



House of Commons  
European Scrutiny Committee

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# The EU's mandate for negotiating a new partnership with the UK: outcome of Select Committee consultation

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**Fifth Report of Session 2019–21**

*Report, together with formal minutes relating to the report*

*Ordered by the House of Commons to be printed 30 April 2020*

## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

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

### Euros

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

### Further information

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

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



## The European Scrutiny Committee

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

### Current Membership

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

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

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### Powers

The Committee's powers are set out in House of Commons Standing Order No 143. The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/escom](http://www.parliament.uk/escom) and in print by Order of the House. Evidence relating to this report is published on the relevant inquiry page of the Committee's website.

### Staff

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# 1 The EU’s mandate for negotiating a new partnership with the UK<sup>1</sup>

In the opinion of the European Scrutiny Committee, the Council Decision (published in draft on 3 February 2020 and adopted in amended form by the Council on 25 February 2020) authorising the opening of negotiations for “a new partnership” with the UK and establishing the EU’s negotiating position raises matters of vital national interest to the UK under section 13A of the European Union (Withdrawal) Act 2018.<sup>2</sup>

The European Scrutiny Committee has consulted Departmental Select Committees of the House of Commons which it considers also have an interest in this EU legislation.<sup>3</sup>

Accordingly, pursuant to section 13A, we propose a debate and vote on the following motion:

That this House, having regard to the constitutional and legal functions enshrined in the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, urges the Government to conduct its negotiations with the European Union with the fullest possible transparency to facilitate essential parliamentary scrutiny; also urges the Government to make regular progress reports on the negotiations, including on stakeholder contributions to the consultation on *The Future Relationship with the EU: the UK’s Approach to Negotiations*, and to address the issues identified by the European Scrutiny Committee in its Fifth Report of Session 2019–21, HC 333, as matters of vital national interest.”

## Overview

1. The UK left the EU on 31 January 2020 and is now in a transition period. The Government says it will not extend the transition period beyond the end of 2020 and this commitment is enshrined in UK law.<sup>4</sup> The Government expects the UK to “regain our legal and economic independence” on 1 January 2021.<sup>5</sup> The [Report](#) on *EU Withdrawal: Transitional provisions and dispute resolution* published by our predecessor Committee in March 2018 both charted and criticised the early stages of the UK’s exit negotiations.<sup>6</sup> Since then, two Acts of Parliament have been passed. The European Union (Withdrawal) Act 2018 repealed the European Communities Act 1972 on exit day—31 January 2020—

1 Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland; Council number 5721/20 + ADD 1, COM(20) 35 and 5870/20 + ADD 1 Rev 1; Legal base—Articles 217, 218(3) and (4) TFEU and Article 101 Euratom Treaty; Cabinet Office; Devolved Administrations: not consulted; ESC number 41058 and 41127.

2 As inserted by [section 29 of the European Union \(Withdrawal Agreement\) Act 2020](#).

3 As foreseen in [section 13A of the EU \(Withdrawal\) Act 2020](#).

4 [Section 15A of the EU \(Withdrawal\) Act 2018](#). A statutory amendment would therefore be necessary for the UK to agree to an extension of the transition period.

5 [Statement](#) issued by the Prime Minister’s office on the conclusion of the first round of negotiations with the EU, 5 March 2020.

6 HC 763 (2017–19). The Report notes that the European Union (Notification of Withdrawal) Act 2017 was supported by a majority of 499 to 120.

while amendments made by the European Union (Withdrawal Agreement) Act 2020 temporarily “saved” and applied some of its provisions during the current post-exit transition period. Following a general election in December 2019, the European Union (Withdrawal Agreement) Act 2020 was passed by a large majority in the Commons and gives effect in UK law to the EU/UK Withdrawal Agreement. Meanwhile, the EU and UK are striving to agree a new relationship to take effect at the end of transition. For this to happen, they will have to complete the bulk of the negotiations by the autumn of 2020 to allow time for a new agreement (or agreements) to be ratified and for businesses and others to prepare for and adjust to the new arrangements.

2. The EU and the UK each set out their approach to the negotiations in February 2020, the UK in a [Written Statement](#) made by the Prime Minister (Rt Hon. Boris Johnson MP) and supplemented by a more detailed [Command Paper](#), the EU in a [Council Decision](#) establishing the official [negotiating mandate](#). The European Commission proposal on which the Council Decision is based was deposited for scrutiny by the Government in February. The Government recognises that the UK is in a unique position, affected by EU laws and policies for as long as the transition period lasts, but with no presence or formal say when they are being discussed and agreed by the EU, and accepts that there is a continued need for scrutiny during transition. In this regard, we draw the House’s attention to section 38 of the European Union (Withdrawal Agreement) Act 2020 on Parliamentary sovereignty. Scrutiny is indeed imperative because decisions which may affect the UK are often taken by the EU’s Council of Ministers behind closed doors, by majority vote or no vote at all (when it acts by consensus), and there is no public transcript to explain the reasons for its decisions.

3. In examining the proposed Council Decision in March, we had two tasks in mind: to fulfil our traditional function of alerting the House to EU documents which we consider to be legally or politically important for the UK and also our new statutory duty, under [section 13A of the European Union \(Withdrawal\) Act 2018](#), to determine whether specific EU legislation (or a proposal for EU legislation) “raises a matter of vital national interest to the United Kingdom”. We were also mindful of the reaffirmation in section 38 of the European Union (Withdrawal Agreement) Act 2020 that “the Parliament of the United Kingdom is sovereign” and that nothing in the Act implementing the EU/UK Withdrawal Agreement “derogates from the sovereignty of the Parliament of the United Kingdom”.

4. To inform our assessment of vital national interests under section 13A of the 2018 Act, we published an [initial Report](#) in March inviting Select Committees to provide their views on the EU negotiating mandate in the areas of policy for which they are responsible.<sup>7</sup> Our request came at a time when many Committees were shifting the focus of their work to scrutinising the Government’s efforts to tackle the Covid-19 pandemic. We are immensely grateful to those that were able to respond, at short notice and in challenging circumstances. Their responses are summarised in the Annex and reproduced in full in the Appendix to this Report.

**5. Having completed the consultations foreseen in section 13A of the European Union (Withdrawal) 2018 Act, we consider that the Council Decision establishing the EU negotiating mandate for “a new partnership” with the UK raises matters of vital national interest to the UK that should be debated on the floor of the House on the following motion.**

<sup>7</sup> See our [Report](#), HC 218 (2019–21), published 17 March 2020.



**That this House, having regard to the constitutional and legal functions enshrined in the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, urges the Government to conduct its negotiations with the European Union with the fullest possible transparency to facilitate essential parliamentary scrutiny; also urges the Government to make regular progress reports on the negotiations, including on stakeholder contributions to the consultation on *The Future Relationship with the EU: the UK’s Approach to Negotiations*, and to address the issues identified by the European Scrutiny Committee in its Fifth Report of Session 2019–21, HC 333, as matters of vital national vital interest.**

### The Government’s position on the EU negotiating mandate

6. We examined the main elements of the EU negotiating mandate in our [earlier Report](#), agreed on 11 March 2020, and identified areas in which we considered that the EU position could affect matters of vital national interest to the UK. The Paymaster General at the Cabinet Office (Rt Hon. Penny Mordaunt MP) has since provided an [Explanatory Memorandum](#) which contains no significant assessment of the main legal, policy or financial implications of the mandate itself, stating only that “it was agreed without the UK’s involvement” and that its direct impact for the UK is “to allow negotiations to begin”.<sup>8</sup>

7. In [further correspondence](#), we suggested that lack of UK involvement strengthened rather than weakened the need for effective Parliamentary scrutiny of the Government’s position on EU proposals made during transition, not least so that stakeholders likely to be affected by them would have some basis on which to assess their potential implications.<sup>9</sup> The Minister nonetheless maintained (in her [letter of 1 April 2020](#)) that there would “surely be no benefit” in publishing an assessment of the impact on the UK of the EU’s opening position for the negotiations, since “this is not a position the UK Government would accept” and the impact envisaged would therefore “never come to pass”. Moreover:

[...] making such a broad ranging assessment and putting it in the public domain would severely undermine the UK’s negotiating position and would go beyond any assessment the EU produces.

8. We likewise assume that the EU would not accept in its entirety the UK starting position, as set out in the Government’s [Command Paper](#), *The Future Relationship with the EU: The UK’s Approach to Negotiations*. On 12 March 2020, the EU published its [draft text of the future partnership agreement with the UK](#). In his Written Statement to Parliament on 9 March 2020, the Chancellor of the Duchy of Lancaster (Rt Hon. Michael Gove MP) said that the Government expected to table “a number of legal texts, including a draft Free Trade Agreement” shortly.<sup>10</sup> We understand that these texts have so far only been made available, on a confidential basis, to the European Commission Task Force responsible for negotiating with the UK. The Minister told the Committee on the Future Relationship with the EU that it would be appropriate to share these texts with Parliament, but “regarding the key question as to when [they are] published, no decision has yet been

<sup>8</sup> The Minister’s Explanatory Memorandum, dated 16 March 2020, was due on 18 February 2020.

<sup>9</sup> See the [letter dated 18 March 2020](#) from the Chair of the European Scrutiny Committee.

<sup>10</sup> See his [Written Statement of 9 March 2020](#), HCWS153.

taken on that timing”.<sup>11</sup> Given the preparations and adjustments that many stakeholders will need to make before the end of the year if a new agreement is to be in place from 1 January 2021, or if there is no agreement, this is a significant concern.<sup>12</sup> Against this background, we consider that a greater degree of transparency is possible and desirable without undermining the UK’s negotiating position. As the European Commission has published its draft legal text, we encourage the Government also to publish the draft legal texts it has made available to the European Commission’s Task Force for Relations with the United Kingdom and to undertake to make subsequent draft legal texts available to Parliament.

## Progress in negotiations

9. The EU and the UK have made a legally binding commitment to “use their best endeavours, in good faith and in full respect of their respective legal orders” to agree and apply the terms of their new partnership “to the extent possible” from the end of transition.<sup>13</sup> The Government must be vigilant in ensuring that the EU uses its best endeavours and acts in good faith throughout the negotiations. The Prime Minister has made clear that the transition period will end on 31 December 2020 and Parliament has enacted legislation to this effect.<sup>14</sup> Reinforcing the Government’s determination, the Chancellor for the Duchy of Lancaster told the Committee on the Future Relationship with the EU:

The course is set and it would be foolish for anyone to imagine that the Prime Minister is not going to stick to that timetable and stick to that commitment. People underestimate him at their peril.<sup>15</sup>

10. In February, the EU and the UK agreed [Terms of Reference](#) for the future relationship negotiations and established 11 negotiating groups working under the guidance of their Chief Negotiators—for the UK, David Frost, Head of the UK’s Task Force Europe team reporting directly to the Prime Minister, and for the EU, Michel Barnier, Head of the European Commission’s Task Force for Relations with the UK—who chair the opening and closing plenary sessions for each negotiating round. The negotiating groups broadly correspond to the envisaged framework for the future relationship set out in the [Political Declaration](#) accompanying the [EU/UK Withdrawal Agreement](#)—“an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation”—but with one exception. At the UK’s request, there is no negotiating group on foreign policy, security and defence.<sup>16</sup>

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11 See the [transcript](#) of the Minister’s evidence to the Committee on the Future Relationship with the EU on 11 March 2020.

12 The Government expects the new partnership to take effect on 1 January 2021 and has published advice on how to get ready. See the Government’s [website \(www.gov.uk/transition\)](http://www.gov.uk/transition).

13 See Article 184 of the [EU/UK Withdrawal Agreement](#).

14 Section 15A of the [EU \(Withdrawal\) Act 2018](#) prevents a Minister representing the UK in the EU/UK Joint Committee from agreeing to an extension of the transition/implementation period under Article 132 of the EU/UK Withdrawal Agreement.

15 See Q45 of the [transcript](#) of the Minister’s evidence to the Committee on the Future Relationship with the EU on 11 March 2020.

16 The 11 groups cover: Trade in goods; Trade in services and investment and other issues; Level Playing Field for open and fair competition; Transport; Energy and civil nuclear cooperation; Fisheries; Mobility and social security coordination; Law enforcement and judicial cooperation in criminal matters; Thematic cooperation; Participation in EU programmes; and Horizontal arrangements and governance.

11. The Terms of Reference include a timetable for the initial rounds of negotiations from March to mid-May. The first round took place in Brussels from 2–5 March. The second round, scheduled for 18–20 March in London, did not take place because of Covid-19 restrictions.<sup>17</sup> The Chancellor for the Duchy of Lancaster has said that the Government remains in contact with the European Commission and that the “structure of negotiations is likely to change to reflect the current situation”.<sup>18</sup> On 7 April, the UK’s chief negotiator David Frost posted on [Twitter](#):

I want to reassure everyone that UK-EU contacts have been continuing in these difficult times. We have remained in touch throughout, both sides have exchanged legal texts, and last week we had a series of conference calls to explore & clarify technicalities.

12. A video conference followed on 15 April at which the chief negotiators “took stock of the technical work that has taken place since the first negotiating round on the basis of the legal texts exchanged by both sides” and agreed three further negotiating rounds in April, May and June (each lasting a full week and by videoconference). They underlined the need to “make real, tangible progress” by June.<sup>19</sup>

13. The EU and the UK both described the first round of negotiations as “constructive”. For the UK negotiating team, it was an opportunity to make clear that on 1 January 2021, the UK “would regain our legal and economic independence—and that the future relationship must reflect that fact”, in line with the [Prime Minister’s Written Statement of 3 February 2020](#) and the Government’s [Command Paper, \*The Future Relationship with the European Union: The UK’s approach to negotiations\*](#). While achieving “a degree of common understanding of how to take the talks forward”, the Government recognised that there were “significant differences” in some areas, such as fishing, governance, criminal justice and the so-called ‘level playing field’ issues covering common standards in the areas of State aid, competition, social and employment matters, the environment, climate change and aspects of taxation.<sup>20</sup>

14. For his part, the EU’s Chief Negotiator highlighted convergence on some objectives and specific issues, such as civil nuclear cooperation and UK participation in some EU programmes, but also underlined “very serious differences” in the EU and UK approaches in other areas. The most immediate point of contention is fisheries. Under the Political Declaration agreed in October 2019, the EU and the UK have said they will use “best endeavours to conclude and ratify their 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”.<sup>21</sup> The EU is insistent that fisheries must be an integral part of the future trade and economic agreement, not negotiated separately. In addition, the EU wants the future relationship to:

- be based on a single overarching governance framework (rather than split into multiple sector-specific deals, each with its own governance structure);

17 See the [joint EU/UK statement](#) issued on 12 March 2020.

18 See the Minister’s [letter of 31 March 2020](#) to the Chair of the Committee on the Future Relationship with the EU.

19 See the [joint statement](#) issued by the chief negotiators (David Frost and Michel Barnier) on 15 April 2020. The negotiating rounds will begin in the week commencing 20 April, 11 May and 1 June 2020.

20 See the Government’s [press statement](#) issued on 5 March 2020.

21 See paragraph 74 of the [Political Declaration](#).

- include a legally binding commitment to maintain high standards on level playing field issues, as well as appropriate mechanisms to ensure effective compliance with the standards; and
- also include a formal commitment on the UK’s part to continue applying the European Convention on Human Rights and to recognise “the proper role” of the EU Court of Justice in interpreting EU law, especially in the police and criminal justice field where individual rights may be affected.<sup>22</sup>

15. While negotiations on the future relationship and discussions on the implementation and application of the Withdrawal Agreement are proceeding on separate tracks, the latter overseen by a Joint Committee (co-chaired by the Chancellor of the Duchy of Lancaster for the UK and by the European Commission Vice-President Maroš Šefčovič for the EU), the EU’s Chief Negotiator has been keen to emphasise a degree on interdependency between them, stating in March 2020 that proper implementation of the Withdrawal Agreement is a “pre-condition” for building what the EU envisages as a future partnership.<sup>23</sup> The ability of the Joint Committee to resolve any differences between the EU’s and UK’s understanding and application of the Withdrawal Agreement in the coming months, and to take the necessary decisions to ensure the smooth operation of the Protocol on Ireland/Northern Ireland before the end of the transition period, may therefore be an important factor in ensuring steady progress in negotiations on the future relationship. We have joined with other Select Committees in writing to the Chancellor of the Duchy of Lancaster to underline the importance of effective parliamentary scrutiny of the Joint Committee.<sup>24</sup>

16. The European Commission has published its own [timeline](#) for the EU and UK to conclude negotiations and allow for ratification of one or more agreements by the end of 2020, with a meeting of EU leaders in October flagged as an important occasion for reaching a final agreement amongst the EU27. The Government’s aim is to “secure the broad outline of an agreement” in time for the Prime Minister’s high level meeting with the EU in June 2020 to take stock of progress, and to finalise negotiations by September 2020.<sup>25</sup> If the Government considers there has been insufficient progress to achieve its aim at that June meeting, it will “need to decide whether the UK’s attention should move away from negotiations and focus solely on continuing domestic preparations to exit the transition period in an orderly fashion”.<sup>26</sup> There are no hard and fast markers for judging whether sufficient progress has been made to continue negotiations with the EU. The Chancellor for the Duchy of Lancaster told the Committee on the Future Relationship with the EU in March that “we will know it when we see it”, adding: “It is one of those things where you just have to look at the overall package and consider the dynamic in the talks”.<sup>27</sup> Even if negotiations continue beyond June, he also acknowledged that there are “particular challenges” in reaching an agreement on internal security and that “we

22 See the [speech](#) made by Michel Barnier on 5 March 2020.

23 Also in the [speech](#) made by Michel Barnier on 5 March 2020.

24 See the [letter dated 18 March 2020](#) from the Chairs of the European Scrutiny Committee, the Committee on the Future Relationship with the European Union, the Home Affairs Committee, the Northern Ireland Affairs Committee, the Justice Committee, the International Trade Committee, the Foreign Affairs Committee and the Treasury Committee. See also the [response of 24 March 2020](#) from the Chancellor of the Duchy of Lancaster.

25 Paragraph 141 of the [Political Declaration](#) says that the EU and the UK will convene a high level meeting in June to “take stock of progress with the aim of agreeing actions to move forward in negotiations on the future relationship”.

26 See paragraph 9 of the Introduction to [Command Paper 211](#) on the Future Relationship with the EU.

27 See Q33 of the [transcript](#) of the Minister’s evidence to the Committee on 11 March 2020.

may not necessarily have concluded everything” by the end of 2020.<sup>28</sup> In that case, the Government would not be seeking “any transitions or temporary carry-ons” to bridge the gap between the end of transition and any new agreement on internal security becoming operational.<sup>29</sup>

17. The June rendezvous will take place shortly before the deadline set in the EU/UK Withdrawal Agreement for the Joint Committee to decide whether to agree a one-off extension “for up to one or two years” of the transition period. The Government’s commitment not to extend is clear. Responding to speculation that the Covid-19 pandemic might prompt the EU or the UK to request an extension of the transition period, the UK’s Chief Negotiator David Frost posted on his [Twitter account](#):

As we prepare for the next Rounds of negotiations, I want to reiterate the Government’s position on the transition period created following our withdrawal from the EU. Transition ends on 31 December this year. We will not ask to extend it. If the EU asks we will say no.

Extending would simply prolong negotiations, create even more uncertainty, leave us liable to pay more to the EU in future, and keep us bound by evolving EU laws at a time when we need to control our own affairs. In short, it is not in the UK’s interest to extend.

## Consultation with Select Committees

18. We consulted 24 Select Committees<sup>30</sup> and have received 23 responses. Our summary Table annexed to the Report provides an overview of the key issues raised by Select Committees in their responses to our consultation under section 13A of the EU (Withdrawal) Act 2018. The full responses are reproduced in the Appendix to the Report.

19. We noted in our earlier Report that the EU negotiating mandate covers a wide range of complex, cross-cutting policy areas. Our initial assessment was that it raised “matter[s] of vital national interest for the UK” because of the potential for there to be substantial issues arising such as, amongst other matters, the jurisdiction of the EU Court of Justice, as well as:

- the influence of the Court of Justice (CJEU) and other EU institutions in the UK after transition and how they affect the autonomy of the UK’s legal order, having regard to section 38 of the European Union (Withdrawal Agreement) Act 2020 reaffirming the sovereignty of the United Kingdom Parliament;
- the role of the European Convention on Human Rights and the Human Rights Act 1998 in underpinning and protecting fundamental rights in the UK after transition;

28 See Q35 of the [transcript](#) of the Minister’s evidence to the Committee on 11 March 2020.

29 See Q69 of the [transcript](#) of the Minister’s evidence to the Committee on 11 March 2020.

30 Business, Energy and Industrial Strategy; Defence; Digital, Culture, Media and Sport; Education; Environmental Audit; Environment, Food and Rural Affairs; Future Relationship with the European Union; Foreign Affairs; Health and Social Care; Home Affairs; Housing, Communities and Local Government; International Development; International Trade; Justice; Northern Ireland Affairs; Public Administration and Constitutional Affairs; Science and Technology; Scottish Affairs; Transport; Treasury; Welsh Affairs; Women and Equalities; Work and Pensions; Joint Committee on Human Rights.

- ease of trade between the UK and the EU and the wider ramifications for trade within the UK’s internal market (between Northern Ireland and Great Britain) as well as UK trade with (non-EU) third countries;
- the degree of regulatory autonomy that the UK will have after transition;
- the operation of particular sectors of the UK economy, from fisheries to freight transport and financial services;
- mobility and the conditions governing movement between the EU and the UK;
- UK involvement in EU programmes, for example on science and innovation or student exchanges, and the UK’s contribution to the EU budget;
- air, road and rail connectivity between the UK and the EU and the provision of services by UK operators within the EU;
- the cross-border sharing of data to facilitate trade, research, and to counter threats to public safety and security;
- operational cooperation in tackling serious cross-border criminality; and
- wider cooperation in managing and responding to global security threats.

20. The contributions we have received from Select Committees touch on all these issues and help to flesh out how particular elements of the EU negotiating mandate may affect vital national interests. Many Select Committees note the importance the EU mandate attaches to “a level playing field that will stand the test of time” and underline how the scope and nature of any commitments agreed by the EU and the UK might not only affect standards of protection across many sectors of the economy, but also the terms of access to the EU market and how much regulatory autonomy the UK will have after transition. The vital need for data-sharing arrangements to underpin commercial transactions, regulatory cooperation (for example, on chemicals, public health and pandemics, the safety of medicines and medical devices), cross-border research collaboration, and effective law enforcement also features in many of the responses we have received.

21. No less important are the practical arrangements for implementing the Protocol on Ireland/Northern Ireland to ensure an invisible North/South border and, linked to that, the application of EU State aid rules, including how recent changes to these rules affect loan guarantees made to mitigate the effects of the Covid-19 pandemic for businesses. We also highlight financial services market access as a crucial issue for the UK, as well as the potentially profound budgetary implications of any prolongation of the transition period beyond 31 December 2020. We are pursuing a number of these more technical issues, for example on the quantification of UK contributions to the EU budget, exposure to the European Investment Bank, and the loss of the rebate, separately with the Treasury.<sup>31</sup>

22. It is too soon to tell how the Covid-19 pandemic will affect the timetable for negotiating the different elements of the future partnership between the EU and the UK, though it will influence the progress and possibly also the content of negotiations to a degree not anticipated when the EU and the UK each set out their initial negotiating positions

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31 See, for example, [chapter 9](#) of our Third Report HC 229–i on Possible UK participation in EU funding programmes post-Brexit.

in February. Health and public health systems are at the top of the political agenda in the UK and the EU27 and likely to remain there for the duration of the negotiations, along with a much greater public awareness of how regulatory standards (for example, on medical devices such as ventilators), trade in essential goods (such as Personal Protection Equipment) and mobility of workers (in the health and social care sector) affect how these systems are able to respond to a pandemic. We referred to these issues in our [Report, \*The Covid-19 pandemic: the EU's policy response and its implications for the UK\*](#).<sup>32</sup> In this context, we also draw attention to the response from the Health and Social Care Committee which highlights “the general omission [...] of health as a regulatory floor” in the EU and UK negotiating positions and the need for a broader reflection on the treatment of health and healthcare systems in international trade negotiations.

23. Select Committees have also underlined a vital need for parliamentary scrutiny and oversight of negotiations with the EU and, by extension, of the work of the Joint Committee established by the EU/UK Withdrawal Agreement, given the possibility that it may well have repercussions for the progress of the future relationship negotiations. Effective scrutiny depends on frequent reporting to Parliament itself, so that Ministers are accountable for the positions they take (particularly if they depart from those set out in the Government’s Command Paper), but also depends on openness to consultation and engagement with the large variety of stakeholders whose interests will be affected by the outcome of negotiations. We recall in this context section 38 of the European Union (Withdrawal Agreement) Act 2020 on Parliamentary sovereignty, as well as the statutory commitment in section 15A of the European Union (Withdrawal) Act 2018 to end the transition period on 31 December 2020.

24. The motion we propose for debate in the House urges the Government to provide updates to Parliament on stakeholder contributions to the public consultation launched in its Command Paper on *The Future Relationship with the EU: the UK’s Approach to Negotiations* and to address concerns raised by the European Scrutiny and other Select Committees on aspects of the EU negotiating mandate which raise matters of vital national interest to the UK.

## Annex: Summary of Select Committee responses

Committee	Key issues which may raise a matter of vital national interest to the UK under s.13A of the EU (Withdrawal) Act 2018	Commentary
Business, Energy and Industrial Strategy	<p>Trade in goods</p> <p>Workers' rights</p> <p>Competition law and State aid</p> <p>Level playing field</p> <p>Energy</p> <p>Civil nuclear</p> <p>Carbon pricing</p> <p>Global cooperation—COP26</p> <p>Consultation and information</p>	<p>Retaining regulatory harmony and friction-free trade is crucial, particularly for the automotive, aerospace, processed food and drink and pharmaceutical sectors</p> <p>The scope of any non-regression clauses or reciprocal commitments not to weaken or reduce labour laws and standards is an area of great interest</p> <p>Different EU and UK positions warrant close scrutiny</p> <p>Potential for outcome in this area (particularly on State aid, environmental standards and climate change) to have substantial and long-lasting impacts on the energy sector and on meeting the UK's Net Zero target</p> <p>UK departure from the EU's internal energy market may have an impact on security of supply and efficiency of trade over interconnectors—maintaining secure, cost-effective and low carbon energy services across all UK regions is a key concern</p> <p>Maintaining close cooperation on standards is essential to ensure the ongoing operation of power stations and access to medical radioisotopes. Also important to maintain international cooperation on R&amp;D to achieve the UK's goal of developing nuclear fusion.</p> <p>Robust carbon pricing has played a major role in driving UK emissions reductions—possible linkage with the EU Emissions Trading System merits close scrutiny</p> <p>Potential for EU and UK to exert positive global influence by working together as close partners</p> <p>Need for Government to meet regularly with businesses, trade unions and civil society during negotiations, report regularly to Parliament and provide the information needed to ensure full scrutiny as negotiations progress.</p>



Defence	Essential to maintain UK's position as a key contributor to European defence	<p>The UK "should not be treated as just as another third country" because of its significant capabilities in defence</p> <p>The UK contribution is "too important to be parcelled together with the wider negotiations and should not be used simply as another bargaining chip".</p> <p>A draft framework should be drawn up which is "partitioned from our future trade relationship" with the EU.</p>
Digital, Culture, Media and Sport	Trade and investment in audio-visual services	The exclusion of audio-visual services in the EU's negotiating mandate "risks a period of extreme uncertainty in a sector which plays a huge role in the UK's creative industry".
Education	UK participation in EU education and research programmes Student and staff mobility	Specifically, the Horizon Europe and Erasmus+ programmes from 2021, and the implications for the mobility of students, researchers and staff.
Environment, Food and Rural Affairs	Fisheries Trade in fish, agriculture and food	<p>There are "stark differences" on negotiating future access to UK waters and allocating fishing opportunities to EU boats, raising questions about the feasibility of a deal by 1 July 2020.</p> <p>Anything less than zero tariffs and minimum border friction would have a heavy impact on the fishing industry, agricultural producers and food exporters, as well as consumer food prices.</p>
Environmental Audit	Regulation of chemicals Environmental protection	<p>Vital for the Government to clarify if it intends to seek associate membership of REACH and, if not, how data sharing and reciprocal recognition of standards will operate.</p> <p>Mutual commitments to maintain high standards of protection, but assurance needed that the governance arrangements proposed in the Environment Bill and the establishment of the Office for Environmental Protection will provide a transparent system for effective domestic monitoring, reporting, oversight and enforcement of obligations.</p>

<p>Future Relationship with the EU</p>	<p>Fisheries                      Level playing field, especially State aid                      Market access v. freedom to diverge from EU rules                      Structure and governance of the future partnership, including dispute settlement                      Police and law enforcement cooperation                      Northern Ireland Protocol                      Impact of Covid-19 on the negotiations</p>	<p>Different EU and UK positions on these politically important issues.</p> <p>There is a question mark over the suitability of existing third country models for EU/UK cooperation in this area.</p> <p>Concerns have been raised about the implementation of the Northern Ireland Protocol and how it might affect the progress of future partnership negotiations.</p> <p>Questions raised about the capacity to conduct negotiations while responding to the health and economic consequences of coronavirus.</p>
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<p>Health and Social Care</p>	<p>Reciprocal healthcare arrangements</p> <p>Importation of medical isotopes</p> <p>Antimicrobial resistance</p> <p>Employment and social protection</p> <p>Competition, State aid and public procurement</p> <p>Consultation and information</p> <p>Significant <u>omissions</u> from the EU mandate:</p> <p>Health as “a regulatory floor”</p> <p>Substances of human origin (blood, tissue and cells, organs)</p> <p>EU Health Programme</p> <p>Agency-level cooperation on the licensing of medicines</p> <p>Data-sharing</p>	<p>Vital for individuals travelling between the EU and the UK.</p> <p>Vital as the NHS is dependent on supplies from Europe.</p> <p>Continued cooperation on the animal health dimension of antimicrobial resistance as part of sanitary and phytosanitary provisions important to tackle the human health impact of antimicrobial resistance.</p> <p>Non-regression would have an indirect but significant impact on the NHS, especially on working time.</p> <p>EU rules in these areas may be “particularly challenging for the NHS and social care”. There may be a need for an exemption for the NHS.</p> <p>Effective stakeholder consultation throughout the negotiating process is vital to identify any unexpected consequences of Brexit as well as the potential impact of EU and UK negotiating positions on health and social care.</p> <p>As the first substantive trade deal the UK is likely to strike after leaving the EU, it will be a reference point for all that follow. Trade agreements should include a shared commitment to protecting health and national health systems.</p> <p>Omission might risk NHS access to these substances.</p> <p>UK participation not envisaged, jeopardising areas of useful cooperation such as European Reference Networks.</p> <p>There is a mutual interest in maintaining “deep cooperation” between the European Medicines Agency and the UK’s Medicines and Healthcare products Regulatory Agency.</p> <p>Examples include: sharing of pharmacovigilance data to support patient safety; clinical trials which speed up patient access to health innovations; the management of pandemics through the EU’s Early Warning and Response Mechanism.</p>
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<p>Home Affairs</p>	<p>Security</p> <p>Law enforcement data sharing</p> <p>Europol and Eurojust</p> <p>European Arrest Warrant and other cross-border law enforcement tools</p> <p>Data protection—adequacy decision</p>	<p>Any reduction in operational capabilities which might affect national security and the ability of law enforcement to do its job is “fundamental to the national interest”. Reaching an agreement on security in order to preserve existing levels of data sharing and operational capabilities, and improve them where possible, is vitally important and must be “a first order priority” in the negotiations.</p> <p>The EU and the UK have a mutual interest in preserving and building on existing capabilities provided by the Schengen Information System (SIS II), Prüm (sharing of fingerprints, DNA profiles and vehicle registration data), ECRIS (criminal records information) and Passenger Name Record (PNR) data.</p> <p>Vital to be clear about the implications for UK law enforcement of any change in their ability to cooperate with EU law enforcement agencies and access data and systems supporting the investigation and prosecution of cross-border crime.</p> <p>The EU and the UK should “do their utmost to protect existing capabilities” .</p> <p>The EU negotiating mandate makes police and criminal justice cooperation conditional on the UK obtaining and retaining an EU adequacy decision. It will therefore be “vitally important” for the UK to monitor carefully EU data regimes and court judgments and respond accordingly.</p>
<p>Housing, Communities and Local Government</p>	<p>No issues of vital national interest to UK identified in EU mandate, but the following areas could have a substantial impact on local authorities:</p> <p>Public procurement</p> <p>Consultation and information</p> <p>Mobility of workers</p> <p>Funding</p>	<p>Consultation with local authorities essential as powers in this area revert to the UK. So too for food hygiene rules, environmental health, trading standards and waste management.</p> <p>Essential throughout the negotiating process to enable local authorities to plan for the post-transition world.</p> <p>Workforce shortages are a risk, particularly in the key sectors of construction and social care.</p> <p>Further details are needed on the UK Shared Prosperity Fund, as well as assurances that it will match or exceed equivalent levels of EU funding to support local government.</p>

<p>International Development</p>	<p>Level playing field conditions</p> <p>Dispute resolution</p> <p>Participation in future EU development cooperation funding programmes</p>	<p>The EU's insistence on continued UK adherence to certain international conventions (such as the Council of Europe's European Social Charter) may "substantially hinder" the UK's ability to determine its own standards if it wishes to collaborate with the EU on development projects.</p> <p>The EU is also linking cooperation with the UK on the UN's Sustainable Development Goals with its broader demands on a level playing field.</p> <p>The mechanism proposed by the EU to resolve disputes concerning level playing field conditionality includes a continued role for the EU's Court of Justice.</p> <p>It is unclear whether the UK will seek to participate in the EU's Neighbourhood Development and International Cooperation Instrument from 2021, what its contribution would be or how much say the UK would have over expenditure. Similar issues arise in connection with possible UK participation in the EU's post-Cotonou agreement.</p>
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International Trade	<p>Market access/regulatory convergence</p> <p>Trade in goods</p> <p>Trade defence measures</p> <p>Regulatory cooperation</p> <p>Geographical indications</p> <p>Implementation of the Northern Ireland Protocol</p> <p>Trade in services</p> <p>Financial services</p> <p>Audio-visual services</p> <p>Data protection</p> <p>Level playing field provisions</p> <p>Handling of concurrent trade negotiations</p> <p>Consultation and information</p> <p>Transparency and scrutiny</p>	<p>The outcome on these issues will have “a potentially major impact” on the negotiation and conclusion of other (non-EU) UK trade agreements and on the “roll over” of existing EU-third country trade agreements. It may also have significant impact on the “type, amount and destination” of UK exports and on the “form, volume and source” of inward investment to the UK.</p> <p>Arrangements for the cumulation of rules of origin will affect market access—the EU negotiating mandate does not specify how extensive cumulation may be under an EU/UK trade agreement.</p> <p>Any undertakings made in an EU/UK agreement on anti-dumping, countervailing and safeguard measures could constrain how the UK operates its own trade defence regime. Choice made about the application of the “lesser duty rule” and the “economic interest test” may well prove to be contentious.</p> <p>The implications of the EU’s approach to regulatory cooperation while preserving regulatory autonomy on matters such as Technical Barriers to Trade, conformity assessments and Sanitary and Phytosanitary Measures are unclear.</p> <p>The Government’s intention to “keep its approach under review” as negotiations progress creates a degree of uncertainty.</p> <p>Parts of the Protocol are relevant to UK trade with the EU and with other third countries, raising questions about the application to Northern Ireland of post-Brexit trade agreements concluded by the UK with third (non-EU) countries and UK trade defence measures.</p> <p>The EU position on a Most Favoured Nation clause to ensure ongoing liberalisation for cross-border trade in services is unclear. The inclusion of such a clause would have implications for other third countries’ access to the UK market under rolled-over trade agreements, eg EU/South Korea agreement.</p> <p>The EU mandate lacks provision for legally binding obligations on market access.</p> <p>The EU mandate excludes audio-visual services.</p> <p>Adequate data protection standards are regarded by the EU as “fundamental” to a future partnership agreement.</p>
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<p>Joint Committee on Human Rights</p>	<p>Human rights standards</p>	<p>There seems to be "significant divergence" in the EU and UK positions on how any reference to human rights should be expressed in a future partnership agreement. This could seriously affect the extent of law enforcement and judicial cooperation. There should be no regression in rights for individuals in the UK or in EU Member States—at a minimum, both sides should agree to apply human rights standards that are equivalent to the ECHR.</p>
<p>Justice</p>	<p>Closest possible cooperation on criminal justice</p> <p>Continued access to EU regulations on inter-state commercial law</p> <p>Cross-border legal practice rights</p> <p>Efficient mechanisms for resolving family law cases</p> <p>Maximum cooperation with Europol and Eurojust</p>	<p>The Committee notes different approaches on how human rights should be safeguarded under a future partnership agreement.</p>

Northern Ireland Affairs	An inquiry on the implementation of the Protocol on Ireland/N Ireland is underway	
Public Administration and Constitutional Affairs	<p>The status of Northern Ireland under the Protocol on Ireland/Northern Ireland</p> <p>Governance of a future partnership agreement</p> <p>Territorial scope</p> <p>Resource implications for UK civil service</p> <p>Horizon Europe (research and innovation) programme</p> <p>Collaboration on research</p>	<p>The way in which the UK and the EU seek to address Ireland's "unique geographic situation" in the negotiations could have legal or practical implications for Northern Ireland's status within the UK.</p> <p>The EU mandate envisages that a joint EU/UK governing body could modify level playing field conditions, raising important questions of accountability to Parliament.</p> <p>The EU mandate does not include Gibraltar within the scope of a future partnership agreement with the UK.</p> <p>Some reflection may be needed on the resources available to the civil service and Government Departments to implement substantial changes to the EU/UK relationship by the end of 2020.</p> <p>Essential to establish terms of UK participation in/association with the EU's Horizon Europe research funding programme for 2021–27.</p> <p>International collaboration enhances the impact of UK research, but is dependent on the UK securing a data adequacy decision so that EU and UK researchers and institutions are able to share personal data.</p>
Science and Technology		



<p>Scottish Affairs (As the Committee has not yet been appointed, this contribution draws on relevant conclusions and recommendations made by the Scottish Affairs Committee in the previous Parliament (2017–19)</p>	<p>Agriculture</p> <p>Relationship between the Scottish and UK Governments</p> <p>Trade</p> <p>Mutual recognition of professional qualifications</p> <p>Fisheries</p>	<p>Concerns highlighted include the impact of tariffs on Scotland’s farming sector, financial support for farmers and crofters, the protection of future Scottish GIs (geographical indications) in the EU, and the ability to recruit agricultural workers.</p> <p>Reform of the Joint Ministerial Committee is needed to strengthen the relationship, including in the negotiation of post-Brexit trade deals, with participation of representatives of the devolved administrations in UK negotiating teams.</p> <p>Sectors of vital importance to the Scottish economy must not be “traded away” for preferences in other sectors of industry. Priorities include tariff-free trade for goods, minimal non-tariff barriers, consultation with business on any divergence from EU standards for goods. Equivalence regimes in the services sector should cover “the broadest range of activity” in Scotland’s services sector and a dispute resolution mechanism.</p> <p>A long-term agreement is needed.</p>
<p>Transport</p>	<p>Scope of agreement on aviation</p> <p>Road haulage</p> <p>Level playing field provisions</p> <p>Technical rules, testing and certification of goods</p>	<p>There are no international or regional agreements to fall back on in this sector if the EU and UK do not reach a deal. EU mandate does not provide for “cabotage” and “grand cabotage” (the ability to fly within and between the territory of Member States).</p> <p>As for aviation, the scope of the agreement envisaged in the EU mandate may rule out “cabotage” and “grand cabotage”.</p> <p>Alignment of rules and standards in these areas will have an impact on all transport sectors.</p> <p>The UK favours mutual recognition, the EU a streamlined certification process for goods, such as motor vehicles and parts.</p>

Treasury	<p>Financial services</p> <p>Trade in (other) services</p> <p>Level playing field—taxation</p> <p>Protection of personal data</p> <p>Trade in goods</p> <p>Regulatory checks and compliance</p> <p>Public procurement and State aid</p> <p>Dispute settlement</p>	<p>There is no “equivalence” regime for EU market access for sectors such as insurance or retail deposit taking which are important to the UK economy. Unless included within the EU/UK trade deal, significant UK business will be relocated to the EU or cease altogether.</p> <p>Any restrictions on trade in services (substantial rather than full sectoral coverage) would stifle some service export activities and reduce economic output in affected sectors, as well as GDP, taxable business and earnings.</p> <p>Scope of the level playing field arrangements envisaged for “relevant tax matters” is unclear and could be disadvantageous for the UK economy.</p> <p>A positive data adequacy decision necessary for HMRC, the Serious Fraud Office, Police and National Economic Crime Agency to share data with their international counterparts. Also essential to the operating models of many businesses trading across borders.</p> <p>Any tariffs or quotas on goods traded between the EU and UK would be “a one-off source of inflation” and increase the cost of living.</p> <p>Any friction at the border will raise the cost of doing business and trading, even if physical checks are kept to a minimum.</p> <p>Scope to prioritise UK companies if not included in an EU/UK trade agreement, but risk for UK companies bidding for public contracts in the EU27 and possibility of retaliatory measures to counter unfair subsidies.</p> <p>A functioning dispute mechanism is important for business confidence and investment.</p>
Welsh Affairs	<p>Inquiry pending on the implications for Wales of the trade aspects of the future partnership negotiations</p> <p>Equality</p>	<p>Principles of equality should underpin all aspects of the negotiation. Equality should form part of the discussion on achieving a “level playing field”, for example to advance the role of women in the economy, tackle the gender pay gap.</p>
Women and Equalities		

Work and Pensions	Level playing field	<p>Level playing field provisions will affect three areas of the Committee's activities: labour standards, occupational health and safety, and social security (benefits and pensions). Particular concerns are: the level and nature of commitments needed to ensure "a parallel evolution of standards" or non-regression; the basis for future social security coordination, including uprating of State pensions; the use of third party benchmark standards, such as core ILO Conventions; and evolution of the precautionary principle for occupational health and safety.</p>
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# Appendix

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## *Rachel Reeves MP, Chair of the Business, Energy and Industrial Strategy Committee*

In the previous Parliament, the Committee carried out a number of inquiries on the UK's withdrawal from the European Union:

- [Leaving the EU: implications for the civil nuclear sector;](#)
- [The impact of Brexit on the automotive sector;](#)
- [The impact of Brexit on the aerospace sector;](#)
- [The impact of Brexit on the processed food and drink sector;](#)
- [The impact of Brexit on the pharmaceutical sector;](#)
- [The response from business to the Withdrawal Agreement and Political Declaration.](#)

Additional inquiries were conducted by the Committee during the 2015 Parliament:

- [Business views on EU Referendum;](#)
- [Leaving the EU: negotiation priorities for energy and climate change policy.](#)

Members also asked questions on the impact of Brexit as part of other inquiries and during sessions with the BEIS Secretary of State and BEIS Ministers.

The Business, Energy and Industrial Strategy Committee judges that the following provisions in the EU's draft negotiating mandate are of vital national interest, and we would encourage greater scrutiny of these issues:

- **Trade in goods:** we welcome the aim of both the UK and EU negotiating teams to agree a future economic relationship with no tariffs or quotas on trade. We await further and more detailed information on the degree of friction in UK-EU trade. As we heard during our inquiries into the impact of Brexit on the automotive, aerospace, processed food and drink and pharmaceutical sectors, retaining the regulatory harmony and friction-free trade assured by the EU single market and customs union is crucial;
- **Workers' rights:** we note that the EU is seeking non-regression clauses in areas including fundamental rights at work, occupational health and safety, fair working conditions and employment standards, and information and consultation rights at company level. The UK Government is seeking reciprocal commitments not to weaken or reduce the protections given by labour laws and standards in order to encourage trade or investment, as well as recognising the right of the UK and EU to set their own labour priorities and adopt or modify their own labour laws. This is an area of great interest to the Committee and we aim to follow the negotiations in this area closely;

- **Competition law and state aid:** we note that competition law and state aid is an area where the UK and the EU positions differ, and we would encourage close scrutiny of this issue;
- **Level playing field:** we note that the EU and UK positions differ considerably on issues relating to the “level playing field”, notably on state aid and future cooperation on environmental standards and climate change. Decisions in these policy areas could have substantial and long-lasting impacts on the energy sector, as well as the cost and difficulty of meeting the UK’s Net Zero target. We would advise close scrutiny of these areas;
- **Energy:** we welcome the interest from both parties in a future agreement that addresses energy, including electricity and gas trading and investment in technologies for decarbonisation. We also welcome the Government’s aim that the Protocol on Ireland/Northern Ireland can provide the basis for continued operation of the Single Electricity Market on the island of Ireland. Our inquiry into negotiation priorities for the energy sector highlighted concerns about the impact of the UK’s departure from the Internal Energy Market on the future security of supply and efficiency of trade over interconnectors. Maintaining secure, cost-effective and low carbon energy services across the all regions of the UK is a key focus for the Committee. We would encourage close scrutiny of these issues;
- **Civil nuclear:** We welcome the priority that both parties have accorded to reaching broad agreement on future cooperation on civil nuclear. During our inquiry into the impact of Brexit on civil nuclear we heard that maintaining close cooperation on safeguards will be essential to ensure the ongoing operation of power stations and access to medical radioisotopes. We note the UK’s intention that any Nuclear Cooperation Agreement should provide “a long-term legal basis for future cooperation in civil nuclear research and development in both fission and fusion”, and the absence of references to R&D in the EU Council’s decision. The Government has set out ambitions to develop fusion, but R&D into this technology requires international cooperation. We will continue to monitor developments in this area;
- **Carbon pricing:** we note the EU’s position that the UK should maintain a system of carbon pricing of “at least the same effectiveness and scope” as the EU system, and both parties’ openness to consider linking any future UK Emissions Trading System with that of the EU. We await further detail on plans for the UK’s future carbon pricing regime and propose that this should receive close scrutiny. Robust carbon pricing has played a major role in driving UK emissions reductions to date and will be important for delivery of the Net Zero target;
- **Global cooperation:** we note the EU’s recognition of the importance on cooperation in international fora, and the UK’s acknowledgement that cooperation on foreign affairs and related issues is “likely to be substantial”. We will be paying especially close attention to cooperation efforts in the run up to COP26 this year. We advise the Government approaches this in a collaborative

spirit that recognises not only the importance and impact of the UN talks themselves, but also the positive global influence that the UK and the EU can together exert as close partners.

The Government’s Command Paper *The Future Relationship with the EU: The UK’s Approach to Negotiations*, published last month, notes that “the Government intends to invite contributions about the economic implications of the future relationship from a wide range of stakeholders via a public consultation. That process will begin later this spring”. Whilst we welcome this public consultation, we also expect the Government to meet regularly with business organisations, trade unions and civil society representatives during the negotiations. We also expect the Government to report back to Parliament regularly during the negotiations and to provide Parliament with the necessary documents and information to fully scrutinise the talks as they progress.

### ***Hilary Benn MP, Chair of the Committee on the Future Relationship with the European Union***

The Committee launched an inquiry into the progress of the negotiations on 4 March and has since held two oral evidence sessions. We took evidence from the Chancellor of the Duchy of Lancaster, Michael Gove, on 11 March, and on 17 March, the Committee heard from Professor Anand Menon from King’s College London, Stephen Booth from Policy Exchange and Christophe Bondy from Steptoe & Johnson LLP.

Witnesses have been clear that there are many areas on which the UK and EU’s aims align, including the ambition to conclude a zero-tariff, zero-quota Free Trade Agreement by the end of 2020. However, the two sides seem to have adopted different positions on some politically important issues. According to our witnesses, these include:

- fisheries;
- the so-called “level playing field” provisions, notably state aid; and
- the overall governance structure for the agreement and its scope, including the mechanisms for co-operation on matters such as security.

Witnesses also raised how implementation of the Ireland/Northern Ireland Protocol of the Withdrawal Agreement might affect progress in the negotiations on the future relationship. In relation to this, the Chancellor of the Duchy of Lancaster told us that the interpretation and implementation of the Ireland/Northern Ireland Protocol of the Withdrawal Agreement was a matter for the Joint Committee, which had yet to meet. Witnesses also raised further questions about the ability of both the UK and the EU to conduct the negotiations while responding to the health and economic consequences of coronavirus.

The Committee intends to follow the progress of negotiations closely and will pay particular attention to the areas outlined above.

We would support a proposal from your Committee for a debate on the EU’s negotiating mandate on the floor of the House before June. Any debate should cover the draft legal text published by the EU, as this would give effect to its mandate.

***Rt Hon. Tobias Elwood MP, Chair of the Defence Committee***

Thank you for your letter of 11 March and for the invitation to share my views on the mandate for negotiations on the future relationship with EU. Earlier in the month I attended the Intra Parliamentary CFSP/CSDP Conference in Zagreb where I was struck by our European colleagues' recognition of the significance of the UK's contribution to meeting and addressing these challenges. Our Armed Forces, intelligence agencies and law enforcement capabilities are held in high regard. In particular French colleagues were adamant that because of our valuable contribution the UK should not be treated as just another third country in this area.

This presents an excellent opportunity to redefine our relationship with the EU and set a confident tone for the future in terms of our defence standing. I feel very strongly that the UK's contribution to this area is too important to be parcelled together with the wider negotiations and should not be used as simply another bargaining chip.

I believe it is essential that to maintain our position as a key contributor to European defence in protection of our interests that a draft framework should be drawn up setting out how this could be delivered. I have already written to the Prime Minister requesting a meeting with to explore how our future defence and security relationship with Europe, straddling both EU and NATO, is partitioned from our future trade relationship.

I would be pleased to discuss this further with you and your colleagues on the European Scrutiny Committee.

***Julian Knight MP, Chair of the Digital, Culture, Media and Sport Committee***

Thank you for your letter of 11 March regarding the EU's mandate for negotiating a new partnership with the United Kingdom. I welcome the opportunity to share an initial view, on behalf of the Digital, Culture, Media and Sport Committee ('the Committee'), on the proposed mandate.

There are a number of areas within the EU's negotiating mandate which fall within the Committee's remit. These include:

- Digital trade
- Participation in Union programmes (specifically those relating to culture and tourism, but with an interest in youth and education programmes)
- Audio-visual and telecommunication services
- Cyber security
- Data protection and data adequacy

On the issue of data protection and data adequacy, it is worth noting that data adequacy is a separate process and is not itself part of the negotiations. The UK has now set out its framework for post-Brexit data adequacy, and the EU intends to enact its decision by the end of 2020.<sup>33</sup> Naturally, the Committee is concerned about the impact on the

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33 EU Commission, [Political Declaration setting out the framework for the future](#) (October 2019), p 4

UK if the EU does not enact its decision by the end of the transition period. However, the Committee appreciates that this is a separate process to that which is covered by the documents you refer to.

There is, however, one notable policy area which is explicitly excluded from the EU's negotiating mandate: trade and investment in audio-visual services. This area is included in the UK Government's document, 'The UK's Approach to Negotiations':

“The Agreement could promote trade in audio-visual services as well as associated businesses in the audio-visual supply chain by ensuring fair access and treatment for audio-visual services, and provide protections for the UK's audio-visual services policy framework.”<sup>34</sup>

However, the EU's negotiating mandate states:

“The envisaged partnership should include ambitious, comprehensive and balanced provisions on trades and services and investment in services and non-service sectors, respecting each Party's right to regulate. These provisions should aim to deliver a level of liberalisation in trade and services beyond the Parties' WTO commitments and taking into account existing Union free trade agreements...Audio-visual services should be excluded from the provisions relating to liberalisation.”<sup>35</sup>

Excluding audio-visual services from the negotiations, and potentially failing to reach an agreement, risks a period of extreme uncertainty in a sector which plays a huge role in the UK's creative industry. For example, if the UK does not share a copyright framework with the EU post-transition, it will make production and distribution more difficult for UK producers and UK businesses which sell such services into the EU.

The Committee recently launched an inquiry into public service broadcasting in the UK. Public Service Broadcasters, among many others, would be greatly affected by a failure to reach an agreement on the trade and investment of audio-visual services so, as I am sure you will appreciate, this is an area of significant interest to members of the Committee. I would welcome the opportunity to raise this issue in the debate on the negotiating mandate when it is scheduled, diary permitting.

### **Robert Halfon MP, Chair of the Education Committee**

The Committee has asked me to thank you for your letter of 11 March 2020. The EU mandate for negotiations with the UK on the future relationship covers a number of education and research-related issues that are of interest to the Committee. Owing to the short timeframe in which you have requested a response, we have focussed on providing you with a brief overview of these. Our comments are therefore not exhaustive and should not be taken as such.

**Our predecessor Committee's Report** *Exiting the EU: challenges and opportunities for higher education considered the potential implications for the sector of the UK's withdrawal*

34 UK Government, [The UK's Approach to Negotiations](#) (February 2020), p 13

35 Council of the European Union, [Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland](#) (February 2020), p 7



from the EU.<sup>36</sup> In this regard, the majority of issues highlighted by our predecessor were not covered during withdrawal negotiations and were set-aside to be considered as part of the UK and EU’s future relationship negotiations. These included UK participation in EU education and research programmes, and the (related) movement of people.

As you will be aware, the EU’s negotiating mandate covers UK participation in EU programmes. Paragraph 14 of the mandate reads:

The envisaged partnership should establish general principles, terms and conditions for the United Kingdom’s participation in and contribution to Union and Euratom programmes, subject to the conditions set out in the corresponding instruments, in areas such as science and innovation, youth, culture and education...

The UK’s corresponding document—*The Future Relationship with the EU: The UK’s Approach to Negotiations*—states that the Government is “...ready to consider third country participation in certain Union programmes where it is the UK’s and the EU’s interest that we do so”.<sup>37</sup> More specifically, the Government suggests that it will consider a relationship in line with non-EU Member States for Horizon Europe—the EU’s dedicated research and innovation funding programme—but, for Erasmus+, will only consider participation in “elements” of the programme “on a time-limited basis”.<sup>38</sup>

It is also worth drawing the Committee’s attention to the terms of participation for third countries (non-EU Member States) in EU programmes. As in other EU policy areas, the rules for participation in Horizon 2020 and Erasmus+ for 2021–27 are currently under negotiation (as part of the EU’s next budget or ‘Multiannual Financial Framework’). This means that the criteria for future UK involvement could change; making the terms for participation less or more exacting.

On a related point, the success of programmes like Horizon 2020 and Erasmus+ is predicated on student and staff mobility. Paragraph 57 of the EU mandate calls for the future UK/EU relationship to aim at “setting out conditions for entry and stay for purposes such as research, study, training and youth exchanges”. In comparison, the Government’s document covers ‘temporary entry and stay for business purposes’ as a separate chapter but does not provide any specific details on education and research-related mobility. The Government’s recent policy statement on ‘the UK’s points-based immigration system’ covers student mobility, however, this is framed in general terms and does not address EU programmes like Erasmus.<sup>39</sup>

Should a debate on the EU’s negotiating mandate be arranged, I am sure Committee Members will be happy to participate.

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36 House of Commons Education Committee, [‘Exiting the EU: challenges and opportunities for higher education’](#) (25 April 2017)

37 HM Government, [‘The Future Relationship with the EU: the UK’s Approach to Negotiations’](#) (February 2020), para 19

38 *ibid* paras 20–21

39 See HM Government, [‘The UK’s points-based immigration system: policy statement’](#) (19 February 2020)

***Rt Hon. Philip Dunne MP, Chair of the Environmental Audit Committee***

I am writing in response to your letter of 11 March about the EU and UK mandates for negotiating the future relationship. Based on work undertaken by this Committee in the last Parliament, there are two areas of vital national interest where I think your Committee should seek further clarity from Government about the proposed future relationship.

The EU and UK mandates provide limited detail on the regulation of chemicals under any future trade agreement. Both the UK and EU indicate a desire to maintain high standards of protection for human health and the environment, but it is unclear how this will operate in practice. The UK Government mandate suggests that the UK is seeking a parallel regulatory framework, outside the current REACH arrangements. We would welcome further clarity from the Government about whether it intends to seek associate membership of REACH. If this is not the case, it is vital that the EU and the UK provide information to businesses about how data sharing and reciprocal recognition of standards will operate, given the complex data ownership arrangements and the prevalence of cross-border supply chains in this sector, and given the requirements under the Northern Ireland Protocol for Northern Ireland to maintain compliance with REACH and the wider EU Chemicals framework.

More broadly, both mandates contain commitments to maintain high standards of protection for the environment, and it is welcome that the UK Government intends to at least maintain existing environmental protections. We would however welcome further information from the Government about whether it believes arrangements proposed in the Environment Bill to establish the Office for Environmental Protection will be sufficient to meet the EU's expectations for future governance of environmental protection, namely to be overseen by a transparent system for effective domestic monitoring, reporting, oversight and enforcement of obligations. It would be interesting to know the Government's view on whether disagreement over this element of environmental governance will impact the parties' ability to agree a comprehensive free trade agreement.

***Neil Parish MP, Chair of the Environment, Food and Rural Affairs Committee***

The EU's mandate and the UK Government's corresponding command paper cover many important issues across the range of our remit. The Committee has not had chance in this Parliament to consider these in detail, so it is not possible to provide you with a comprehensive assessment of them. Philip Dunne, as Chair of the EAC, has raised questions about REACH and the independence of the Office for Environmental Protection which I endorse; but I would also like to draw your Committee's attention to two further broad areas of concern based on work carried out in the previous Parliament.

On fisheries I agree with the analysis of the House of Lords EU Committee in their Eighth Report of this session (paras 100 to 103) and in particular that there is a "stark difference" in the two sides positions on negotiating future access, and allocating fishing opportunities, to EU boats operating in UK waters. The Committee's work in the previous Parliament proceeded on the basis that leaving the EU would mean the UK becoming an independent coastal state with the right to determine on what basis it provides access to

its fisheries to third parties. The ability to reach an agreement on fisheries, and ratify it, by 1 July, as envisioned by the EU mandate (reflecting the Political Declaration), must also be questionable in the current circumstances.

It is also worth noting that the fishing and fish processing industries will also be heavily impacted by the content of any free trade agreement on goods. The EU currently imposes a tariff of up to 25% on fish imports. Approximately seventy per cent of fish, and eighty-five per cent of shellfish, caught by UK boats is exported to the EU. In the case of shellfish much of this is live exports which are especially sensitive to delays or friction at the border. Achieving zero tariff and as frictionless trade as possible, as both sides envision, is therefore likely to be an important consideration for the fishing industry as well as the outcome of the separate fisheries negotiations.

The goal of zero tariffs and minimum border friction in the free trade agreement is also a vital consideration for agricultural producers and food exporters given the steep external tariffs charged by the EU. The average EU external tariff on food is approximately 22% and as high as 84% on beef and 53% on wheat. In 2018 61% of total UK food exports went to the EU. The UK Government would also be faced with charging high tariffs on EU imports of food, approximately 30% of our imports, with a consequent impact on consumer food prices; or charging low or zero tariffs on all imports allowing for low cost non-EU imports to undercut UK producers. The Government proposed taking the former approach in the event of a “no deal” exit last year, which the NFU predicted would be “catastrophic” for British farming.

### ***Rt Hon. James Hunt MP, Chair of the Health and Social Care Committee***

The EU’s mandate includes some specific health and care issues that are important for the UK, and omits some which should be included.

While health is not a central focus of the EU’s negotiating mandate, it does include three specific issues with a significant impact on health and social care. Reciprocal healthcare arrangements (under coordination of social security) can be vital for individuals relying on them, and agreement on them is a key UK interest. Similarly the NHS relies on importing medical isotopes from Europe, and agreement on this is also vital. Continued cooperation on the animal health dimension of antimicrobial resistance as part of sanitary and phytosanitary provisions is also an important contribution to tackling the human health impact of antimicrobial resistance.

There are also provisions in the EU negotiating mandate with an indirect but significant impact on health and social care. The non-regression clause on employment and social protection would include working time, already a sensitive topic for the NHS. Provisions on competition rules, state aid and public procurement can also be particularly challenging for the NHS and social care. It may be useful to consider seeking an exemption for the NHS from these rules.

There are also significant omissions from this negotiating mandate regarding health and social care: one general omission, and four specific ones. The general omission is of health as a regulatory ‘floor’ in these discussions. While we would not expect the EU to seek to lower health standards, this agreement will be the first substantive free trade agreement that the UK will strike since Brexit, and it will be the reference point for all that follow.

There is substantial public concern around the NHS and health more generally in relation to our trade agreements. We propose that the UK should seek to make a shared commitment to protecting health and national health systems part of these negotiations, in order to defuse tensions on this issue for the future.

The four specific health-related omissions are:

- No reference to substances of human origin (eg: blood, tissues and cells, and organs), with potential risks on access to these substances for the NHS;
- No reference to participation in the EU’s health programme, which includes useful
- areas of cooperation such as European Reference Networks;
- No reference to agency-level cooperation in medicines licensing between the Medicines and Healthcare products Regulatory Agency and the European Medicines Agency. Given the significant contributions of the UK to medicines licensing regulation across the EU, continued deep MHRA/EMA cooperation is in both EU and UK interests; and,
- No reference to continued cooperation and data sharing in key areas including:
  - ◆ Continued sharing of pharmacovigilance data through EU databases, to support patient safety regarding medicines;
  - ◆ Data-sharing in the context of clinical trials. The UK would be excluded from access to the new clinical trials portal being implemented under the Clinical Trials Regulation. Continued access would ensure patients have access to health innovations under development;
  - ◆ Data-sharing in pandemic management. The Early Warning and Response Mechanism (EWRS) is a valuable tool for cooperation, and highly relevant during the current Coronavirus pandemic.

While writing, I also wish to underline the importance of continued scrutiny and engagement throughout these negotiations, not only by Parliament but also other stakeholders such as health professional bodies, the NHS and health-related industries. Inquiries by the Health Committee in previous Sessions regarding the impact of Brexit on health and social care brought a wide range of issues to light and identified many unexpected consequences. Given the range of actors and processes in this complex and technical area, it is impossible for the Government to have complete knowledge of the potential impacts of the EU’s negotiating mandate on health and social care, and this will doubtless be the case for other sectors as well. Effective processes for stakeholder consultation throughout these negotiations will address this knowledge gap, as well as fostering public confidence. We suggest that your Committee should recommend that such processes are established, whether through Parliament or through other channels.

## ***Yvette Cooper MP, Chair of the Home Affairs Committee***

### ***Scope of negotiations***

The Committee notes the contrast between the UK Government’s preferred negotiating structure, whereby separate sectoral agreements are reached, and the European Commission’s preference for a single, overarching agreement. We further note that, during the first round of negotiations, one strand out of eight was committed to discussing security matters. We understand that the immediate future of negotiations during the current Covid-19 pandemic is not certain.

It is vitally important that a future security relationship with the European Union is uppermost in the Government’s considerations over the coming months. We were therefore concerned to hear, in evidence to the Committee on the Future Relationship with the European Union on 20 March, that the Chancellor of the Duchy of Lancaster believes “we may not necessarily have concluded everything on internal security by 31st [December]”<sup>40</sup> and that “there are particular challenges” surrounding such an agreement.<sup>41</sup>

Preserving current capabilities and improving them where possible to enhance the UK’s security must be in both our national interest and that of our nearest neighbours. The Government and the European Commission therefore should ensure that reaching an agreement on security is a top priority regardless of their preferred structure for negotiation.

### ***Specific areas of national interest***

The Home Affairs Committee in the last Parliament reported extensively on the implications of EU Exit for the UK’s security apparatus. Having considered both the EU and UK negotiating mandates, I draw to your attention the following areas in which the UK’s national interest may be affected:

#### **1. Law enforcement data sharing**

The UK and EU currently benefit from access to each other’s considerable law enforcement data. That the UK has now ceased to be a member state and will of course continue not to be part of the Schengen zone is significant: there is no direct precedent for a country in the UK’s position to achieve the degree of access to EU law enforcement information which the UK seeks. The UK has played a leading role in developing EU capabilities to tackle serious cross-border crime. It is in the mutual interests of the EU and the UK to preserve and build on these capabilities to the extent possible following the UK’s exit from the EU, though the mechanisms for future cooperation might well be different. The Committee would wish to draw attention to the following aspects of UK-EU data sharing:

- **Second Generation Schengen Information System (SIS II):** The EU negotiating mandate is clear that any security data sharing would need to take account of the UK’s “future status as a non-Schengen third country that does not provide for the free movement of persons”.<sup>42</sup> The UK mandate envisages that a future

40 Oral evidence taken before the Committee on the Future Relationship with the European Union on 11 March 2020, HC 203, Q35

41 Oral evidence taken before the Committee on the Future Relationship with the European Union on 11 March 2020, HC 203, Q67

42 Annex to Council Decision 5870/20, Paragraph 117

agreement “should provide capabilities similar to those delivered by SIS II, recognising the arrangements established between the EU and non-EU Schengen countries”.<sup>43</sup> Were the UK unable to continue to access SIS II, the quantity of law enforcement data readily available to UK law enforcement agencies would reduce significantly and abruptly. The EU would similarly lose access to UK data from which it currently benefits. Any agreement should therefore seek to maintain a similar level of information sharing, even if this means accepting that judgments of the Court of Justice on the protection of personal data may indirectly affect the UK.

- **Prüm:** We welcome that both mandates wish to explore the possibility of sharing fingerprints, DNA and vehicle registration data of suspected and convicted individuals as previously facilitated by the Prüm framework. Parties should seek to preserve mutual access as close as possible to current terms.
- **European Criminal Records Information System:** We welcome the Government’s and
- Commission’s aspiration towards continued sharing of information on convictions and criminal records. We note that the EU mandate indicates an agreement on this matter should be “appropriate to the UK’s future status”.
- **Passenger Name Record data:** Both mandates recognise the importance of reciprocal transfer of passenger name records for flights and envisage a partnership that permits the continued sharing of this data. The UK mandate seeks agreement based on “and in some respects going beyond” existing precedents such as the EU-Japan agreement. The EU mandate makes clear that a future agreement must comply with Opinion 1/15 of the Court of Justice, which stipulated conditions for EU data sharing with Canada to ensure compliance with requirements for necessity and proportionality under the Charter of Fundamental Rights.<sup>44</sup>

## 2. Membership of law enforcement bodies

The Government’s mandate is clear that the UK does not seek to remain part of Europol or Eurojust but says in relation to Europol that the agreement for future cooperation should go “beyond existing precedents given the scale and nature of cooperation between the UK and Europol”.<sup>45</sup> It also notes that the UK was the largest contributor of data to Europol for strategic, thematic and operational analysis in 2018.

When Denmark withdrew from Europol in 2017, it maintained indirect access to Europol databases. While Denmark, being both in the EU and Schengen, is in a different position from the UK this nevertheless shows that bespoke arrangements may be possible.

43 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, February 2020, para 45

44 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, February 2020, paras 40–42; Annex to Council Decision 5870/20, Paragraph 119; Docksey, C., ‘Opinion 1/15: Privacy and security, finding the balance’ in *Maastricht Journal of European and Comparative Law*, Vol. 24(6), 2017, pp. 768–773

45 6 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, February 2020, para 47

Whatever the UK’s future relationship with Europol and Eurojust, it is vital that the Government is clear about the implications for UK law enforcement, particularly their ability to access data and systems which support the investigation and prosecution of cross-border crime.

### 3. Law enforcement tools

The Government’s mandate is clear that the UK does not intend to retain access to the European Arrest Warrant, but favours “fast-track extradition agreements” like those the EU has with Norway and Iceland. Again, it is important that law enforcement agencies receive early clarity on the timescale for concluding such agreements and the likely impact on their operational capabilities, including how quickly criminal suspects can be brought back to the UK for prosecution.

It should be noted that some Member states are already unable to extradite their own nationals to the UK during transition owing to their own constitutional arrangements which prohibit extradition to a non- Member state. Those constitutional restrictions are likely to endure in any event.

During transition, the UK still has access to the European Investigation Order, an instrument enabling member states to request evidence for criminal proceedings which is held in another member state. Measures to this end can include: preservation of evidence gathered; searches of houses and other premises; checks on bank accounts and financial transactions; and temporary transfer of persons in custody. While the EU and UK mandates both seek to build on “relevant Council of Europe conventions” to enable mutual legal assistance and law enforcement cooperation to continue, the EU mandate makes clear that any new arrangements must be “appropriate for the United Kingdom’s future status” as a third country.<sup>46</sup> In the interest of effective law enforcement, the EU and UK should do their utmost to protect existing capabilities.

### 4. Data adequacy

The UK Government has said it will seek a data adequacy decision from the European Commission which, if granted, would mean that the EU viewed UK data protection laws as essentially equivalent to its own. That decision would be made unilaterally. We understand that a specific data adequacy decision is required for law enforcement data. We also understand that the EU negotiation mandate envisages the suspension of a future EU security agreement should any UK data adequacy decision be itself suspended.

A positive data adequacy decision would be the simplest way to ensure that personal data required for law enforcement purposes can continue to flow between the UK and the EU. The absence of a positive data adequacy decision could require a more piecemeal and limited approach to data-driven law enforcement cooperation and complicate agreement on issues such as Passenger Name Record data, and a future relationship with Europol.

The Government’s “explanatory framework for adequacy discussions” is designed to inform considerations around data adequacy. It mentions the Privacy International case<sup>47</sup> currently before the CJEU about UK processing of bulk communications data for the

46 HM Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations*, February 2020, para 52; Annex to Council Decision 5870/20, Paragraph 124

47 C-623/17

purposes of national security. Though the Court has yet to rule, it is concerning that the Advocate General has recently opined that UK legislation requiring such processing would breach EU law. The explanatory framework makes much of the UK's membership of the ECHR and the application of the Human Rights Act 1998, but the UK Government has previously stated it will not agree to a “legally-binding” commitment to continued adherence to the ECHR in any EU-UK future relationship agreements, even if such a commitment was a condition for security cooperation and sharing of related data, as envisaged by the EU mandate.<sup>48</sup>

We are also mindful that a positive data adequacy decision made at the end of transition would always be subject to periodic review. It is therefore vitally important for any future security relationship that the UK carefully monitors European data regimes and court judgments relevant to them, and where appropriate responds accordingly.

### **Overall assessment**

Any reduction in operational capabilities which might affect national security and the ability of the law enforcement community to do its job is fundamental to the national interest.

While the UK will always retain substantial security strengths, the scale of international cooperation now needed in law enforcement and counter terrorism means that a continuing close relationship with the EU on security issues is essential and is in the clear national interest of the UK and of every EU Member State. That means the security interest on both sides is to preserve as far as possible existing levels of data sharing and operational capabilities.

It is not clear to us at present how the different negotiating positions set out by the EU and the UK on their future security relationship can be reconciled. In our reports of the previous Parliament, the Home Affairs Committee has been very clear on the importance of achieving a strong security partnership and we have previously raised concerns about the negotiating stance of the EU, and on aspects of the UK Government approach.<sup>10</sup> We also called for a separate Security Treaty in order to ensure that the priority and potential for a security agreement is not lost amidst wider difficult trade arguments. We hope that, on all points, more information about direction of travel is forthcoming as soon as negotiations permit. This would also increase the ability of law enforcement agencies to prepare and adjust appropriately.

It is not clear to us that the security element of a future agreement with the European Union is yet being treated with the urgency it requires. In evidence to a Committee of this House, the Chancellor of the Duchy of Lancaster conceded that agreement on security matters by 31 December was a tall order, but the UK cannot risk an abrupt end to its security relationship with the EU. It will be far harder later on to rebuild arrangements that replicate, build upon, or refresh existing mechanisms. The national interest requires the security treaty to be a first-order priority.

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48 HM Government, Explanatory Framework for Adequacy Discussions: Section H: National Security, Data Protection and Investigatory Powers Framework, 13 March 2020



### **Clive Betts MP, Chair of the Housing, Communities and Local Government Committee**

We have not identified any specific issues in the EU’s negotiating mandate which raise matters of vital national interest in the policy areas for which the HCLG Committee is responsible. Nonetheless, our predecessor Committee’s Report on [Brexit and local government](#), published in April 2019,<sup>49</sup> highlighted a number of areas in which the UK’s exit from the EU could have a substantial impact on local authorities and the services they provide.

We believe that these recommendations continue to serve as a good basis upon which the UK Government can ensure that local government is fully involved in and prepared for the end of the post-exit transition period when EU laws, policies and funding programmes will largely cease to apply in the UK.

Specifically, the EU negotiating mandate calls for the future UK-EU partnership to open up public procurement markets beyond commitments in the WTO Government Procurement Agreement (GPA). The EU Mandate states that

“the envisaged partnership should provide for mutual opportunities in the Parties’ respective public procurement markets based on the United Kingdom’s access offer for accession to the GPA and beyond their commitments under the GPA in specific areas, without prejudice to their domestic rules to protect their essential security interests. These areas should include relevant procurement not covered by the GPA such as procurement in the utilities sectors not covered under the GPA. National treatment should ensure treatment no less favourable than that accorded to locally-established suppliers or service providers.”

The Government does not mention the issue of public procurement in the Command Paper published on 27 February 2020, entitled *The Future Relationship with the EU: The UK’s Approach to Negotiations*. We reiterate the conclusion of our predecessor Committee that the Government must consult with local authorities as it transfers legislation from the EU back to the UK, taking into particular consideration the areas highlighted to the Committee as opportunities for improvement including public procurement, as well as, food hygiene, environmental health, trading standards and waste management.

We also continue to call for the Government to maintain its existing mechanisms for mutual engagement and information-sharing with local government, including for the full period of transition and negotiations on a future relationship. This will be essential to enable local authorities to plan for the post-transition world and assess how local and national interests may be affected.

The risk of workforce shortages highlighted to us by local government stakeholders, particularly in the key sectors of construction and social care, continues to be of concern.

We still await the Government’s plans for the establishment of the UK Shared Prosperity Fund, and the promised consultation on its design and administration. Our predecessor Committee sought assurances that funding levels would match or exceed the equivalent

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49 ‘Brexit and local government’, Thirteenth Report of Session 2017–19, 3 April 2019, HC493

levels of EU funding which is currently provided to local government. We also argued that the funding made available in the UK Shared Prosperity Fund should be additional to the funding provided by the Stronger Towns Fund.

We support parliamentary scrutiny of these issues, including through your use of the s13A consultation mechanism and would welcome a debate in the House. We will continue to monitor these issues considering the need for any future inquiry to be conducted by our own committee.

### ***Sarah Champion MP, Chair of the International Development Committee***

On behalf of my Committee, I welcome this opportunity to bring to your attention those aspects of the EU’s mandate that relate to international development and deserve close scrutiny from the House.

#### ***The level-playing field***

The EU mandate sets out a framework in which the EU and the UK can continue to cooperate on sustainable development, both internally and externally. It specifically calls for joint work for “the implementation of the United Nations 2030 Agenda for sustainable development” which is in line with UK aid policy and is within the UK’s interest.

However, in order to collaborate with the EU on development projects, the EU mandate indicates that the EU will want the UK to continue to adhere to a number of international conventions the EU is a signatory to. Whilst not necessarily problematic in itself as some of these conventions are either uncontroversial (such as the International Maritime Organisation) or conventions that the UK is currently committed to abide with in any case (such as the Paris Agreement), the list does include some that could be more controversial like the Council of Europe European Social Charter and the International Labour Organisation as they are more wide-ranging and far-reaching. This could substantially hinder the Government’s capacity to determine its own standards for those projects it wants to collaborate with the EU on.

Controversially, the EU is also linking cooperation on the UN Sustainable Development Goals to its overall “level playing field” demands. The UK government may find this to be an unreasonable position in light of the Government’s rejection of the EU’s level playing field demands in other policy areas. These issues should be fleshed out by the House in the debate ahead of the Prime Minister meeting EU leaders in June.

#### ***Dispute resolution***

The EU mandate states that there should be a mechanism to monitor and, if necessary, resolve disputes around implementation and adherence to the standards mentioned above. This includes the level playing field standards, in which case, should they refer to any EU legislation, the EU may call for continued jurisdiction of the European Court of Justice.

This is likely to be most contentious depending on what dispute resolution mechanism is negotiated as the UK government has repeatedly said it did not want to be bound by rulings from existing EU institutions like the European Court of Justice in any way. As a result, this issue should be monitored closely by the House.

### ***Participation in the Neighbourhood Development and International Cooperation Instrument (NDICI)***

The EU’s mandate states that the UK will be able to contribute financially to the EU’s new €89.2 billion development and cooperation fund (the Neighbourhood Development and International Cooperation Instrument or ‘NDICI’), which is due to become operational in January 2021. Participation in the NDICI may be welcomed by the Government to drive economies of scale and to mitigate some of the duplication of development assistance that may otherwise occur as the UK pursues a wholly independent aid policy for the first time since 1973.

However, the House should monitor what influence the UK will be able to have on what the NDICI budget, including the British contribution, would be spent on. Traditionally, the EU consults non-EU member states about spending decisions from funds to which they contribute, but ultimately voting rights on work programmes are reserved for EU Member States only. This is a highly contentious point overall in the EU-UK Brexit negotiations on UK participation in EU programmes and is likely to be one in the area of development cooperation as well.

It is also unclear at this stage if the Government is actually seeking to participate in the NDICI: while it is mentioned in the October 2019 Political Declaration, it is not mentioned in the negotiating objectives of 27 February. In a similar vein, my Committee would be interested in scrutinising the Government’s position on the UK’s future participation in the replacement framework for the EU ‘Cotonou’ agreement.

### ***Angus Brendan MacNeil MP, Chair of the International Trade Committee***

#### ***The International Trade Committee’s interest in the EU negotiating mandate***

The International Trade Committee exists, of course, to scrutinise the work of the Department for International Trade (DIT). While the negotiation of the future relationship does not fall within the remit of that Department, there are, as I have detailed below, a number of aspects of these negotiations that are highly relevant to the work of DIT. These relate particularly to the Department’s role in respect of both UK trade policy concerning non-EU countries, and the promotion of UK exports and international investment.

The level of market access and/or regulatory convergence contained in a UK-EU agreement will have a potentially major impact on the negotiation and conclusion of new UK trade agreements, as well as on outstanding attempts to “roll over” EU-third country trade agreements.

At the same time, the terms of a UK-EU agreement could have a potentially significant impact on the type, amount and destination of UK exports. Likewise, the terms of an agreement could significantly affect the form, volume and source of inward investment in the UK economy, much of which has hitherto been predicated on the UK’s participation in the EU Single Market as a Member State.

In addition, any undertakings given in a UK-EU agreement in respect of anti-dumping, countervailing and safeguard measures will, of course, potentially constrain the terms under which the UK can operate its trade defence regime.

Another relevant consideration is the Northern Ireland (NI) Protocol to the Withdrawal Agreement. A future relationship agreement will have to sit alongside, and could be constrained by the provisions of, the Protocol, aspects of which are relevant to the terms of UK trade with non-EU countries. Under the Protocol, NI remains part of the UK's customs territory and, as such, able to benefit from future UK trade agreements with third countries, “provided that this does not prejudice the application of the Protocol”. At the same time, EU customs legislation and Single Market legislation will apply to all goods in, entering and leaving NI. These terms raise important issues, which are clearly within my Committee's remit, concerning the applicability to NI of post-Brexit UK trade agreements with non-EU countries and UK trade defence measures.

A number of consequential issues of interest to my Committee also arise in connection with the negotiation of a UK-EU agreement. These issues notably include the involvement of DIT in cross-departmental processes relating to the concurrent negotiating of trade agreements with the EU and several non-EU countries. DIT's Strategic Trade Advisory Group would seem to have a potentially important role in this context. There is also the question of how DIT fits into the cross-Government structure (under the Cabinet Office) for developing trade policy at both ministerial and official levels—as well as trade-related committees and working groups, such as the Trade Policy Steering Board and Whitehall Trade Capability Group.

Also of great interest to us is the nature and extent of any consultation around the UK Government's negotiating mandate. Such consultation is required to allow stakeholders to comment on possible consequences and trade-offs associated with particular negotiating positions. The range of such stakeholders is wide. It encompasses (and is not necessarily limited to) the devolved administrations; local and regional government; businesses; industrial sectors; and civil society groups, such as trade unions and consumer bodies.

Lastly, my Committee has a long-standing and keen interest in the specifically Parliamentary dimension of the transparency and scrutiny arrangements attached to trade agreements. There must, as soon as possible, be clarity and certainty on how Parliament is going to be able to fulfil its scrutiny role regarding the full range of trade negotiations that the Government now stands poised to undertake, with the complex web of choices and trade-offs that this will inevitably entail.

### **Detailed comments**

I have set out below the aspects of the mandate that fall within my Committee's remit and that merit consideration in a debate on the floor of the House, as provided for under s13A of the European Union (Withdrawal) Act 2018. In doing so, I have referred to both the *Directives for the Negotiation of A New Partnership* with the UK agreed by the Council of the European Union on 25 February ([ST 5870/20 ADD1 REV2](#)) and *The Future Relationship with the EU: The UK's Approach to Negotiations* ([CP211](#)), which the UK Government published on 3 February.

#### Trade in goods

The EU mandate (para 20) and the UK mandate (Part 1, para 3) both envisage tariff- free and quota-free trade in goods under a UK-EU agreement.

*Rules of Origin*

The EU mandate seeks “appropriate rules of origin based on the standard preferential rules of origin of the Union” (para 21); it is silent on the subject of arrangements for cumulation of origin.

The UK mandate, by contrast, calls for bilateral cumulation between the EU and the UK, as well as diagonal cumulation with other trade agreement partners, so that materials from any of the three parties concerned (the EU, the UK and the third country) can count as originating content (Part 1, para 6).

The UK’s “roll-over” agreements with third-country parties to EU trade agreements typically provide for extended cumulation (whereby both parties agree to recognise materials from the EU, or processed in the EU, as originating in the UK or in the counter party, as applicable). EU agreement is essential if there is also to be diagonal cumulation.

Such agreement will be necessary for the UK to benefit from cumulation arrangements under the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (the “PEM Convention”). All signatories to the PEM Convention have agreed to replace rules of origin in the trade agreements between each other with the rules of origin laid down in the PEM Convention, forming a single cumulation zone.

*Technical Barriers to Trade*

The EU mandate states that provisions on Technical Barriers to Trade (TBT) “should build on and go beyond” the WTO TBT Agreement (para 28). The mandate refers to reliance on international standards to underpin regulatory cooperation, as well as “streamlined testing and certification requirements” (para 29)—but the drafting leaves it unclear exactly what is being aimed at here.

The UK mandate states that an agreement should address regulatory barriers “while preserving each party’s right to regulate”. This “should apply to trade in all manufactured goods, as well as to agri-food products for issues not covered by sanitary and phytosanitary (SPS) requirements” (Part 1, para 10). In addition, “The Agreement should build upon the WTO TBT Agreement, in line with recent EU Free Trade Agreements such as CETA [EU-Canada Comprehensive Economic and Trade Agreement] and the EU-Japan EPA [Economic Partnership Agreement]” (Part 1, para 11).

There is a clear call in the UK mandate for mutual recognition of conformity assessment, as well as cross-border compliance arrangements on drugs and medical products; motor vehicles and parts; organic products; chemicals; and marine equipment (Part 1, paras 10–20). It is noteworthy that on conformity assessment CETA applies to a specified list of products, with the capacity to increase that list over time. It thus creates a mechanism for mutual recognition of conformity assessment, rather than automatic recognition.

*Sanitary and Phytosanitary Measures*

The EU mandate states that disciplines on SPS Measures “should build on and go beyond” the WTO SPS agreement (para 28). SPS provisions “should respect Union rules”, as well as taking into account the relevant international standards, guidelines and recommendations

(para 30). In addition, “health and product sanitary quality in the agricultural and food sector” should be at least maintained at the level applicable at the end of the transition period (para 103).

The UK mandate pledges to “maintain a robust SPS regime reflecting our existing high standards” (Part 1, para 21). It states that provisions on SPS should “build on the WTO SPS Agreement in line with recent EU agreements such as CETA and the EU-NZ [New Zealand] Veterinary Agreement” (Part 1, para 21). The mandate further promises that “The UK will continue to pursue a risk-based approach to disease management and surveillance, based on scientific evidence” (Part 1, para 23).

### *Geographical indications*

Geographical indications are names or signs on products corresponding to a specific geographical location.

The EU mandate envisages that an agreement “should confirm the protection of existing geographical indications as provided for in the Withdrawal Agreement and establish a mechanism for the protection of future geographical indications ensuring the same level of protection as that provided for by the Withdrawal Agreement” (para 51).

The UK mandate states that: “There are different ways of proceeding on Geographical Indications (GIs) and the UK will keep its approach under review as negotiations with the EU and other trading partners progress. Any agreement on GIs must respect the rights of both parties to set their own rules on GIs and the future directions of their respective schemes” (Part 1, para 72).

### *Trade defence*

The EU mandate favours the inclusion of “provisions on antidumping, countervailing and safeguard measures”, subject to conformity with the relevant WTO agreements (para 23).

The UK mandate likewise refers to the relevant WTO agreements (Part 1, para 8). In addition, it states that an agreement should provide that “both parties may apply the lesser duty rule and must apply an economic/public interest test during anti-dumping and countervailing investigations to ensure proportionate use of trade remedies” (Part 1, para 9).

Both the lesser duty rule and the economic interest test are contentious; in sectors that are liable to dumping they can be seen as limiting the effectiveness of anti-dumping measures. Under the lesser duty rule, damage suffered as a result of dumping is rectified through imposing a duty calculated on the basis of either the dumping margin (the difference between the export price and normal value) or the injury margin (the difference between the price of the product and that of its domestic equivalent). When the EU modernised its trade defence instruments so as to include a conditional lesser duty rule, the UK voted against doing so.

The economic interest test (which involves considering the interest of the economy as a whole rather than just the sector affected by dumping) forms an integral part of the UK Government’s trade remedies regime.

*Northern Ireland Protocol*

The EU mandate states that the negotiation of the future relationship “should be premised on the effective implementation of the Withdrawal Agreement and of its three Protocols”, including the NI Protocol. It further states that “While preserving the integrity of the Single Market, the envisaged partnership should ensure that issues arising from Ireland’s unique geographic situation are addressed” (para 5).

The UK mandate mentions the NI Protocol only once, in passing (Section 1, para 11).

*Trade in services; and investment provisions*

The EU mandate seeks “ambitious, comprehensive and balanced provisions” on trade in services and on investment, “respecting each Party’s right to regulate”. Provisions should deliver a level of liberalisation in services trade “beyond the Parties’ WTO commitments and taking into account existing Union free trade agreements” (para 34). In accordance with Article V of the General Agreement on Trade in Services, the EU aspires to “substantial sectoral coverage, covering all modes of supply” (para 35).

The UK mandate similarly urges that “provisions on services and investment should be based on recent EU FTAs, such as CETA and the EU-Japan EPA” (Part 1, para 35). An agreement “should provide for balanced and reciprocal market access”, have “substantial sectoral coverage and cover all four modes of supply”. Provisions “should respect both parties’ right to regulate”, with “limited, justified carve-outs, such as for services in the exercise of governmental authority” (Part 1, para 36).

*Most Favoured Nation provisions in a UK-EU agreement*

The EU mandate says nothing on whether an agreement should include “Most Favoured Nation” (MFN) clauses (whereby parties to a trade agreement undertake that, if they subsequently agree better terms with a third country, the existing agreement must be revised to incorporate those same terms).

By contrast, the UK mandate explicitly seeks, specifically in relation to Cross-Border Trade in Services, “Most Favoured Nation treatment, to ensure the Agreement continues to provide for ongoing liberalisation” (Part 1, para 37(d)).

*Impact on Most Favoured Nation provisions in other agreements*

The rolled-over EU trade agreement with South Korea includes an MFN clause in relation to cross-border trade in services and right of establishment (whereby individuals or companies from one party must be legally free to deliver services within the other party’s jurisdiction while continuing to be regulated by the authorities of their home country). Consequently, if the UK were to grant the EU better market access conditions in this regard, it would be legally bound to extend the same provisions to South Korea.

*Data Protection*

In the EU mandate, data protection provisions are fundamental to an agreement (para 13). The EU’s unilateral right to determine the adequacy of a counter party’s data protection regime is to be reinforced (para 13); and no opening is left for any change to the EU’s approach to determining adequacy (para 47).

In the UK mandate, by contrast, data protection features as a point independent of the future relationship negotiations on which the UK is seeking a decision before the end of the transition period (Part 3, paras 59–62).

#### *Financial Services*

The EU mandate sees equivalence decisions (i.e. recognition by the EU that the regulatory or supervisory regime of a non-EU country is equivalent to the corresponding EU framework) as the main means for regulating interactions between financial services (paras 44, 46). The mandate also implies “voluntary cooperation on regulatory and supervisory matters” (para 45). There is no mention of market access or legally binding provisions.

The UK mandate sees a decision on equivalence as sitting outside the scope of the future relationship negotiations (Part 3, para 63), separate and apart from steps to build regulatory cooperation (Part 1, paras 53–55). The mandate also seeks “legally binding obligations on market access and fair competition” (Part 1, para 53).

#### *Audio-visual services*

The EU mandate specifies that “Audiovisual services should be excluded from the scope of the economic partnership” (para 18).

By contrast, the UK mandate envisages that an agreement “could promote trade in audio-visual services as well as associated businesses in the audio-visual supply chain by ensuring fair access and treatment for audio-visual services” (Part 1, para 52).

#### *Level Playing Field provisions*

The EU mandate seeks broad Level Playing field (LPF) provisions (encompassing social and labour policy, environmental protection, taxation, and state aid and competition) that “rely on appropriate and relevant Union and international standards” (para 94). The mandate sees LPF provisions as integral to an economic partnership and calls for an overarching mechanism of implementation, enforcement, dispute resolution and remedies (para 94). The mandate envisages “the application of Union State aid rules to and in the United Kingdom”, with the UK setting up “an independent and adequately resourced enforcement authority with effective powers to enforce the applicable rules, which should work in close cooperation with the Commission” (para 96). The mandate also advocates the continued application of EU standards on tax, and certain other provisions, as applicable at the end of the transition period (para 99).

The UK mandate, by contrast, sees LPF provisions as quite separate from other aspects of a trade agreement. It envisages arrangements in this respect along the lines of those in CETA, the EU-Japan EPA and the EU-South Korea free trade agreement (Part 1, paras 66, 68, 76, 77, 78), with much looser alignment to the EU. The UK mandate explicitly requires that the dispute resolution mechanisms in the envisaged comprehensive free trade agreement shall not apply to LPF provisions (Part 1, paras 65, 68, 76, 78, 81)—although it is unclear what form of dispute resolution is proposed as an alternative. The idea of the UK following EU laws in areas such as competition policy and tax is explicitly rejected (Part 1, paras 66, 80).



### ***Rt Hon Harriet Harman MP, Chair of the Joint Committee on Human Rights***

We support the European Scrutiny Committee’s use of its statutory powers to consult other Committees and to call for a debate in the House. This use of the powers under section 13A of the European Union (Withdrawal) Act 2018 provides an important means of facilitating effective parliamentary scrutiny on a matter of vital national interest.

The JCHR notes the commitment made in the Political Declaration by both the UK and the EU (“the parties”) that the future arrangements should be “underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR”. Mutual trust in each other’s respect for human rights standards will be important in our future relationship with the EU.

The negotiating mandates of each party are intended to build upon the commitments made within the Political Declaration. However, we are concerned that there seems to be a significant divergence between the negotiating positions of each party in relation to how any reference to human rights should be expressed in the agreement.

#### *The EU’s position*

The EU’s ‘directives’ for the negotiation with the UK, as agreed on 25 February 2020, stipulate that “the envisaged partnership should provide for automatic termination of the law enforcement cooperation and judicial cooperation in criminal matters if the United Kingdom were to denounce the European Convention of Human Rights (ECHR). It should also provide for automatic suspension if the United Kingdom were to abrogate domestic law giving effect to the ECHR, thus making it impossible for individuals to invoke the rights under the ECHR before the United Kingdom’s courts.” It is our understanding that “abrogating” the domestic law giving effect to the ECHR refers to a repeal of the Human Rights Act 1998, which incorporated the ECHR into domestic law. However, it would be helpful to clarify the precise meaning of this language, given the potential implications.

We note that although the Member States of the EU are parties to the ECHR, the EU itself has not yet acceded to the Convention. We also note that the requirement for the UK to continue its adherence to the ECHR is unprecedented when compared to the EU’s third country agreements with other states.

#### *The UK’s position*

Although the UK Government’s mandate states that cooperation will be underpinned by the importance attached by the UK and EU to safeguarding human rights, it also states that “the agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal systems”. The UK Government does not, therefore, wish for the agreement with the EU to refer to any specific requirements for continued adherence to the ECHR.

#### *The implications of divergence*

On 3 March 2020, the EU Commission’s Head of Task Force for Relations with the UK, Michel Barnier, highlighted various points of divergence between the UK and the EU. In particular, he noted that the UK had informed the EU that they do not wish to commit formally to continue to apply the ECHR and that the UK does not want the Court of

Justice of the EU to play a role in interpreting EU law. Michel Barnier warned that if this position is maintained, it would have an immediate and concrete effect on the ambition of our cooperation.

The UK's refusal to commit to continued adherence to the ECHR may seriously affect the extent of cooperation that is possible with the EU on law enforcement and judicial cooperation. This may have consequences for the exchange of important data, such as biometric data concerning suspects and convicted persons, extradition arrangements, and the UK's involvement in important institutions such as Europol and Eurojust. All of these mechanisms are important for securing cross-border justice and in protecting the security of the UK.

We are concerned that the UK Government's refusal to make commitments to adhere to the ECHR may signal its future intention to withdraw from the ECHR, or to reform the Human Rights Act in a way that would prevent individuals from being able to bring human rights claims before domestic courts. We note that the Government's manifesto included a commitment to "update" the Human Rights Act.

It is important that the UK continues to adhere to the ECHR, not only to guarantee the ongoing protection of rights for persons in the UK, but also to set an example to other countries. We do not want to see a regression in rights for individuals in the UK or EU Member States. At the very least, it is important that both parties agree to apply human rights standards that are equivalent to the ECHR. This would provide reassurance to both parties that fundamental human rights standards would continue to be respected.

### ***Sir Robert Neil MP, Chair of the Justice Committee***

In the Committee's Ninth Report of Session 2016–17, on the Implications of Brexit for the Justice System, we highlighted the seriousness of ensuring maximum UK-EU co-operation on criminal justice once the UK had left the European Union. We concluded: **"The security and safety of the UK's citizens and residents is too precious to be left vulnerable to tactical bargaining"**, recommending that security and co-operation be an aspect of negotiations to be firmly separated from other areas.

We would hope that, while security and co-operation are now aspects within the negotiating mandates of both the UK and EU, that the principle of treating that part of the negotiations with that level of seriousness and separation from any bargaining process will guide both sides. We note with support the Government's ambition in paragraph 30 of its Command Paper CP211 on the Future Relationship with the EU to create a separate agreement on law enforcement and judicial cooperation in criminal matters, and the EU's desire, in para 115 of its Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland, for a broad, comprehensive and balanced security partnership that will provide for close law enforcement and judicial cooperation in relation to the prevention, investigation, detection and prosecution of criminal offences.

The Committee also concluded in 2016–17 that the four principal aims of the Government's approach to justice matters in Brexit negotiations should be:

- the closest possible co-operation on criminal justice;
- maintaining access to the EU's regulations on inter-state commercial law;

- enabling cross-border legal practice rights and opportunities; and
- retaining efficient mechanisms to resolve family law cases involving EU member states and the UK.

It is welcome that both the EU’s directives for the negotiation of a new partnership and the UK Government’s Command Paper CP211 highlight the importance of human rights, democracy and the rule of law; the fight against terrorism; and prosecution of those accused of serious crimes.

We note that the EU seeks in paragraph 118 of its directives automatic termination of co-operation should the UK denounce the European Convention on Human Rights or abrogate domestic law giving effect to that Convention. We note the UK Government’s recognition in paragraph 31 of its document of the importance of safeguarding human rights and the rule of law, but also its desire that the agreement between the UK and EU should not specify how either party protects and enforces human rights within their autonomous legal systems.

We note that the UK Government will not seek membership of Europol or Eurojust (albeit it seeks continued co-operation between the UK and those bodies), and nor will the UK Government seek to participate in the European Arrest Warrant. We note the EU’s intention, at paragraph 121 of its directives, to seek mechanisms for simplified, efficient and effective exchanges of existing information and intelligence between the EU and the UK. We noted in our 2016–17 Report, referenced above, the value that UK law enforcement agencies placed on both Europol and Eurojust, and would hope that the UK Government achieves maximum co-operation with those agencies in default of membership.

### ***Simon Hoare MP, Chair of the Northern Ireland Affairs Committee***

The Northern Ireland Affairs Committee will not be submitting an opinion on this occasion. The Committee has not scrutinised the EU negotiating mandate and is not planning to hold an inquiry on this issue due to its busy programme of inquiries on the implementation of the Northern Ireland Protocol, Covid-19 and devolution. Nevertheless, I am grateful to you for inviting the Committee to share its view.

### ***William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee***

This letter sets out some points in response to the EU’s negotiating mandate. This letter seeks only to raise matters that the House may wish to consider in any debate put forward by your Committee but does not seek to reach any substantive conclusions.

### **The status of Northern Ireland**

Paragraph five of the EU negotiating mandate states that “While preserving the integrity of the Single Market, the envisaged partnership should ensure that issues arising from Ireland’s unique geographic situation are addressed.” Under the Protocol on Ireland/Northern Ireland, “Northern Ireland is part of the customs territory of the United Kingdom” but, unlike the rest of the UK, Northern Ireland will be bound by EU customs and other laws relating to the movement of goods after the post-exit transition period has

ended. The way in which the UK and the EU seek to address “Ireland’s unique geographic situation” as part of the negotiations could have legal or practical implications for Northern Ireland’s status within the UK.

### **Role of the governing body**

Paragraph 155 envisage the establishment of a “a governing body responsible for managing and supervising the implementation and operation of the envisaged partnership”. Paragraph 166 suggests that this body “should comprise the Parties’ representatives at an appropriate level, reach decisions by mutual consent, and meet as often as required to fulfil its tasks.”

Paragraph 95 of negotiating mandate states that the governing body “should be empowered to modify the “level playing field commitments in order to include additional areas or to lay down higher standards over time”. What powers are conferred on this body under the future relationship agreement and how effectively the body can be scrutinised, may raise important questions of accountability to Parliament.

### **Territorial scope and Gibraltar**

Paragraph 167 states “Any agreement between the Union and the United Kingdom negotiated on the basis of these negotiating directives will not include Gibraltar.” The status of Gibraltar is something the House may wish to seek urgent clarification on.

### **Quality and standards of administration provided by the Civil Service and Government Departments**

The extent of the change in the UK’s relationship with the EU that is envisaged by both the EU and the UK’s mandate is significant and, given the timeline under which such change is to be achieved (the transition is to end on 31 December 2020), it may be prudent to consider what resources the Civil Service and Government Departments require to successfully implement these changes by the end of the year.

## ***Rt Hon. Greg Clark MP, Chair of the Science and Technology Committee***

### ***Horizon Europe***

Paragraph 14 of the EU’s negotiating mandate states:

The envisaged partnership should establish general principles, terms and conditions for the United Kingdom’s participation in and contribution to Union and Euratom programmes, subject to the conditions set out in the corresponding instruments, in areas such as science and innovation, youth, culture and education, development and international cooperation, defence capabilities, civil protection, space and other relevant areas when in the Union’s interest.

Research and Innovation stakeholders have consistently advocated UK association with the EU’s £100bn research funding programme for 2021 to 2027—Horizon Europe. The UK has been a net- beneficiary of the predecessor programme, Horizon 2020, since its inception in 2014, and the Royal Society has suggested that 33.5% of UK research papers

are co-authored with other EU Member States and countries associated to Horizon 2020. This paragraph keeps open the possibility of UK association with EU programmes such as Horizon Europe. In the UK's negotiating mandate, the Government also stated that it would consider non-EU member state participation in Horizon Europe. Both of these commitments are welcome.

However, the EU is yet to set the terms for association, and the UK Government has stated that it will not make a decision on whether to associate until it understands whether association represents value for money. Progress is needed to provide certainty to the research and innovation community.

### *International collaboration*

Paragraph 16 of the EU negotiating mandate states:

The envisaged partnership should provide for, as appropriate, dialogue and exchanges in areas of shared interest, with the view to identifying opportunities to cooperate, share best practice and expertise, and act together, including in areas such as culture, education, science and innovation, tourism or statistics. In these areas, the envisaged partnership should recognise the importance of mobility and temporary movement of objects and equipment in enabling cooperation and also facilitate ongoing cooperation between culture and education related groups.

The European Union is [currently](#) the UK's most frequent collaborator for research, and provides over €1bn funding for UK research per year as well as 1 in 6 academic staff in UK Higher Education Institutions. This collaboration enhances the impact of UK research, with work by the Royal Society [indicating](#) that studies conducted with international collaborators have almost 1.5 times the impact, on average, of UK-only studies. This vision for the future relationship is therefore positive, and we endorse it.

This ideal is only possible, however, if the EU makes a positive data adequacy decision in respect of the UK. Reduced capacity to share personal data between UK and EU institutions and researchers could significantly hinder the capacity for collaborative research. The UK Government has [indicated](#) it expects an adequacy decision to be taken by the EU by the end of the transition period in December 2020. The UK Government should do all it can to ensure a positive outcome.

### ***Pete Wishart MP, Chair Elect of the Scottish Affairs Committee***

As you may be aware, the Scottish Affairs Committee has not yet been appointed, and so I am unable to represent the views of the Committee at this time.

Nevertheless, I would like to draw the attention of the European Scrutiny Committee to reports compiled by the former Scottish Affairs Committee in the previous Parliament. The Committee considered the impact of the UK leaving the European Union within several reports and inquiries. The conclusions of those reports would be relevant to considerations around the EU mandate for negotiations with the UK on the future

relationship, and could be raised as part of any subsequent debate. Please find below a summary of relevant conclusions and recommendations, which I hope that you and your Committee will find useful.

### **The future of Scottish agriculture post-Brexit**

The previous Scottish Affairs Committee’s report on the future of Scottish agriculture post-Brexit contained relevant conclusions and recommendations relating to trade post-Brexit and the agricultural workforce.<sup>50</sup> These include the following points:

#### *Trade post-Brexit*

We are alarmed by the negative reaction Scotland’s farming sector has had to the Government’s temporary no-deal tariffs, which appear to provide significantly less protection than the current regime and give industry very little time to adapt. The Government must address these concerns during this consultation period on its permanent tariff regime. The Government should also provide more detail on the financial support it will make available to farmers and crofters to offset the impact of the EU’s high no-deal tariffs on their exports. (Paragraph 64)

Geographical indications have been crucial in protecting the provenance of many iconic Scottish products, and we are pleased that the UK Government has acted on our recommendation and established a domestic register. While we are reassured that the Government is committed to continued recognition of UK products, the Government must provide more clarity on how it will ensure the future protection of Scottish GIs in the EU given that this may be revoked by the EU if a reciprocal arrangement is not reached. We also repeat our call for GI protection to be a red line in future UK trade negotiations. (Paragraph 70)

#### *Agricultural workforce*

We welcome the additional support the UK Government has made available to the pilot scheme following our intervention. However, we are concerned that there remain difficulties in processing workers in Ukraine and Moldova to allow them to reach farms on time. This has not been helped by the additional costs expected of workers to book a visa interview on-top of the £244 visa fee, which could deter student workers. This is substantially more than comparative schemes in Europe and risks pricing the UK out of the market for agricultural workers. If the Government wants the best and most motivated workers, not just those who can afford to pay, we recommend it abolish visa interview fees and review the cost of Tier 5 visas, to ensure the pilot remains competitive internationally. (Paragraph 84)

### **The relationship between the UK and Scottish Governments**

The former Scottish Affairs Committee’s report on the relationship between the UK and Scottish Governments noted the “importance of a healthy and robust relationship between these two governments has been a recurring theme in our work during this Parliament. It has been raised in issues [...] [including] negotiating post-Brexit trade deals”.<sup>51</sup>

50 Scottish Affairs Committee, [The future of Scottish agriculture post-Brexit](#), Ninth Report of Session 2017–19, published 23 July 2019, HC 1637;

51 Scottish Affairs Committee, [The relationship between the UK and Scottish Governments](#), Eighth Report of Session 2017–19, published 22 My 2019, HC1586; Scottish Affairs Committee, [Scotland, Trade and Brexit](#), Seventh Report of the Session 2107–19, HC 903

The Committee also took evidence on the Joint Ministerial Committee (JMC), and its sub-Committee, the JMC (EU negotiations). The sub-Committee “was established in late 2016, with the aim of involving the devolved administrations in the process of withdrawing the UK from the EU”.<sup>52</sup> The report set out recommendations relating to the JMC, including, for example, reforms to the JMC, including the following:

[There] are several reforms we think that the Government could make to the JMC to ensure it embodies the principle of parity of esteem and becomes a forum where all four governments can engage as equals. We recommend that:

- JMC meetings should be hosted and chaired by each of the UK’s administrations on a rotating basis.
- JMC meetings should be held frequently, and to a set schedule.
- JMC agendas should be agreed in advance between all parties. (Paragraph 33)

### **Scotland, Trade and Brexit**

The former Scottish Affairs Committees’ report on Scotland, Trade and Brexit reached a number of relevant conclusions and recommendations.<sup>53</sup>

#### *How Scotland trades with the world*

While there are many similarities between the trading patterns of Scotland and the rest of the UK, there are differences in the relative importance of different sectors and markets. As the Government negotiates future trade agreements, it must ensure that sectors of vital importance to the Scottish economy such as the food, drink and fisheries sectors are not traded away to secure preferential agreements for other industries. (Paragraph 10)

#### *Role of the devolved administrations in trade policy*

We are pleased that the Government has committed to publish a concordat outlining the role of the devolved administrations in future UK trade policy. (Paragraph 16)

The Government should explore new options to facilitate extensive consultation with the devolved administrations when setting negotiating mandates in the future. One of these options should be the establishment of a JMC sub-committee on international trade. This should be supported by a fully resourced JMC secretariat responsible for ensuring the sub-committee meets regularly and that the devolved administrations have a role in setting the agenda for meetings. (Paragraph 24)

We recommend that the Government commit to including representatives from the devolved administrations in the UK negotiating team for future trade agreements where commitments are being sought that will impact on devolved competencies. This would have to be done with the understanding that devolved ministers would not deviate from the UK Government’s negotiating position. (Paragraph 29)

The Scottish Government must have a meaningful role in future trade negotiations including in the setting of negotiating mandates and participation in the negotiations

52 JMC Joint Secretariat, [Report of the Joint Ministerial Committee](#): 2015–2018, March 2018

53 Scottish Affairs Committee, [Scotland, Trade and Brexit](#), Seventh Report of Session 2017–19, published 2 March 2019, HC903

themselves. We believe a model based on cooperation and trust would be preferable to one of formal consent of the Scottish Government on a final deal, but it will require goodwill from both Governments to make it work. (Paragraph 33)

*Scotland's trade priorities for future trade deals*

We are encouraged that the Political Declaration commits to no tariffs on goods being the basis of the future trading relationship between the UK and EU. Maintaining tariff-free trade is crucially important for the food and drink sector in Scotland which would be most susceptible to the EU's WTO tariffs, with some sectors' exports to the EU likely to become uncompetitive overnight. (Paragraph 40)

Scottish manufacturers have benefited immensely from frictionless access to the EU Single Market and require assurances that trade with one of their largest international markets will not be disrupted in the future. We welcome the Political Declaration's ambition for a "comprehensive" free trade area, but this must minimise non-tariff barriers for goods and provide continuity for businesses which rely on EU supply chains and perishable products. If the Government no longer wishes to align with an EU standard in the future, it should clearly state its rationale for diverging and provide businesses with ample opportunity to comment on the proposed changes before they are agreed. (Paragraph 46)

Scotland's service sector has benefited from its ability to freely offer services to customers in the EU, which accounts for 41% of service sector's trade. We were told that any agreement to provide the sector with continued market access to the EU needed to go further than the EU's existing equivalence regimes. We therefore recommend that the Government ensure that any new equivalence regime covers the broadest range of activity conducted by Scotland's service's sector. This agreement must not be vulnerable to sudden revocation, instead a dispute resolution mechanism should be established to resolve disagreements about whether the two regimes are equivalent, which would need to be followed before either side could withdraw from the agreement. This should provide confidence to businesses that they can make long term decisions with the knowledge that their access arrangements will not suddenly change. (Paragraph 57)

Scotland's service sector currently benefits from its ability to operate throughout the EU due to the mutual recognition of professional qualifications within the single market. We heard this was particularly important for the legal and financial services sectors. However there remains uncertainty as to the future recognition of UK professional qualifications in the EU post-Brexit. We welcome the provisions included in the Withdrawal Agreement which will provide continuity, but the Government must confirm and deliver on its intention to negotiate a long-term agreement with the EU which maintains similar market access for UK qualifications. This will provide clarity about what the future arrangements will be for Scottish professionals operating in the EU after Brexit. (Paragraph 64)

We are disappointed that some existing trade agreements will not be rolled over by the time the UK leaves the EU. While we welcome the government's publication of a register outlining the status of outstanding agreements, this does not offer practical advice to businesses on the steps they should be taking to minimise disruption. We recommend that the government outline the practical steps it will take to support Scottish exporters who rely on these agreements. (Paragraph 78)



Creating a UK GI register will not protect iconic Scottish products in foreign markets unless those countries agree to recognise and protect these GIs. In negotiating the UK's future relationship with the EU, the Government must ensure that it agrees a comprehensive mutual recognition agreement which protects existing and future Scottish geographical indications indefinitely. The Government should also ensure that its trade agreements with other countries include robust protection for these products. Ensuring Scottish producers enjoy the protection of GI status must be a red line in all the UK's future trade negotiations. (Paragraph 95)

### **Immigration and Scotland**

The former Scottish Affairs Committee's report on immigration and Scotland provided an additional consideration for negotiations:<sup>54</sup>

#### *EU migration and the impact of Brexit*

We heard from witnesses that uncertainty over the future rights and status of EU citizens was causing difficulties for both employers and employees. We welcome the progress made between the EU and the UK on EU citizens' rights and emphasise the importance of agreement being secured on this issue in the final deal. (Paragraph 60)

### **Fisheries**

In addition to these reports, the former Scottish Affairs Committee held a one-off evidence session on the Fisheries Bill, where we heard evidence from the former minister of state for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, and Anne Freeman, Deputy Director for Domestic Fisheries and Reform, UK Government.

### ***Huw Merriman MP, Chair of the Transport Committee***

The Committee believes that the EU mandate for negotiations with the UK on the future relationship is an important document and deservedly warrants further parliamentary scrutiny through a debate on the floor on the House.

Transport will form a key part of UK-EU future relationship negotiations. The EU's negotiating mandate sets out its desired future relationship with the UK in transport, with particular emphasis on aviation and road haulage. The EU's mandate mentions rail and maritime to a lesser degree. Due to the timeframe for response, we are unable to provide a detailed assessment of each transport sector but we highlight areas of interest for aviation and road transport below, particularly where the stated positions of the EU and UK diverge.

Aviation—the EU envisages a comprehensive agreement with the UK for the aviation sector. The UK has the third largest aviation network in the world and the largest air transport system in Europe.<sup>55</sup> Unlike some other areas, there is no international or regional agreement for both parties to fall back on should a deal not be reached.

54 Scottish Affairs Committee, [Immigration and Scotland](#), Fourth Report of Session, 2017–19, published 4 July 2018, HC 488

55 Government Response to Report by the Committee on Exiting the European Union, '[Aviation Sector Report](#)', November 2017

On the specific content, the EU seeks an agreement that covers basic point-to-point travel—for example, from the EU to the UK and vice versa—along with providing for “fifth freedom rights” if balanced with “corresponding obligations”.<sup>56</sup> Fifth freedom rights include flight stops in the territory of a Member State en-route to another third state (for example, a flight begins in the UK, sets down and picks up passengers in Germany and then continues to Dubai). The EU’s mandate is, however, silent on “cabotage” and “grand cabotage” (that is, the ability to fly within, and between, the territory of Member States).

Road haulage—the EU is clear that UK hauliers should not be granted the same level of rights and benefits as those enjoyed by EU hauliers when travelling from one Member State to another, or within the territory of a Member State.<sup>57</sup> This approach is consistent with that suggested for aviation and is justified on the basis that non-EU states should not enjoy the same rights as Member States. The UK’s counterpart negotiating document, however, states that “UK and EU road transport operators should be entitled to provide services to, from and through each other’s territories”.<sup>58</sup> It is unclear whether reference to the provision of services “to, from and through”—taken collectively—envisages an agreement covering cabotage or grand cabotage. We believe these apparent different objectives between the EU and UK would benefit from further scrutiny.

Alignment of regulation and standards—transport is central to ongoing debates about ensuring a “level playing field” in certain sectors. Commitments from both the UK and EU on state aid, competition, environment, and social and labour standards will have an impact on all transport sectors. In road transport, for example, the EU seeks an agreement covering rules relating to “operators and drivers (including social rules)” that do not fall below the levels of protection “provided by the common standards applicable in the Union and the United Kingdom at the end of the transition period”.<sup>59</sup> This could be interpreted to include existing EU laws on driver working hours and rest periods.

Similarly, Part 2 of the EU’s mandate covers technical regulations and testing and certification requirements for goods placed on the EU and UK markets. Such goods include motor vehicles and motor vehicle parts. The EU envisages a streamlined certification process for such goods whereas the UK has proposed a system that favours mutual recognition.<sup>60</sup> This is again an area which will need to be resolved between the two parties and where further scrutiny could be beneficial.

I hope this information is useful in determining whether to put forward a motion on the floor of the House for debate. If such a debate is scheduled, either I or another Committee Member would be happy to participate.

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56 Para 64 of the EU’s negotiating mandate.

57 *ibid* para 73

58 HM Government, [‘The Future Relationship with the EU: The UK’s Approach to Negotiations’](#), (27 February 2020) CP211, para 62

59 Para 74

60 Para 29 of the EU’s negotiation mandate; Para 19 of HM Government’s Command Paper.

## **Mel Stride MP, Chair of the Treasury Committee**

### **Scope of the mandate**

#### *Financial services*

The Commission Annex states that EU—UK should respect the Parties’ “*ability to take equivalence decisions in their own interest*” in allowing financial services market access to EU markets. There are many sectors such as insurance or retail deposit taking—large UK industries—for which no equivalence regime exists.

If there is no scope to include financial services within the trade deal, and reliance is placed on equivalence agreements, significant UK business will be relocated to the EU, or will cease to take place altogether. *Very high priority*

#### *Taxation level playing field*

The Commission’s Annex for negotiations is silent on the level playing field arrangements of specific taxes being levied. It states:

“the envisaged agreement should uphold the common high standards in the areas of State aid, competition, state-owned enterprises, social and employment standards, environmental standards, climate change, and relevant tax matters.”

If the deal with the EU requires level playing field on taxes, HMRC and Treasury may be bound to future taxes that it does not deem appropriate for the UK economy. Examples already exist such as VAT treatment on some categories of sanitary products, or energy.

Similar taxes that could exist in the future might include taxes on transaction within financial services, sometimes known as the Tobin Tax. *Medium priority*

### **Implications for the UK**

#### *Data/justice & security co-operation*

The Commission’s Annex states:

“The adoption by the Union of [data] adequacy decisions, if the applicable conditions are met, should be a factor for fostering cooperation and exchange of information. It is also a condition, where necessary, to achieve the high level of ambition on law enforcement and judicial cooperation in criminal matters.”

[...]

“The economic partnership should ensure that the Parties retain their autonomy and the ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives such as [...] consumer protection, data protection.”

The ability of HMRC, Serious Fraud Office, Police and National Economic Crime Agency to carry out their functions would be significantly impaired if the UK did not receive a positive data adequacy decision and these organisations were unable to share data between their international counterparts across borders. *Very high priority*

Many businesses rely on cross border sharing of customer data. The absence of a favourable data adequacy decision from the EU would introduce significant barriers to their operating models. *High priority*

## **Trade in goods**

### **Tariffs:**

The negotiation stances of both the UK and the EU begin with the aspiration of removing all tariffs and quotas from all goods. The potential introduction of tariffs on goods inwards would be a one-off source of inflation. Permanent future tariffs would represent a permanent increase in cost of living. *High priority*

### **Regulatory checks and compliance:**

The UK Approach states:

“It should promote principles of good regulatory practice when setting technical regulation, to ensure it is not more trade-restrictive than necessary. It should include provisions to facilitate the acceptance of the results of conformity assessment procedures, to ensure that these are not applied more strictly than is necessary to provide adequate confidence to the importing party. It should establish a framework for either party to request that the other consider its technical regulation to be equivalent to its own regulation.”

If there is no agreement on mutual recognition of standards for goods, costs and frictions at the border through checks would raise the costs of doing business and trading, which would either have a negative impact on business profitability or result in higher prices for businesses and consumers. *High priority*

Even if checks at the border are substantially reduced to a minimum, the cost to business would not be removed because businesses would still need to prepare documentation in the instances in which their consignment of goods were checked. Unless checks are removed in law, companies will have to comply with regulatory paperwork required, even if checks were reduced to very low levels. *High priority*

## **Trade in services**

The EU Mandate states:

“The envisaged partnership should include ambitious, comprehensive and balanced provisions on trade in services and investment in services and non-services sectors, respecting each Party’s right to regulate. These

provisions should aim to deliver a level of liberalisation in trade in services beyond the Parties’ WTO commitments and taking into account existing Union free trade agreements.”

[...]

“In line with Article V of the General Agreement on Trade in Services (GATS), the envisaged partnership should aim at substantial sectoral coverage, covering all modes of supply and providing for the absence of substantially all discrimination in the covered sectors.”

The aspiration for only “substantial coverage” rather than full coverage means that even if a negotiated trade deal covered services, some service export activities would cease to be carried out by the UK altogether. Any restrictions on service trade would correspondingly reduce the economic output of that service sector, and correspondingly lead to a reduction in GDP, taxable business, and taxable earnings. *Very high priority*

### **Level playing field—taxation**

The EU mandate states:

“The envisaged partnership should recognise and commit the Parties to implementing the principles of good governance in the area of taxation, including the global standards on transparency and exchange of information, fair taxation, and the OECD standards against Base Erosion and Profit Shifting (BEPS). It should ensure that the United Kingdom applies the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to at least the following areas: exchange of information on income, financial accounts, tax rulings, country-by-country reports, beneficial ownership and potential cross-border tax-planning arrangements.”

The Commission’s negotiation mandate Annex aims at continued co-operation on international efforts to combat international tax avoidance by multinational companies, commonly known as efforts to tackle Base Erosion and Profit Sharing (BEPS). This is an OECD initiative and can be mutually beneficial to both parties to continue existing measures.

### **Public procurement**

The EU mandate states:

“The envisaged partnership should provide for mutual opportunities in the Parties’ respective public procurement markets based on the United Kingdom’s access offer for accession to the GPA and beyond their commitments under the GPA in specific areas at all levels of government (including sub-central level), without prejudice to their domestic rules to protect their essential security interests. [...] National treatment should ensure treatment no less favourable than that accorded to locally-established suppliers or service providers.”

(OPPORTUNITY) In the absence of a trade deal in line with the Commission Annex, the UK could prioritise UK domestic companies, were no agreement with the EU to be reached. However:

(RISK) In its absence, UK firms would no longer be given equal status when bidding for public procurement with EU countries. *High/Medium priority*

### **State Aid**

The EU mandate states:

“The envisaged partnership should ensure the application of Union State aid rules to and in the United Kingdom.”

State aid agreements would have similar opportunities and risks to public procurement rules listed above.

The UK could provide state aid if no agreement were to be reached, but EU may introduce retaliatory measures such as tariffs and non-tariff barriers were this to take place. *Medium priority*

### **Dispute settlement**

In the absence of a functioning dispute mechanism it would become difficult for businesses to seek redress if they believed they were the victims of unfair or uncompetitive actions in a market. Without such certainties, businesses may choose not to enter a market, and may not invest. This could ultimately harming productivity growth, and the competitiveness of markets. *Medium priority*

### **Participation in future projects**

The UK would benefit from potential future participation in the operations of European Investment Bank within the UK. However, given such participation would require changes to EU treaties, this is unlikely. However, UK could replace this source of funding from its own domestic funds. *Low priority*

### **Rt Hon. Steven Crabb MP, Chair of the Welsh Affairs Committee**

Unfortunately, and as you will appreciate in the current circumstances, this is not a matter to which I or the Committee have been able to give particular attention to at this time.

The Committee has launched an inquiry into the implications for Wales of the trade dimension of the future relationship negotiations, the terms of reference can be found here: <https://committees.parliament.uk/work/119/brexit-and-trade-implications-for-wales/>. However, we have yet to take oral evidence on this matter.

### **Rt Hon. Caroline Noakes MP, Chair of the Women and Equalities Committee**

In light of the current situation, we have prioritised responding to your letter within the requested timeframe. Our comments are therefore not exhaustive.

There is little direct reference to matters of equality in the mandate. We think that ensuring there will be no negative impact to people with protected characteristics as a result of the UK leaving the EU is a matter of great importance. It is certainly a risk that has been raised with us by a number of our stakeholders, and which we believe warrants further debate.

The UK has often led the way on equality legislation. We think that there is an opportunity to continue to do so on areas such as worker’s rights and employment standards. We want the Government to ensure that there is no risk of a race to the bottom, in particular in relation to social and employment standards, we want the Government to go further. We want the Government to demonstrate a commitment to ensuring that the UK is a global leader in equality and human rights through its actions, as well as through its words.

We would like to draw the European Scrutiny Committee’s attention to the resolution on the mandate from the European Parliament on gender equality at paragraph 14(xi), that the following objective should be included in the negotiating directives:

“... an ambitious chapter on trade and gender equality should be included; the consequences of the UK’s withdrawal from the EU on gender equality should be taken into account, including by ensuring a level-playing field for EU actions protecting and advancing the role of women in economy, for instance in terms of measures combatting the gender pay gap...”

It is not clear what the UK Government’s view is on this objective and this may be worth drawing out in debate. We believe it would also be useful to have further information on the relevance of equality law in any negotiations around the EU’s aim of achieving a level playing field.

Our overall view is that principles of equality should underpin the negotiations and should inform the EU and the UK Government’s thinking across all areas. It is our view that ensuring this is done is of vital national interest as it affects the lives of people right across the UK.

### ***Rt Hon. Stephen Timms MP, Chair of the Work and Pensions Committee***

I know you will understand that other priorities in our programme of work, not least urgent scrutiny of the DWP’s response to the coronavirus outbreak, have not left us the opportunity to seek any evidence on these issues or to have a full discussion in Committee. We are therefore responding with our preliminary views to inform your immediate deliberations, but with the caveat that we would expect to consider these important issues in more detail later in the year—after the current crisis has passed—and contribute more fully to your ongoing scrutiny of the negotiations.

Our initial thoughts are that there are three areas that stand out within the policy areas within the Committee’s remit, and on which we believe an increased focus may be needed:

- Labour standards
- Occupational health and safety
- Social security

There is agreement between the UK and EU that at the point of a Free Trade Agreement coming into place the standards in the UK and EU would be comparable in these areas. Agreement still needs to be reached on how these standards will either remain aligned or diverge in future. More detail on what arrangements might be agreed for the future relationship is required from both sides.

Level playing field provisions will have the largest impact on any agreement in these three areas. Level playing field provisions include common rules on competition, state aid, the environment and social rights—which have been a central part of the EU’s internal market.

The Political Declaration stated that distortions of trade and unfair competitive advantages would be prevented, and both the UK and EU agreed at least not to regress below common EU and international standards in place at the end of the transition period in several areas of law. The text of the Political Declaration (Chapter XIV) details that the Parties should in particular:

maintain environmental, social and employment standards at the current high levels provided by the existing common standards.

The text says that “the precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties”, meaning that the negotiations now need to decide what level of commitments will match the future relationship. The future treaty would contain non-regression clauses with regard to fundamental rights at work, occupational health and safety, fair working conditions and employment standards. Both the UK and EU would promote social dialogue in labour matters.

The EU’s intended future relationship would ensure that the level of labour and social protection provided by laws, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to at least the following areas: fundamental rights at work; occupational health and safety, including the precautionary principle; fair working conditions and employment standards; and information, consultation and rights at company level and restructuring. It should also protect and promote social dialogue on labour matters among workers and employers, and their respective organisations, and governments.

The UK Government does not believe that to secure such an agreement, it is necessary to be bound by an international treaty or guided by shared institutions, which could restrict any aspirations to develop separate and independent UK policies.

The UK Government wants its commitments to high national and international standards and fair competition to be recognised without needing to follow EU law or having supervision included in treaty provisions. This is a similar approach to that taken in other free trade agreements with the EU. The Comprehensive and Economic Trade Agreement between the EU and Canada, for example, prevents either side from ignoring or lowering standards to boost trade and provides that where there is a dispute both parties should make every attempt to arrive at a mutually satisfactory resolution.

Under the Withdrawal Agreement, EU citizens who were residing in the UK and UK nationals who were residing in an EU Member States at the end of the transition period,



along with other specified groups, maintain their right to pensions and other social security benefits. If they are entitled to a cash benefit from one country, they will in principle be entitled to receive it, even if they decide to live in another country. The social security co-ordination arrangements for those who are not in scope of the Withdrawal Agreement who move to the EU after the transition period, are subject to negotiations between the UK and EU.

The Committee would welcome greater focus and debate on:

- The level of commitment that is required for a parallel evolution of standards to take place without the need for a formal resolution process, and which areas would not require future alignment providing that there is a binding commitment for no regression from current standards.
- The basis for future social security co-ordination, including the uprating of state pensions, for UK and EU citizens outside the scope of the Withdrawal Agreement.
- What third party standards the UK Government might commit to, to negate the need for a bilateral resolutions process. These might include the ILO core conventions and the ILO's decent work agenda, both of which formed part of CETA.
- Whether any changes to the application or technical definitions of the precautionary principle for occupational health and safety in either the UK or EU would require future alignment.

# Formal Minutes

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**Thursday 30 April 2020**

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