Executive summary

- Standing Order no. 143 should be revised to ensure better use of policy-specific expertise through greater synergies and more effective coordination with sectoral select committees and through instruments such as joint rapporteurships, joint hearings and briefings, and cross-committee reporting.
- Greater parliamentary involvement in the negotiations on EU withdrawal arrangements, the future relationship with the EU, and trade agreements with non-EU countries could increase the legitimacy of the Government’s international action.
- The current ad hoc European Committees should be transformed into standing sub-committees to address three key aspects of the post-Brexit environment: withdrawal, future relationship with the EU, and EU legislation with lasting effect on the UK.
- Membership and research capacities of the European Scrutiny Committee may need to increase to enable it to manage the workload and stimulate cross-committee cooperation, thus strengthening the institutional position of Parliament in future negotiations.
- The advantages of keeping the Lords EU Committee separate from the Commons European Scrutiny Committee are likely to outweigh any benefits of their merger into a single joint committee.
- The House of Commons should adopt a mixed scrutiny system based on proactive parliamentary agenda-setting and strategic policy prioritisation, which should see a more frequent adoption of own-initiative resolutions and the drafting of assessments of post-Brexit UK-EU regulatory and legislative convergence.
- The scrutiny reserve should be extended to cover the Government’s participation in post-Brexit institutions of governance, such as joint committees, regulatory cooperation bodies, and dispute settlement bodies.
- It is essential for the UK Parliament to devise a clear agenda of post-Brexit international engagement through parliamentary diplomacy, for which standing parliamentary delegations should be set up drawing on the best practice from the European Parliament and the Parliament of Canada.
- In order to maximise opportunities for influence, the UK Parliament should follow the examples of Norway and Switzerland and maintain active involvement in all current EU interparliamentary forums, as well as initiate new forums where this facilitates the pursuit of British interests.
- The Government should make firm commitments, if needed in statutory form, to enhance the transparency of post-Brexit policy making and guarantee Parliament’s access to information on the negotiations on international agreements and on draft decisions to be adopted by post-Brexit institutional bodies, such as joint committees.

A) Introduction
1. To begin with, there is a wide consensus across the House of Commons committees that adequate and intensive parliamentary scrutiny ought to be maintained after Brexit during any potential transition period as well as during UK-EU negotiations on a future relationship.\(^1\) The situation is less clear concerning parliamentary scrutiny of EU affairs after the expiry of a potential transition period and after a future relationship has been decided. This paper addresses these questions and discusses how the different aspects of Brexit should be reflected in the work of Parliament and the House of Commons in particular.

B) How the UK’s exit from the EU will affect the current document system for scrutinising EU law and policy and what changes might be needed

2. At present, the tasks of the House of Commons European Scrutiny Committee are laid down in **Standing Order no. 143** (p. 174 thereof) and are aimed at enabling MPs to respond to EU developments. These tasks are very widely formulated, thus leaving ample scope for the structuring of the Committee’s work. The Committee members are invited to do three things: (a) decide the legal and political importance of EU documents and, if they consider it appropriate, give an opinion on how UK law and policy are affected; (b) set up ad hoc European Committees under Standing Order no. 119 to discuss matters further; and (c) consider any issue arising from these documents, or related matters.

3. Although such wording provides useful flexibility in adjusting the work to the exigencies of the legislative developments at the EU level, the current scrutiny system needs reform. It is not only outdated,\(^2\) it is premised on the UK being a member state, which in all likelihood will stop being the case either on 31 October 2019 or later if another extension is agreed.\(^3\)

4. Brexit negotiations and exit itself have significant repercussions for the structure, objectives and content of parliamentary work regarding the EU. The UK moves from being an insider and an active shaper of EU legislation to an outsider and a passive observer. For Westminster, this brings a number of challenges.

5. First, one needs to question the internal committee structure of the House given that a number of committees already deal with EU affairs. These are above all the European Scrutiny Committee, the Exiting the European Union Committee, and the European Statutory Instruments Committee, but to some extent EU-related work is also conducted by the International Trade Committee and the Foreign Affairs Committee. Concerning the latter two committees, the EU dimension of their work will tangibly increase due to the necessity for the UK to agree terms of cooperation with the EU in the areas of trade, security, defence, international sanctions, migration etc. This could lead to overlap and duplication, which should be avoided. EU affairs

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\(^2\) The Standing Order uses some terminology, for instance concerning the definition of what EU documents are, which has become redundant and is no longer relevant.

\(^3\) The newly appointed European Commission President, Ursula von der Leyen, has already indicated that she will pursue a pragmatic and flexible approach to Brexit negotiations and is favourable to another extension. See: M. Banks, *Ursula von der Leyen "Does not See Any Problems" with Brexit Extension after 31 October*, *The Parliament Magazine*, 8 July 2019.
and Brexit are emphatically multidisciplinary and multifarious, they defy easy classification, cut across the remits of different committees, and address most policies dealt with in Westminster. Committees should therefore ensure that their activities are complementary and enable the cross-fertilisation of outputs.

6. This could be organised in a number of ways. One way is to create special and joint \textit{rapporteurships}, which would be shared among members of different Commons committees or between MPs and peers. Another way is to organise \textit{joint ministerial hearings} much more frequently. These are, for instance, routinely organised in the French Parliament, where MPs, senators and MEPs elected in France come together to discuss salient EU issues with representatives of the French Government and EU institutions. Further, the adoption of \textit{cross-committee reports} and positions would add value by bringing different expertise and perspectives to bear on the UK’s negotiating positions. This would strengthen the position of Parliament towards the Government as well as show a higher degree of unity over often controversial matters that regularly polarise the public opinion.

7. Such initiatives would in turn bolster the legitimacy of the UK’s claims in Brexit negotiations. They would facilitate the exchange of information and create greater synergies across the UK Parliament, the UK Government and the European Parliament. These internal rearrangements could help to bring various committees to work together and maximise their input and output.

8. Second, while the work of \textit{European Committees} has been helpful in deepening the debate on more salient EU dossiers, their key problem is lack of visibility and ad hoc character.\textsuperscript{4} I would advise to transform European Committees into permanent, standing sub-committees which would focus on different aspects of Brexit: Sub-Committee on Withdrawal (A), Sub-Committee on the Future Relationship (B), and Sub-Committee on EU Legislation (C).

9. \textit{The Withdrawal Sub-Committee} would have a fourfold responsibility: oversee the ongoing negotiations aimed at extricating the UK from the EU; monitor the application of the withdrawal arrangements (e.g. with regard to citizen rights, financial implications, Northern Ireland backstop), regardless of whether these arrangements stem from a Withdrawal Agreement or in less formal and temporary ‘contingency’ agreements that would extend the application of some EU law in case of no deal exit; scrutinise the action undertaken by the specialised committees envisaged under the current version of the Withdrawal Agreement;\textsuperscript{5} and, importantly, hold the Government to account for the activities taken by any institutionalised form of cooperation and dispute settlement that may be agreed, such as the Joint Committee foreseen by the Withdrawal Agreement.

10. \textit{The Future Relationship Sub-Committee} would focus on scrutinising two key aspects. The first concerns negotiations on a UK-EU trade arrangement and collaboration with the International Trade Committee in devising the House of Commons’ approach to replacement trade arrangements with non-EU countries. The second, similar to the Withdrawal Sub-Committee, would concentrate on Parliament’s scrutiny of any institutionalised form of cooperation foreseen under these agreements.


\textsuperscript{5} Article 165 of the Withdrawal Agreement.
11. The **EU Legislation Sub-Committee** would keep abreast of those EU legislative developments that are likely to have a strong bearing on UK policies after Brexit has been completed, such as those relating to financial services, data protection, transport, customs, etc. This Sub-Committee would advise on the desirability, advantages and necessities of voluntary legislative and regulatory alignment with EU law. The three sub-committees would therefore support the work of the European Scrutiny Committee, help structure its scrutiny, and strengthen its impact and external visibility.

12. Third, when it comes to **membership** of the European Scrutiny Committee, it may be necessary to increase its size to enable the House to deal with Brexit-induced workload more efficiently. Several non-EU countries with strong ties with or aspirations towards the EU provide a useful comparison. Serbia is an EU candidate country with an association agreement with the EU and the European Affairs Committee of the Serbian Parliament (*Narodna Skupstina*) counts 17 members and 17 substitutes, one member more than the European Scrutiny Committee. Turkey is in a customs union with the EU and its Parliament, the Grand National Assembly, maintains relations with the EU through two committees: the EU Harmonization Committee, which is internal to the Assembly (26 members), and the Turkey-EU Joint Parliamentary Committee which also incorporates members of the European Parliament (25 Turkish and 25 European members).\(^6\) Norway, a member of the European Economic Area, has a European Consultative Committee (*Europautvalget*) within its Parliament (*Stortinget*). This Committee is presided over by the Chairman of the Foreign and Defence Affairs Committee and is composed of members of the Foreign and Defence Committee (16 members), members of the parliament’s EFTA/EEA Delegation (6 members and 10 substitutes), and members of other relevant committees who may be invited due to their expertise in a given policy area. In Switzerland, which has a series of bilateral agreements with the EU, the Lower House of Parliament, the National Council, does not have a dedicated select committee for European affairs. These are instead scrutinised within the Foreign Affairs Committee (25 members compared to 11 members of the House of Commons Foreign Affairs Committee). Given that the UK Parliament will face a high degree of legislative activity in order to replace retained EU legislation with UK law, it would be advised for the parliamentary capacities in terms of human and financial resources to be increased accordingly. This would help to alleviate pressures, avoid backlogs and provide greater legal certainty to both citizens and businesses.

13. Fourth, in relation to the question of the **post-Brexit status of the European Scrutiny Committee**, there have been suggestions to abolish it and replace with a European Affairs Committee, or to establish a joint committee with the House of Lords.\(^7\) While I believe reforming the existing Committee is crucial, I am not convinced that joining forces with the House of Lords EU Committee would necessarily be beneficial.

14. Restructuring the European Scrutiny Committee will become inevitable for several reasons. First, once the Exiting the European Union Committee has completed its work and is wound up, its portfolio should be taken over by a reorganised ESC with a stronger internal structure as proposed above. Second, the nature of EU-related scrutiny will change away from sifting EU documents and reviewing their subsidiarity compliance towards: (a) the implementation of withdrawal and transition

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arrangements, (b) the adoption and scrutiny of statutes and statutory instruments needed to prepare the UK statute books for the post-Brexit period, and, crucially, (c) designing mechanisms for international parliamentary engagement.

15. Joining forces with the House of Lords may not be desirable because, unlike in some other member states where the upper house is elected, the two houses of the UK Parliament are very different and perform distinct roles within the UK constitution. While the House of Commons is more strongly focused on the activity of Government departments and have less time for in-depth analysis, the House of Lords approaches EU affairs from a more holistic perspective, aiming not only to hold the Government to account but also to accumulate knowledge, disseminate information and expertise, and influence wider audiences including EU institutions themselves.

16. Merging the two committees might do away with the present advantages of separate involvement by the Lords and the Commons. This could also lead to disagreements as to how to approach the Government, given that MPs would be more constrained by party politics than peers and would be subject to greater pressures for constituency work and the pursuit of legislative agendas. The Lords also focus on a smaller number of EU documents in greater depth, as opposed to a much wider ‘sift-and-flag’ process in the Commons. Keeping separate the two EU-oriented committees in the Lords (European Union Committee) and the Commons (European Scrutiny Committee) would continue to add value through mutually complementary work. When it comes to these two committees’ remits, it is positive that informal liaison and coordination is already maintained to avoid duplication. If needed, the relationship between the remits of the two committees could be spelled out in a joint committee statement of the Commons and the Lords.

17. The joining of committees could furthermore reduce the EU-related output of the UK Parliament, as there would only be one unified position, as opposed to having a variety of views being presented from different perspectives and with different objectives in mind (e.g. statements for the purpose of influencing the Government, influencing EU developments, influencing the public opinion, or informing the debate). The advantage of the House of Lords as the chamber of reflection might be eroded if peers were made to fit the Commons schedules. Separate scrutiny committees whose remit and mutual relationship were more precisely delineated and whose activities were better coordinated would preserve the qualities of each House's contribution to scrutinising EU affairs.

18. From a comparative perspective, the joining of parliamentary committees elsewhere has not in and of itself brought particular advantages in terms of scrutiny or parliamentary control. The Netherlands and Ireland illustrate this well. The Dutch Parliament has trialled a Temporary Joint Committee for Subsidiarity Review (Tijdelijke Gemengde Commissie Subsidiariteitstoets) but after three years of its operation (2006-2009), the committee was abolished after members of the Upper House (Eerste Kamer) decided no longer to be a part of it. Contrary to what one might have expected, the final Eerste Kamer evaluation concluded that such a

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committee added no value and that it only caused delays, thus contributing to decreased efficiency, which is crucial for a deadline-sensitive procedure of subsidiarity monitoring within the early warning mechanism.\footnote{Eerste Kamer der Staten Generaal, Kamerstukken I no. 30 953, ‘Evaluatie Tijdelijke Commissie Subsidiariteitsstoets’, vergaderjaar 2008–2009.} Already during the establishment of this Committee, there were concerns among Dutch MPs that a joint committee might jeopardise the primacy of the Lower House (\textit{Tweede Kamer}) in the Dutch constitutional system. As a result, the European Affairs Committees of the \textit{Tweede Kamer} and the \textit{Eerste Kamer} carried on with their own subsidiarity monitoring arrangements. The Irish Oireachtas has a Joint Committee on European Affairs which has shown that collaboration between the houses of parliament can be effective in terms of adopting reports.\footnote{See in greater detail: G. Barrett (2018), \textit{The Evolving Role of National Parliaments in the European Union: Ireland as a Case Study} (Manchester University Press).} Even so, Irish parliamentary control in EU matters has been judged unsatisfactory,\footnote{G. Barrett (2015), ‘Long Train Running: The Slowly Developed (and Slowly Developing) Role of Ireland’s Oireachtas in EU Affairs’, in C. Neuhold et al. (eds), \textit{The Palgrave Handbook of National Parliaments and the European Union} (Basingstoke: Palgrave Macmillan), pp. 290-311.} and has scored very low in the rankings of national parliaments.\footnote{T. Winzen (2012), ‘National Parliamentary Control of European Union Affairs: A Cross-national and Longitudinal Comparison’, \textit{West European Politics}, Vol. 35, No. 3, pp. 657-672, at 664-665.}

19. The benefits of joint EU-related work of the House of Commons and the House Lords can instead be reinforced by means of an interinstitutional agreement where common goals would be set and procedures agreed for joint meetings where this adds value (e.g. information-sharing on matters of common concern, briefings with Government and EU representatives, or thematic hearings with external stakeholders).

20. Fifth, research capacities of the committees focused on European, trade and foreign affairs should be enhanced. The European Parliamentary Research Service and the US Congressional Research Service provide good examples of strong research and evidence-based support for parliamentarians but also for the wider public. The reports prepared by such research services (e.g. impact assessments, added value analyses, cost-benefit factsheets, comparative studies, etc) should be publicised more widely and its contents integrated and used more prominently in both committee reports and in discussions with the Government.

21. Fact-based evidence base is critical for parliamentarians’ international engagement as well as their constituency work. This can be achieved by establishing stronger ties with the House of Commons Library, which has thus far made insightful contributions to the debate, but more should be done to incite a normative debate on the future policy options for the UK’s position in Europe and the world. The Hansard Society has also been a very helpful source of information and reflection. The UK Parliament’s practice of organising academic seminars is particularly useful in providing research-informed outside perspectives which could enhance the information base for parliamentary reports.

22. Sixth, greater synergies with sectoral select committees in exchanging policy-specific expertise should be fostered, given that the exchange of information and knowledge between them and the European Scrutiny Committee has been sparse and unstructured.\footnote{Cash MP, supra note 6, p. 20.} The impact of Brexit, which affects virtually all areas of UK law, provides a unique opportunity to establish channels for dialogue between EU-
focused committees and departmental select committees in charge of a given policy area. One way to establish a structural link would be to appoint European liaison officers within departmental select committees who would ensure regular personal linkages with the EU-oriented committees. Other means include joint hearings, inquiries and evidence sessions, as well as the formalisation of the procedures for soliciting and giving policy-specific opinions between the committees.

23. Seventh, in terms of the nature of post-Brexit parliamentary scrutiny, I would not advise the establishment of a mandating system of scrutiny, which is practiced in some other national parliaments in the EU. These systems are too rigid and do not sit well with the royal prerogative. The introduction of such a system would reduce the Government's flexibility in international negotiations and could slow down the process of agreeing the UK's position. This system is furthermore associated with frequent minority governments (e.g. Denmark), which is not the case in the UK. Also, too tight a grip over the Government can lead to negative negotiation outcomes in situations where the Government faithfully abides by the constraints imposed by the parliamentary mandate, but ends up being outvoted or rejected.

24. I would therefore advise a mixed system of scrutiny. This would not be based on sifting every document coming from the EU for its legal and political importance. Instead, the committee should take a more proactive agenda-setting approach and seek to establish a list of annual, biennial or triennial strategic policy priorities and focus on convergences between the UK's planned regulatory and legislative agendas and the EU's policy priorities published in the Commission’s annual work programmes and legislative and work programmes. These lists would be devised in consultation with the Government, with the particular contribution of the minister in charge of European affairs. Such a proactive approach would remedy the problem posed by the fact that sifting through EU documents is based on a ‘subjective judgment’. Rather than wait for EU documents to reach the European Scrutiny Committee, the Committee should identify its own priorities and select the corresponding EU documents on this basis. Prioritisation would effectively decide the direction of scrutiny, and this decision would be a result of the choices made by MPs in accordance with their political preferences. In turn, this could politicise the process and thus increase the profile of the ensuing parliamentary debates. A version of this priority-based scrutiny is successfully practiced by the Portuguese Parliament (Assembleia da República) in the form of ‘enhanced scrutiny’ which involves tight cooperation with sectoral committees.

25. The prioritisation of scrutiny will become increasingly important when Britain regains full legislative autonomy, because this may and eventually will likely lead to some regulatory divergences with the EU. This is why I would strongly advise this committee and other competent parliamentary bodies to unite in creating a strategic approach to analysing the status of UK-EU regulatory and legislative convergence. This is essential because after Brexit exports to the EU will need to abide by EU regulatory standards (e.g. human, animal and plant health, product safety, technical

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16 Broadly similar reasoning, which underlines the importance of active position-taking by Parliament, has also been advocated by Sir Ivan Rogers, former UK Permanent Representative to the EU, who advised their lordships that, in the context of future trade negotiations, ‘the House needs to develop its own conception of what matters most to it and why’. House of Lords, EU Committee, Uncorrected Oral Evidence: Scrutiny of Brexit Negotiations, 20 February 2019, Q6.

17 Heaton-Harris MP and Broadhurst, supra note 4, p. 45.

standards, labelling requirements). This is laid down in EU regulations and EU directives, which are currently a part of UK law either directly or after transposition. Although the European Union (Withdrawal Act) 2018 retains much of the EU law that is currently applicable in the UK, post-Brexit Britain will be free to move away from EU law. This, however, can cause additional burdens on UK businesses which intend to trade with the EU. Therefore, parliamentary action on assessing regulatory compatibility between the UK and the EU will be essential.

26. Moreover, the UK Parliament’s voting on Brexit has proven that the Government’s grip over the parliamentary majority weakens the more controversial and politically sensitive the matter becomes. The repeated rejections of Prime Minister May’s withdrawal agreement are evidence that Parliament can play an active role in the shaping of UK’s European policy and foreign affairs. Instead of adopting mandates, the European Scrutiny Committee should take greater lead in initiating the adoption of resolutions expressing Parliament’s views on Brexit and EU affairs in advance of negotiating rounds without formally tying the hands of the Government. Currently, House of Commons resolutions on EU affairs are mostly document-oriented which to some extent limits their impact. A reformed practice of a more frequent adoption of own-initiative resolutions – which are not necessarily based on a specific EU document, but based on broader considerations concerning the direction of a given policy (e.g. expressing opinion proactively on how a certain policy or negotiation should be shaped) – would be highly beneficial to Parliament’s influence over the Government and its EU interlocutors. Discussing and suggesting different policy options would be a more constructive way of participating in policy formulation and informing the public. Indicative votes on options for Brexit are a step in this direction, with the focus needing to be on what Parliament supports rather than what Parliament opposes. Positive action is far more likely to exert influence. Although such resolutions would not be legally binding, they would have political force. They would not only inform the Government’s policy making but could also enhance the legitimacy of the Government’s claims in negotiations. Resolutions have been a strong political tool which the European Parliament is using ex ante to draw red lines or express approval or opposition to a given course of EU action. The UK Parliament should learn from this and make greater use of this instrument of influence.

27. Eighth, the scrutiny reserve should be kept. It has thus far proven to be a valuable and sufficiently flexible tool in Parliament’s hands, which enabled it to halt Government action until MPs have completed scrutiny, while allowing the Government to override the reserve and proceed in urgent cases subject to an ex post justification. I would advise the committee to extend the scrutiny reserve to any institutionalised form of cooperation that may be agreed post-Brexit.

28. Ninth, the UK Parliament should set up mechanisms for ex ante and ex post scrutiny of the Government’s decisions within joint committees established under any withdrawal arrangements with the EU and future trade agreements with the EU and non-EU countries. This would apply to agendas, positions and draft decisions of the Joint Committee foreseen under the now defunct Withdrawal Agreement, which may be revived by fresh negotiations that Prime Minister Boris Johnson may engage in with the EU. This Joint Committee enjoys powers related to the implementation, application and interpretation of the Withdrawal Agreement and to the resolution of any disputes arising therefrom. It is important to note that these powers entail political discretion (e.g. concerning the effects of amendments or replacements of EU social security legislation, the extension of the transition period, or amendments to

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19 See Sections 2-7 thereof.
20 Article 36 of the Withdrawal Agreement.
the non-essential elements of the Agreement\textsuperscript{22} and have financial implications (e.g. the fees that the UK will need to pay in order to access relevant EU networks, information systems and databases).\textsuperscript{23} The UK Parliament should insist on having comprehensive and timely access to information concerning the work of any such future committee.

29. Such joint committees are common to trade agreements, such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA) Joint Committee, the EEA Joint Committee, the Joint Committee under the now moribund EU-US Transatlantic Trade and Investment Partnership (TTIP) agreement, and over 20 EU-Switzerland joint committees. These committees are executive and managerial engines of trade agreements. An appropriately restructured European Scrutiny Committee, as outlined above, would be well-equipped to scrutinise their activities.

30. In addition to the joint committees, regulatory cooperation bodies might be set up. TTIP foresaw a regulatory coordination mechanism and a series of channels for legislative exchange. These forms of institutionalisation, which rely on softer forms of cooperation such as dialogue and communication, are not politically neutral and engage in politically sensitive issues where important policy choices are made.\textsuperscript{24} This necessitates adequate parliamentary scrutiny procedures to be put in place to avoid gaps in accountability.\textsuperscript{25}

31. With respect to both joint committees and regulatory cooperation committees, Parliament should seek a commitment by the Government to raise issues within these committees where Parliament has identified them as problematic or injurious to British interests. If the Government disagrees with Parliament’s view, there is a risk of the latter being ignored. This is why MPs should set up timely ex ante discussions with a competent Government representative in advance of joint and regulatory cooperation committee meetings to address any differences of opinion and discuss the UK’s position on the items appearing on the agenda. As mentioned above, an extended scrutiny reserve would be a suitable guarantee for parliamentary scrutiny.

32. Tenth, the establishment of a ‘parliamentary engagement group’ to act in an advisory capacity announced by incumbent Brexit Secretary, Stephen Barclay, is a welcome development.\textsuperscript{26} However, this initiative is issue-specific and limited to enabling MPs and peers to have an input in devising workable alternatives to the Northern Ireland backstop. This platform for Government-Parliament liaison should be extended to the wider post-Brexit context.

C) Purpose and form of scrutiny of EU law and policy in a post-exit world

33. Formally, the UK is a full member of the EU until exit. De facto, the UK is a ‘non-EU state-in-waiting’. If the UK does not do anything it will eventually become a non-EU state. The UK has in fact already begun acting as a non-EU state as shown by Prime Minister May’s decision not to attend the informal European Council meeting in Sibiu.

\textsuperscript{21} Article 132 of the Withdrawal Agreement.
\textsuperscript{22} Article 164(5)(d) of the Withdrawal Agreement.
\textsuperscript{23} Article 50 of the Withdrawal Agreement.
\textsuperscript{26} Written statement by Mr Stephen Barclay MP on EU Exit, doc. no. HCWS1386, 07 March 2019.
None of this, however, masks the fact that EU law will have effects and consequences for the UK for a long time after exit. While this issue has been analysed in many studies, the following paragraphs outline an aspect that has received less attention, namely why and how the UK Parliament should strengthen its capacities for *parliamentary diplomacy*.28

34. The successes and challenges of the international action of UK parliamentarians in general is well-illustrated by the influence exerted by the British Group of the Inter-Parliamentary Union (IPU). The IPU was co-founded in 1889 by Sir William Randal Cremer, a Liberal MP who went on to receive a Nobel Peace Prize in 1903, while the IPU Centenary, attended by 110 nations, was held in London in 1989.29 The British Group of the IPU is presently chaired by a Conservative member of the House of Commons Exiting the EU Committee, John Whittingdale.

35. With respect to Brexit, Westminster has already begun engaging parliamentary diplomacy at the level of the UK through the establishment of the Interparliamentary Forum on Brexit in October 2017. However, to cope with the UK’s withdrawal from EU decision-making bodies, it is absolutely paramount for Parliament to set out a clear agenda of international engagement. Parliament will need more not less presence not only in Brussels but also in bilateral and multilateral relations with other parliaments and institutions. This will be critical in an attempt to realise the goal of constructing a ‘global Britain’.

36. It is encouraging that the Political Declaration calls for interparliamentary cooperation between the UK Parliament and the European Parliament.30 This could take the shape of a joint parliamentary committee (e.g. a new UK-EP Joint Parliamentary Committee or Euro-British Legislative Forum).

37. Westminster should seek to continue participating in all formal and ad hoc EU interparliamentary conferences, including the COSAC Chairpersons and Plenary formats, the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU, the Interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), the Joint Parliamentary Scrutiny Group on Europol, and the Conference of Speakers and Secretaries General of the EU Parliaments.31 By way of comparison, the Turkish Grand National Assembly has participated in COSAC meetings since 2003. Even though British parliamentarians will not have the right to vote within such interparliamentary forums, this will be an important asset in terms of putting matters on the EU agenda or proposing ideas for policy development that could resonate with European colleagues and allow UK parliament to exercise a degree of indirect influence even after Brexit.

38. It will also be critical for the UK Parliament to retain and improve the personal and operational capacities of the National Parliament Office in Brussels. I have personally witnessed the helpful informal work done by House of Commons and House of Lords

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30 Points 125 and 128 thereof.

permanent parliamentary representatives (‘antennas’). I am convinced of the value they bring to the voice of the UK Parliament being heard among EU institutions and other national parliaments. They help to disseminate the views of the UK and create a network of contacts that are instrumental to the timely and impactful scrutiny of EU affairs, both via the Government and directly with EU institutions. The Norwegian Stortinget has operated a well-functioning office in Brussels since 2010, and has been based at the premises of the European Parliament since 2013. The importance of informal ties and the physical presence of parliamentarians in the EU centres of decision making is compellingly shown by the calls, at least in academic discussions, for the US Congress and the Chinese National People’s Congress to set up liaison offices in Brussels.

32. It is furthermore important for the UK Parliament to retain full access to the IPEX database of EU documents and information on the progress of EU-related national parliamentary scrutiny. Apart from all EU member states, EU candidate countries have IPEX correspondents, as does Iceland as a non-EU country, making it possible for the UK to keep its status within IPEX.

33. It is equally advised to establish informal bilateral relationships and contacts with the national and, where judged advantageous, regional parliaments of the EU member states. However, it should be borne in mind that EU national parliaments have assigned roles within European integration, which may constrain their international engagement. This will no longer be the case with the UK Parliament after Brexit.

34. Beyond these forums, the UK Parliament, where this is judged beneficial, would also be able to take part in other interparliamentary forums. For example, the European Parliamentary Week – which encompasses the European Semester conference and the abovementioned Interparliamentary Conference on Stability, Economic Coordination and Governance – is regularly attended by parliamentary officials both from EU candidate countries in their capacity as observers, and by Norway and Switzerland in their capacity as ‘special guests’. At the latest European Parliamentary Week, Norway was represented by a two-member delegation composed of the national parliament representative in Brussels and by the Vice-Chair of the Standing Committee on Finance and Economic Affairs of the Stortinget. The Swiss delegation was composed of the Chair of the Swiss Federal Assembly’s EFTA/EU Delegation and the Delegation’s deputy secretary.

35. Other interparliamentary forums may involve non-EU parliamentarians, too, and may be organised by a national parliament. An example of this is the 7th Conference of the Parliamentary Committees for the Oversight of Intelligence and Security Services of the European Union Member States, Norway and Switzerland, which was organised by the German Bundestag in October 2011. This meeting resulted in the adoption of a declaration. These forms of interparliamentary cooperation will be particularly important for the UK in light of the loss of access to EU databases established in the Area of Freedom, Security and Justice.
43. These examples demonstrate that there is clear political will on the part of the European Parliament and national parliaments of the EU member states to nurture links with third countries with which the EU has a close economic relationship. The UK Parliament should carry out a periodic cost-benefit analysis of participating in these forums and engage accordingly.

44. In the long term, the UK Parliament should strive not only to maintain the existing interparliamentary links but, crucially, to initiate new ones where this would enable MPs to exert influence and keep a watchful eye over policy and legislative developments. For instance, the European Parliament has been engaged in the work of the Northern Dimension Parliamentary Forum, as the parliamentary component of the Northern Dimension. This is a quadrilateral policy between the EU, Norway, Iceland and Russia, with a very broad agenda covering economic cooperation, environment protection, health transport, education, etc. EU member states participate in their national capacity, while, for instance, Canada and the US act as observers. The UK Parliament should endeavour to establish new forms of interparliamentary cooperation at the European level, but also at bilateral and multilateral levels beyond Europe, especially in policy areas of strategic interest to the UK, as identified in strategic policy priorities suggested above. This would help Westminster to reinvent itself as a leader and engine for global parliamentary diplomacy.

45. The UK will start conducting trade policy with third countries independently after Brexit. Establishing stronger internal structures for parliamentary diplomacy is particularly important in light of the Government’s refusal to accept a yes/no vote on post-Brexit trade deals. Creating new and strengthening the existing links with third countries is critical in light of the intensive agenda of trade agreements that the UK will be negotiating with the countries and trade blocs with which the EU has already fully or partially concluded trade agreements (Canada, Singapore, Japan, Vietnam, Mercosur, South Korea, Mexico, etc) or is in the process of negotiating one (United States, Australia, New Zealand, Indonesia, etc).

46. To this end, Westminster should establish standing parliamentary delegations for relations with future trade partners. This could be done in the form of bilateral or trilateral legislative dialogues (e.g. a new UK-China Legislative Dialogue, or UK-Australia-New Zealand Legislative Dialogue). Some basis for this already exists at Westminster in the form of all-party parliamentary groups, which cover a very wide variety of countries, territories and issues. However, these groups do not enjoy the status of official parliamentary bodies. Newly created delegations should enjoy official status in order to give them greater prominence and weight in interactions with counterparts abroad.

47. The UK Parliament currently has three official ‘overseas delegations’ to interparliamentary assemblies: the Parliamentary Assembly of the Council of Europe (PACE), the NATO Parliamentary Assembly (NATO PA), and the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE PA). These delegations are appointed by the Prime Minister (PACE and OSCE PA) or the Foreign Secretary (NATO PA) in the form of a Written Statement. This gives a

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38 See the most current list at: UK Parliament, Register of All-Party Parliamentary Groups, 19 June 2019.
degree of influence over delegation formation to the Government. On the contrary, the constitution of the European Parliament’s delegations is entirely a matter for Parliament: proposal is made by the Conference of Presidents and appointment finalised by the plenary. Westminster should seek to gain greater autonomy from the Government is organising its own delegations for international relations.

48. From a comparative perspective, inspiration could be taken from the European Parliament, which has established over 40 delegations for relations with third countries, trade blocs and international organisations and has built a well-functioning internal institutional structure to enable them to conduct their operations. The Parliament of Canada is also illustrative and could provide useful insights for Westminster, because it has a very developed internal system of parliamentary diplomacy, which involves both the House of Commons and the Senate. It has a Canada-Europe Parliamentary Association, which ensures a wide coverage of direct parliamentary exchanges with parliamentary institutions in Europe, such as the European Parliament, PACE, the OSCE PA, etc. It currently counts 107 members. Canadian parliamentarians from both Houses are free to join upon payment of an annual fee. While the advantage of such a paid system of membership is that it may ensure that only interested parliamentarians join, it has also been criticised as potentially enabling parliamentary tourism. In any event, an important activity that Canadian parliamentarians engage in is missions to the country that will next hold the rotating Presidency of the Council of the EU. This enables them to establish personal contacts with the EU agenda-setters and inform the two Houses of ways to develop cooperation.

49. The creation of a broader network of UK parliamentary delegations would in turn help to address the gap which will be left due to the cessation of UK parliamentary scrutiny of draft EU trade agreements and the accompanying EU documents (e.g. negotiating mandates, position papers, draft decisions on the signing and conclusion of agreements). The mechanism of parliamentary involvement in the process of concluding UK international treaties under the Constitutional Reform and Governance Act 2010 is ill-suited, because it does not reflect the loss of parliamentary scrutiny power that Brexit will cause. This Act does not envisage any legally binding obligation for the Government beyond the laying of a copy of the treaty before Parliament for 21 sitting days. Provided an explanation is given, the Government is free to disregard an adverse parliamentary resolution and ratify the treaty regardless as long as ‘the Minister is of the opinion that the treaty should nevertheless be ratified’. Especially concerning replacement trade agreements which have hitherto been dealt with under the EU’s Common Commercial Policy, this mechanism is not fit for purpose and enables serious legitimacy and accountability slippages. This is because ratification is almost entirely at the discretion of the executive. Exit from the EU is the right time to revisit this and install more compelling ex ante arrangements for legislative-executive relations in foreign trade policy. This should be aimed at allowing Parliament to have an opportunity to express its position.

44 Section 20 of the Constitutional Reform and Governance Act 2010.
throughout the different rounds of negotiations of international agreements, and at any rate well in advance of them being signed on behalf of the UK. This will also entail a more structured inter-committee coordination within each House of Parliament as well as between the two Houses.

50. The two routes for the institutionalisation of interparliamentary ties – European and global – would help to regularise interparliamentary exchange and establish valuable channels of communication and debate. This would also enable Westminster to voice its concerns and opinions on bilateral relations with the EU and third countries, which may be then taken into account by the partner parliament in its own deliberations. Establishing stable platforms for interparliamentary liaison is also required because the UK Government is likely to set up similar arrangements at summit, ministerial and technical levels with the EU and non-EU partners as post-Brexit life settles down.

D) What action the Government should take to “support and facilitate a strong parliamentary scrutiny process” post-exit

51. Since Brexit will bring about profound changes in the status of the UK in international relations and in the constitutional relationship between Parliament and Government, it is critical that the latter make credible commitments to ensure adequate parliamentary involvement for the purposes of political accountability and democratic legitimacy. In addition to the recommendations made above, the following would reinforce parliamentary action on EU-related affairs.

52. The Government should undertake to provide continued access to information via explanatory memorandums, which should be adapted to the post-Brexit context. These explanatory memorandums should concern not only international treaties as already foreseen under Section 24 of the Constitutional Reform and Governance Act 2010, but also to: (a) EU legislation drafted during the remainder of British membership, during the transition/implementation periods, and after the expiry of the transition period in relation to salient EU legislation of lasting effect for the UK; (b) draft decisions and policy papers pertaining to the UK’s involvement in the institutional bodies established under post-Brexit UK-EU agreements (e.g. trade, security cooperation, educational mobility under the Erasmus programme, etc). These adjustments would provide greater focus to parliamentary scrutiny and supply a more solid political basis for committee analysis and plenary debates on the issues concerned.

53. Parliament should request the Government to increase the transparency of the negotiations of post-Brexit international agreements, including agreements with the EU and third countries. This particularly concerns the Government’s negotiating papers (e.g. positions, analyses, studies, minutes of meetings, agendas, explainers, summaries, and factsheets which inform the Government’s policy making). This would avoid the negative effects of potential leaks and would give certainty to the negotiating parties. This would not necessarily prevent the Government from changing its view where circumstances so require, as long this is communicated to Parliament and the citizens in a timely fashion.

54. The European Commission sets a very good example in enhancing the transparency of trade negotiations, if not necessarily in the EU legislative processes as such. In January 2015, for the first time ever, the Commission published a series of EU textual proposals, including layman’s guides and factsheets. This change towards providing extensive information on EU websites was sparked to some extent by

popular resentment surrounding the secrecy of TTIP negotiations. The UK Parliament has already acted decisively when faced with the May Government’s reluctance to disclose full information and has even found the Government to be in contempt of Parliament over the non-disclosure of Brexit legal advice. The Foreign Secretary in the newly appointed Johnson Cabinet, Mr Dominic Raab, while he was Brexit Secretary, infamously refused to appear in the House of Lords to discuss Brexit until a deal with the EU has been reached, and has supported the idea of suspending Parliament in order to achieve Brexit. These are clear signs of urgency for Parliament to strike binding commitments with the Government, if necessary in statutory form, concerning access to information and ex ante and ex post reporting to enable MPs to scrutinise the Government and hold it to account for action within post-Brexit governance mechanisms.

55. Parliament ought to ensure that any Government commitments do not remain hollow statements and should insist on concrete guarantees, mechanisms, arrangements and channels for holding the Government to account.

July 2019

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