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European Scrutiny Committee

Fourth Report of Session 2019–21

Documents considered by the Committee on 23 April 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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Business, Energy and Industrial Strategy Committee: Biocidal product approvals under the Withdrawal Agreement [Proposed Commission delegated Regulation (NC)]

Committee on Exiting the European Union: Market Access for Goods from African, Caribbean and Pacific ("ACP") [European Commission Report (NC)]

Committee on the Future Relationship with the EU: Regulation on Paediatric Medicines [Report(C)]

Foreign Affairs Committee: EU Sanctions against Turkey [Council (a) Decision; (b) Regulation (NC)]

Health and Social Care Committee: Regulation on Paediatric Medicines [Report(C)]

Home Affairs Committee: Passenger Name Record (PNR) data: updating internationals standards and negotiating an EU/Japan PNR Agreement [Proposed Council Decision (NC)]

International Trade Committee: EU retaliatory duties on imports from the US (Byrd amendment WTO dispute)[Commission Delegated Regulation (NC)];Market Access for Goods from African, Caribbean and Pacific ("ACP") [European Commission Report (NC)];EU Sanctions against Turkey [Council (a) Decision; (b) Regulation (NC)]

Northern Ireland Affairs Committee: EU retaliatory duties on imports from the US (Byrd amendment WTO dispute)[Commission Delegated Regulation (NC)];Market Access for Goods from African, Caribbean and Pacific ("ACP") [European Commission Report (NC)];EU Sanctions against Turkey [Council (a) Decision; (b) Regulation (NC)]

1 2020 Fishing Opportunities[1]

These EU documents are politically important because they:

- apply during the transition period:
- raise issues concerning implementation of the Withdrawal Agreement;
- are relevant to the future EU-UK relationship; and

raise post-Brexit policy questions.

Action

- Write to the Minister.

Overview

1.1 The European Commission's proposed Regulation for Total Allowable Catches (TACs) in 2020 was adopted by Ministers in December 2019.[2] As the TACs govern fisheries during 2020, the Regulation applies to the UK during the post-Brexit Transition Period, scheduled to end on 31 December 2020.[3] That Regulation was subsequently amended following a second proposed Regulation from the Commission, along with changes to TACs in the Baltic Sea. The latter was agreed[4] after the UK's departure from the EU and so — under the terms of Article 130(1) of the Withdrawal Agreement — was subject to consultation of the UK.

1.2 In her Explanatory Memorandum on the later document, the Parliamentary Under-Secretary of State (Victoria Prentis MP) expressed concern that the UK had been insufficiently consulted about potential additional recovery measures for North Sea cod. Such measures had been floated by the European Commission in a 'non-paper' seen by the Government but were not incorporated into the draft Regulation, nor into the final Regulation adopted by the EU. We understand that work on the cod recovery measures is ongoing and that the UK is engaging with the Commission.

1 (a) Proposal for a Council Regulation fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, (b) Proposal for a Council Regulation amending Regulation (EU) 2019/1838 as regards certain fishing opportunities for 2020 in the Baltic Sea and other waters, and correcting and amending Regulation (EU) 2020/123 as regards certain fishing opportunities for 2020 in Union and non-Union waters; (a) 13438/19 + ADDs 1–2 COM(19) 483 (b) 6546/20 + ADD 1, COM (20) 87; Legal base: Article 43(3) TFEU; QMV ; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: (a) 40907 (b) 41111.

2 Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.

3 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.

4 Council Regulation (EU) 2020/455 of 26 March 2020 amending Regulation (EU) 2019/1838 as regards certain fishing opportunities for 2020 in the Baltic Sea and other waters, and Regulation (EU) 2020/123 as regards certain fishing opportunities for 2020 in Union and non-Union waters.

1.3 At the December 2019 Fisheries Council (including the UK),[5] TACs for 98 stocks of interest to the UK were set, in the context of scientific advice, multi-annual management of stocks and the application of the landing obligation ("discard ban"). The discard ban means that a feature of the TAC-setting process is the need to minimise "chokes" — the risk that the ban can choke economically important fisheries where banned species are caught accidentally as bycatch. One way of doing so is to apply "bycatch TACs".

1.4 The following results of negotiations are of particular note to the UK:

- 41% increase in the North East Atlantic mackerel TAC;
- substantial reduction in the bycatch TAC for Celtic Sea cod, resulting in an 83% reduction for the UK;
- 21% reduction in the UK's North Sea hake TAC;
- 30% increase in the UK's Haddock TAC in waters west and southwest of Ireland, the Celtic Sea and English Channel;
- 68% decrease in the UK's Irish Sea cod TAC;
- 44% decrease in the UK's common sole TAC in waters southwest of Ireland and in the southern Celtic Sea;
- 40% decrease in the UK's pollack TAC in waters west and southwest of Ireland, the Irish Sea, the Celtic Sea and English Channel;
- 40% cut in the English Channel sprat TAC;
- 50% cut in the UK's North Sea cod TAC; and
- additional seabass opportunities for both recreational and commercial seabass fishers.

1.5 The then Minister of State for Agriculture, Fisheries and Food (Rt Hon. George Eustice MP) explained in his Explanatory Memorandum on the 2020 TACs Regulation that the UK's priorities were focused around reducing significant choke risks. He described a largely successful outcome of the negotiations for the UK, noting that further progress was made towards stocks being fished at sustainable levels. While some of the cuts to UK TACs were significant, the Government was supportive of several as they were in line with scientific advice. The UK unsuccessfully resisted the proposed pollack and sprat reductions (see above). The Minister identified a number of stocks where the outcome will present challenges if chokes are to be avoided, such as: Celtic Sea cod; Irish Sea whiting; and West of Scotland cod.

1.6 On North Sea cod, the Minister noted that the UK had been leading in the North Sea Regional Group to develop a rebuilding plan for cod in the light of the scientific advice recommending a TAC reduction of 61%. The Minister added that the EU and Norway

5 The UK was represented at the Fisheries Council and supported the agreed text, as explained by the then Minister in his letter of 13 January 2020, even though this involved overriding parliamentary scrutiny as scrutiny had not been possible due to the general election.

had agreed to establish a Working Group to define the technical details for a suite of technical measures to support stock recovery and increase selectivity. Recommendations were expected by 1 February 2020.

1.7 In its subsequent analysis of the final outcome, the Department concluded:

- of those 54 UK-relevant TACs assessed against Maximum Sustainable Yield (MSY)[6] advice, 36 (67%) were set at levels corresponding to be at or below MSY fishing rates — a level due in part to the failure of all relevant coastal states to agree on the overall TAC for mackerel in the North East Atlantic;
- the TACs agreed in December 2019 represent, for the UK, a year-on-year increase in value of 3% and increase in volume of 6% — much of the increase was driven by a 41% increase in the TAC for mackerel; and
- the final UK settlement was worth around £15 million more than originally proposed by the Commission.

1.8 This was the last year of setting UK TACs as an EU Member State. In her letter of 1 April 2020, the Minister said that the UK would undertake a further forward-looking review of the methodology applied to assess the sustainability of fishing opportunities going forward. This will underpin the UK's negotiations for fishing opportunities in 2021 and will represent a fresh and transparent new approach to assessing outcomes on TAC-setting including in relation to MSY that will reflect the UK's objectives for delivering sustainable fisheries as an independent coastal state.

1.9 The EU and UK agreed in the Political Declaration on their future relationship to use their best endeavours to conclude and ratify a new fisheries agreement by 1 July 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period (i.e. 2021). Such an agreement would set out the principles on which future TACs would be agreed between the EU and UK. The negotiation positions set out by the UK[7] and the EU[8] respectively suggest, however, that securing agreement will be challenging. While the EU wishes largely to retain the status quo in terms of fishing opportunities, the UK would like to move towards an alternative method of allocating fishing opportunities known as "zonal attachment"[9] and based on annual negotiations. A concern expressed by the EU's chief negotiator is how such annual negotiation would apply practically to the sheer volume of shared EU-UK stocks, which number almost 100.[10]

Observations

1.10 It is clear from the then Minister's EM that the implementation of the discard ban remains difficult and that this will continue to be a challenge for the EU and UK in their management of shared stocks after the transition period.

6 The optimal level of capture without damaging the long-term viability of the stock.
7 The Future Relationship with the EU: The UK's Approach to Negotiations, February 2020, CP 211.
8 5870/20 ADD 1 REV 3 ANNEX to COUNCIL DECISION authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.
9 Zonal attachment is a general term used to describe the spatial distribution of fish stocks, but there is no single agreed definition of how zonal attachment should be measured.
10 Speech by Michel Barnier, 5 March 2020: "Negotiations with the UK: Michel Barnier, the European Commission's Chief Negotiator, sets out points of convergence and divergence following the first round of negotiations".

1.11 The Government has said that it wishes to negotiate TACs annually in the future, based on a relationship similar to that between the EU and Norway. We note that a system of annual negotiations could represent a move away from the evolving EU multi-annual approach to the management of several stocks (with annual scientifically-based variations within agreed limits and with a view to achieving a particular stock trajectory over a period of time), alongside regional cooperation between states during the year. The Minister has said that the UK intends to review the overall approach to the setting of fishing opportunities.

1.12 We note too the Minister's comment in a letter[11] to the Chair of the House of Lords EU Committee, Lord Kinnoull, that the timing and format of the negotiations for 2021 fishing opportunities are a matter for further negotiations.

Action

1.13 On the basis that the legislation will apply to the UK during the transition period and raises policy issues both during and after transition, we are drawing these documents to the attention of the House as politically important and have written to the Minister as set out below.

1.14 Our concerns are two-fold. First, we require an update following the Minister's concerns that the UK was insufficiently consulted on the Regulation amending the Baltic Sea TACs and amending the overall 2020 TACs Regulation.

1.15 Second, the process for setting fishing opportunities in 2021 is full of uncertainty, with little progress towards concluding and ratifying a UK-EU fisheries agreement by 1 July, but an international obligation to cooperate on the management of almost 100 shared fish stocks with a view to a new annual framework taking effect from 1 January 2021. The UK must also negotiate with other coastal states with which it shares stocks. We have therefore asked the Minister to set out the work being undertaken by the UK to prepare for what may be a highly complex and time-consuming negotiation of fishing opportunities for 2021.

Letter from the Chair

We have considered the above documents and are drawing them to the attention of the House as politically important for the following reasons: they will be applicable during the transposition period; they raise issues concerning the implementation of the Withdrawal Agreement; they are relevant to the future relationship; and they raise post-Brexit policy questions.

In your Explanatory Memorandum on document 6546/20, you expressed concern that the UK had been given insufficient opportunity to input into the development of North Sea cod recovery measures. Should that be the case, it would represent a breach of the terms of Article 130(1) of the Withdrawal Agreement. This is an important concern, and so we would ask you to clarify if your concerns remain and, if so, how you have raised them with the Commission.

11 Letter from Victoria Prentis MP to Lord Kinnoull, dated 1 April 2020.

Ultimately, cod recovery measures were not included in the adopted Regulation, but we understand that work is ongoing. We would welcome any information that you are able to provide on the process and timing for agreeing those measures, including how the UK is being consulted. Cod recovery measures in the North Sea would clearly be of direct relevance to the UK fleet.

Turning to the agreement in December on fishing opportunities for 2020, we note that the agreement was largely aligned with the UK's negotiating objectives and that the value of the UK's quotas under the final outcome was marginally higher than that under the Commission's proposal.

On a point of detail, your predecessor identified a number of stocks where the outcome would present challenges if chokes were to be avoided, such as: Celtic Sea cod; Irish Sea whiting; and West of Scotland cod. We would welcome the Government's latest assessment on those stocks and the extent to which chokes are proving to be an issue.

This was the UK's final annual fisheries negotiation as an EU Member State. During the second half of 2020, the UK will negotiate its own fishing opportunities in advance of becoming an independent coastal state with effect from 1 January 2021. Negotiations will be required not only with the EU, but with a series of other coastal states with which the UK shares stocks.

We are concerned that, with only eight months until the end of the year, there is very little clarity on the modalities for negotiating the 2021 fishing opportunities with the EU or any other coastal state. Between the UK and the EU alone, the negotiation will involve nearly 100 shared stocks. While the internal EU negotiation is currently based on multi-annual plans and agreed catch allocation between Member States, no arrangement is yet in place for 2021 between the UK and the EU. Even though both the EU and UK have agreed the objective of concluding and ratifying a fisheries agreement by 1 July 2020, success by that date cannot be taken for granted. We would welcome an indication of the steps that you are taking to prepare the UK for what may well be a highly complex and time-consuming negotiation.

We ask for a response within ten working days.

2 Animal health standards[12]

This EU document is politically important because it:

- will apply in Northern Ireland under the Ireland/Northern Ireland Protocol;
- will, along with the overarching animal health Regulation, apply from 21 April 2021 and will therefore present imminent potential divergence between the EU/NI and GB after the end of the transition period on 31 December 2020; and
- is in an area (sanitary and phytosanitary standards — SPS) identified by the Government and EU as requiring particular arrangements under the future relationship.

Action

- Write to the Minister raising queries regarding future SPS arrangements.

Overview

2.1 A new EU regulatory framework for animal health will apply from 21 April 2021,[13] bringing together and simplifying the framework that has previously operated and enabling Member States to react quickly in cases of animal health emergencies. 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,[14] enshrined in the UK as "EU retained law".

2.2 This document makes largely minor changes to the detailed rules for terrestrial animals and hatching eggs, but it is of particular interest as it highlights a policy area — animal health — where regulatory divergence between GB on the one hand and the EU and Northern Ireland on the other soon after the transition period has ended could be imminent. 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.[15]

12 Commission Delegated Regulation of 17.12.2019 supplementing Regulation (EU) 2016/429 as regards animal health requirements for movements within the EU of terrestrial animals and hatching eggs; 15206/19 + ADD 1, C(2019) 4058; Legal base: Regulation (EU) 2016/429; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41037.

13 Regulation (EU) 2016/429 (as amended) of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') The main differences between the existing and new frameworks are summarised by the European Commission: "Animal Health Law".

14 The current framework consists of 30 different pieces of legislation.

15 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.

2.3 Currently, the import of live animals into Northern Ireland from Great Britain requires an import licence,[16] with consignments subject to brief checks. EU law requires that imports of live animals from third countries enter the single market through Border Control Posts (BCPs) and be subject to veterinary inspection.[17] That extends to such imports under the EU-New Zealand agreement, which the Government indicated was its preferred model for future cooperation with the EU on sanitary matters.[18] Inspection fees and checks (at specified frequencies) apply under the EU-New Zealand agreement.

2.4 The Parliamentary Under Secretary of State for Rural Biosecurity (Lord Gardiner) noted in his Explanatory Memorandum that the UK was involved throughout the process of adopting the document (Delegated Regulation) subject to scrutiny. He added that the UK had played a prominent role in the development of the wider review of the animal health rules. As such, the UK was broadly supportive of them and will keep their relevance to the UK's national circumstances under review. The Minister explained that, if the provisions of the Delegated Regulation were to be implemented across the UK, there would be some changes to legislation but that the main activities of government bodies, vets and operators would remain largely unchanged.

Action

2.5 We note that there is a great deal of uncertainty about the future arrangements for SPS controls between the GB and Northern Ireland, as well as the wider EU. We have therefore written to the Government as set out below requesting further information on the following points:

- the Government's assessment of the impact of GB not following NI in applying this Delegated Regulation and the wider Animal Health Law;
- the legal basis for any alignment with EU law in this area; and
- the Government's negotiating objectives for future SPS checks on relevant goods moving from GB to Northern Ireland and the EU respectively, including frequency of checks, possible inspection fees and whether they would need to enter Northern Ireland or the EU through an official Border Control Post.

Letter from the Chair to the Parliamentary Under Secretary of State for Rural and Biosecurity

We considered your Explanatory Memorandum on the above document at our meeting of 23 March 2020.

We note that the UK was closely involved in the preparation of both this Delegated Regulation and the wider Animal Health Act and that, as such, the UK is broadly

16 Introduction to importing animals and animal products, Department for Agriculture, Environment and Rural Affairs, Northern Ireland.

17 Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (Official Controls Regulation).

18 Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products.

supportive. Your EM acknowledges that the UK in respect of Northern Ireland will be obliged to apply the legislation from 21 April 2021 and it implies that Great Britain may apply it (in full or in part).

Animal health legislation constitutes some of the sanitary and phytosanitary standards (SPS), regarding which, both the EU and UK have acknowledged that specific arrangements will be required in the future. Bearing in mind the particular importance of this matter to the export of live animals from GB to Northern Ireland, we request information on the following points:

- your assessment of the impact of GB not following Northern Ireland in applying this Delegated Regulation and the wider Animal Health Law;
- the legal basis for England, Scotland and Wales deciding to align — in full or in part — with the Animal Health Law and its associated detailed implementing rules;
- whether the Government envisages reaching an agreement with the EU removing — or dramatically reducing — the need for physical checks on live animals and products of animal origin moving between Great Britain and Northern Ireland as well as Great Britain and the EU;
- whether all GB goods subject to SPS requirements would need to enter Northern Ireland and the EU though a Border Control Post; and
- what criteria might be used to set the percentage of physical checks and inspection fees applicable to imports into Northern Ireland and the EU from GB.

We ask for a response within ten working days.

3 Regulation setting CO2 emission performance standards for new heavy-duty vehicles[19]

This EU document is legally/politically important because:

- it concerns an issue that our predecessor Committee was interested in and sought further information on.

Action

- As the proposal has been adopted and our predecessor Committee's request for further information has been addressed, no action is necessary.

Overview

3.1 The proposal under consideration concerns the introduction of binding Carbon Dioxide (CO2) emission standards for new heavy-duty vehicles (HDVs).

3.2 The key elements of the proposal can be divided into six main parts: scope (the vehicles to which the Regulation would apply); baseline (the reference values against which reduction standards would be set); targets and timelines; incentives for zero-emission and low-emission vehicles; flexibilities (centred around a credit/debt system for manufacturers); and penalties.

3.3 A full background to the proposal—including the Government's initial legal and political assessment of the Commission's plans—can be found in our predecessor's Forty-third Report to the House of 31 October 2018.

3.4 Our predecessor Committee last considered the proposal on 19 June 2019 and granted a scrutiny waiver in order for the Government to support its formal adoption at Council during June of that year.[20] Our predecessor also asked a number of questions relating to the system proposed for the collection of real-world emissions data under the draft Regulation and its potential implications for individuals' rights.[21]

3.5 Since our predecessor last considered the proposal, it has been adopted as Regulation (EU) 2019/1242. The text of the Regulation was published in the Official Journal of the European Union on 25 July and took effect in Member States on 14 August.

3.6 By way of brief summary, the Regulation:

19 Proposal for a Regulation of the European Parliament and of the Council setting CO2 emission performance standards for new heavy-duty vehicles; Council and COM number; 8922/18 + ADDs 1–4 and COM(18) 284; Legal base; Article 192(1) TFEU; ordinary legislative procedure; QMV; Dept; Transport; Devolved Administrations; Consulted; ESC number; 39723.

20 Sixty-eighth Report to the House of 19 June 2019

21 Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (Text with EEA relevance)

- sets a 15% CO2 reduction target for new HDVs from 1 January 2025 to 31 December 2029;
- sets a 30% CO2 reduction target for new HDVs from 1 January 2030 onwards (unless decided otherwise based upon the outcome of a review to be undertaken by 31 December 2022);
- introduces a 'minimum sales target' for Zero and Low Emission Vehicles (ZLEVs) of 2% from 2025;
- introduces a system of excess emissions penalties for manufacturers; and
- allows Zero emission trucks to weigh up to 2 tonnes more that their diesel counterparts to compensate for additional battery weight.

3.7 The Minister with charge over the proposal, George Freeman MP, wrote to our predecessor on 24 October 2019.[22] The Minister explains that the Government supported the adoption of the proposal at the 13 June Employment, Social Policy, Health and Consumer Affairs Council. This was before the Committee granted a scrutiny waiver on 19 June and, therefore, constitutes a scrutiny override.

3.8 The circumstances of this override are, however, in no way consequent upon the handling of the proposal by the former Minister—Michael Ellis MP—or his Officials. Our predecessor was due to consider the Minister's request for a scrutiny waiver on 12 June at its weekly meeting but—due to its late cancellation—this was not possible. Committee staff made Officials at the Department for Transport aware of this and were informed that any decision by the Minister to override scrutiny would not be taken lightly.

3.9 The Minister explains that his predecessor took the view that there were 'special reasons' for overriding scrutiny, namely, that the Government had strongly supported the proposal during negotiations and that "abstention could have sent the wrong signal". The Minister further states that the Government—when in operation—took the scrutiny reserve very seriously.

3.10 On the questions that our predecessor asked in its Report chapter of 19 June, the Minister explains that the transfer of real-world emissions data under the Regulation does engage individual rights and that any transfer system for must include adequate safeguards. The Minister explains that the Government will reserve judgement on this point as these issues will arise when implementing acts—giving effect to the real-world emissions reporting requirements of the Regulation—are brought forwards.

3.11 The Minister further notes that the information to be transferred is unlikely to have a material effect on individuals' rights as it will be anonymised and restricted to issues such as vehicle and energy performance. This arrangement is followed under the existing HDV Regulation; whereby vehicle identification numbers are transferred to the European Commission and the European Environment Agency but are omitted from any publicly available data.

22 Letter from George Freeman MP to Sir William Cash MP, 24 October 2019

Action

3.12 As the proposal has been adopted and our predecessor Committee's request for further information has been addressed, no action is necessary.

4 Multiannual financial framework 2021 — 27: Connecting Europe Facility[23]

This EU document is legally/politically important because:

- it relates to the EU's next 'Multiannual Financial Framework' (which may be relevance to the UK if the transition period—as provided for under the Withdrawal Agreement—is extended beyond 31 December 2020); and
- it covers transport infrastructure funding and transport modalities that are likely to be a consideration in UK/EU future relationship negotiations.

Action

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

Overview

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

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

4.3 A full background on the proposal—including a detailed exposition of the programmes objectives and, importantly, in the context of the UK's withdrawal from the EU, the conditions for 'third country' association to CEF—can be found in our predecessor Committee's first Report chapter on the proposal of 10 October 2018.[24]

Partial General Approach and current state of play

4.4 The proposal under scrutiny was last considered by our predecessor on 28 November 2018.[25] Our predecessor was highly critical of the Government's handling of the draft

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

24 Thirty-ninth report HC 301–xviii (2017–19) chapter 6 (10 October 2018)

25 Forty-sixth Report HC 301–xlv (2017–19), chapter 11 (28 November 2018)

Regulation and sought further clarity from the lead Department—the Department for Transport—on a number of significant points relating to its substance and UK participation in the 'TENs' after withdrawal from the EU.

4.5 These requests were made in an Annex to our predecessor's last Report chapter on the proposal and restated the detailed questions previously asked when the proposal was first considered. Our predecessor made clear that at no point during the Government's handling of the proposal had it made its *own* views clear—despite repeated attempts to elicit these—rather it had merely restated the Commission's rationale for regulatory action. On this basis, our predecessor refused to clear the proposal from scrutiny or grant a scrutiny waiver—as the Government had requested—in order for it to support a partial General Approach to be sought by the Austrian Presidency at 3 December 2018 Transport Council. The Committee requested a progress report on the outcome of the December Council by 7 January 2019.

4.6 We note the change in Government since progress on the proposal was last Reported to the House and do not hold the current administration responsible for the uncertainly that has plagued its handling.

Partial General Approach

4.7 The former Minister with charge over the proposal, Baroness Vere of Norbiton, wrote in response to these questions on 19 July 2019.[26] This reply is some six months later than requested. The former Minister apologises for not responding sooner but does not explain the reasons for her delay. Before addressing (some of) the points raised by our predecessor, the former Minister makes clear that "the proposal covers an EU policy that will be funded after the UK has ceased to be a member of the EU and is therefore primarily a matter for the remaining Member States". It can be inferred from this statement—and from how the proposal has been handled to-date—that it did not sit especially highly on her former Department's list of priorities. If true, this is worrying; especially given that there remains an outside chance that the UK will pay into the next EU budget and,[27] more likely, that it will seek association with the TENs.

4.8 This apparent indifference aside, the former Minister does provide (some) insight into the Government's views on certain parts of the proposal. These are set against the partial General Approach that was reached at the December 2018 Transport Council. As the draft Regulation was not cleared from scrutiny ahead of Council and the Government was not granted a scrutiny waiver, the UK abstained at General Approach.

4.9 On the substance of the partial General Approach, all issues were covered aside from those relating to the amounts to be made available—under the TENs and sub-programmes—and the conditions of third country (non-Member State) participation. These issues are to be finalised as part of the overall settlement on the next Multiannual Financial Framework (on which negotiations are not expected to conclude until the summer). The former Minister explains that the Government does not have a "strong view" on the proposed allocation of funding to—or within—the TENs and accepts what

26 Letter from Baroness Vere of Norbiton to Sir William Cash MP, 19 July 2019

27 This is possible should the transition period be extended beyond 1 January 2021 (when the EU's new budgetary cycle begins).

is "broadly anticipated". On third country participation and, in particular, whether or not the UK will seek association with CEF, the former Minister explains that this has not been "ruled out" but that:

> Any decision and subsequent agreement on participation would depend crucially on the terms and conditions of such participation, and it is too early to say whether the benefits would justify the commitments.

Current state of play

4.10 Interinstitutional negotiations (Trilogues) on the proposal were concluded on 8 March 2019 and a partial provisional agreement reached covering all aspects of the proposal minus those relating to budgetary issues and third country participation. This agreement was subsequently endorsed by COREPER on 14 March and later adopted with minor amendments by the European Parliament at first reading on 17 April 2019.

4.11 The European Parliament's adopted position includes important changes to the Commission's proposal (as originally introduced). Noteworthy amendments include:

- an increased budget (€43.85 billion versus €42.27 billion);
- on transport, funding of projects of common interest would be retained at up to 30% of costs (with cross-border links eligible for up to 50% in certain cases). Financing for actions in 'outermost' regions would be increased to 70% and a 'co-financing' premium—for actions across two or more areas—included;
- criteria for the funding of military mobility projects have been clarified so that a clear civilian benefit must be derived (infrastructure must be 'dual use');
- on energy, unused budget from the renewable energy heading could be used for other projects on the trans-European energy network; and
- criteria for TEN-E projects have been amended so as to ensure consistency with national and EU plans on energy and the climate.

Action

4.12 No action is necessary at this time.

4.13 We urge the Government to take heed of our predecessor's concerns regarding the handling of this file and we look forwards to a timely and detailed update on the progress of negotiations on the proposal in the spring.

5 Progress on the implementation of the Intelligent Transport Systems Directive[28]

This EU document is legally/politically important because:

- it concerns the Government's approach to the retention of EU law under the European Union (Withdrawal) Act 2018 and was an issue that the predecessor Committee was interested in

Action

- Request further information from the Government on its approach to the retention of EU delegated acts under the 2018 Act

Overview

5.1 The report under consideration has been prepared by the Commission pursuant to Article 17(4) of Directive 2010/40/EU (the Intelligent Transport Systems Directive).

5.2 The Intelligent Transport Systems Directive (the ITS Directive) establishes a legal framework for the accelerated development and deployment of ITS across the EU (and mainly covers technical specifications and standards).

5.3 The Directive empowers the Commission to adopted delegated acts in the areas of: optimal use of road, traffic and travel data; continuity of traffic and freight management of ITS services; ITS road safety and security applications; and linking vehicles and transport infrastructure. The Directive further lists 6 priority action areas that the EU should focus on in the development and deployment of ITS specifications and standards.

5.4 The report finds that the priority actions have, by-and-large, been adequately met. The report also considers Member State progress in delivering 'National Action Plans' (NAPs)—as per Article 17(3) of the Directive—and concludes that the development and deployment of ITS across Europe has been mixed. This having been said, the UK is reported to be achieving its NAP requirements.

5.5 The Minister with charge over the proposal, George Freeman MP, wrote to the Committee's predecessor by way of Explanatory Memorandum on 24 October 2019. The Minister welcomes the Commission's report and suggests that it does not raise any direct policy implications for the UK.

5.6 The Minister does, however, mention potential legislative changes that may have to be made in relation to ITS Regulations and Decisions after the UK has left the EU. The Minister notes that the Government has decided to revoke the four ITS Delegated Acts—

28 Report on the implementation of Directive 2010/40/EU (on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport); Council and COM numbers: 12906/19 + ADD 1 and COM(19) 464;Legal base: —; Department: Transport; Devolved Administrations: consulted; ESID number: 40868

adopted under the Directive—pursuant to section 8 of the European Union (Withdrawal) Act 2018. This revocation is to be made by The Intelligent Transport Systems (EU Exit) Regulations which are "programmed" to be laid on 8 May 2020 in draft.

5.7 The Minister's justification for this revocation is somewhat confusing citing that the decision was "based on current administrative measures being undertaken to deliver… [relevant] requirements". Upon further investigation, ITS—and the four Delegated Acts—are currently given effect to in the UK via administrative measures (presumably by a body such as Highways England). It is therefore not entirely clear why the ITS Delegated Acts must be revoked in order for this method of implementation to continue.

Action

5.8 In light of the confusion surrounding the reasoning behind the planned revocation of the aforementioned ITS Delegated Acts, we request that the Minister provides further information on the Government's approach.

Letter to the Minister of State at the Department for Transport (George Freeman MP)

The Committee have asked me to thank you for your Explanatory Memorandum on the above listed report of 24 October 2019. We were are pleased to hear that the UK is achieving its 'National Action Plan' requirements under Directive 2010/40/EU (the Intelligent Transport Systems (ITS) Directive).

The Committee was, however, somewhat confused by mention in your Explanatory Memorandum of the Government's plans to revoke four of the five Delegated Acts adopted under the ITS Directive after the UK has left the EU. You explain that this revocation is to be made by The Intelligent Transport Systems (EU Exit) Regulations which are "programmed" to be laid on 8 May 2020 in draft. You further specify that this revocation is to be made pursuant to section 8 of the European Union (Withdrawal) Act 2018 (EUWA).

The Committee requests further information on why the Government considers revocation to be necessary. Mention is made in your Explanatory Memorandum of the Government's desire to continue to give effect to the ITS Directive via administrative means;, however, we are not sure why the four Delegated Acts prevent this and therefore have to be revoked. Second, we seek clarity on the precise power that will be used under section 8 of the EUWA to revoke the aforementioned Delegated Acts.

6 Aviation: aerodrome safety[29]

This EU document is legally and politically important because:

- parts of the proposed Regulation would apply during the transition period.

Action

- As the proposal would make only technical changes to aviation rules and these are supported by the Government, no further action is necessary.

Overview

6.1 The proposal under scrutiny would amend Commission Regulation (EU) No 139/2014—on requirements and administrative procedures relating to aerodromes—in light of new international standards.[30]

6.2 The Commission Regulation sets general aerodrome safety rules relating, for example, to the certification of vehicles permitted on runways, incident occurrence reporting, and operator competency requirements. Since its entry into force, the Regulation has been further 'fleshed-out' by delegated acts that have been based on best practice guidance set by the International Civil Aviation Organisation (ICAO).

6.3 Acts such as that under scrutiny are commonplace, are often technical in nature and are a way for the EU to give internal legal effect to new international standards.

6.4 On the back of a recent review, ICAO identified runway safety as one of the major high-risk categories for aviation accidents and incidents. It subsequently amended its 'Standards and Recommended Practices' (SARPs) to reflect new safety measures. Around the same time, changes were also made to SARPs covering:

- the reporting of runway surface conditions;
- the detection and removal of foreign object debris in manoeuvring areas; and
- winter operation guidance (i.e. relating to snow and ice on runways).

6.5 These measures are referenced and included in annexes to the proposal. Furthermore, in light of recent EU-level developments,[31] the proposal would also:

  - harmonise training requirements for aerodrome operational personnel;
  - require aerodromes to limit access to the movement area and other operational areas only to persons whose duties require them to have access;

29 Commission Delegated Regulation (EU) .../... of 13.2.2020 amending Regulation (EU) No 139/2014 as regards runway safety and aeronautical data; Council and COM number; 6052/20 + ADD 1 and COM(20) 710; Legal base; Articles 39 and 128 of Commission Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency; Dept; Transport; Devolved Administrations; Consulted; ESC number; 41094.

30 An aerodrome is a location from which aircraft flight operations take place, regardless of whether they involve air cargo, passengers , or neither. In Europe, the term airport implies an aerodrome of a certain statute (such as meeting a certain size or capacity).

31 Notably recommendations addressed by the Member States to the European Aviation Safety Agency (EASA).

- set the criteria by which an aeirodrome should initiate a 'Notice to Airman';[32] and
- lay down requirements in relation to the management of aeronautical data.

6.6 Under the terms of the proposal, rules on the reporting of runway surface conditions would become applicable as of 5 November 2020 and will thus apply in the UK during the transition period (as established by the UK/EU Withdrawal Agreement). Other rules, for example, relating to the management of aeronautical data, would become applicable in the EU at a later date (currently set as 27 January 2022).

Government position

6.7 The Minister with responsibility for the proposal, Kelly Tolhurst MP, wrote to the Committee by way of Explanatory Memorandum on 11 March 2020. The Minister notes the Government's support for the proposal and its commitment to aerodrome safety and the adoption of common international rules in this regard. She does not raise any concerns with the substance of the proposal and is clear on those parts that would become applicable in the UK during the transition period.

Action

6.8 As the proposal would make only technical changes to aviation rules and these are supported by the Government, no further action is necessary.

32 A 'Notice to Airman'—or NOTAM—is a notice filed with an aviation authority to alert aircraft pilots of potential hazards along a flight route or at a location that could affect the safety of the flight.

7 Aviation: third country licensing framework[33]

This EU document is legally/politically important because:

- it would apply during the transition period.

Action

- As the changes suggested to the licensing framework are intended to simplify its operation and no substantive amendments are made in this regard, further action is not deemed necessary.
- This chapter is, therefore, published primarily for information purposes.

Overview

7.1 The proposal under scrutiny would provide a new legal framework for EU requirements relating to the acceptance, validation and conversion of third country (non-EU Member State) aviation licences.[34] It would also take account of revised rules concerning licences for pilots of balloons and sailplanes (also known as gliders).

7.2 The draft Delegated Act would, in effect, move these requirements over from a number of pieces of EU legislation into one legal act. The licensing framework in this area is highly complicated and this small housekeeping change is viewed by the Commission as a way of avoiding overregulation and improving legal consistency.

7.3 The proposal would 'hold' existing requirements for validation in relation to:

- commercial air transport and other commercial activities;
- non-commercial activities with an instrument rating; and
- non-commercial activities without an instrument rating.

It would also make provision, based, again, on existing requirements, for the conversion of licences and the acceptance of class and type ratings.

7.4 In her Explanatory Memorandum on the proposal, Kelly Tolhurst MP, Parliamentary Under Secretary of State at the Department for Transport, notes the Government's support for the draft Delegated Act and states that it does not raise any direct policy implications for the UK.

33 Commission Delegated Regulation (EU) …/… of 4.3.2020 lying down detailed rules with regard to the acceptance of third-country certification of pilots and amending Regulation (EU) No 1178/2011; Council and COM number; 6611/20 + ADD 1 and COM(20) 1120; Legal base; Article 128 of Regulation (EU) 2018/1139; Dept; Transport; Devolved Administrations; Consulted; ESC number; 41126.

34 The existing framework allows for documentation issued by non-Member State competent authorities to be recognised as equivalent to that issued in the EU pursuant to Regulation (EU) No 2018/1139 (subject to certain conditions being met).

7.5 If not objected to by the Council or European Parliament, the proposal can be expected to enter into force in June 2020. This would be during the transition period (as established by the UK/EU Withdrawal Agreement).

Action

7.6 As the changes suggested to the third-country aviation licensing framework are intended to simplify its operation and all current requirements would remain the same, no further action is deemed necessary.

8 Regulation of Paediatric Medicines[35]

This EU document is politically important because it:

- Is relevant to the future EU-UK relationship
- Has post-Brexit domestic policy implications

Action

- Draw to the attention of the Health and Social Care Committee and the Committee on the Future Relationship with the EU.

Overview

8.1 Responding to our predecessors' request, the Government has provided an assessment of the impact of the EU Paediatric Medicines Regulation (Paediatrics Regulation) in the UK, including analysis of how the UK might cooperate with the EU in this area post-Brexit.

8.2 Our predecessors' request, dating back to 10 January 2018, responded to the lack of a clear Government view on the European Commission's own assessment. In his Explanatory Memorandum on the Commission's document, the then Minister (Lord O'Shaughnessy) had said that the Government had no UK-specific information regarding paediatric medicines development and so was unable to give a view on the accuracy of the Commission's analysis.

8.3 Prior to 2007, the development and testing of paediatric medicines was considered to be unsatisfactory. Pharmaceutical companies were under-investing in paediatric medicines, since the private costs of developing and testing medicines for children were greater than the value of expected sales.

8.4 The Paediatrics Regulation set up a system of obligations, rewards and incentives (such as extended patent protection) and put in place measures to ensure that medicines were regularly researched, developed and authorised to meet children's therapeutic needs. The Regulation obliged pharmaceutical companies to agree at an early stage of development of every new product a paediatric investigation plan (PIP) with the European Medicines Agency (EMA). In its assessment of the impact of the Regulation, the European Commission concluded that the Regulation had boosted the development of paediatric medicines, but that these positive developments were not spread evenly across all therapeutic areas. They were often linked to research priorities in adults rather than children and there had also been issues about the availability of licensed medicines and long deferrals of clinical trials.

35 State of Paediatric Medicines in the EU—10 years of the EU Paediatric Regulation; EU document references: 13779/17, COM(17) 626; Legal base: —; Department: Health and Social Care; Devolved Administrations: consulted; ESC number: 39173.

8.5 The then Parliamentary Under-Secretary of State (Baroness Blackwood) wrote to our predecessors on 5 November 2019, sharing the Government's assessment of the Paediatrics Regulation in the UK, including the implications of EU Exit. She noted that the work was commissioned further to the request made by our predecessors in 2018.

8.6 She identified the following key conclusions:

- the EU and UK experiences are similar and that the Paediatric Regulation has had a positive impact overall, including through an increase in the number of paediatric medicines and medicines with paediatric indications as well as clinical trials on paediatric medicines;
- some of the incentives offered in the Regulation have had a low uptake although a complete assessment of this would only be possible after a longer period of time given the long timeframes for the development of medicines; and
- there is insufficient data to conclude now that the benefits of the Regulation, namely increased access to paediatric medicines, outweigh the significant costs of providing these incentives in the UK.

8.7 The assessment recommended that the impact of the Regulation should continue to be monitored and a further review carried out if required. The Government's commitment to maintaining close cooperation and collaboration with the EU and other nations on regulatory approaches to development of paediatric medicines was also emphasised.

8.8 The text of the assessment provides further detail on the EU exit implications, noting that — under the Political Declaration on the future relationship between the UK and the EU — both parties agreed to "explore the possibility of cooperation" between the UK and the European Medicines Agency (EMA).[36] From the UK's perspective, this amounts — notes the assessment — to an "ambition to seek active participation" in the EMA. In order to facilitate this, relevant regulations would need to be aligned according to the assessment. This would include those relevant to paediatric incentives. Under a no-deal scenario, divergence from the current system would be minimised as far as possible with any short-term divergence linked only to significant scientific disagreement. Post-Brexit, it would also be important to continue participation in the European Network of Paediatric Research at the EMA (Enpr-EMA), which is open to EU and non-EU participants, and other initiatives for global collaboration in paediatric clinical trials.

8.9 We welcome this comprehensive assessment and have no further queries. We draw it to the attention of the Health Committee and the Committee on the Future Relationship with the EU. We observe that future UK-EU collaboration on medicines generally will form part of the negotiations on the future relationship.

36 Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, 19 October 2019.

9 Enhancing trade in the Euro-Mediterranean region: changes to preferential rules of origin[37]

This EU document is politically important because:

- It concerns changes to an international agreement—the Regional Convention on pan-Euro-Mediterranean preferential rules of origin ("the PEM Convention")—in which the UK may wish to participate in its own right after leaving the EU.

Action

- Write to the Minister for Trade Policy (Rt. Hon Conor Burns MP) to clarify why the changes proposed to the PEM Convention have not been agreed and to seek further information on possible UK participation in the Convention after the post-exit transition period has ended.

Overview

9.1 The Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the "PEM Convention") entered into force in the European Union in May 2012. Its purpose is to encourage the conclusion of free trade agreements amongst all the countries participating in the Convention—the EU on behalf of its 27 Member States and a further 25 countries in the Euro-Mediterranean region—by establishing a single set of rules of origin and a system of cumulation which make it easier for producers and traders operating within the region to benefit from preferential rules on market access.[38] The intention is that the preferential rules of origin contained in the PEM Convention will replace protocols on rules of origin which form part of existing bilateral free trade agreements between participating countries or apply as the default rule in any new free trade agreements. It will be far easier to amend a single legal instrument (the PEM Convention) to reflect changes in trading conditions than each individual protocol. We explain later (see the Background section at the end of this chapter) why rules of origin and systems of cumulation are an important lubricant of trade.

9.2 Changes to the PEM Convention must be agreed unanimously by a Joint Committee in which each of the parties to the Convention is represented. As the PEM Convention falls within the scope of the EU's common commercial policy and is an area in which the EU has exclusive or sole competence to act, the EU is represented by the European Commission.

37 Proposal for a Council Decision on the position to be taken by the EU in the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention; Council document 13169/19 + ADD 1, COM(19) 482; Legal base — Articles 207(3) and (4) and 218(9) TFEU, QMV; Dept — International Trade; Devolved Administrations — Consulted; ESC number 40897.

38 The non-EU participating countries are Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey, Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, Kosovo, the Faroe Islands, Moldova, Georgia and Ukraine.

The EU's position

9.3 In October 2019, the European Commission put forward a proposal for a Council Decision setting out the position to be taken on behalf of the EU on proposed changes to the PEM Convention (the changes are set out in detail in an Annex—ADD 1). The Joint Committee was expected to agree the changes at its meeting on 27 November 2019, though the proposed Council Decision anticipated that it might take longer.[39] According to the European Commission, the changes proposed are consistent with those already agreed by the EU in other recent trade agreements (for example, with Canada, Vietnam, Japan, South Africa) or preferential schemes. Their overall effect would be to simplify existing rules and make them more flexible.[40]

The Government's position

9.4 In his Explanatory Memorandum of 28 October 2019, the Minister for Trade Policy (Rt Hon. Conor Burns MP) expressed the Government's support for the EU position as the changes proposed to the PEM Convention would "align and simplify the rules of origin used within free trade agreements" between the parties to the Convention.[41] He added that this "facilitative approach" was consistent with the Government's policy of supporting "ease of trading for UK businesses".[42]

9.5 The Minister confirmed that the UK would continue to be bound by the PEM Convention after leaving the EU until the end of the post-exit transition period provided for in the EU/UK Withdrawal Agreement—31 December 2020, unless the UK requests an extension before 1 July 2020. During transition, other non-EU parties to the PEM Convention would also be bound by its provisions in respect of trade with the UK, provided they accept the continuity approach to international agreements envisaged in the Withdrawal Agreement.[43] As the proposed amendments to the PEM Convention were only intended to take effect on 1 January 2021, the Minister noted that the changes were "only likely to apply to the UK if the transition period is extended or if the UK requests to join the PEM Convention in its own right".[44] He added that any decision to become a party to the PEM Convention would be made "in the light of ongoing discussions on the future relationship with the EU as well as future bilateral relationships with other Contracting Parties and third countries that are not Contracting Parties to the PEM Convention".[45]

9.6 In a subsequent letter dated 7 January 2020, the Minister told us that the PEM Joint Committee had failed to reach an agreement last November to update the PEM Convention's rules of origin so that they would apply across the whole region. He continued:

39 Recital (5) says that the Joint Committee is expected to adopt a Decision amending the PEM Convention at its meeting on 27 November 2019 "or at a later date".

40 See the Commission's explanatory memorandum accompanying the proposed Council Decision.

41 He also indicated that the Government intended to abstain if the proposed Decision was brought to the Council for a vote ahead of Brexit, a consequence of the Government's policy of non-attendance at EU meetings unless they were of strategic importance to the UK.

42 See paragraph 27 of the Minister's Explanatory Memorandum.

43 Article 129(1) of the EU/UK Withdrawal Agreement stipulates that the UK "shall be bound by the obligations stemming from the international agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly". A footnote adds: "The Union will notify the other parties to these agreements that during the transition period the United Kingdom is to be treated as a Member State for the purposes of these agreements".

44 See paragraph 18 of the Minister's Explanatory Memorandum.

45 See paragraph 28 of the Minister's Explanatory Memorandum.

The Commission now plans to progress with updating rules of origin bilaterally, with a meeting in the first quarter of 2020 with those countries interested in moving forward on this basis.

Action

9.7 We ask the Minister to explain why the changes proposed to the PEM Convention were not agreed by the PEM Joint Committee in November 2019 and to provide further information on possible UK participation in the Convention after the post-exit transition period has ended.

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

Thank you for your Explanatory Memorandum of 31 October 2019 on a proposed Council Decision setting out the position to be taken by the EU on proposed changes to the so-called "PEM Convention"—a framework agreement in which the EU and 25 non-EU countries in or near the Mediterranean region participate. We note that the changes agreed to by the Council were not, in any event, accepted by the PEM Joint Committee and will not take effect. We ask you to explain why the Joint Committee failed to agree the changes, whether there is any prospect of the same or a modified set of rule changes being brought back to the Joint Committee during 2020, and how many countries have indicated that they would be willing to agree updated rules of origin with the EU on a bilateral basis.

Now that the UK has left the EU, we ask you to tell us:

- how many non-EU parties to the PEM Convention have indicated that they intend to roll over the agreement and treat the UK as if it is still a Member State during the post-exit transition period;
- whether any non-EU parties to the PEM Convention have indicated that they do not intend to apply the agreement to the UK during the post-exit transition agreement;
- what assessment the Government has made of the likely costs and benefits of UK participation in the PEM Convention in its own right after leaving the EU, how long the process of joining is expected to take and whether it would be feasible to become a party during or immediately after a post-exit transition period;[46]
- whether the UK would meet the criteria for acceding to the PEM Convention if a free trade agreement with the EU is not in place at the end of the post-exit transition period; and
- how soon you expect the Government to reach a decision on UK participation in the PEM Convention.

46 Article 129(4) of the EU/UK Withdrawal Agreement provides that the UK may "negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union".

We also ask you to explain how bilateral relationships with third countries that do not participate in the PEM Convention might be relevant in deciding whether the UK should participate in its own right.[47]

Background

9.8 Rules of origin establish the 'economic nationality' of a product based on where it is produced or, if more than one country is involved in the production process, the country where the last substantial, economically justified working or processing is carried out.[48] They determine how much local content is needed for a product to qualify for preferential treatment under a trade agreement. Cumulation makes it easier to qualify by allowing preferential market access for goods which include components from different countries. The value of these components can be added together to meet the local content threshold, ensuring that goods which form part of a regional supply chain qualify for preferential treatment in the same way as goods originating from a single country. Cumulation only applies in cases where two or more countries have concluded free trade agreements with each other and operate the same rules of origin.

9.9 The PEM Convention allows for 'diagonal cumulation' of rules of origin for those Contracting Parties that have concluded free trade agreements with one another. This makes it possible for inputs from several free trade partners to be used in the manufacture of a product and for that product to satisfy rules of origin requirements and qualify for preferential treatment.

47 See paragraph 28 of the Minister's Explanatory Memorandum.

48 See the European Commission's Users' Handbook on the Rules of Preferential Origin used in trade between the European Community, other European Countries and the countries participating to the Euro-Mediterranean Partnership.

Extract from the User's Handbook to the Rules of Preferential Origin used in trade between the European Community, other European Countries and the countries participating to the Euro-Mediterranean Partnership

Diagonal cumulation operates between more than two countries. If countries A, B and C have agreements with each other and each operates identical origin rules concerning the working or processing of non-originating materials, country A can apply diagonal cumulation in its trade with the other two partners, if their agreements provide for such cumulation.

For example, originating products from countries B and C can be used to produce an originating product in country A. The imports into Country A from countries B and C are under the bilateral agreements existing between Country A and the other two. However, because all three countries operate an identical system of origin rules the originating status of all the components can be added together to retain the originating status of the final product.

Example:

Norway has agreements with Switzerland and Turkey providing for cumulation and containing identical origin rules. Switzerland also has a similar agreement with Turkey that contains the same origin rules it operates with Norway. Therefore, Norway can use originating products from Turkey and Switzerland to make a product that will have Norwegian origin.

9.10 For the UK to become a party to the PEM Convention in its own right after leaving the EU, it would have to fulfil the conditions set out in Article 5. These provide:

> A third party may become a Contracting Party to this Convention, provided that the candidate country or territory has a free trade agreement in force, providing for preferential rules of origin, with at least one of the Contracting Parties. A third party shall submit a written request for accession to the depositary.

9.11 The request must be approved by the Joint Committee, subject to the condition that no single Contracting Party has a veto.

10 Market Access for Goods from African, Caribbean and Pacific ("ACP") Countries[49]

This EU document is legally and politically important because:

- it concerns the operation of a 2016 Regulation which will continue to apply in Northern Ireland, but not the rest of the UK, after the post-exit transition period has ended; and
- it raises questions about the relationship between the Protocol on Ireland/ Northern Ireland and future UK trade arrangements with third countries.

Action

- Write to the Minister for Trade Policy (Rt Hon. Conor Burns MP) requesting further information.
- Draw to the attention of the Northern Ireland Affairs Committee, the International Trade Committee, the Exiting the European Union Committee.

Overview

10.1 This report by the European Commission examines how it has exercised powers conferred on it by a 2016 Regulation setting out the market access arrangements for goods originating in countries which form part of the African, Caribbean and Pacific ("ACP") group of States and have concluded negotiations with the EU on an Economic Partnership Agreement ("EPA"). EPAs are trade and development agreements. Their purpose is to encourage sustainable development and poverty reduction in ACP countries through preferential (duty- and quota-free) access to the EU market and rules of origin which encourage the integration of regional supply chains. The 2016 Regulation empowers the European Commission to amend the list of ACP countries to whom the market access arrangements apply and to make other technical changes. The Commission reports that it has adopted seven delegated acts under the power conferred by the Regulation.

Application during and after the post-exit transition period

10.2 The 2016 Regulation and acts made under it will continue to apply to the whole of the UK during the post-exit transition period provided for in the EU/UK Withdrawal Agreement.[50] They also form part of the EU law that will continue to apply to Northern Ireland, but not the rest of the UK, after the post-exit transition period ends.[51]

49 European Commission report on the exercise of delegated powers under Regulation (EU) 2016/1076; Council document 5253/20, COM(20) 7; Legal base —; Dept — International Trade; Devolved Administrations — not consulted; ESC number 41031.

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

51 See Article 5(4) of the Protocol on Ireland/Northern Ireland and Annex 2.

The Government's position

10.3 The Minister for Trade Policy (Rt Hon. Conor Burns MP) states in his Explanatory Memorandum of 29 January 2020 that the post-exit transition period will end on 31 December 2020. In practice, he says that the market access arrangements set out in the 2016 Regulation have been superseded by EPAs concluded with many of the ACP countries within its scope. These EPAs will also apply to the UK during the post-exit transition period. Once this period has ended, the Minister indicates that the 2016 Regulation will:

- continue to apply to goods entering Northern Ireland that are 'at risk' of entering the EU, under the Northern Ireland Protocol; but
- cease to apply to the rest of the UK.

10.4 He adds that, post-transition, "the UK aims to bring into force the UK EPAs that will replicate the effects of the EU EPAs".

Action

10.5 To assist our understanding of how the customs provisions of the Protocol on Ireland/Northern Ireland will apply in practice, we ask the Minister to explain what customs and/or regulatory checks would apply (i) to "at risk goods" brought into Northern Ireland from elsewhere in the UK or from a non-EU third country, and (ii) to goods exported from Northern Ireland to the relevant ACP countries once the post-exit transition period has ended.

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 the report by the European Commission examining how it has exercised powers conferred on it by a 2016 Regulation setting out the market access arrangements for goods originating in countries which form part of the African, Caribbean and Pacific ("ACP") group of States and which have concluded negotiations with the EU on an Economic Partnership Agreement ("EPA").

We note that the Regulation and acts adopted under it will continue to apply to the UK during the post-exit transition period provided for in the EU/UK Withdrawal Agreement, as will any Economic Partnership Agreements entered into by the EU and ACP countries which are currently in force or enter into force during the transition period. There will, therefore, be no change to existing market access arrangements for goods traded between the UK and ACP countries at least until the end of 2020. Thereafter, you indicate that the Government "aims to bring into force UK EPAs that will replicate the effects of the EU EPAs".[52]

After transition, the 2016 Regulation and acts adopted under it will cease to apply to the UK, with the exception of goods originating in ACP countries covered by the Regulation which enter Northern Ireland from the UK or from other non-EU third countries and are considered to be "at risk" of subsequently moving into the EU. EU customs laws will apply to these "at risk" goods under the provisions of the Protocol on Ireland/Northern Ireland

52 Paragraph 21 of the Minister's Explanatory Memorandum.

which forms part of the EU/UK Withdrawal Agreement.[53] The Protocol also provides that Northern Ireland is part of the UK's customs territory and may therefore be covered by any trade agreements which the UK concludes with third countries, "provided that those agreements do not prejudice the application of this Protocol".[54]

To assist us in understanding how the customs provisions of the Protocol on Ireland/Northern Ireland will apply in practice once the post-exit transition period has ended, we ask you to explain what customs duties and/or regulatory checks would apply to "at risk goods" brought into Northern Ireland from elsewhere in the UK or from a non-EU third country in the following circumstances:

- the UK has concluded agreements with ACP countries which "replicate the effects of the EU EPAs";
- the UK has concluded agreements with ACP countries which differ from the EU's EPAs or from the 2016 Regulation in their treatment of goods originating in the relevant ACP countries; and
- no bilateral agreements between the UK and the relevant ACP countries are in place at the end of transition.

Similarly, for goods exported from Northern Ireland to the relevant ACP countries, we ask you to explain:

- whether they would continue to be governed by the rules set out in the 2016 Regulation and EU EPAs, or by any new arrangements and agreements negotiated by the UK after transition; and
- what regulatory and other customs checks or duties would apply to these exports.

We would welcome further information on any assessment made (or planned) by the Government to quantify trade flows (imports and exports) between the ACP countries covered by the 2016 Regulation and/or EU EPAs on the one hand, and (i) the UK as whole and (ii) Northern Ireland separately, on the other. Does the Government consider that safeguard measures similar to those set out in the 2016 Regulation will be needed in any new trade arrangements put in place by the UK after transition and to what extent could these measures depart from those established by the EU without prejudicing the application of the Protocol on Ireland/Northern Ireland?

Finally, we ask you to update us on the process for negotiating new bilateral agreements with the ACP countries covered by the 2016 Regulation, the progress being made in negotiations, and how soon you expect the agreements to be made available to Parliament for scrutiny.

We look forward to receiving your response within 10 working days.

53 Article 5 of the Protocol on Ireland/Northern Ireland.
54 Article 4 of the Protocol on Ireland/Northern Ireland.

11 EU retaliatory duties on imports from the US (Byrd amendment WTO dispute)[55]

This EU document is legally and politically important because:

- it concerns a retaliatory trade measure which will apply UK-wide from 1 May 2020 until the end of the transition;
- the measure may continue to apply in Northern Ireland after transition under the Protocol on Ireland/Northern Ireland; and
- there may be wider implications for the UK in negotiating trade agreements with third (non-EU) countries.

Action

- Ask the Minister to clarify the Government's understanding of the relevant provisions of the Protocol on Ireland/Northern Ireland and how the possible application of different trade defence measures in Northern Ireland and Great Britain after transition might affect the UK's trade negotiations with third countries.
- Draw to the attention of the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

11.1 The Commission Delegated Regulation adjusts the retaliatory measures—in this case additional customs duties—which will be payable on the import of certain products originating in the United States of America from 1 May 2020. The EU's right to apply these additional duties stems from a World Trade Organisation ("WTO") ruling in 2003 which found that the United States' Continued Dumping and Subsidy Offset Act 2000 (usually referred to as the "Byrd amendment") was incompatible with its WTO obligations. The Byrd Amendment requires the US Government each year to distribute anti-dumping and countervailing duties to the domestic companies that requested or supported their imposition, creating an incentive for US industries to press for duties on imported goods to secure cash payments and improve their competitive position.[56]

11.2 The retaliatory measures taken by the EU must be adjusted each year to reflect the wide variations in the amount of payments made to US industry under the Byrd amendment. from one year to the next. The Commission Delegated Regulation establishes the new

55 Commission Delegated Regulation of 21.02.2020 amending Regulation (EU) 2018/196 on additional customs duties on imports of certain products originating in the USA; Council number 6308/20 + ADD 1, C(20) 973; Legal base — Article 3(3) of Regulation (EU) 2018/196; Department for International Trade; Devolved Administrations not consulted; ESC number 41093.

56 Anti-dumping duties may be applied to protect domestic industry from the harmful effects of products which are "dumped" on the market by an exporter at less than their normal value. Countervailing measures may be applied to offset the trade distorting effects of unfair subsidies.

level of retaliation to apply to the export of the following goods from the US: sweetcorn, spectacle frames and mountings, crane lorries, and women's denim trousers. It would increase duties on these products from 0.001% in 2019 to 0.012% in 2020 (effective from 1 May), bringing the new level of EU retaliation to around $25.5 thousand in cash terms.

11.3 In his Explanatory Memorandum of 10 March 2020, the Minister for Trade Policy (Rt Hon. Conor Burns MP) explains that the Continued Dumping and Subsidy Offset Act 2000 was repealed in December 2005 but still has "transitional effects". The Government, as "a strong defender of the rules-based system of trade under the WTO", supports the Commission Delegated Regulation which will apply directly in the UK during the post-exit transition period and "may continue to apply subject to the interpretation of the Northern Ireland Protocol (Article 5(1), 5(2), 5(3), 5(4) and Annex 2)".

11.4 The Minister notes that the level of retaliation proposed for 2020 "constitutes a negligible sum", expected to amount to "around £997" in additional duty collected on the affected goods on import into the UK from the US, and will have "a negligible effect on UK-US FTA [free trade agreement] negotiations". He makes clear that the Government "will not transition the Commission Delegated Regulation" at the end of the post-exit transition period, meaning that the UK will no longer collect the additional duties, though this is "subject to the interpretation" of the Protocol on Ireland/Northern Ireland.

Action

11.5 Ask the Minister to clarify the Government's understanding of the relevant provisions of the Protocol on Ireland/Northern Ireland, how it might affect the application of the Commission Delegated Regulation (and other EU trade defence measures) in Northern Ireland once the post-exit transition period has ended, and whether there may be wider implications for the UK in negotiating trade agreements with (non-EU) third countries.

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

Thank you for your Explanatory Memorandum on the Commission Delegated Regulation which adjusts the level of retaliatory measures — in this case, additional duties — to be applied from 1 May 2020 on a range of products imported from the United States, in line with a World Trade Organisation ruling dating back to 2003.

You make clear that the Commission Delegated Regulation "will be binding on the UK as well as all EU Member States" during the post-exit transition provided for in the EU/UK Withdrawal Agreement, but add that you will "not transition" the Regulation at the end of the transition period. We take this to mean that the UK will not continue to collect the additional duties beyond 31 December 2020 (the date on which the transition period is expected to end). You nonetheless indicate that the additional duties "*may* continue to apply subject to the interpretation of the Northern Ireland Protocol" (our emphasis) and refer us to Articles 5(1)-(4) of the Protocol.

Article 5(3) of the Protocol on Ireland/Northern Ireland specifies the customs legislation that will apply to Northern Ireland. It includes the EU Customs Code and "the provisions supplementing or implementing it adopted at Union or national level". Articles 5(1) and (2) provide that EU customs duties will apply to goods considered to be "at risk"

of subsequent onward movement to the EU after entering Northern Ireland from Great Britain or another (non-EU) third country. Article 5(4) and Annex 2 list the additional provisions of EU law that will continue to apply to Northern Ireland (but not the rest of the UK) after the post-exit transition period has ended, including various EU trade defence instruments.[57]

Your Explanatory Memorandum suggests that there is room for doubt about the continued application of the Commission Delegated Regulation in Northern Ireland after the end of the post-exit transition period. We would welcome a more detailed analysis of the provisions you cite in Article 5 of the Protocol on Ireland/Northern Ireland, including your reasons for considering that the application of the Commission Delegated Regulation in Northern Ireland after transition turns on the interpretation of the Protocol, and where the ambiguity lies. We also ask you to explain what systems would need to be put in place to distinguish between products entering the UK after transition which would attract the additional duties and those which would not, how long this is likely to take to set up, and your assessment of the costs involved.

One of the tasks of the Joint Committee established by the EU/UK Withdrawal Agreement is to consider "any issue relating to the implementation, application and interpretation" of the Agreement (including the Protocols) referred to it by the EU or the UK.[58] The first meeting of the Joint Committee took place on 30 March. We would like to know whether issues relating to the implementation, application and interpretation of the Protocol on Ireland/Northern Ireland were discussed at the meeting or whether the intention is to address any issues, in the first instance, in the Specialised Committee on the Protocol on Ireland/Northern Ireland or in the Joint Consultative Working Group. We also ask you to explain how the Government intends to update Parliament on the issues discussed at these meetings, particularly where they concern differences in the EU and UK positions on the implementation, application and interpretation of the Protocol.

Finally, we recognise that the sums involved in applying the specific retaliatory measures set out in the Commission Delegated Regulation are negligible and, as such, are unlikely in themselves to undermine the Government's goal of negotiating "an ambitious and comprehensive" Free Trade Agreement with the United States. We wonder, nonetheless, whether a broader issue might be at stake if it is indeed the case that Northern Ireland and Great Britain might (after transition) apply different trade defence measures in their trading relationships with third (non-EU) countries. What assessment has the Government made of the magnitude of the risk, how disruptive it may be when negotiating trade agreements with third countries, and how it could be mitigated.

We expect to receive your response by 15 May 2020.

57 Regulation (EU) No 2018/196 on additional customs duties on imports of certain products originating in the United States of America.

58 See Article 164 of the EU/UK Withdrawal Agreement.

12 EU sanctions against Turkey[59]

This EU document is legally and politically important because:

- it imposes sanctions on Turkey for its unauthorised gas drilling in Cypriot territorial waters, the first time the EU has applied restrictive measures against a NATO ally and major economic partner; and
- the UK has to enforce the sanctions, currently consisting of an asset freeze and travel ban against two employees of the Turkish Petroleum Corporation, until the end of the post-Brexit transition period even while it tries to negotiate a new trade agreement with Turkey.

Action

- Write to the Minister of State at the Foreign Office (Nigel Adams MP) to clarify if the UK intends to carry these sanctions over domestically after the end of the post-Brexit transition period.
- Draw the EU's imposition of sanctions against Turkey to the attention of the Foreign Affairs Committee and the International Trade Committee.

Overview

12.1 Since 2014, Turkey has repeatedly violated the sovereignty of the Exclusive Economic Zone (EEZ) of Cyprus — an EU Member State — to drill for hydrocarbon reserves. These activities have intensified since the discovery of significant gas deposits in the eastern Mediterranean in 2018.

12.2 On 11 November 2019, the EU's Foreign Affairs Ministers[60] — the UK included — formally approved a legal framework enabling the EU to impose sanctions against Turkish citizens and companies involved in the continued unauthorised drilling for hydrocarbon resources in Cyprus' territorial waters. On 27 February 2020, this framework — which imposes an EU-wide travel ban[61] and asset freeze[62] against people and entities listed —

59 Document(s): (a) Council Decision (CFSP) 2019/1894 concerning restrictive measures in view of Turkey's unauthorised drilling activities in the Eastern Mediterranean; (b) Council Regulation (EU) 2019/1890; Legal base: (a) Article 29 TEU; (b) Article 215 TFEU; Department: Foreign and Commonwealth Office; Devolved Administrations: not consulted; ESC number: (a) 41059; (b) 41060.

60 The UK, then still a Member State of the EU, was represented by Sir Tim Barrow, its Permanent Representative (now Head of Mission) in Brussels.

61 A travel ban through or to the EU which can be invoked against people "involved in" unauthorised drilling activities in Cypriot waters,3 as well as those who provide "financial, technical or material support" for such activities and those "associated with" either of these two categories of people. In legal terms, the sanctions framework refers to Cyprus "territorial sea", "exclusive economic zone" and "continental shelf", as well as drilling in areas where "the exclusive economic zone or continental shelf has not been delimited in accordance with international law with a State having an opposite coast", but where such activities "may jeopardise or hamper the reaching of a delimitation agreement" (Article 1(1)(a) of the Decision).

62 Under the sanctions framework, an asset freeze of "funds and economic resources" held by any of the people listed as being subject to the travel ban, as well as any organisations or companies listed. There would be some exceptions, including allowing listed person to access their funds for the purpose of making a "payment due under a contract entered into prior to the date" on which the asset freeze became applicable to them. For example, funds could be unfrozen to "satisfy the basic needs of the natural or legal persons, entities or bodies listed", including for "payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges" or to pay for legal representation.

was specifically invoked against two high-ranking employees of the government-owned Turkish Petroleum Corporation (TPAO). The sanctions are significant because Turkey is a NATO ally of many EU Member States, as well a major economic partner (being in a customs union with the EU).

12.3 While not directly linked, the sanctions should also be seen in the wider political context of extreme strain in the European Union's relations with Turkey. These result notably from the EU's opposition to Turkish military incursion into North East Syria in autumn 2019 (which has led to some EU countries restricting or banning arms sales to Turkey), and Ankara's decision in February 2020 to threaten to suspend[63] a 2016 arrangement with the EU under which the Turkey receives €6 billion (£5.2 billion) in financial support in return for preventing the crossing of refugees and others into EU Member States Greece and Bulgaria.

The Government's position

12.4 The then-Minister for Europe and the Americas[64] (Rt Hon. Christopher Pincher MP) submitted an Explanatory Memorandum on the EU's sanctions against Turkey on 6 February 2020, nearly two months after they were approved by EU Foreign Affairs Ministers (at a time when the UK was still entitled to attend EU meetings as a full Member State).

12.5 With respect to the substance of these measures, the Minister said that "the UK has been clear from the start that we oppose Turkish drilling" in "an area the UK would regard pas of the Republic of Cyprus' internationally-agreed Exclusive Economic Zone", and "continue[s] to call for de-escalation and dialogue". Under the terms of the transition period in the Brexit Withdrawal Agreement, the UK will have to apply these measures until 31 December 2020.[65] However, the Minister's Explanatory Memorandum does not state whether the Government intends to maintain the sanctions independently after that point if Turkey's activities in Cypriot waters have not ceased by that point.

Action

12.6 The Committee has taken note of the new EU sanctions framework, the first time the European Union has applied restrictive measures of this kind against a NATO ally as well as a major economic and security partner.[66] It has written to the Minister of State at

63 On 28 February 2020, Turkish President Recep Tayyip Erdo- an announced Turkey would cease exercising controls at its borders with EU Member States Greece and Bulgaria to stop crossings of refugees and other people from immigrant communities. The decision by Turkey to encourage people to move into Greece and Bulgaria followed an escalation in violence in the war in Syria and the subsequent displacement of even more refugees into Turkey (which already hosts more than 3 million).

64 This Ministerial position no longer exists. Our engagement with the Foreign & Commonwealth Office in relation to EU foreign policy issues is now conducted via Nigel Adams MP, Minister of State with Asia but also responsible for relations with Parliament.

65 Article 132 of the Withdrawal Agreement provides for the possibility of an extension of the transition for no more than two years, i.e. until 31 December 2022. However, Parliament has legislated against the Government accepting any extension of the transitional period under section 15A of the European Union (Withdrawal) Act 2018.

66 The Committee notes in this respect that there is, at the UK's request, no dedicated negotiating track within the UK-EU future relationship negotiations on a formalised, structural approach to "cooperation on foreign policy, security and defence".

the Foreign & Commonwealth Office (Nigel Adams MP) to ascertain the Government's policy on the continuation, or disapplication, of the sanctions against Turkey after the end of the transition period. The text of that letter is shown below.

Letter from the Chair to the Minister of State at the Foreign & Commonwealth Office (Nigel Adams), 18 March 2020

EU sanctions against Turkey

I am writing to thank you for your predecessor's Explanatory Memorandum of 6 February 2020 on the EU's new sanctions framework in response to Turkey's drilling activities in Cypriot territory.[67] We note that the Foreign Affairs Council has since listed two employees of Turkey's TPAO petroleum company under the regime.[68]

However, we have not received information from you about whether the UK intends carry over the restrictive measures in domestic law after EU law ceases to be binding on the Government and UK financial institutions at the end of the transition period. As EU sanctions will not automatically be carried over into UK law after the end of the transitional period under the European Union (Withdrawal) Act 2018, it would be helpful if you could clarify if the intention is to maintain EU sanctions in operation at that time if Turkish activities in Cypriot waters have not ceased.

67 ESC documents (41059) and (41060).

68 Council Decision (CFSP) 2020/275 of 27 February 2020, not yet deposited for scrutiny.

13 Passenger Name Record (PNR) data: updating internationals standards and negotiating an EU/Japan PNR Agreement[69]

These EU documents are legally and politically important because:

- they are relevant to the Government's goal of agreeing a framework for the transfer of Passenger Name Record (PNR) data with EU and other third countries after transition.

Action

Ask the Minister for Security at the Home Office (Rt Hon. James Brokenshire MP) to:

- clarify the Government's position on EU competence for the collection, processing, transfer and use of PNR data and explain how it may affect the UK's ability to negotiate its own PNR agreements with EU and other third countries after transition;
- indicate whether/how differences in the EU's and UK's approaches to PNR data might be a factor in securing a data protection adequacy decision; and
- explain whether the Government wishes to continue to apply the EU's PNR agreements with Australia and the US (and any others concluded in the coming months) after transition or to negotiate new terms.

Draw to the attention of the Home Affairs Committee.

Overview

13.1 Access to the passenger information held in air carriers' flight reservation and departure control systems is an important law enforcement tool to support the investigation of terrorism and other serious cross-border crimes. The UK has been at the forefront of efforts to promote the sharing of Passenger Name Record (PNR) data within the EU (a new EU PNR Directive took effect in May 2018)[70] and externally through the negotiation of EU PNR agreements with third countries. The UK has also been instrumental in efforts within the United Nations Security Council to agree a Resolution (UNSCR 2396)

69 Proposal for a Council Decision on the EU's position within the Council of the International Civil Aviation Organisation with regard to standards and recommended practices on passenger name record data; Council document 12197/19 + ADD 1, COM(19) 416; Legal base — Articles 16(2), 87(2)(a) and 218(9) TFEU, QMV; Dept — Home Office; Devolved Administrations consulted; ESC number 40822.

Council Decision authorising the opening of negotiations with Japan for an agreement between the EU and Japan on the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and serious transnational crime; Council document 5378/20, —; Legal base — Articles 16(2), 87(2)(a) and 218(3) and (4) TFEU, QMV; Dept — Home Office; Devolved Administrations —; ESC number —.

70 See Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Member States were required to implement the Directive no later than 25 May 2018.

requiring all UN members to "develop the capability to collect, process and analyse" PNR data and urging the International Civil Aviation Organisation ("the ICAO") to establish an international standard for the collection, use, processing and protection of PNR data.

International standards on PNR data

13.2 The Convention on International Civil Aviation ('the Chicago Convention') includes a set of Standards and Recommended Practices ('SARPs') on PNR data.[71] All EU Member States are parties to the Chicago Convention and seven (including the UK) are currently represented on the ICAO Council, the body empowered to adopt and amend the ICAO's SARPs.[72] In October 2019, our predecessor Committee examined a European Commission proposal for a Council Decision establishing the position to be taken by EU Member States represented in the ICAO Council on possible changes to the ICAO's SARPS on PNR data. The European Commission considered that a Council Decision was necessary as the changes would be "capable of decisively influencing the content of Union law" enshrined in the EU PNR Directive and in existing and future PNR agreements concluded with third countries and concerned an area of policy in which the EU had exclusive competence to act.[73] A difference in the standards applicable at international and EU level would, the Commission said, "compromise the effectiveness of the EU PNR mechanism". It would therefore be "essential to steer the discussions" on new PNR standards within the ICAO to ensure they were consistent with the EU's regulatory framework and relevant case law of the Court of Justice on the fundamental right to privacy and data protection.[74] An Annex to the proposed Council Decision set out the general principles and orientations on which the EU position would be based.

EU rules on the sharing of PNR data

13.3 EU law only allows Member States to share personal data with third countries which ensure a level of protection "essentially equivalent" to that guaranteed within the EU. To provide legal certainty for air carriers that their transfers of PNR data are lawful, the EU has concluded PNR Agreements with Australia and the United States of America and is keen to negotiate agreements with other third countries. Progress has been hampered by a EU Court of Justice ruling—Opinion 1/15—issued in July 2017 which found that some provisions of a proposed PNR Agreement with Canada were incompatible with fundamental rights and contrary to EU law. The Agreement has been renegotiated to address the Court's concerns but has not been formally concluded. The UK participates in the EU's PNR Agreements with Australia and the US and also opted into the mandate proposed by the European Commission to renegotiate the Agreement with Canada.

13.4 In February 2020, the Council adopted a Decision authorising the European Commission to negotiate a PNR Agreement with Japan. The original Commission proposal was not deposited for scrutiny as it was marked "limité", meaning its contents could not be made public. According to the Council, the agreement will "regulate the transfer and use of PNR data to prevent and fight terrorism and serious transnational

71 See Annex 9 ('Facilitation'), chapter 9 on PNR data.
72 36 countries are represented on the ICAO Council for the 2019–22 term — see the ICAO website.
73 See recital (13) of the proposed Council Decision.
74 See p.4 of the European Commission's explanatory memorandum accompanying the proposed Council Decision.

crime" and "fully ensure the respect of fundamental rights, in particular, the right to protection of personal data, by setting the necessary safeguards and controls as provided by EU law" (our emphasis).[75]

The Government's position

International standards on PNR data

13.5 The Government told our predecessor Committee that international standards for the collection, use, processing and protection of PNR data were intended to "help mitigate potential conflicts of national law where airlines would be required by one law to disclose PNR data and by another to protect the same data".[76] It said the proposed Council Decision establishing the EU's position on possible changes to the ICAO's SARPS on PNR data was subject to the UK's Title V (justice and home affairs) opt-in and that the Government would "take and communicate a decision on UK participation" before 31 October 2019, the date on which the UK was (then) expected to leave the EU.

13.6 In his letter of 25 March 2020, the Minister for Security (Rt Hon. James Brokenshire MP) informs us of the Government's decision not to opt in. Despite this, the Council Decision adopted last November (before the UK's exit from the EU) states that the UK is bound by the Decision.[77] This reflects the European Commission's view, shared by the Council, that rules on the collection, processing, transfer and use of PNR data are an area of exclusive EU competence and that the UK is automatically bound by EU action within this area because it participates in the EU's 2016 PNR Directive.[78] The Minister insists that the opt-in does apply (and that the UK is not therefore bound by the Council Decision during the post-exit transition period provided for in the EU/UK Withdrawal Agreement) and says that the Government's position has formally been placed on the record.[79] The Minister continues:

> In accordance with the principle of sincere cooperation, the UK shall refrain, during the transition period, from any action or initiative likely to be prejudicial to the position taken by the Council Decision particularly within ICAO of which the United Kingdom is a contracting party in its own right.
>
> The decision not to opt-in will enable the UK to retain control over our national interests in the development of our independent policy on international transfers of PNR data.

75 See the press release issued by the Council on 18 February 2020.

76 See the Government's Explanatory Memorandum of 27 September 2019.

77 See Council Decision (EU) 2019/2107. Recital (16) provides: "The United Kingdom and Ireland are bound by Directive (EU) 2016/681 and are therefore taking part in the adoption of this Decision."

78 See Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Recital (11) of the Council Decision states that the common rules on PNR data set out in the 2016 Directive "overlap significantly with the area to be covered by the envisaged new SARPs", highlighting in particular "a comprehensive set of rules to safeguard the fundamental rights to privacy and the protection of personal data, in the context of a transfer of PNR data by air carriers to Member States for the purpose of prevention, detection, investigation and prosecution of terrorist offences and serious crime".

79 See Council document 14008/19 which sets out the UK view that the "Justice and Home Affairs opt-in applies to all proposals for EU legislation which cite a legal base in the Justice and Home Affairs section of the TFEU, and, therefore, to this Council Decision as well".

13.7 While the Government "does not take issue with the large part" of the Council Decision, which is "in accordance with EU law as interpreted by the relevant case law" of the EU's Court of Justice, the Minister considers that "some principles […] go beyond that which is necessary in a global context". He highlights the stipulation that "deletion of PNR data should be ensured in accordance with the legal requirements of the source country", adding:

> The practical effect of this would reflect the CJEU's Opinion that PNR data should be deleted once individuals leave the territory of that third country, unless there was objective evidence from which it could be inferred that certain air passengers may have links to terrorism or serious crime. This would seriously hinder the operational effectiveness of using PNR data to identify and respond to serious threats, including travelling foreign terrorist fighters and trafficking of vulnerable individuals. We consider this position is unworkable; it would have an adverse impact on national authorities' processing of PNR data and would not be reflected in EU law. This position also does not consider the consequences when the law of a source country requires deletion of PNR data after a period other than five years as required in EU law.

The proposed EU PNR Agreement with Japan

13.8 In a separate letter also dated 25 March 2020, the Minister informs us of the Council Decision authorising the European Commission to open negotiations for a PNR Agreement with Japan. As the proposal was put forward before the UK's exit from the EU on 31 January 2020, the EU and the UK both agreed that the UK's Title V (justice and home affairs) opt-in applied. The Government decided not to opt in because it had reservations about some of the safeguards included in the negotiating mandate, particularly those concerning purpose limitation, right to individual notification, retention and onward transfers of PNR data, which reflected the Court of Justice's Opinion on the EU/Canada PNR Agreement. The Minister tells us:

> An opt-in to this Decision would have indicated acceptance of these negotiating directives. By not opting into this Decision, we protect our negotiating position with the EU on our future relationship on the transfer and use of PNR data.
>
> The UK's exit from the EU means we can determine and pursue our own policy on the international transfer and use of PNR data, with Japan and other partners, which acknowledges the significance of this valuable and unique dataset for countering terrorism and serious crime subject to safeguards ensuring respect for individuals' fundamental rights.

13.9 The Minister indicates in both letters that the Government will publish Written Ministerial Statements "shortly" to inform Parliament of its opt-in decisions.

Action

13.10 Ask the Minister to:

- clarify the Government's position on EU competence for the collection, processing, transfer and use of PNR data and explain how it may affect the UK's ability to negotiate its own PNR agreements with EU and other third countries after transition;
- indicate whether/how differences in the EU's and UK's approaches to PNR data might be a factor in securing a data protection adequacy decision; and
- explain whether the Government wishes to continue to apply the EU's PNR agreements with Australia and the US (and any others concluded in the coming months) after transition or to negotiate new terms.

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

Thank you for your letters dated 25 March 2020, the first relating to a Council Decision establishing the EU position on changes to international (ICAO—International Civil Aviation Organisation) standards on Passenger Name Record (PNR) data, the second a Council Decision authorising the European Commission to negotiate a PNR Agreement with Japan. Both Council Decisions concern opt-in decisions which were taken before the UK left the EU on 31 January 2020.

We are disappointed that it has taken so long to inform us of the Government's opt-in decisions and to publish Written Ministerial Statements. Although the Government has decided not to opt into either of the Council Decisions, they are both relevant to the goal (set out in the Government's Command Paper on *The UK's Future Relationship with the European Union*) of agreeing a framework for "reciprocal transfers of PNR data to protect the public from serious crime and terrorism".[80] This is why we are asking you to provide some additional information.

The Council Decision establishing the EU position within the ICAO Council

You explain that the UK, on the one hand, and the Council and the European Commission on the other, take a different view on the application of the UK's justice and home affairs opt-in Protocol to the Council Decision.[81] Recitals (11) and (16) of the text formally adopted by the Council last November state that the UK *is* bound by the Decision because it participates in the 2016 EU PNR Directive and the scope of these common EU rules "overlaps significantly with the area to be covered by the envisaged new SARPs". We infer from this that the EU considers: (i) that it has exclusive competence to determine the position to be taken by EU Member States in the ICAO Council as changes to the ICAO's SARPs on PNR data may affect the common rules established by the 2016 PNR Directive;[82] and (ii) that the UK cannot simultaneously be bound by the PNR Directive but not by the Council Decision and so has no option but to participate in it.

80 See the Government's Command Paper (CP211), The Future Relationship with the European Union: The UK's Approach to Negotiations, published in February 2020.

81 Protocol No 21 to the EU Treaties.

82 Article 3(2) TFEU provides that the EU has exclusive competence if "necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope".

By contrast, your letter informing us of the Government's decision *not* to opt in says that this "will enable the UK to retain control over our national interests in the development of our independent policy on international transfers of PNR data". The EU and UK positions appear difficult to reconcile. To clarify matters, please tell us:

- whether the Government accepts that the Council Decision falls within the ambit of Article 127 of the EU/UK Withdrawal Agreement and is binding on the UK until the end of the post-exit transition period;[83] and
- what, if any, constraints there are on the position the UK takes "as a contracting party within its own right" within the ICAO Council during transition.

The Council Decision on the negotiation of a PNR Agreement with Japan

Although we understand that the EU alone has negotiated, signed and concluded previous PNR Agreements with Australia and the US and considers this to be an area of exclusive EU competence, it seems that the EU and UK both agree that the justice and home affairs opt-in Protocol does apply in this case and that it is open to the UK to decide not to participate in the proposed Council Decision.[84] We would welcome your analysis of the reasons why the EU considers that the UK is bound to participate in the Council Decision establishing the EU position in the ICAO but not in this Council Decision, based on your understanding of the extent of the EU's competence for the collection, processing, transfer and use of PNR data.

The Government has said that it wishes to agree a framework for reciprocal transfers of PNR data after transition and that this should be "based on, and in some respects go beyond, precedents for PNR Agreements between the EU and third countries—most recently, the mandate for the EU-Japan Agreement".[85] This suggests that the scope of the agreement the UK is seeking may be broader than existing EU third country precedents or more ambitious than the common rules set out in the 2016 EU PNR Directive. Do you anticipate that the UK will negotiate exclusively with the EU, on the basis that the negotiation will cover an area of exclusive EU competence, or might the agreement also cover areas of Member State competence and require Member State involvement in the negotiation and ratification of the agreement? How might that affect the time taken for the agreement to become operational? Is there any scope for the UK to negotiate bilateral agreements with individual Member States if the Government is unwilling to accept the EU's terms?

The detailed mandate for the EU's negotiations with Japan has not been published, but the Council has made clear that it should include all "the necessary safeguards and controls as provided by EU law".[86] We assume that these include the data protection requirements set out in Opinion 1/15 issued by the EU Court of Justice in July 2017 which prompted the EU to renegotiate its PNR agreement with Canada. This raises two concerns. First, that any future PNR agreement between the UK and the EU which does not comply fully with the

83 Article 127 states: "Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period".

84 This is clear from recital (4) which states that Ireland, like the UK, has chosen not to opt into the Council Decision even though both are bound by the 2016 EU PNR Directive.

85 See Part 2, para 40 of the Government's Command Paper (CP211), The Future Relationship with the European Union: The UK's Approach to Negotiations, published in February 2020.

86 See the press release issued by the Council on 18 February 2020.

Opinion will be at risk of legal challenge. Second, that any significant departure from the EU's PNR framework when negotiating agreements with other (non-EU) countries may well be a factor in obtaining a so-called "adequacy" decision. This is because the mandate agreed by EU Member States for negotiating a future relationship with the UK makes wider criminal justice and law enforcement cooperation conditional on the UK ensuring a level of protection of personal data which is essentially equivalent to EU standards and requirements (the "adequacy" test).[87] Does the Government consider that there is scope to diverge from existing EU precedents on PNR without jeopardising the UK's ability to conclude its own PNR agreement with the EU and to secure a data adequacy decision?

Finally, we ask whether the Government's policy is to seek to continue to apply the EU's PNR agreements with Australia and the US (and any others concluded in the coming months) after transition or to negotiate new terms. If new agreements, we would welcome some indication of how they would differ from those concluded by the EU and the timescale you envisage for concluding negotiations and the agreements taking effect.

We ask you to respond within ten working days.

87 See paragraphs 13, 118 and 119 of the Annex to Council Decision (EU, Euratom) 2020/266.

14 Biocidal product approvals under the Withdrawal Agreement[88]

This EU document is legally/politically important because:

- it concerns the functioning of the Withdrawal Agreement and the status of a UK agency during the transition period.

Action

- As the proposal has been adopted, no further action is necessary.

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

Overview

14.1 Our predecessor Committee considered the proposal under consideration on 6 February 2019.[89] Since this time, the proposal has been adopted as Commission Delegated Regulation (EU) 2019/227.[90] Our predecessor retained the Regulation under scrutiny pending requests from the lead Department—the Health & Safety Executive— for further information. The former Minister with charge over the Regulation, Sarah Newton MP, wrote to our predecessor in reply on 21 February 2019.[91]

Background

14.2 The Commission Delegated Regulation was of particular interest to our predecessor as it amends Regulation (EU) No 1062/2004—the 'Biocides' Review Regulation—in order to take account of the UK's withdrawal from the EU.[92] The Review Regulation gives effect to the EU's re-evaluation programme for 'biocidal' active substances placed on the market before May 2000.[93] As part of this programme, the UK was made responsible for the review of 57 active substances.

14.3 By way of explanation, biocidal products—or biocides—are chemical substances or microorganisms that are produced and/or marketed to destroy, deter, render harmless or exert a controlling effect over any harmful organism.

88 Proposal for a Commission delegated Regulation (EU) .../... of 28.11.2018 amending delegated Regulation (EU) No 1062/2014 as regards certain active substances for which the competent authority of the United Kingdom has been designated as the evaluating competent authority; Council and COM number; 14911/18 + ADD 1 and COM(18) 7778; Legal base; Article 89(1) and 83 of Regulation (EU) No 528/2012 (the Biocidal Products Regulation); Dept; Health and Safety Executive; Devolved Administrations; Consulted; ESC number: 40242.

89 Forty-fourth Report HC 301–liii (2017–19), chapter 7 (6 February 2019)

90 Commission Delegated Regulation (EU) 2019/227 of 28 November 2018 amending Delegated Regulation (EU) No 1062/2014 as regards certain active substances/product-type combinations for which the competent authority of the United Kingdom has been designated as the evaluating competent authority (Text with EEA relevance)

91 Letter from Sarah Newton MP to Sir William Cash MP, 21 February 2019

92 Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (Text with EEA relevance)

93 Before May 2000, the approval of active substances and the authorisation of active products was governed by a different framework.

14.4 The Commission Delegated Regulation amends the Review Regulation so that the UK, specifically, the Health & Safety Executive (HSE) (as the UK's competent authority), can no longer evaluate or authorise biocidal substances on behalf of the EU. This change is in line with the Withdrawal Agreement which states at Article 128(6) that during the transitionary period "the United Kingdom shall not act as a leading authority for risk assessments, examinations, approvals or authorisations at the level of the Union…". Furthermore, during transition—as per Article 127—the UK will be obliged to recognise all EU-issued approvals and authorisations.

14.5 Our predecessor sought further information from the Government on: its plans for the evaluation and approval of biocides after the UK's withdrawal from the EU; the terms of the Withdrawal Agreement (as they relate to the regulatory position of the HSE during the transitionary period); and future cooperation between the HSE and the European Union Chemicals Agency (EUCA).

Government response

14.6 In her letter of 21 February 2019, former Minister of State for Disabled People, Health and Work, Sarah Newton MP, addressed our predecessor's questions at length.

14.7 On whether the HSE would continue with the evaluation of the 57 active substances for which it was responsible before EU exit, the former Minister gave a rather confusing answer, explaining that:

> In a no-deal scenario [where the Withdrawal Agreement was not ratified by either the UK or the EU], [the] HSE will continue with its evaluation if the company wishes to seek approval of their active substance in the UK…

The reason for this confusion appears to be the former Minister's failure to mention that—under the Review Regulation—the EU's review programme is not systematic and reviews are only undertaken when requested by a company (i.e. when seeking to place a product on the market that contains a covered active substance). The former Minister stated that reviews of most of the 57 active substances that the HSE holds responsibility for have not been performed previously but does not provide exact figures.

14.8 On a linked point, the former Minister clarifies that the HSE did not receive any payment from the EUCA for the re-evaluation of these 57 substances and explains that applicant companies bear the full cost of evaluations (which are levied by Member State competent authorities).

14.9 Our predecessor was also interested in the potential resource implications of the UK having to institute its own evaluation programme in the event of a 'no-deal' Brexit. In the explanatory memorandum accompanying the Commission Delegated Regulation, the former Minister stated that "the resource implications of operating a UK-specific review programme in the event of a no-deal exit have also been considered by the HSE". A full summary of this assessment was requested, however, it was provided. Rather, the former Minister's response reads as though an assessment is yet to be undertaken and, instead, she lists the criteria that would be considered if a full assessment were to be commissioned. This includes:

- the extent to which businesses take commercial decisions to fund the evaluation of the remaining active substances to gain access to the UK market;
- the timeframe over which HSE reviews the active substances; and
- the extent to which HSE draws on the results of evaluations of active substances already undertaken in other jurisdictions, including the EU.

14.10 Turning to the Withdrawal Agreement, the former Minister addresses a number of points raised by our predecessor relating to the meaning and interpretation of those provisions covering the UK's status in regulatory evaluation and approval processes during the transitionary period.[94]

14.11 Our predecessor sough clarity on the implications of Article 128(6) of the Withdrawal Agreement, in particular, whether it would prevent UK-issued approvals from being used as the basis for an approval sought in an EU Member State (between Member States, this process is known as 'mutual recognition in sequence'). The former Minister explains that it is the Government's understanding that Article 128(6) precludes the UK from acting as a 'reference' Member State and thus the HSE from serving as a 'lead' authority in mutual recognition processes. The former Minister does, however, state that "the precise implementation of Article 128 is subject to further discussion with the European Commission"; suggesting that there may be scope for some softening in the EU's position.

14.12 Further information was also requested on whether Article 44 of the Withdrawal Agreement would oblige the UK to transfer all files and documents relating to assessments and approvals—for which it was acting as the lead or reference Member State prior to EU exit—to relevant Member States after withdrawal. In response, the former Minister explains that, as with Article 128(6), the exact requirements of Article 44 are subject to discussion with the Commission. The former Minister does note, however, that in the event of an implementation period being entered into (which it has been), the Government would make such transfers voluntarily. Details of how this would be achieved are not provided and are said to be part of ongoing negotiations with the Commission and Member States.

14.13 Our predecessor was also concerned with how items treated with biocides would be handled in the UK in the event of a no-deal Brexit, in particular, whether treated articles would be allowed into the UK if they contain active substances that have not been approved by the HSE. The Minister explains that under the provisions of the EU (Withdrawal) Act 2018 all current EU approvals would be carried over into domestic law and that new active substance approvals would be made by the Secretary of State. This approach to granting new approvals would differ to that currently in place; where responsibility for approvals rests with the HSE not the Secretary of State.

14.14 A final issue covered by our predecessor was the potential implications of the UK's withdrawal from the EU for the participation of UK experts in forums such as the EU

94 Although our predecessor's Report chapter was committed to the House in February 2019—when the November 2018 draft Withdrawal Agreement was the most current version—the numbering and text of the October 2019 Withdrawal Agreement is identical as far as regulatory assessments/evaluations and approvals/authorisations are concerned.

Biocidal Products Committee and UK access to special databases including 'R4BP 3'.[95] The former Minister suggests that the type of cooperation possible with the EUCA will very much depend on the form EU withdrawal takes. If the UK enters into a transitionary period under the terms of the draft Withdrawal Agreement, UK experts will be able to attend the Biocidal Products Committee but attendance will be by invitation only and the UK will not have voting rights on matters put forwards for formal decision. In terms of the UK's future relationship with the EU, the Minister is frank in explaining that there is currently no model for third country membership of the EUCA and that access to databases such as R4BP 3 is not possible for non-Member States.

Analysis

14.15 We thank the former Minister for her letter of 21 February 2019 and the responses that she has provided to our predecessor's requests for further information.

14.16 As with our predecessor, we draw attention to the wider political and legal context against which the Commission Delegated Regulation has been adopted.

14.17 We highlight, in particular, the implications of the Withdrawal Agreement for regulatory assessments/evaluations and approvals/authorisations in the UK during the transitionary period. In effect, the UK and its competent authorities, for example, the HSE for biocides, will not be permitted to act as 'lead' bodies during assessments and approvals. As explained by the former Minister, this is also likely to extend to the use of UK approvals by EU Member States during mutual recognition processes.

14.18 We contrast this situation with the responsibilities of the UK during the transitionary period—to continue to give full effect to current and new EU laws—and, importantly, the position of the UK's competent authorities before and after EU exit.

14.19 On the latter point, taking biocide approvals as an example, the HSE is internationally renowned for its expertise with companies based in other countries choosing to pay for its services over those offered by the competent authorities of other EU Member States. The terms of the transitionary period prevent the HSE for undertaking this work (for the purposes of EU law); with uncertain consequences for its position as Europe's leading authority.

14.20 We also draw attention to the former Minister's responses to our predecessor's requests for clarification on specific parts of the Withdrawal Agreement. Given that the text of the Agreement was negotiated between the UK and the EU, it is disappointing that the Government is unsure of the exact implications of certain provisions—such as Article 44 on file and document transfers—and is seeking further negotiations/clarity from the European Commission.[96]

Action

14.21 As the proposal has been adopted, no further action is necessary.

95 The R4BP 3 database is the central hub through which all biocides applications are made in the EU. It provides functions which enable Member State authorities and industry to comply with EU legislative requirements and to exchange relevant information.

96 We acknowledge, however, the change in Prime Minister and machinery of Government since the time of the Minister's letter.

14.22 We draw this Report chapter to the attention of the Business, Energy and Industrial Strategy Committee.

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

Department for Business, Energy and Industrial Strategy

(40690) 10251/19 +ADDs COM(19) 285	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions United in delivering the Energy Union and Climate Action — Setting the foundations for a successful clean energy transition.
(40691) 10515/19 +ADD COM(19) 4428	Commission Recommendation 18.6.2019 on the draft integrated National Energy and Climate Plan of the United Kingdom covering the period 2021–2030.
(40693) 10626/19 COM(19) 270	Report from the Commission to the European Parliament and the Council on the provisions of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements applying to online bookings made at different points of sale.
(40839) 12546/19 COM(19) 426	Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation').
(41026) 5023/20 SWD(19) 454	Commission Staff Working Document EGNSS downstream standards development.

Department for Digital, Culture, Media and Sport

(40912) 13390/19+ ADD 1 COM(19) 495	Report from the Commission to the European Parliament and the Council on the third annual review of the functioning of the EU-U.S. Privacy Shield.
(40921) 13596/19 COM(19) 546	Report from the Commission to the European Parliament and the Council assessing the consistency of the approaches taken by Member States in the identification of operators of essential services in accordance with Article 23(1) of Directive 2016/1148/EU on security of network and information systems.
(40943) 13914/19 COM(19) 548	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation, results and overall assessment of the European Year of Cultural Heritage 2018.

(40981) 14747/19 + ADD 1 COM(19) 616	Report from the Commission to the European Parliament and the Council on the review of the roaming market.

Department for Education

(40997) — —	Court of Auditors Report on the annual accounts of the European Schools for the financial year 2018 together with the Schools' replies.

Department for Environment, Food and Rural Affairs

(40879) — —	Court of Auditors: Opinion No 03/2019 on a proposal for the Financial Regulation of the Community Plant Variety Office.
(40900) 13256/19 COM(19) 474	Proposal for a Council Regulation on the allocation of fishing opportunities under the Protocol on the implementation of the Fisheries Partnership Agreement between the Republic of Senegal and the European Union.
(40901) 13255/19 + ADD 1 COM(19) 473	Proposal for a Council Decision on the conclusion, on behalf of the Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the Republic of Senegal and the European Union.
(40902) 13254/19 + ADD 1 COM(19) 475	Proposal for a Council Decision on the signing, on behalf of the Union, and provisional application of the Protocol on the implementation of the Fisheries Partnership Agreement between the Republic of Senegal and the European Union.

Department for Exiting the European Union

(40735) 11145/19 COM(19) 318	Report from the Commission to the Council on the Union institutions' progress towards the implementation of the gradual reduction of the Irish language derogation.

Department for International Development

(40747) 11277/19 COM(19) 336	Report from the Commission to the Council on the implementation of the financial assistance provided to the Overseas Countries and Territories under the 11th European Development Fund.
(40917) 13463/19 + ADD 1 COM(19) 550	Proposal for a Council Decision on the position to be adopted by the European Union within the ACP-EU Committee of Ambassadors, with regard to the adoption of a decision to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement.

Department for International Trade

(40845) 12698/19 COM(19) 449	Report from the Commission to the European Parliament and the Council Report on export authorisation in 2017 and 2018 pursuant to the Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
(40860) 12850/19 COM(19) 445	Report from the Commission to the European Parliament on the activities and consultations of the Anti-Torture Coordination Group referred to in Article 31 of Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
(40936) 13764/19 +ADD1 COM(19) 562	Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, including a report on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 599/2014 of the European Parliament and the Council of 16 April 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.
(40963) 14348/19 COM(19) 597	Report from the Commission to the European Parliament and the Council on the operation of Regulation (EU) No 912/2014 on the financial responsibility linked to investor-to-state dispute settlement under international agreements to which the European Union is party.
(40976) 14670/19 + ADD 1 COM(19) 608	Recommendation for a Council Decision updating the negotiating directives for the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions.
(41005) 14900/19 —	Decision of the Representatives of the Governments of the Member States, Meeting Within The Council authorising the European Commission to negotiate, on behalf of the Member States, Economic Partnership Agreements between the European Union and its Member States, of the one part, and the African, Caribbean and Pacific countries and regions, of the other part, to the extent that they fall within the competences of the Member States.
(41006) 14899/19 —	Council Decision amending the negotiating directives for the negotiation of Economic Partnership Agreements with the African, Caribbean and Pacific countries and regions, to the extent that they fall within the competence of the Union.

Department for Transport

(40875) 13052/19 —	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos. 0, 16, 17, 21, 29, 43, 44, 48, 53, 55, 58, 67, 74, 80, 83, 85, 86, 98, 107, 112, 113, 115, 116, 123, 129, 135, 148, 149 and 150, as regards the proposal for modifications to Global Technical Regulation (GTR) No. 2, as regards the proposal for amendments to Mutual Resolution MR.1, as regards the proposals for amendments to Consolidated Resolutions R.E.3 and R.E.5, and as regards the proposals for authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVP).
(40892) 13158/19 COM(19) 465	Report from the Commission to the European Parliament and the Council on the delegation of power under Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007.
(40893) 13154/19 COM(19) 466	Proposal for a Council Decision on the position to be taken on behalf of the European Union within the enlarged Commission of Eurocontrol, regarding principles for establishing the cost-base for en route charges and the calculation of the unit rate and conditions of application of the route charges system and conditions of payment.
(40931) 13702/19 COM(19) 561	Report from the Commission to the European Parliament and the Council Quality of petrol and diesel fuel used for road transport in the European Union (Reporting year 2017).
(40932) 13687/19 + ADD1 COM(19) 577	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of the revision of Annex 17 (Security) (Amendment 17) to the Convention on International Civil Aviation.
(40938) 13816/19 COM(19) 575	Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, in the International Maritime Organization during the 31st session of the IMO Assembly on the adoption of amendments to resolution A.658(16) on the use and fitting of retroreflective materials on Life-Saving Appliances, Procedures for Port State Control, 2017 (resolution A.1119(30)) and the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), (resolution A.1120(30)).
(40955) — —	Court of Auditors 2019 Special Report no. 25: Data quality in budget support: weaknesses in some indicators and in the verification of the payment for variable tranches.
(40956) 13815/19 COM(19) 574	Amended proposal for a Council Decision on the conclusion of the Euro Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part.

(40957) 13813/19 COM(19) 569	Amended proposal for a Council Decision on the conclusion of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Government of the State of Israel, of the other part.
(40958) 13811/19 COM(19) 568	Amended proposal for a Council Decision on the conclusion of the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other part.
(40978) 14252/19 + ADD 1 COM(19) 622	Recommendation for a Council Decision authorising the opening of negotiations on amending the Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus and the Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco.
(40984) 14811/19 COM(19) 598	Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure.
(41101) 6347/20 + ADD 1 COM(20) 71	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the 56th session of the Committee of Experts for the Carriage of Dangerous Goods of the Intergovernmental Organisation for International Carriage by Rail as regards certain amendments to Appendix C to the Convention concerning International Carriage by rail.
(41102) 6363/20 + ADD 1 COM(20) 69	Report from the Commission to the European Parliament and the Council on the Application by the Member States of Council Directive 95/50/EC on Uniform Procedures for Checks on the Transport of Dangerous Goods by Road.
(41110) — —	Court of Auditors Special Report 2020 No. 06: Sustainable Urban Mobility in the EU: No substantial improvement is possible without Member States' commitment.
(41117) 6697/20 COM(20) 77	Report from the Commission to the European Parliament and the Council on the exercise of delegation of powers to the Commission to adopt delegated acts pursuant to Article 18(2) of Directive 2014/45/EU, Article 7(2) of Directive 1999/37/EC and Article 22(2) of Directive 2014/47/EU.

Foreign and Commonwealth Office

(41049) 5513/20 COM(20) 27	Communication from the Commission to the European Parliament and the Council Shaping the Conference on the Future of Europe.
(41073) — —	Council Decision (CFSP) 2020/120 of 28 January 2020 amending Decision 2014/145/CFSP concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

(41074)
—
—

Council Implementing Regulation (EU) 2020/119 of 28 January 2020 amending Regulation (EU) No.269/2014 concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

HM Revenue and Customs

(41016)
-—
COM(19) 636

Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Administrative Committee for the Customs Convention on the International Transport of goods under cover of TIR carnets as regards the proposal to amend the Convention.

HM Treasury

(41055)
5686/20
COM(20) 43

Report from the Commission to the Council on the Recommendations of the high-level group of wise persons on the European Financial Architecture for Development.

(41068)
5937/20
+ ADD 1
COM(20) 47

Report from the Commission to the European Parliament and the Council assessing the invoicing rules of Directive 2006/112/EC on the common system of value added tax.

Formal Minutes

Thursday 23 April 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)