal participation in the EU’s ‘Fusion for Energy’ agency and its contribution to the ITER fusion research project;

- confirm whether the Government has ruled out seeking co-funding from the Connecting Europe Facility for any cross-border infrastructure projects with neighbouring countries, especially in the field of energy; and

- set out on what basis UK participation in other EU programmes not explicitly listed in the command paper of 27 February appear but tentatively identified in the Political Declaration now have been ruled out, especially with respect to Creative Europe, the European Defence Fund, the Neighbourhood, Development and International Cooperation Instrument and the Civil Protection Mechanism.

We look forward to receiving further updates from you in due course, if appropriate, in relation to any progress in negotiations with the EU on the conditions of any UK ‘association’ with specific EU programmes, including in particular on the specific methodology underlying any UK financial contribution.

10 Trade in financial services: equivalence with the EU[86]

This EU document is legally/politically important because:

- this European Commission policy paper sets out the EU's position on "equivalence" in finance, the key legal mechanism by which the UK Government wants to secure preferential access for British financial services exports to the EU under the new post-Brexit economic relationship; and
- there are a number of unresolved questions about the Government's approach to equivalence and the trade-off it presents between regulatory flexibility and market access for the financial services sector.

Action

- Write to the Economic Secretary to the Treasury (John Glen MP) to seek more information on the UK's objectives in the negotiations with the EU with respect to financial services.
- Draw our assessment of the role of equivalence in the future UK-EU economic relationship to the attention of the Committee on the Future Relationship with the EU and the Treasury Committee.

Overview

10.1 In July 2019, the European Commission published a review of the EU's approach to "equivalence" in financial services. This is a legal mechanism allowing the EU to determine that the regulatory and supervisory regime in a 'third' (non-EU) country for a specific part of the financial services industry—in terms of financial stability and consumer protection—are equivalent to its own. Under EU law, such a finding can provide the financial industry of equivalent non-EU countries with some limited preferential treatment when servicing EU-based customers in any of the 27 Member States compared to competitors from other "third" (non-EU) countries.

10.2 The Commission document is key in the context of the Government's efforts to negotiate a new trading arrangement for financial services with the EU. After the UK leaves the Single Market at the end of the post-Brexit transition period on 31 December 2020,[87] its financial services industry will lose its 'passporting' rights to operate with full market access throughout the EU on the basis of a British licence. The Government has accepted that EU market access of—and therefore export opportunities for—the British financial services industry will be reduced after the UK leaves the Single Market. As is common, the UK-EU free trade agreement, as a bilateral construct, is expected offer very little by way of binding market access measures for this sector.[88]

86 Document: Communication from the Commission: Equivalence in the area of financial services; Council and COM number: 11595/19, COM(19) 349; Department: HM Treasury; ESC number: 40782.

87 We have assumed the post-Brexit transition period will not be extended, as required by section 33 of the European Union (Withdrawal Agreement) Act 2020.

88 See for example the European Commission's "Draft text of the Agreement on the New Partnership between the European Union and the United Kingdom", circulated in March 2020, notably Title VI, Part Five, Section 5.

10.3 Instead, the Government is seeking some limited preferential treatment within the European market based primarily around the aforementioned unilateral equivalence decisions. This is set out explicitly in the Political Declaration on the future UK-EU relationship, which commits the EU to assessing—but crucially not granting—equivalence by June 2020.[89]

10.4 The overall economic implications for the UK financial services industry of obtaining equivalence, or not, in specific areas remain unclear. The Bank of England has judged that an absence of facilitation of cross-border flows of financial services between the UK and the EU at the end of transition would "primarily" cause disruption on the EU side.[90] In the absence of EU-wide equivalence decisions, individual EU Member States maintain domestic rules on the provision of financial services by non-EU providers, including those based in the UK.[91] In any event, any benefits of gaining—and maintaining—equivalence with the EU must be set against certain political and legal difficulties, as discussed further below.

The EU's approach to equivalence

10.5 The EU's negotiating position for the trade talks with the UK, approved by the remaining 27 Member States on 25 February 2020, reiterates the intended use of equivalence but omits the commitment of making the necessary legal assessments by June this year. In any event, while equivalence could offer some preferential access for UK firms, the way in which the EU approaches the equivalence process has a number of shortcomings that make it unreliable as a long-term trading arrangement:

- first, the actual benefits of EU equivalence to the City will in many cases be limited notably, under EU law, it is not available in key areas like deposit-taking, payment services, or insurance mediation. Moreover, even where it is available, equivalence very rarely leads to full cross-border market access[92] and thus is markedly different from the level of access UK financial firms enjoy within the Single Market until the end of the transition period;
- secondly, equivalence decisions are unilateral EU legal acts, which would not be set out in a treaty with the UK and could be withdrawn by the EU unilaterally as it sees fit (or annulled by the Court of Justice), for example in cases of actual or perceived regulatory divergence in a specific financial sector. The UK has no right to be given equivalence, and it has no legal recourse or appeal if the EU refuses to grant it. The EU has categorically not committed to granting the UK equivalence in any financial services sector. It could also do so in a piecemeal

89 This deadline was agreed between the UK and the EU when the former was still due to cease being a Member State on 29 March 2019. It was not pushed back after the UK extended its membership by a further 10 months.

90 The Bank of England said in its December 2019 Financial Stability Report that "major UK banks have demonstrated their resilience to—and capacity to keep lending in [...] a worst-case Brexit". However, it also noted that "any disruption in the provision of financial services into the EU "could increase volatility and spill back to the UK in ways that cannot be fully anticipated or mitigated".

91 In many cases national rules prohibit non-EU companies from providing certain financial services altogether. As such, market access for UK financial services will be different Member State by Member State and sector by sector.

92 In most cases, equivalence decisions deliver "prudential benefits [or] provide for burden reduction" for EU firms contracting financial services from an 'equivalent' non-EU country. They therefore facilitate cross-border business but do not necessarily make it easier for non-EU firms to sell directly into the EU.

way, withholding equivalence for some financial services activity in a bid to force gradual relocation of EU-oriented operations from the UK to the remaining Member States;

- thirdly, in the UK's case specifically because of its large financial services industry, the EU is also likely to insist equivalence requires some form of continued substantive regulatory alignment of UK law with EU rules.[93] In fact, two key pieces of EU financial services law—MiFIR[94] and EMIR[95]—were recently amended in response to Brexit, precisely to require closer alignment and supervisory cooperation in return for equivalence; and
- lastly, the question of EU market access for British financial services under equivalence has also explicitly been linked to concessions by the Government in other areas of the future economic relationship, notably the "adequacy" of the UK's post-Brexit data protection regime[96] and access to fishing waters.[97] The EU can withdraw, or even refuse to grant, equivalence for any reason, not solely a divergent regulatory approach: for example, it ended equivalence for Swiss stock exchanges in July 2019 because of Switzerland's failure to ratify a "common institutional framework" on trade relations with the EU (similar to the one the EU is seeking with the UK).[98]

The Government's position

10.6 As noted, obtaining equivalence for financial services is one of the explicit objectives of the UK Government as it constructs a new economic relationship with the EU. A key component of the Government's negotiating position, as set out in the Prime Minister's formal negotiating objectives of 27 February 2020, is that the EU's approach to equivalence, as outlined above, should change so that it offers a more stable trading environment. More specifically, the UK is asking for withdrawal of equivalence to be "structured" (i.e. it wants to restrict, apparently by means of a treaty, how the EU can end such arrangements to limit disruption to businesses and markets). That would be a fundamental change to the way the EU operates its equivalence regime, and unlike anything it has granted to a Free Trade Agreement partner to date.[99]

93 See for example: Financial Times, "EU chief issues Brexit warning over City of London access" (2 December 2019).

94 MiFIR is the Markets in Financial Instruments Regulation (Regulation 2014/900), which governs investment services. On 17 February 2020, the European Commission also launched a wider consultation as part of its review of the Regulation, which could lead to further proposals for legislative change in the future.

95 EMIR is the European Markets Infrastructure Regulation (Regulation 2012/648), which governs clearing of over-the-counter derivatives by Central Counterparties (CCPs).

96 We have considered the role of data protection in the EU-UK trade talks in more detail in a separate section of this Report on the EU's ePrivacy Regulation.

97 This link between different areas of the new economic partnership has recently been explicitly referred to by Phil Hogan, EU Trade Commissioner, Andrej Plenković, Prime Minister of Croatia and current holder of the presidency of the Council of the EU, as well as by Leo Varadkar, Taoiseach of Ireland.

98 The EU's correspondence with the Swiss Government on this matter made it explicit that its stance was influenced by the upcoming discussions with the UK on the future economic relationship. See for example: Bloomberg, "Brexit Hardens EU's Stance on Switzerland Amid Stock Trading Row" (18 June 2019).

99 The EU already rejected a UK proposal which contained a similar suggestion when it was made under the previous Prime Minister's "Chequers" White Paper in July 2018, wanting to safeguard its "regulatory autonomy" to withdraw equivalence decisions as it sees fit. While Chief EU negotiator Michel Barnier in February 2020 rejected the notion of any "general, open-ended" equivalence for the UK, he did not comment on the possibility of agreeing more limited preconditions on withdrawal such as formal consultation periods. However, if the EU were to grant even such a concession it would come under pressure to grant other non-EU countries like Japan, Switzerland and the US similar treatment when assessing their continued equivalence.

10.7 An additional, cross-cutting, element of the Government's approach is that it does not want any legal commitment to continued "regulatory alignment". For example, the Prime Minister said on 3 February 2020 that he expects the EU's equivalence assessments to be "technical and confirmatory of the reality that the UK" will apply EU rules fully at the point of exit (something the EU has already rejected[100]). In fact, in the formal negotiating objectives laid in Parliament on 27 February, the Government hinted it could walk away from the trade talks with the EU altogether if by June 2020 there is no "good progress" in the "various autonomous processes"—such as equivalence assessments—proceeding "on a technical basis according to agreed deadlines".[101]

The Committee's position

10.8 The very concept of equivalence implies some form of continued convergence of rules: if there was fundamental divergence the UK and EU's financial services regimes, they would be unlikely to lead to 'equivalent' outcomes. That does not imply equivalence requires a binding legal commitment by the UK to stay aligned with EU financial legislation. Rather, the key issue is to what extent the UK chooses to exercise its new regulatory flexibility in this sector even if that risks not obtaining, or losing, formal equivalence with the EU (and therefore preferential treatment of its financial services providers within the European market).[102]

10.9 The Government's public negotiating documents have not addressed how it might approach this trade-off between regulatory freedom and EU market access, and there is no concrete detail on how the UK may want to regulate its financial services industry differently in the future.[103] The concept of "regulatory alignment" itself—which the Government of course emphatically rejects—also remains undefined and open to interpretation, especially if used to refer specifically to a treaty-based commitment to follow EU rules. Other forms of informal, voluntary 'convergence' are also conceivable. For example, it is not yet clear if the upcoming Financial Services Bill[104] will mirror its predecessor in the last Parliament, which would have allowed the Treasury to temporarily continue aligning with EU financial law after the end of the post-Brexit transition period by means of statutory instruments (thereby avoiding the need for Acts of Parliament).

10.10 In any event, the Government's insistence that the EU must complete its initial equivalence assessments by June 2020, as foreseen by the Political Declaration, is no guarantee for a stable trading relationship for this important economic sector. Even if the

100 In July 2019, the Commission specifically said the fact that the UK is still fully aligned with EU FS law is not a guarantee that equivalence will be granted; see p. 8 of this Commission document.

101 On 2 March 2020, the Financial Times reported the Chancellor (Rt Hon. Rishi Sunak MP) had written to the European Commission on 27 February—the day the UK published its negotiating position—to say the UK saw "no reason" the equivalence process could not be finalised by June 2020 as originally agreed in early 2019.

102 From the UK's perspective, such trade-offs will be least problematic where both UK and EU financial rules are based on detailed international standards, because global alignment is already implied, or where the economic benefits of equivalence to the UK are limited. The difficulties will arise in cases where such standards are implemented in divergent ways in EU and UK law, for example where they are principles-based (leaving significant room for interpretation), or where equivalence with the EU is considered more critical for economic or financial stability reasons.

103 It is noteworthy in this respect that the UK as a Member State voted in favour of virtually all major pieces of EU financial services legislation, except the 2013 Capital Requirements Directive and, more recently, amendments to the European Markets Infrastructure Regulation.

104 This Bill was announced in the Queen's Speech in December 2019.

European Commission concluded positively by June 2020 that the UK's regulatory regime was indeed equivalent for the purposes of EU law, this does not translate into guaranteed market access by the end of the transition period.

10.11 Any formal equivalence decisions adopted by the EU could be revoked at any point or made time-limited, as was the case for the two UK equivalence measures it adopted in advance of a possible "no deal" Brexit (to safeguard European firms' access to vital markets infrastructure in London).[105] The EU's revocation of its equivalence decision for Swiss stock exchanges in June 2019 is also instructive, because it was a direct consequence of Switzerland's refusal to bow to EU demands in a broader negotiation about the bilateral relationship.[106] Moreover, the European Commission linked this decision explicitly to the need to demonstrate to the UK the EU's approach to equivalence.[107] This also, also shows what little guarantee any positive assessments by June would provide in practice.

10.12 For a stable arrangement for trade in financial services between the UK and the EU on the basis of equivalence, the Government should focus on securing a positive outcome with respect to regulatory cooperation and consultation with the EU, the institutional framework in which this would take place, and the Government's proposals for "structured" withdrawal of equivalence.

10.13 Given their novelty and complexity, those discussions—which are certainly not "technical and confirmatory"—will not be done by June 2020. By making positive assessments by the EU of the UK's regulatory approach in financial services by this summer into a possible precondition for any further trade talks with the EU, without any guarantees with respect to equivalence's durability and stability, the Government is at risk of losing sight of those longer-term negotiating objectives. If the EU and UK cannot agree on new structures in which equivalence would be embedded, the Government should be clear about which types of equivalence it will not pursue because the risk to financial stability—if it were to be withdrawn by the EU at short notice—were considered too significant.

Action

10.14 In light of the above, the Committee has written to the Economic Secretary to the Treasury (John Glen MP) to clarify the Government's position on the possible implications of seeking equivalence for the UK's regulatory autonomy; the proposed UK-EU institutional framework for financial services; the concept of "structured" withdrawal of equivalence; and any relevant provisions of the upcoming Financial Services Bill. The text of that letter is shown below.

105 These pre-emptive equivalence decisions concerned the UK's Central Counterparties for derivatives clearing and Central Securities Depositories. Had the UK left the EU without a deal on 29 March 2019, these equivalence measures would have expired after one and two years respectively.

106 For more information on the revocation of the EU's equivalence decision for Swiss stock exchanges, which was driven by a wider political issue over a EU-Switzerland institutional framework, see: Bruegel Institute, "The consequences of Switzerland's lost equivalence status" (25 July 2019).

107 Bloomberg, "Brexit Hardens EU's Stance on Switzerland Amid Stock Trading Row" (18 June 2019).

Letter from the Chair to the Economic Secretary to the Treasury (John Glen MP), dated 18 March 2020

Trade in financial services under the future UK-EU economic partnership

The European Scrutiny Committee at its meeting today discussed your letter of 31 October 2019 in relation to the UK's new arrangement for trade in financial services with the EU, in the context of the EU and Government's respective negotiating objectives for the future relationship. In light of our discussion, there are a number of issues we wish to raise with you and various outstanding questions, which are listed at the end of this letter.

Equivalence in financial services

The Government and the EU agree that the use of unilateral 'equivalence' decisions will be the primary mechanism for granting preferential treatment of each other's financial services providers following the UK's exit from the Single Market. Equivalence, of course, offers each side flexibility to grant preferential market access but no long-term stability, because it can be withdrawn unilaterally. The benefits it provides under EU law also fall far short of the 'passporting' arrangements that apply to firms based within the Single Market.

In any event, we note that the UK and EU having taken very different positions on how equivalence should be handled. In the Prime Minister's statement of 3 February, as reiterated in the more detailed approach published on 27 February, the Government called for any withdrawal of equivalence decisions to be "structured" (i.e. subject to mutually agreed restrictions) while ruling out "regulatory alignment". The Chancellor reiterated this in a newspaper article on 11 February, specifying the UK was asking for "measures to directly address the long-term needs of industry for a reliable equivalence process" to provide businesses with certainty. The Government has also explicitly called for an "institutional arrangement" for financial services within which regulatory cooperation and consultation would take place.[108]

By contrast, the July 2019 European Commission review of equivalence reiterated the importance the EU attaches to its ability to unilaterally vary or withdraw equivalence, and the need for non-EU countries seeking equivalence to "ensure in full the outcomes as set out in [the EU legal] framework" through their domestic regulatory approach. This latter point was made more explicit by EU Commissioner Dombrovskis in December last year, when he said that "the more systemically important the market is for the EU, the more we import potential risks, [and] the closer the regulatory alignment that is expected" in return for equivalence.[109]

The UK is therefore pursuing restrictions on both sides' legal autonomy with respect to the process by which equivalence is granted while rejecting the notion of continued alignment of the substance of UK financial services law with EU rules. Conversely, the EU has to date ruled out agreeing to limitations on the process by which it grants equivalence while insisting the UK will need to remain aligned to some extent with the substance of

108 Letter from John Glen MP to Sir William Cash MP, 31 October 2019.
109 Financial Times, "EU chief issues Brexit warning over City of London access" (2 December 2019).

EU rules if it wants market access (in particular with respect to the position of UK Central Counterparties within the EU under the European Markets Infrastructure Regulation, as we discuss further below).

Given the Government's intent to pursue equivalence in all 40 areas where EU law provides for it, we were disappointed that these potential political difficulties were not substantively acknowledged in your Department's Explanatory Memorandum of 30 August 2019 on the Commission's equivalence review, or indeed your subsequent letter of 31 October last year. We have therefore taken this opportunity to seek further clarity on the Government's position on these matters.

Links between the equivalence assessment process and the wider UK-EU trade negotiations

First, there is a clear potential for politicisation of the equivalence process in the overall negotiations between the UK and the EU on a range of trade-related issues. Several EU leaders, including Phil Hogan, EU Trade Commissioner, Andrej Plenković, Prime Minister of Croatia and current holder of the presidency of the Council of the EU, and Leo Varadkar, Taoiseach of Ireland have recently linked the question of market access in financial services to access to UK fishing waters for EU fishermen.

On the UK's side, we note that the Government has said it expects the EU's equivalence assessments to be "technical and confirmatory of the reality that the UK" will apply EU rules fully at the point of exit (something the EU has already rejected). It apparently attaches such importance to this that, in the formal negotiating objectives laid in Parliament on 27 February, the Prime Minister hinted the UK could walk away from the trade talks with the EU altogether if by June 2020 there is no "good progress" on the "various autonomous processes"—such as the equivalence process—"on a technical basis according to agreed deadlines".

We should note firstly that it is unclear if the Government is pushing for the adoption of formal equivalence decisions by that point, or wants a commitment from the European Commission that its legal assessment has shown the UK's regulatory approach is equivalent. This distinction is of course important because any equivalence decisions adopted by the EU while the UK is still in the transition period will have no practical legal effect, given British firms will still be part of the Single Market until 31 December this year.

In any event, we are concerned that this focus on obtaining a positive equivalence outcome by June 2020 is, in a way, putting the cart before the horse. Irrespective of whether the Government is looking for positive equivalence assessments or formal decisions by June, the practical impact on investor and business confidence will be very limited without a wider agreement on the UK-EU relationship in financial services, including a new institutional arrangement on regulatory cooperation and "structural" withdrawal of equivalence.

Without knowing the outcome of those negotiations, which are anything but "technical and confirmatory", any equivalence assessments or decisions taken by the EU by this summer have no guarantee of being durable or stable. Any formal equivalence decisions taken outside of a structured new approach agreed with the UK could be explicitly time-limited, like those adopted by the EU ahead of a possible 'no deal' Brexit or in relation to

Swiss stock exchanges in late 2018. We are looking for reassurance from the Government that, even though it appears focussed on the deadline of June 2020, it is not losing sight of these more fundamental objectives to ensure a stable trading environment with the EU for financial services.

Structured withdrawal of equivalence decisions

Secondly, as noted, the Government's objectives for the UK-EU financial services arrangement refers to "structured processes for the withdrawal" of equivalence decisions granted by the EU to the UK or vice versa, a phrase borrowed verbatim from the previous Government's now-discarded 'Chequers' White Paper for the future relationship with the EU.[110]

As you know, European law does not generally fetter the EU's ability to repeal Decisions acknowledging equivalence of any 'third country' under sectoral financial services legislation as it sees fit, if considered necessary at very short notice.[111] We accept that as currently practised, reliance on this mechanism for cross-border trade could therefore disrupt transactions between UK financial services providers and their EU counterparties overnight, especially in areas where equivalence allows 'third country' firms to sell services into the EU from their UK base.

We therefore support the Government's request for a more structured process to withdrawal of equivalence decisions. However, the negotiating objectives of 27 February 2020 were lamentably vague about the precise proposals being made. It would be helpful if you could confirm whether the substance of 'structured withdrawal' is in essence the same as contained in 'Chequers', for example by instituting a consultation requirement with the other party before withdrawal is commenced, and transitional measures safeguarding the ability of firms to continue fulfilling their contractual obligations entered into under the framework of an equivalence arrangement intended to be withdrawn.

It is also unclear whether the UK is seeking to set out this new approach to 'structured withdrawal' in a binding treaty with the EU, or—perhaps more realistically—is requesting a political commitment from the EU to consult the Government and consider mitigating measures before an equivalence arrangement in a given area is terminated.

EU conditionality for equivalence decisions under EMIR

Thirdly, with respect to the process of determining the UK's equivalence in return for preferential treatment for British financial services providers, our predecessors in the last Parliament repeatedly expressed concerns about the high level of continued regulatory alignment the EU may demand of the UK in return for granting equivalence.

This is true especially in the EU Regulations governing professional investment services (MiFIR) and clearing of over-the-counter derivatives (EMIR 2.2) respectively, where substantive, Brexit-driven changes to the equivalence process were agreed last year. We

110 Department for Exiting the EU, White Paper on the "future relationship between the United Kingdom and the European Union" (July 2018), page 31.

111 In some cases where the EU is considering withdrawing registration from a particular non-EU firm operating under a wider equivalence decision, a compulsory time-limit applies. For example, under the MiFIR Article 47 equivalence process—discussed in more detail in section 3.1.1 below—registration can only be withdrawn after a thirty-day notice period.

are concerned that these amendments are designed, at least in part, to give the EU greater cover to refuse or withdraw equivalence over the longer term in a bid to incentivise companies to relocate activity aimed at EU-based customers to one of the remaining Member States.

In particular, in the case of EMIR, recent amendments approved by the remaining Member States appear to prevent British Central Counterparties (CCPs) from having any market access rights under equivalence unless the Bank of England agreed to "assure"—which we take to mean 'enforce'—supervisory decisions taken against such CCPs by the European Securities and Markets Authority (ESMA), an EU body in which the Bank no longer participates. The Government also opposed other changes to EMIR, notably as regards the 'location' and 'dual supervision' policies for non-EU CCPs considered systemically important for the EU's capital markets.

We note that the UK—then still a Member State—voted against the amendments to EMIR in October last year. With respect to the supervisory cooperation requirement, the Treasury itself stated in March 2019 that the new conditions for equivalence are so far-reaching that they could "become a barrier to market access in the future" because "third countries" like the UK "are very unlikely to bind their independent supervisors in this way".[112]

However, in a subsequent letter to our predecessors dated 9 July 2019 you mentioned that this (i.e. your Department's own) assessment of the legal text was "only one possible interpretation" of the new Regulation, referring to EMIR's new 'comparable compliance' provisions which—in your words—would allow for a large UK CCP operating under equivalence to "meet EMIR requirements while following its own domestic [British] framework".

Given that the 'comparable compliance' provisions under EMIR 2.2 only have relevance at the point where a systemically important British CCP were to seek recognition to operate in the EU under an equivalence decision—and where such recognition itself depends on the prior existence of a Bank of England-ESMA agreement on supervisory cooperation[113]—it is not clear to us how they would negate the effect of the Bank of England having to "assure" ESMA's decisions against UK firms. We also note that ESMA's technical advice of November 2019 on the implementation of the 'comparable compliance' mechanism does not appear to contain any cross-references to the supervisory cooperation element of the Regulation.[114]

It would therefore be helpful if you could clarify the direction of travel in the EU's interpretation of the term "assure" in the supervisory cooperation agreement required under Article 25 of EMIR, especially in the context of the 'comparable compliance'

112 Summary Record of the meeting of the Committee of Permanent Representatives of 18 and 20 March 2019, p. 8.

113 Article 25(2) of EMIR, as amended, states ESMA can only grant non-EU CCPs recognition to operate into the EU if their home country has been granted an equivalence decision and that country's home regulator has entered into a cooperation agreement with ESMA which specifies—as per Article 25(7)—"the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA". Under Article 25p EMIR, ESMA [...] shall withdraw a recognition decision [...] where [...] ESMA is unable to exercise effectively its responsibilities [...] due to the failure of the third-country authority of the CCP to provide ESMA with all relevant information or cooperate with ESMA in accordance with Article 25(7)". Moreover, in such a case the European Commission would also review whether to withdraw equivalence from that non-EU country altogether (barring any of its firms from providing clearing services into the EU).

114 ESMA, "Technical Advice on Comparable Compliance under article 25a of EMIR" (11 November 2019).

mechanism, and whether the Treasury is ruling out seeking equivalence with the EU for the clearing industry if it would in fact restrict the Bank of England's supervisory autonomy in the way suggested by the Government's own statement of March 2019.

Equivalence, regulatory alignment and the Financial Services Bill

Lastly, aside from the specific hurdles introduced for obtaining and maintaining equivalence referred to above, as we have seen the EU has become increasingly explicit that it intends to make equivalence for the UK generally conditional on commitments on continued regulatory alignment with EU financial services law. By contrast, the Prime Minister was clear in his statement of 3 February 2020 that the UK does not believe the future UK-EU relationship needs to entail any legal commitment to continued alignment given the UK's existing stringent standards for financial services.

There is therefore a fundamental tension between the EU's likely demands in return for granting British financial services providers preferential access to its market, and the Government's position on the commitments the UK is willing to make for such access.

In this respect, we note that it remains unclear whether the upcoming Financial Services Bill will—like its predecessor, which failed to receive Royal Assent prior to the Dissolution of Parliament in November last year—contain regulation-making powers for the Treasury to update UK law in line with amendments to EU financial services legislation. Such a power, if included in the Bill, could of course be used to facilitate alignment with EU law, and therefore the equivalence process, without the need for the Government to secure an Act of Parliament. It would be helpful to receive more clarity about the substance of the Financial Services Bill in this regard.

Outstanding questions

In light of the above, we ask you to write to us by 3 April 2020 to:

- set out the envisaged nature and role of the "institutional arrangement" on financial services to which you referred in your letter of 31 October 2019, and in particular how it is intended to relate to the equivalence process;

- explain which specific equivalence assessments available under EU financial services law are the Government's immediate priorities, and why, as promised in your letter of 31 October 2019;

- confirm our interpretation that the Government, when referring to the deadline of June 2020 in the Political Declaration, is seeking only positive equivalence assessments for its financial services regime from the EU rather than actual, legal equivalence decisions;

- explain why the Government is attaching such particular importance to the deadline of June 2020 for the conclusions of the EU's equivalence assessments in the context of the wider trade negotiations, considering that any EU equivalence decisions would have no legal effect until 1 January 2021 and the stability to market participants they offer is highly dependent on wider UK-EU negotiations on regulatory cooperation and consultation which will still be on-going well beyond June;

- clarify the nature of the "structural" restrictions the Government wants to impose on withdrawal of equivalence decisions by either the EU or the UK, and whether these are intended to be set out in a treaty or made as a non-binding political commitment by both sides;

- explain if, in the absence of legally binding commitments by the EU on making equivalence decisions subject to "structured withdrawal", the Government will not pursue certain specific equivalence decisions because the risks to market and financial stability are considered too great, and if so, which;

- in this context, provide an update on the direction of travel in the EU's interpretation of the term "assure" in the supervisory cooperation agreement required under Article 25 of EMIR for equivalence on CCPs, especially in the context of the 'comparable compliance' mechanism, and clarify whether the Treasury is ruling out seeking equivalence with the EU for the clearing industry if it would in fact restrict the Bank of England's supervisory autonomy in the way suggested by the Government's own statement of March 2019; and

- clarify if the upcoming Financial Services Bill is intended to contain clauses allowing the Treasury to implement EU financial services legislation post-transition, analogous to similar provisions the Government sought to introduce in the previous Parliament under the Financial Services (Implementation of Legislation) Bill.

11 EU Fund for Aid to the Most Deprived[115]

This EU document is politically important because:

- it relates to a Government decision to withdraw from an EU Fund intended to alleviate "the worst forms of poverty" in the EU, resulting in a loss of £3.46 million in funding for the most vulnerable for the period 2014–20.

Action

- Request further information on the reasons for, and timing of, the Government's decision to withdraw from the Fund.
- Draw to the attention of the Home Affairs Committee and the Work and Pensions Committee.

Overview

11.1 The Fund for European Aid to the Most Deprived ("the Fund")[116] was established in 2014 to support Member States in meeting the poverty reduction target agreed by EU leaders in June 2010 which sought to "lift at least 20 million people out of the risk of poverty and social exclusion" by the end of 2020.[117] The Fund has a total budget of €3.4 billion for the period 2014–20, with each EU Member State receiving a minimum amount of around €3.5 million to be distributed in annual instalments. Its purpose is to target those furthest from the labour market and most at risk of extreme poverty and/or social exclusion.

11.2 The European Commission publishes annual implementation reports describing how the funding has been used in each Member State. Its 2016 report indicated that the funding had reached around 38 million beneficiaries across the EU between 2014 and 2016, with most receiving food support. The Commission's 2017 report estimated that there were around 12.9 million beneficiaries of the Fund in 2017 and concluded that "many of the most deprived people in the EU [were] receiving effective assistance". None of these beneficiaries were in the UK.

Implementation of the Fund in the UK

11.3 The Government told us that it had abandoned its original (2014) plan to expand breakfast club provision in deprived areas in England as it did not meet the Fund's eligibility requirements. It had instead decided to use the Fund to support vulnerable 16–24-year olds who had entered the UK through a resettlement scheme, been granted refugee status through the in-country asylum process or identified as potential victims of modern slavery. The delay in setting up the necessary governance infrastructure for the UK's new operational programme meant that the UK had lost £600,000 of its total allocation of £3.46 million and was at risk of losing more.

115 European Commission report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2017*; Council document 10602/19 + ADD 1, COM(19) 259; Legal base—; Department: Home Office; Devolved Administrations: Consulted; ESC number 40692.

116 See Regulation (EU) No 223/2014 on the Fund for European Aid to the Most Deprived.

117 See the Conclusions agreed by the European Council on 17 June 2010.

11.4 In July 2019, the Government told us that it was "finalising the governance structures to manage the programme and the arrangements to run grants under the programme, to enable us to begin seeking bids" and expected to obtain Commission approval for the UK's operational programme by October/November 2019. To this end, the Home Office had signed a service level agreement with the Government Internal Audit Agency (GIAA) who would be responsible for auditing the programme.[118]

11.5 On 18 February 2020, the (then) Permanent Secretary at the Home Office (Sir Philip Rutnam) wrote at the request of Home Office Ministers to inform us of their decision to withdraw from the Fund, explaining:

> Late last year, it became apparent that due to European Commission accounting rules, the amount of funding the UK could access for a programme focussed on social inclusion and mental health support would not allow us to deliver a comprehensive programme in the way it was originally envisaged.

11.6 He added that the Home Office would "continue its work to support some of the most vulnerable children and young people in society", including through the provision of Independent Child Trafficking Guardians as "an additional source of support and legal advice for trafficked children and someone to advocate on their behalf".

Action

As the Government's Explanatory Memorandum on the European Commission's 2017 implementation report was submitted by the Parliamentary Under-Secretary of State and Minister for Safeguarding at the Home Office (Victoria Atkins MP), we ask her to expand on the Government's reasons for withdrawing from the Fund, explain when the decision was taken and communicated to the European Commission, and whether the Government intends to fill the gap left by the loss of this source of EU funding.

Letter to the Minister for Safeguarding at the Home Office (Victoria Atkins MP)

I am writing in response to the letter dated 18 February 2020 from the former Permanent Secretary at the Home Office (Sir Philip Rutnam) informing us of the decision taken by Home Office Ministers to withdraw from the Fund for European Aid to the Most Deprived ("FEAD").[119] The decision means that the UK will no longer claim its allocation—£3.46 million—of the Fund for the period 2014–20, even though it is entitled to do so under the terms of the EU/UK Withdrawal Agreement. Indeed, in your letter of 27 September 2019 to the House of Lords European Union Committee, you confirmed that if the UK left the EU on the terms envisaged in the Withdrawal Agreement, the UK would "still benefit from the FEAD under the Multiannual Financial Framework (MFF) 2014–20 as if it was still a Member State".

Our predecessor Committee made clear its concern that Government delays in submitting an operational programme to deliver the Fund had put at risk a source of funding and

118 See the Explanatory Memorandum of 9 July 2019 submitted by the Minister for Safeguarding (Victoria Atkins MP).

119 See Regulation (EU) 223/2014 establishing the Fund.

material assistance for some of the most vulnerable in society. In his letter, Sir Philip Rutnam indicates that the decision to withdraw from the Fund was "due to European Commission accounting rules" which affected the amount of funding the UK could access and would not allow the UK to deliver "a comprehensive programme in the way it was originally envisaged".

We find this difficult to reconcile with the assurance you gave to the Lords European Union Committee in September 2019 that the Government would be "complying stringently with European Commission rules regarding the proportion of funding that can be spent on administration and management costs" and that "no more than 5% of FEAD funding" would be spent on management costs, "with the clear majority of funding dedicated to 'on the ground' activity". We note, moreover, that the purpose of the Fund is to "complement sustainable national poverty eradication and social inclusion policies, which remain the responsibility of Member States"—a recognition that each Member State's allocation of funding would not, by itself, deliver a comprehensive programme, but could make a useful contribution to "the reduction of poverty, and ultimately the eradication of the worst forms of poverty, in the Union by supporting national schemes", with a particular focus on alleviating "forms of extreme poverty with the greatest social exclusion impact, such as homelessness, child poverty and food deprivation".[120]

We understand that the Home Office did submit the UK's operational programme to the European Commission for approval in July 2019. We ask you to explain:

- why, having put the necessary governance structures in place and signed a service level agreement with the Government's Internal Audit Agency, Home Office Ministers decided to withdraw from the Fund;
- when the decision to withdraw was taken;
- when this decision was communicated to the European Commission; and
- whether the Government intends to fill the gap left by the loss of this source of EU funding by committing to provide an equivalent additional sum for the vulnerable groups targeted in the UK's operational programme up until the Fund's expiry date at the end of 2020.

We look forward to receiving your response by the end of March 2020.

120 See recital (7) of Regulation (EU) 223/2014.

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

Department for Business, Energy and Industrial Strategy

40481 7813/19 SWD(19) 143	Corporate Social Responsibility [Commission Staff Working Document].
40761 11414/19 +ADD 1 COM(19) 339	EU competition policy in 2018 [Commission report].
40888 13153/19 + ADD COM(19) 454	Commission Report: Alternatives to animal testing in the field of cosmetics.

Department for Environment, Food and Rural Affairs

40896 13014/19 COM(19) 7004	Commission Delegated Regulation: Official controls on plants away from border control posts.
41061 Special Report No 05/2020	European Court of Auditors Special Report: Sustainable use of plant protection products—Limited progress in measuring and reducing risks.

Department of Health and Social Care

40880 12776/19 COM(19) 439	Report on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 658/2014 on fees payable to the European Medicines Agency for the conduct of pharmacovigilance activities in respect of medicinal products for human use ("The Pharmacovigilance Fee Regulation).

Department for International Development

40874 12691/19 COM(19) 487	Amending letter No 1 to the draft general budget 2020.

Department for International Trade

40538 8724/1/19 COM(19) 172	Commission Staff Working Document: EU Preferential Rules of Origin.
40682 10400/19 COM(19) 271	Commission Report: Trade and Investment Barriers 2018.
40881 13110/19 +ADD 2 COM(19) 455	Implementation of EU Free Trade Agreements in 2018 [Commission report].

Food Standards Agency

40870 12900/19 + ADD COM(19) 454	Commission Report: Food and food ingredients treated with ionising radiation 2016–17.

Foreign and Commonwealth Office

40314 — —	Council Decision (CFSP) 2018/2078 of 21/12/2018 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
40890 12720/19 —	CFSP Report—Our priorities in 2019.

HM Treasury

40767 11521/19 COM(19) 354	Proposal for a REGULATION on a governance framework for the budgetary instrument for convergence and competitiveness for the euro area.
40811 11900/19 +ADD 1 COM(19) 411	Proposal for a Decision providing further macro-financial assistance to the Hashemite Kingdom of Jordan.
40826 12399/19 COM(19) 415	Report from the Commission on the activities of the European Globalisation Adjustment Fund in 2017 and 2018.
40859 12777/19 COM(19) 442	Proposal for a decision on the mobilisation of the European Globalisation Adjustment Fund following an application from Belgium—EGF/2019/001 BE/Carrefour.
40867 12950/19 COM(19) 463	2019 report on the economic and social situation of Gozo (Malta).
40889 13144/19 COM(19) 487	Amending letter No 1 to the draft general budget 2020.
40891 13214/19 COM(19) 451	Report from the Commission on the compliance of the European Banking Authority with the requirements regarding the location of its seat.
41028 12778/19 —	Proposal for transfer of appropriations NO DEC 18/2019 within Section III -Commission—of the general budget for 2019.

Home Office

40710 10885/19 +ADDs 1–2 COM(19) 287	Implementation of the Pericles 2020 programme to protect the euro against counterfeiting in 2018 [Commission report].

40821 12217/19 + ADD1 COM(19) 417	EU Visa Facilitation Agreement with Cape Verde [Proposed Council Decision].
40882 13103/19 COM(19) 471	President of Eurojust—compensation mechanism [Proposal for a Council Implementing Decision].
40898 13249/19 COM(19) 481	Implementation of the European Agenda on Migration [Commission Communication].

Ministry of Defence

40834 — —	European Defence Agency 2019 Amending Budget.

Office for National Statistics

40871 — —	Court of Auditors Special Report no. 2019 / 16: European Environmental Economic Accounts: usefulness for policymakers can be improved.
41076 6102/20 COM(20) 56	Report from the Commission on the implementation of Regulation (EU) No 691/2011 on European environmental economic accounts.

Formal Minutes

Thursday 26 March 2020

Tahir Ali	Mr David Jones
Sir William Cash	Stephen Kinnock
Jon Cruddas	Mr David Lammy
Allan Dorans	Marco Longhi
Richard Drax	Craig Mackinlay
Margaret Ferrier	Anne Marie Morris
Mr Marcus Fysh	Charlotte Nichols
Mrs Andrea Jenkyns	Greg Smith

After consulting all Members of the Committee, the Chair was satisfied that the Report represented a decision of the majority of the Committee and reported it to the House. (Order of the House of 24 March 2020).

Standing Order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers—

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

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

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

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

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

Richard Drax MP *(Conservative, South Dorset)*

Margaret Ferrier MP *(Scottish National Party, Rutherglen and Hamilton West)*

Mr Marcus Fysh MP *(Conservative, Yeovil)*

Mrs Andrea Jenkyns MP *(Conservative, Morley and Outwood)*

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

Stephen Kinnock MP *(Labour, Aberavon)*

Mr David Lammy MP *(Labour, Tottenham)*

Marco Longhi MP *(Conservative, Dudley North)*

Craig Mackinley MP *(Conservative, South Thanet)*

Ann Marie Morris MP *(Conservative, Newton Abbot)*

Charlotte Nichols MP *(Labour, Warrington North)*

Greg Smith MP *(Conservative, Buckingham)*