



Law Society
of Scotland

Consultation Response

Public Administration and Constitutional Affairs
Committee Inquiry into Brexit and Devolution

April 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Constitutional Law Sub-committee welcomes the opportunity to consider and respond to the Public Administration and Constitutional Affairs Committee Inquiry into Brexit and Devolution.

Preliminary Comments

The UK's exit from the EU is arguably the most significant constitutional development to affect the UK since 1945. Other changes including accession to the European Economic Community in 1972, the development of devolution to Scotland, Northern Ireland and Wales in the 1990's, the adoption of the Human Rights Act in 1998 and the creation of the Supreme Court in 2005 were important constitutional changes most of which have affected the lives of many millions of people living across the UK. However the UK's exit from the EU has so many significant aspects including economic, financial, legal, social, and cultural, which will affect every person living in the British Isles and has as much potential to affect many people living in the EU in some ways which are known and understood and in other ways which are currently unpredictable. The impact of the change however will also have deep broad and far reaching effects for the immediate future and for several years to come.

1. Repatriation of legislative, policy and regulatory powers and responsibilities

The Scottish Government's paper *Scotland's Place in Europe* identified the following areas currently under EU competence which are not specifically reserved under the Scotland Act 1998.

- a) Agriculture, food and drink, in areas covered by the EU Common Agricultural Policy and EU law on food and drink, animal health and welfare, plant health, seeds, potatoes, pesticides and genetically modified organisms.
- b) Fisheries, aquaculture and the marine environment, which are subject to the EU Common Fisheries Policy and marine environment and planning laws.

- c) Environmental protection, including laws on pollution, waste and recycling.
- d) Civil law.
- e) Criminal law and law enforcement.
- f) Health, for example protections afforded under the European Health Insurance Card scheme.
- g) Higher education and research, where Scotland has benefited from EU mechanisms for collaboration and funding. It should be noted that some research funding is reserved under Schedule 5 to the Scotland Act 1998.

The Scottish Government also identified in its paper (paragraph 176) that the following areas would also have to be considered:-

- a) “Repatriated” competences in reserved areas. These are matters no longer subject to EU law which are not within current devolved competence which the Scottish Government believes should be forwarded to enable the Scottish Parliament to protect citizens’ rights such as Employment Law and Health and Safety Legislation.
- b) “Additional Powers to protect Scotland’s interest”. The Scottish Government believes that “beyond repatriated powers, the current division of responsibilities between the Scottish Parliament and Westminster must be reconsidered to reflect the change that will be effected to the UK’s Constitutional Settlement by leaving the EU. New powers to secure any differentiated relationship with Europe be part of this, but additional devolution is necessary in any case to ensure that the Parliament is able to protect Scotland’s interest in this new context.”

The paper then goes on to describe in further detail the content of these propositions (paragraph 177-189).

The Law Societies Joint Brussels Office has conducted some research into the EU Competences concerning agriculture, fisheries, aquaculture, health cover and higher education. This work (contained in the Appendix) indicates the large number of directives and complexity of the legislation affecting these areas of the law.

Accurate mapping of the devolved powers in each of the legislatures in Scotland, Northern Ireland and Wales and in each of the executive authorities in Scotland, Northern Ireland and Wales is essential in order to work out which powers would devolve from the EU via the UK to the devolved arrangements.

Professor Alan Page’s paper “*The implications of EU withdrawal for the devolution settlement*” prepared for the Scottish Parliament’s Culture, Tourism, Europe and External Relations Committee deals with this in significant detail. Professor Page’s paper “maps the reserved matters defined in Schedule 5 to the Scotland Act 1998 onto the EU competences set out in the EU Treaties (Articles 2-6 TFEU).” This

provides a way to identify the policy responsibilities which the Scottish Parliament would acquire if there were no amendment of the Scotland Act in the Great Repeal bill.

Professor Page identifies justice and home affairs, agriculture, animal health and welfare, food safety, food labelling and food composition, fisheries, and the environment as the policy responsibilities which would fall to the Scottish Parliament. In his opinion in agriculture, fisheries and the environment there could be policy and legislative divergence between the nations and regions of the UK in the absence of a common EU framework although compliance with international obligations may limit the scope for differences in environmental law.

Professor Page considers that withdrawal could call into question the UK single market in e.g. agricultural produce unless, “the UK as a whole continues to follow EU Rules or common Rules are otherwise adopted”. Professor Page states that “It may be therefore that adjustments will be made to the devolution settlement in policy areas such as agriculture in order to prevent such fragmentation occurring.”

In contradistinction to reserved powers under the Scotland Act 1998 and excepted powers under the Northern Ireland Act 1998 (which generally reserve powers to the UK Parliament) the current arrangements for Wales (although these will change with the implementation of the Wales Act 2017) provide that the National Assembly for Wales can only legislate on matters that are specifically conferred upon it by the UK Parliament and that anything which is not conferred is outside the competence of the National Assembly. This differentiation between the forms of devolution may create technical difficulties for dealing with repatriated laws in connection with matters currently within the province of the EU under the treaty.

Some of these areas may be dealt with in the context of the withdrawal agreement between the UK and the EU such as civil law and criminal law enforcement, others by parallel UK legislation such as the immigration or customs bills, but others will be effectively repatriated at the point of leaving the EU.

The Prime Minister stressed that “no decisions currently taken by the devolved administrations will be removed from them”, but that devolution of repatriated powers would need to be managed in such a way as to ensure no new barriers within the UK are created.

The UK White Paper *‘The United Kingdom’s exit from and new partnership with the European Union* (‘The Exit White Paper’) indicates that “As the powers to make these rules are repatriated to the UK from the EU we have the opportunity to determine the level best placed to make new laws and policies on these issues ensuring power sits closer to the people of the UK than ever before” (para 3.5).

In the White Paper *‘Legislating for the United Kingdom’s Withdrawal from the European Union* (“the Great Repeal bill White Paper”) chapter 4 deals with “Interaction with the devolution settlements”.

Paragraph 4.2 states: “In areas where the devolved administrations and legislatures have competence, such as agriculture, environment and some transport issues, the devolved administrations and legislatures are responsible for implementing the common policy frameworks set by the EU. At EU level, the UK

Government represents the whole of the UK's interests in the process for setting those common frameworks and these also then provide common UK frameworks, including safeguarding the harmonious functioning of the UK's own single market. When the UK leaves the EU, the powers which the EU currently exercises in relation to the common frameworks will return to the UK, allowing these rules to be set here in the UK by democratically-elected representatives."

The Paper goes on to state that as powers are repatriated from the EU "it will be important to ensure that stability and certainty is not compromised and that the effective functioning of the UK single market is maintained". The UK Government's guiding principle is to "ensure that no new barriers to living and doing business within our own Union are created as we leave the EU "(paragraph 4.3).

The UK Government intends to "replicate the current frameworks provided by the EU Rules through UK Legislation" (paragraph 4.4).

The Great Repeal bill White Paper also identifies the role of subsidiarity in these issues in paragraph 4.5 and indicates that there will be a "significant increase" in the decision making power of each devolved administration. This is a logical position because many of the powers currently exercised by the European Union cover activity which do not fall into reserved matters under the Scotland Act 1998. However paragraph 4.5 also states that "This will be an opportunity to determine the level best placed to take decisions on these issues..." Therefore the UK Government ought to indicate soon to which powers these paragraphs refer.

This reiterates the terms of paragraph 3.5 of the Exit White Paper (see above). Paragraph 3.5 also confirms the approach that "no decisions currently taken by the devolved administrations will be removed from them".

We acknowledge that this is a political process but it is one which takes place within a legal framework. Early clarity about the process and content of the further devolution to Scotland is essential. It would enable the devolved administrations and the Scottish Parliament, Northern Ireland Assembly and the National Assembly for Wales to assess resources and plan for the increased workload to come.

The Great Repeal bill will also provide Scottish and other devolved Ministers with power to amend devolved legislation in line with UK Ministerial power under the bill.

Which power will be devolved as a result of leaving the EU is a matter of political negotiation between the UK Government and the devolved administrations taking into account legal and stakeholder views. This is addressed further in the section of this paper on Dialogue and Frameworks between Devolved administrations and institutions.

It would be helpful if the UK Government consulted on the draft clauses of the Great Repeal bill to proceed.

2. Changes in the legal, constitutional and political landscape

Compliance with EU Law in the devolved jurisdictions is a key feature of all devolution legislation and ensures that the UK meets its obligations under the EU treaties.

The Scotland Act 1998 embeds EU law into the fabric of Scottish devolution. Section 29 of the Scotland Act provides that legislation passed by the Scottish Parliament “*is not law*” if it is incompatible with EU law. Compliance with EU law is therefore a basic condition of the validity of law passed by the Scottish Parliament.

Furthermore, Executive competence concerning EU law is also determined by Section 57 of the 1998 Act which states in subsection (2) that “*A member of the Scottish Government has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with EU law*”.

All the devolved jurisdictions are required to comply with EU law, This obligation is found in the Scotland Act 1998 section 29, the Northern Ireland Act 1998 section 6(2)(d), and the Government of Wales Act 2006 section (108)(2)(c)(Wales Act 2017 Section 108A(2)(e)) in each of these statutes EU law is defined as:-

1. Scotland Act, 1998 s.126 EU Law means “a) all rights, powers, liabilities, obligations and restrictions created or arising by or under the EU treaties and b) all those remedies and procedures from time to time provided for, by or under the EU treaties.”
2. Northern Ireland Act 1998 s.98, EU Law means “a) all rights, powers, liabilities, obligations and restrictions created or arising by or under the EU treaties and b) all remedies and procedures provided for, by or under the EU treaties.”
3. Government of Wales Act 2006 s.158, EU Law means “a) all rights, powers, liabilities, obligations and restrictions created or arising by or under the EU treaties and b) all those remedies and procedures from time to time provided for, by or under the EU treaties.”

Following these provisions the devolved legislatures and administrations are required to comply with EU law when they are making primary legislation or taking executive action.

The European Communities Act 1972 and the devolution statutes ensure that until the UK formally leaves the EU the devolved jurisdictions are required to comply with that law and the UK will not be at risk of breaching EU law.

Therefore any Act of the Scottish Parliament and law made by either the Northern Ireland Assembly or National Assembly for Wales enacted before such a change will only be law if it has complied with EU law at the date of enactment.

However the situation changes in the following circumstances:

- (a) When the treaties cease to apply under Article 50;
- (b) When subject to parliamentary approval, the European Communities Act 1972 and the requirement to comply with EU law is repealed in accordance with the Great Repeal bill (Great Repeal bill White Paper paragraphs 2.1 -2.3).

In either case there will be express provision in the Great Repeal bill and any devolved equivalent will have to be in place to preserve EU law at the point of the UK's leaving the EU and to ensure it will continue to apply within the devolved jurisdictions.

Under the systems of national or regional devolution which apply within the United Kingdom there are currently three methods of devolution:-

1. In Scotland, the Scottish Parliament exercises devolved legislative power and the Scottish Government devolved executive power under the Scotland Act 1988. There are significant powers expressly reserved to the United Kingdom Parliament, and the Scottish Parliament does not have competence to legislate on reserved matters.
2. In Northern Ireland the Northern Ireland devolved institutions are constituted under the Northern Ireland Act 1998. This legislation devolves legislative control over certain matters – transferred matters to the Northern Ireland Assembly. These are principally in the economic, justice and social fields. The Assembly can also in principle legislate “reserved” category matters subject to various consents.

Excepted matters remain the responsibility of the UK Government and the UK Parliament and the Northern Ireland Assembly does not have competence to legislate on these matters.

3. In Wales, the Government of Wales Acts 1998 – 2006 the current system of devolution in Wales is based on the “conferred powers model” which means that the UK Parliament has given powers to the National Assembly for Wales to make laws in specific areas. This system of devolution is due to change to a reserved powers system similar to that applying in Scotland when the Wales Act 2017 is implemented.

The impact of the UK's withdrawal from the EU on the devolved jurisdictions will consequently be different as regards each individual jurisdiction. The different methods of devolution create a complex set of arrangements which prevent there from being a “one size fits all” solution for each devolved area and therefore each relationship between the devolved jurisdictions and EU law and between the UK and the devolved administrations will need to be carefully considered.

How the withdrawal of the UK will affect both legislative and executive devolved powers will require careful analysis, stakeholder engagement and consultation. It is certain that issues concerning administration, finance and the maintenance of the UK Internal Market will be part of the intra-UK debates.

Although there are a number of views on the matter we consider that changes to the Scotland Act 1998 are likely to engage the Sewel Convention under section 28 (8) of the Scotland Act 1998 which states that “the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.” Changes to Parliamentary and Executive Competence (for example providing Scottish Ministers with a power to amend devolved legislation – paragraph 4.6 Great Repeal bill White Paper) are similarly within the ambit of the Sewel Convention in terms of Devolution Guidance Note 10. However it should be noted that the UK Parliament retains the power to make laws for Scotland under Section 28(7) of the Scotland Act 1998.

The Exiting the European Union Committee drew attention to this in its report *The Government's Negotiating Objectives: the White Paper* (HC 1123) at paragraph 72, “the legislation required to implement the UK's exit from the EU will affect the competences of the devolved administrations and it is expected that it will require their legislative consent. We note the Supreme Court's statement that “the Sewel Convention has an important role in facilitating harmonious relationships between the UK and devolved legislatures.” The devolved administrations will require adequate time to conduct the appropriate scrutiny and consultation required before consent can be given. It is likely that the devolved administrations will need to pass their own additional legislation, in turn requiring time for proper consideration in the devolved legislatures. The Government will need to take account of the timescales of the devolved legislatures in its planning.”

The Secretary of State for Scotland, David Mundell MP has confirmed that in his view the Great Repeal bill will require legislative consent from the Scottish Parliament.

3. Accommodating differentiation

The Scottish Government's paper *Scotland's Place in Europe* proposes that Scotland should have a differentiated relationship with the EU compared to the rest of the UK, negotiated as part of the overall withdrawal agreement between the EU and the UK.

The Scottish Government's preference is for Scotland to remain within the EEA and the Single Market, even if the rest of the UK does not. The paper sets out examples of other situations where regions or sub-states have different relationships with the EU to the Member State. However, a key factor in the examples given is precisely that – the regions are a part of a Member State of the EU.

The obvious mechanism currently available for States to be part of the Single Market and the EEA without being members of the EU is membership of EFTA. Membership of EFTA is currently only available to countries that qualify as States in international law. As Scotland does not presently hold that status, it is difficult to see how membership of EFTA would be achieved. However, many of the issues around a

differentiated arrangement for Scotland are essentially political matters which will be subject to negotiation between Scotland and the UK, as well as the UK and the EU.

The Scottish Parliament's Culture, Tourism, Europe and External Relations Committee's Report *Determining Scotland's Future relationship with the European Union* (Fourth Report, 2017) concluded on a majority basis that "We believe that a bespoke solution that reflects Scotland's majority vote to remain in the single market should be explored with the EU 27 as part of the negotiations ahead, before and after the triggering of Article 50. While there is no direct precedent for achieving this particular solution for Scotland, there are a variety of differentiated arrangements for territories that are part of current Member States and a majority of the Committee believes that a bespoke solution could be found within the EU to accommodate Scotland.

Moving from full EU membership to EEA membership would be an easier transition for Scottish businesses than leaving the EU completely as they would be able to remain in the single market. Membership of the EEA would also allow freedom of movement, which is very important to key parts of the Scottish economy as well contributing to Scotland's population growth".

This is a view which is not pursued by the UK Government as the terms of the Exit White Paper make clear.

4. The role of the Civil Service, and its capacity and capability

We have no comments to make except that the withdrawal from the EU will herald an unprecedented period of policy development and law reform for which all legislatures and administrations will have to be geared.

5. Dialogue and frameworks between devolved administrations and institutions

The UK ought to take into account the views of all devolved administrations. For Scotland, there are particular issues about our legal system, constitutional arrangements such as legislative competency and how EU laws are dealt with once they are repatriated. Scotland may need increased devolved powers. This affects justice and home affairs, environment law, farming and research. Withdrawal from the EU should also not precipitate changes to human rights law (there may be value in retaining the EU Charter of Fundamental Rights) see Great Repeal bill paragraphs 2.21 – 2.25.

As Bernard Jenkin MP, the Chairman of Public Administration and Constitutional Affairs Committee stated in his note to the Cabinet Office on "Leaving the EU and the Machinery of Government", this is a "Whole of Government project".

The Whole-of-Government concept is important to recognise in terms of the negotiations with the EU because of the breadth, depth and scope of EU Law as it applies throughout the UK. In this context "Whole of Government" should be interpreted as "Whole of Governance" to include not only the UK Government and Whitehall Ministries but also the Scottish Government, the Northern Ireland Executive and the Welsh Government.

This requires a revision of the October 2013 Memorandum of Understanding and Supplementary Agreements between the Government, Scottish Ministers, Welsh Ministers and the Northern Ireland Executive Committee. Lack of progress in the revision has been noted by the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee report, paragraphs 214 – 218. The revision should take into account the extraordinary circumstances which apply because of the UK's exit from the EU and establish structures to help achieve the best outcome for the UK and its constituent nations. In particular Supplementary Agreement B which contains the "Concordat on Coordination of European Union Policy issues" with Sections B1 relating to Scotland, B2 to Wales, B3 to Northern Ireland and B4 providing a common annex needs revision.

Relevant considerations are also contained in the Concordat on International Relations, Section D of the Memorandum of Understanding and its relevant Sections for Scotland, Wales and Northern Ireland and common annex. Revision of the Memorandum and the annex will enhance the UK response by full engagement with the devolved administrations.

A common approach will ensure that the "Whole-of-Government" concept is respected. It is crucially important that communications between UK Ministers and the devolved administrations are as transparent as possible. Whitehall departments must be fully apprised of the considerations which are of importance to the devolved administrations and fully cooperative with the devolved administrations, the Scottish Parliament and the Welsh and Northern Ireland Assemblies.

The Communiqué from the Joint Ministerial Committee on 24 October 2016 which notes the agreement to form a new Joint Ministerial Committee on EU Negotiations is a step forward but cooperation between the UK Government and the Devolved Administrations must be embedded in Government departments to ensure the success of the negotiations.

This has been reflected in recent parliamentary reports. The Exiting the European Union Committee considered the Exit White Paper: Objective 3 on Strengthening the Union in its report *The Government's Negotiating Objectives: the White Paper (HC1125)* published on 4 April 2017. The Committee identified a number of issues in connection with the devolved administrations (paragraph 65 – 69).

The Committee concludes at paragraph 70 that:

"There are clearly significant differences in the negotiating priorities of the different parts of the UK. If the future deal is to be acceptable to the whole of the UK, then these differences will need to be discussed, negotiated and common ground agreed upon. Differing priorities reflect, in part, differences in the economies and demography of different parts of the UK. The Government must ensure that it understands these differences and takes them into account when it begins its negotiations with the EU."

and in paragraph 74 that:

"The Government has established a Joint Ministerial Committee for EU Negotiations (JMC (EN)) for consulting the devolved administrations on their priorities for Brexit and it aims to use this forum to agree a UK approach to, and objectives for, negotiations, and to consider proposals put forward by the devolved

administrations. The evidence we heard indicated that these meetings have not been effective from the point of view of the devolved administrations. The Government must establish a more effective process for engaging the devolved administrations in developing the UK's negotiating position. If the Government's asserted wish to fully engage the devolved administrations is to be credible, it must share more information and discuss options before decisions are reached. A successful exit from the EU will be measured not just in terms of achieving a good deal with the EU but also whether it "works for the whole of the UK".

The Scottish Parliament's Culture, Tourism, Europe and External Relations Committee also raised questions about the role of the JMC in connection with the negotiation of the Withdrawal Agreement and the future relationship between the UK and the EU in its report *Determining Scotland's Future Relationship with the European Union* (paragraphs 218 – 269, 4th Report 2017(session 5)).

Parliamentary, academic and professional discussions are evolving options which may be applied to determine the practicalities of how the framework for devolved policy areas will develop and repatriated laws can be legally and properly transitioned from EU law and the supra national legal order to the national legal order and to that of the devolved jurisdictions.

These discussions have highlighted:-

1. A Constitutional Convention

A Constitutional Convention was recommended in the Report by the Constitutional and Administrative Reform Committee *Do we need a Constitutional Convention for the UK?* Which was published in session 2012 – 2013 (HC371).

The House of Commons Political and Constitutional Reform Committee also suggested a Constitutional Convention to review how the Union and Devolution is functioning in its report *The future of devolution after the Scottish Referendum (HC700) para 110*.

2. A Commission with a similar composition to the Smith Commission or Calman Commission.
3. The JMC (EN) or another Sub-Committee of the JMC.
4. A new structure or grouping including UK, Scottish, Northern Irish, Welsh Ministers, subject experts and stakeholders.

The Exiting the European Union Committee also commented on this in its report at paragraph 73:

"The repatriation of EU powers to the UK raises questions about how the framework for devolved policy areas will evolve. The Welsh and Scottish governments are clear that any future UK framework for devolved policies should be a matter for consultation and intergovernmental negotiations. Notwithstanding the Government's commitment that "no decisions currently taken by the devolved administrations will be

removed from them”, the devolved administrations will be looking to ensure that legislative competences which are currently held by the EU which relate to matters which have been devolved are repatriated as devolved competences.”

Which method is chosen is a matter for discussion between the UK Government and the Devolved Administrations. In coming to a decision they should be guided by principles of legality, openness, transparency and clarity. It will be necessary for the transfer to take place within a short timescale and therefore there must be good cooperation between the UK Government and the Devolved Administrations and broad consultation with stakeholders.

6. Quantifying a successful process

We have analysed what we perceive to be the most significant public interest issues arising from the UK’s exit from the EU and also the most significant issues confronting Scotland’s solicitors and their clients.

We would consider the negotiation process to be a success by measuring the Withdrawal Agreement and the ongoing relationship between the UK and the EU according to whether the UK Government has achieved the objectives set not only in the Exit White Paper but also in the Society’s Negotiation Priorities for Leaving the EU for the UK Government.

Both prior and subsequent to the Referendum the Society conducted polls of its members and has developed the important messages from our dual statutory function to act in both public and membership interests.

The Society’s Proposals for the UK Government’s Negotiation Priorities on Leaving the EU

The Society has submitted a proposal document in terms similar to this evidence to the UK Government to inform it about the legal issues we consider to be most pressing for the negotiation process.

Public Interest Issues

Ensuring stability in the law

We support the UK Government’s decision to maintain consistency and stability in the law which it has made clear in the Exit White Paper and which reflects one of our priorities for the negotiations.

The need to maintain stability in the law, repeal legislation and prepare new legislation to fill in gaps arising from leaving the EU will comprise a significant part of domestic legislation which is passed at or following withdrawal for some years to come.

The proposals in the Great Repeal bill which will repeal the European Communities Act 1972 and preserve and continue existing EU Law (whether derived from direct or indirect effect provisions) will achieve the Government’s objectives. Laws with direct effect (Treaties and Regulations) will cease to apply once the withdrawal agreement is in place, the UK is no longer a member of the EU and the European Communities Act 1972 has been repealed. However it would be inappropriate to include in any new law the wholesale

repeal of direct effect provisions without providing for alternative arrangements. These arrangements would ensure clarity and stability in the law and prevent legal uncertainty. Similarly EU law with indirect effect (Directives) has already been transposed into domestic legislation through either primary or secondary legislation by the UK Parliament by the Scottish Parliament. That law will continue to be part of the UK and Scots Law until and unless it is specifically repealed. Many statutory instruments deriving from EU Directives have been enacted under Section 2 of the 1972 Act and so would be repealed once the Act is repealed unless explicitly retained.

We note that the Great Repeal bill White Paper states that the bill will contain a power to correct the statute book, where necessary, to rectify problems occurring as a consequence of leaving the EU (paragraph 3.7). Furthermore it is envisaged that this will be done using secondary legislation which will put in place the necessary corrections before the day the UK exits the EU.

The time constraints and the significant amount of material in the Acts of Parliament and statutory instruments which implement the nearly 19,000 EU laws (House of Commons Library Paper Number 7867, 16 January 2017) will make this target exacting, especially taking into account pre-legislative consultation, drafting, debate and the preparation of ancillary documents. We note that the Great Repeal bill White Paper estimates that the necessary changes “will require between 800 and 1000 statutory instruments (para 3.19)”. It appears that these instruments will be significant documents in themselves.

The power to make delegated legislation envisaged by the Government will be very extensive and will not be limited to the ‘mechanical act of converting EU law into UK law’ (Para 3.10 of the Great Repeal bill White Paper).

Para 3.9 makes it clear that delegated powers will be used for more extensive purposes, such as

- a) matters which cannot be known or may be liable to change at the point when the primary legislation is being passed because the Government needs to allow for progress of negotiations;
- b) adjustments to policy which are directly consequential on our exiting the EU; and
- c) to provide a level of detail not thought appropriate for primary legislation (para 3.9 of the Great Repeal bill White Paper).

These changes to UK law could be very substantial, if, for example the negotiations result in a Free Trade Agreement in various sectors, or changes made to correct deficiencies in EU derived law.

Many of the recommendations made by the House of Lords Constitution Committee in the report *The Great Repeal bill and delegated powers*. (HL Paper 123) particularly the special scrutiny regime referred to in paragraph 102(4) are worthwhile considering. We note paragraph 3.23 in the Great Repeal bill White Paper where room for negotiation between the Government and Parliament is specifically provided for as regards striking the balance between the need for scrutiny and the need for speed. The need for scrutiny should not be sacrificed to the need for speed. Provisions such as the Legislative and Regulatory Reform

Act 2006, the Public Bodies (Scotland) Act 2011 and the Public Sector and Regulatory Reform (Scotland) Act 2011 could be used as models to provide enhanced scrutiny.

International Trade Law creates the basis for UK import and export activity which has a direct impact on economic and commercial growth and development. This affects everyone and therefore it is important that new trade agreements are constructed in line with existing standards of trade law and put in place without undue delay to minimise disruption to the economy.

In order to reassure and create stability for businesses, consumers and citizens, it is vitally important that effective transitional arrangements are in place to ensure that disruption to existing commercial and personal legal arrangements are minimised.

Maintaining Freedom, Security and Justice

We agree that the UK should continue to work with the EU to pressure UK and European security and to fight terrorism and uphold justice across Europe.

We propose that the UK should seek as part of the Withdrawal Agreement to maintain the existing EU Freedom, Security and Justice Legislation, including the European Arrest Warrant, access to EU databases, information exchange systems, agencies and cross-border co-operation framework.

The Lisbon Treaty created the Area of Freedom, Security and Justice (AFSJ), which covers policy areas that range from the management of the EU's external borders to judicial cooperation in civil and criminal matters and police cooperation. It also includes asylum and immigration policies and the fight against crime (terrorism, organised crime, cybercrime, sexual exploitation of children, trafficking in human beings, illegal drugs, etc.).

The UK retained an opt-in facility granted to the UK and Ireland under the Amsterdam Treaty in 1997 and has opted into (or in the case of Schengen-related measures has not opted out of) a number measures, including the EU arrest warrant.

EU measures have been developed to deal with cross-border situations, for example where it is suspected that a criminal organisation is operating in several EU countries, or that a suspected criminal is hiding in a different EU country. In such cases, cooperation is necessary. EU law and policy in this area is intended to strengthen dialogue and facilitate action between the criminal justice authorities of EU countries.

a. Access to Agencies

As an EU Member State the UK enjoys access to all of the agencies such as Eurojust, the European Police Office (EUROPOL), the European Police College (CEPOL), the European Union Agency for Fundamental Rights (FRA) and the European Network and Information Security Agency (ENISA). These agencies participate in the EU wide investigation of crime and subsequent prosecution by way of data sharing measures, identifying whereabouts of a suspect and the obtaining of a European Arrest Warrant.

The UK Government should as part of the withdrawal agreement negotiations give priority to maintaining access to all agencies. It would also be desirable for the UK to retain the ability to influence the policies and operational activities of those organisations but after withdrawal from the EU this would be a challenge.

b. Europol

We agree with the decision of the UK Government to opt in to the new Union Agency for Law Enforcement Co-operation Regulation EU 2016/794 by January 2017 in order to continue access to Europol. Membership of Europol will continue until such time as the Regulation was repealed, although there is provision for the Commission to review and evaluate the working practices of the agency every 5 years. We propose that the UK Government should seek to secure the UK's continued membership of the Europol network.

c. Schengen Information System (SIS)

The SIS facilitates the real-time sharing of information and alerts between the relevant authorities in participating countries, it is in operation in all EU Member States and Associated Countries that are part of the Schengen Area. Special conditions exist for EU Member States that are not part of the Schengen Area, of which the UK is one. The SIS enables the UK to exchange information with Schengen countries for the purposes of cooperating on law enforcement.

This provides UK police forces with the following specific alerts for persons wanted for arrest for extradition; missing persons; witnesses or absconders or subjects of criminal judgments. Access to the SIS has resulted in access to all information on live European Arrest Warrants, and information in respect of previous convictions of individuals who have offended within the EU and outwith the UK.

The UK Government should follow other non-EU countries and continue access to the SIS, particularly if an EAW style framework for extradition to and from EU Member States is agreed as part of the Withdrawal Agreement or the post leaving UK/EU relationship.

d. The European Arrest Warrant (EAW)

The EAW is applied throughout the EU and has replaced extradition procedures within the EU's territorial jurisdiction. Judicial procedures have been designed to surrender people for the purposes of criminal prosecution or executing a custodial sentence.

Following a withdrawal from the EU unless the EAW is retained the process for the extradition of individuals will be more expensive, complex and time consuming and will require a new treaty or treaties to underpin any alternative arrangements.

Scotland has been making use of the EAW. The Crown Office and Procurator Fiscal Service in Scotland recently published figures relating to the use of the EAW showing that between 2011 and May 2016 there had been 48 extraditions to Scotland pursuant to EAWs, and 49 EAWs issued by Scotland during the same period.

The options for re-establishing some form of mutual recognition in criminal matters with countries in the EU following a UK exit, include reversion to the European Convention on Extradition 1957 (“ECE 1957”). Such an approach is likely to result in increased burden for all agencies of the criminal justice system. Bilateral Extradition arrangements will require new treaties with EU member states which may be lengthy and present difficulties.

In 2012, the UK Government made a positive decision to opt into the EAW framework. The then Home Secretary Theresa May MP outlined some of the reasons in support of the decision to opt-into the framework, for example it being a streamlined process making it easier to bring serious criminals back to the UK to face trial or serve sentences.

Those reasons for opting into the EAW are still sound and the UK Government should take an approach which avoids disengagement from the EAW. There should be no change to the law which would prejudice the safety and security of the individual.

e. The European Investigation Order (EIO)

The UK Government should prioritise the implementation of the Directive regarding the EIO. The UK Government opted-in to this measure and transposition into domestic law must take place by 1st May 2017. The Directive allows member states to carry out investigative measures at the request of another member state on the basis of mutual recognition. These investigative measures include interviewing witnesses, obtaining of information or evidence already in the possession of the executing authority, and (with additional safeguards) interception of telecommunications.

We believe the UK Government should implement the EIO Directive.

f. Criminal Procedure

The EU published a ‘roadmap’ on procedural rights in 2009 to ensure that the basic rights of suspects and accused persons. A number of measures followed with proposals to further strengthen procedural safeguards for citizens in criminal proceedings. Of those measures, the UK opted into and transposed the Directives on the Right to Interpretation and Translation in Criminal Proceedings and the Right to information in Criminal Proceedings.

We believe that the rationale for opting into these Criminal Procedure Directives remains, and the Government should avoid any proposal which results in a reversal or erosion of the opt-in and, which diminishes the right of the individual.

We propose, notwithstanding that the Exit White Paper made a limited reference to civil judicial co-operation that the UK Government include in the negotiations maintaining recognition and enforcement of citizens’ rights including the rights of parties with pending cases before the Court of Justice of the EU.

Maintaining the structure of the Brussels Regulations, the EU Enforcement and Order of Payment, the Maintenance Regulation and Rome I & II on Applicable law are essential to litigants in both the UK and the EU. They assist in the resolution of disputes and are valuable to litigants in their personal and commercial

capacities. Other Civil Rights including European Trademark Unitary Patents and Design Rights and pending applications should be included in the Withdrawal Agreement.

Article 81 of the TFEU states that the EU shall “develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases... Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.”

The treaty arrangements are backed up by a number of civil justice instruments into which the UK has opted. These include the Brussels I Regulation on the mutual recognition and enforcement of civil and commercial judgements across member states, which sets out the Rules governing cross-border jurisdiction disputes. The principal rule is that the court where a defender is domiciled has jurisdiction. Other EU instruments with significant domestic impact include the EU Enforcement Order 2004 and Order of Payment 2006, and Rome I and II on applicable law.

The EU has also made law in a number of areas concerning civil judicial cooperation in cross-border family cases. The law includes the Brussels II (a) Regulation on the jurisdiction of matrimonial proceedings, principally divorce. This regulation also allows for the mutual recognition and enforceability of judgements concerning parental responsibility and supplements the Hague Convention and provides a mechanism for the return of abducted children. The Maintenance Regulation provides rules for assessing jurisdiction in maintenance disputes and for identifying the law which will be applied as well as for the recognition and enforcement of maintenance decisions from other EU member states' Courts.

When the UK leaves the EU this body of law will cease to apply in the UK as Article 81 and the regulations and directives flowing from it will not operate outside the EU. Prior to the TFEU and the EU regulations arrangements were made for cross border litigation by way of bilateral treaties and other conventions. When the UK exits unless there is provision in the Withdrawal Agreement this solution will need to be adopted. This will take time, incur cost and delay and will leave citizens with civil or family law issues in limbo unless there is provision in the Withdrawal Agreement.

In family cases, there are some practical problems with the implementation of Brussels II (a) but family practitioners generally agree that the regulation makes the law in this area clearer.

In terms of Intellectual Property, the European Patent Office and the European Patent and the European Union Intellectual Property Office and EU Trademarks and Registered Community Design are important processes for UK business and the Withdrawal Agreement must contain provision preserving EU Patents, Trademarks and Registered Community Design and adequate transitional provisions. The EU Council draft *Guidelines following the UK notification under Article 50 TEU* note the need for arrangements dealing with administrative issues.

Creating arrangements to secure the rights of parties with pending cases before the Court of Justice of the European Union (CJEU)

We believe the UK Government should adopt the option for dealing with pending cases at the CJEU which will cause least disruption to litigants.

The UK's exit will have an impact on litigants before the Court of Justice of the EU (CJEU) on the CJEU itself and on the relationship between the CJEU and the domestic courts in the constitutive jurisdictions of the UK.

The CJEU has the following functions:

- interpreting EU law (preliminary rulings)
- enforcing EU law (infringement proceedings)
- annulling EU legal acts (actions for annulment)
- ensuring the EU takes action (actions for failure to act)
- sanctioning EU institutions (actions for damages)

The impact will affect litigants and their lawyers. Steps must be taken to uphold the rule of law and the proper administration of justice.

Although the numbers are not known, it is probable that there are currently cases pending in the domestic courts which may involve a reference to the CJEU in the next few years. There are also cases which have already been referred and are waiting for a decision. Furthermore, once the UK has left the EU, there will still be a need for a determination on applicable EU law in relation to some cases but the UK will no longer have recourse to the CJEU.

It is critically important that current and pending cases are identified quickly, and that these (plus any new cases) are dealt with using adequate transitional arrangements, rather than left to go through the CJEU system and risk not having been heard before the UK leaves the EU.

There are two options for dealing with such cases:-

Option One would permit the CJEU to hear cases pending at the point of withdrawal and promote compliance with decisions in those cases.

Option Two would provide that the UK Supreme Court would establish an EU Chamber consisting of both UK judges and EU judges with expertise in EU law to deal with cases which are repatriated to the UK following the finalisation of the Withdrawal Agreement.

The EU Council *draft Guidelines following the United Kingdom's notification under Article 50 TEU* highlight the need for arrangements ensuring legal certainty and equal treatment for all court procedures pending

before the CJEU on the date of withdrawal which involved the UK or natural or legal persons in the UK (para 15). As noted above, the guidelines also identify the need for arrangements to be made concerning administrative procedures pending before EU Commission and Union agencies.

Promoting Immigration, residence, citizenship and employment rights of EU Nationals in the UK

We believe clarity is needed as a matter of urgency about the residence, housing and work rights of such individuals and their families and how these can be regularised with the minimum of bureaucracy. The Exit White Paper makes it clear that securing the rights of EU nationals in the UK and UK nationals in the EU and protecting workers rights are priority negotiation issues. We welcome this approach.

The Free Movement Directive (2004/38) deals with the ways in which EU citizens and their families exercise the right of free movement, the right of residence and the restrictions on those rights on the grounds of public policy, public security or public health. The UK is currently bound by treaty to the principle of free movement.

Although the UK is bound by the Treaty obligations to respect the free movement of persons it has opted out of most EU Law on immigration, the best example of which is the Schengen Accords which create the common European area and framework for visas and border control.

UK immigration law is reserved to the UK Parliament under the Scotland Act 1998 and although the UK is bound by treaty to the principle of free movement it has retained control over some aspects of border and visa policy.

The UK Government has stated an objective of withdrawal from the EU's control of immigration law and policy, borders and visas. There is a debate about the accrued rights of EU citizens and their families. It is desirable that there is early certainty about the status and rights of citizens of other Member States and their families resident in the UK who do not fulfil the current criteria for permanent residence or who move to the UK before the exit Withdrawal Agreement is finalised. It is likely that citizens of EU states living within the UK who do not qualify for permanent residence under the current rules would have to regularise their immigration, residence and visa status.

An EU citizen can apply for a permanent residence card after 5 years residence in the UK. This document proves the right to live in the UK permanently. Eligibility arises if the applicant has lived with an EEA family member for 5 years and the EEA family member is a qualified person throughout 5 years or has a permanent right of residence. The UK Government has stated that when the UK leaves the EU they fully expect that the legal status of EU nationals living in the UK and that of UK nationals in EU member states will be properly protected. The UK Government has also stated that EU nationals who have lived continuously and lawfully in the UK for at least 5 years automatically have a permanent right to reside. This means that they have a right to live in the UK permanently in accordance with EU law. There is no requirement to register for documentation to confirm this status. Furthermore a person can apply for a permanent residence card after that person has lived in the UK for 5 years. The card will prove that person's right to live in the UK permanently.

Similarly, UK citizens living in other member states would have to comply with the immigration, residence and visa requirements imposed by those member states.

Promoting continued professional recognition and continued rights of audience in the EU

We believe that the UK Government should negotiate the continuity of the EU law concerning the transnational practice of law and legal professional privilege in the Withdrawal Agreement. We have drafted an article for the Withdrawal Agreement which can be found at the Appendix.

Free Movement of Lawyers

The regime to regulate the cross-border supply of legal services and the rules designed to facilitate the establishment of a lawyer in another member state have been in force for a number of years. There are three key pieces of legislation that affect the legal profession:

- Lawyers' Services Directive of 1977 (77/249)
- Lawyers' Establishment Directive of 1998 (98/5)
- Recognition of Professional Qualifications Directive (2005/36)⁴

In addition, Directive 2006/123/EC on Services in the Internal Market which regulates the provision of services in the European Union also touches on the legal profession.

The Lawyers' Services Directive (temporary provision)

The Lawyers' Services Directive 1977 governs the provision of services by an EU/EEA/Swiss lawyer in a member state other than the one in which he or she gained his or her title - known as the 'host state'. Its purpose is to facilitate the free movement of lawyers, but it does not deal with establishment or the recognition of qualifications. The directive provides that a lawyer offering services in another member state - a 'migrant' lawyer - must do so under his or her home title. Migrating lawyers may undertake representational activities under the same conditions as local lawyers, save for any residency requirement or requirement to be a member of the host Bar.

However, they may be required to work in conjunction with a lawyer who practises before the judicial authority in question. For other activities the rules of professional conduct of the home state apply without prejudice to respect for the rules of the host state, notably confidentiality, advertising, conflicts of interest, relations with other lawyers and activities incompatible with the profession of law.

Permanent Establishment under Home Title

The Establishment Directive 1998 entitles lawyers who are qualified in and a citizen of a member state to practise on a permanent basis under their home title in another EU/EEA member state, or Switzerland. The practice of law permitted under the Directive includes not only the lawyers' home state law, community law and international law, but also the law of the member state in which they are practising – the 'host' state.

However, this entitlement requires that a lawyer wishing to practise on a permanent basis registers with the relevant Bar or Law Society in that state and is subject to the same rules regarding discipline, insurance and professional conduct as domestic lawyers.

Once registered, the European lawyer can apply to be admitted to the host state profession after three years without being required to pass the usual exams, provided that he or she can provide evidence of effective and regular practice of the host state law over that period.

Recognition of Professional Qualifications

Re-qualification as a full member of the host State legal profession is governed by the Recognition of Professional Qualifications Directive. Article 10 of the 1998 Lawyers' Establishment Directive is essentially an exemption from the regime foreseen by the Recognition of Professional Qualifications Directive.

The basic rules are that a lawyer seeking to re-qualify in another EU/EEA member state or Switzerland must show that he or she has the professional qualifications required for the taking up or pursuit of the profession of lawyer in one member state and is in good standing with his or her home bar.

The member state where the lawyer is seeking to re-qualify may require the lawyer to either:

- complete an adaptation period (a period of supervised practice) not exceeding three years, or
- take an aptitude test to assess the ability of the applicant to practise as a lawyer of the host member state (the test only covers the essential knowledge needed to exercise the profession in the host member state and it must take account of the fact that the applicant is a qualified professional in the member state of origin).

It is also worth bearing in mind that a number of our future lawyers take advantage of programmes to broaden their horizons during their studies, which rely on reciprocal arrangements with other EU universities. The ERASMUS programme, the best-known EU student exchange programme established in 1987, has a number of participants from Scottish law schools.

Legal Professional Privilege

The CJEU decided the case of *AKZO NOBEL Ltd and AKCROS Chemicals Ltd v The European Commission (C-550/07)* in September 2010. The judgement concerned the application of legal professional privileged communications between a client and in-house Counsel. The Court also decided to exclude all lawyers qualified outside the EU from the application of legal professional privilege. The case proceeded on the precedent of the ECJ in *AM&S Europe v the Commission* [1982] ECR 1575 paras 25-26 which also excluded non-EU lawyers from the application of legal professional privilege. The Court acknowledged that legal professional privilege applies to communications between a client and his independent lawyer but limited the definition of lawyer to "a lawyer entitled to practise his profession in one of the member states, regardless of the member state in which that client lives... but not beyond". The apparent basis of the exclusion of third countries from the benefit of legal professional privilege within the EU is the difficulty of the "Court being able to ensure that the third country in question has a sufficiently

established Rule of Law tradition which would enable lawyers to exercise the profession in the independent manner required and they to perform their role as collaborators in the administration of justice”. *Opinion of Advocate General Kokott, 29 April 2010 paras 60-61*. Legal professional privilege and Confidentiality of Communications is a key aspect of the Rule of Law in the UK and is acknowledged by the Courts and Parliament as central to the administration of justice. Recently legislation such as the Investigatory Powers Bill and the Policing and Crime Bill specifically acknowledge the requirement to protect legal professional privilege and confidentiality. The doctrine is upheld under human rights law in *Campbell v UK (1992) 15 EHRR 137*. The loss of legal professional privilege and confidentiality will have a negative impact on the rights of clients and on the ability of lawyers in the UK to provide a full service to their clients when acting in EU legal issues or on matters which relate to EU Law or business in the EU. The UK legal systems clearly meet the test which Advocate General Kokott identified in respect of the Rule of Law and the independence of the lawyers in those systems and should therefore have legal professional privilege accorded to the lawyer/client relationship when EU Law is an issue.

This should be a priority for the UK Government in the negotiations in order to ensure that UK Lawyers can function fully when acting for British EU clients and third country who wish their legal services and advice.

APPENDIX

Competencies – Agriculture, Fisheries, Aquaculture, Health Cover and Higher Education

The competences of the Union are defined in the EU Treaties (Articles 2-6 of the Treaty on the functioning of the European Union – TFEU).

The competences of the EU are divided into three categories:

- 1) the EU has exclusive competence (Article 3 TFEU) (only the EU can act)
- 2) competences are shared between the EU and the member states (Article 4 TFEU) (The member states can act only if the EU has chosen not to)
- 3) the EU has competence to support, coordinate or supplement the actions of the member states (article 6 TFEU) – in these areas, the EU may not adopt legally binding acts that require the member states to harmonise their laws and regulations.

NB: "Shared competence" means that both the EU and its member states may adopt legally binding acts in the area concerned.

However, the member states can do so only where the EU has not exercised its competence or has explicitly ceased to do so.

The following table is a list of EU competencies which provides the legal basis for which the EU can legislate.

Exclusive competence (Art 3 of TFEU)	Shared competence (see Article 4 TFEU)	Competence to support, coordinate or supplement actions of the member states (see Article 6 TFEU)	Competence to provide arrangements within which EU member states must coordinate policy (see Article 5 TFEU)
customs union	internal market	protection and improvement of human health	economic policy



the establishing of the competition rules necessary for the functioning of the internal market	social policy, limited to the aspects defined in the TFEU	industry	employment
monetary policy for the member states whose currency is the euro	economic, social and territorial cohesion	culture	social policies
conservation of marine biological resources under the common fisheries policy	agriculture and fisheries, excluding the conservation of marine biological resources	tourism	
common commercial policy	environment	education, vocational training, youth and sport	
concluding international agreements: when their conclusion is required by a legislative act of the EU when their conclusion is necessary to enable the EU to exercise its internal competence in so far as their	consumer protection	civil protection	



conclusion may affect common rules or alter their scope.			
	transport	administrative cooperation Legally binding EU acts in these areas cannot imply the harmonisation of national laws or regulations.	
	trans-European networks		
	energy		
	area of freedom, security and justice		
	common safety concerns in public health matters, limited to the aspects defined in the TFEU		
	research, technological development and space		
	development cooperation and humanitarian aid		

Agriculture

[The common agricultural policy](#) (CAP) is aimed at helping European farmers meet the need to feed more than 500 million Europeans. Its main objectives are to provide a stable, sustainably produced supply of safe food at affordable prices for consumers, while also ensuring a decent standard of living for 22 million farmers and agricultural workers. The [CAP reform](#) is now in place for 2014 -2020.

With an annual budget of roughly **€59 billion**, the CAP strengthens the competitiveness and sustainability of agriculture in Europe by financing a range of support measures through the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development notably:

- [Direct payments](#) provide an important support for farmers in order to help **stabilise their incomes**, linked to complying with safety norms, environmental and animal welfare standards. With these annual payments predominantly "decoupled" from production – i.e farmers choose what to produce on the basis of the likely return from the market, rather than on the basis of public support - they **support the long-term viability of farms** in the face of volatile markets and unpredictable weather conditions, and recognise the environmental contribution and public goods that farmers provide to society.

Legislation of direct support

Council Regulations

>> [Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council](#)

Legal basis: Treaty on the Functioning of the European Union, Article 43(2)

>> [Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council](#)

Legal basis: Treaty on the Functioning of the European Union, Article 42 and Article 43(2)

Commission Regulations

>> [Commission Delegated Regulation \(EU\) No 639/2014](#)

Legal basis: Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (1), and in particular Articles 4(3), 8(3), 9(5), 35(1), (2) and (3), 36(6), 39(3), 43(12), 44(5), 45(5) and (6), 46(9), 50(11), 52(9), 57(3), 58(5), 59(3), 67(1) and (2).

>> [Commission Delegated Regulation \(EU\) No 640/2014](#)

Legal Basis: Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000,

(EC) No 1290/2005 and (EC) No 485/2008 (1), and in particular Articles 63(4), 64(6) and 72(5), Article 76, Articles 77(7), 93(4) and 101(1), and Article 120.

>> [Commission Implementing Regulation \(EU\) No 641/2014](#)

Legal basis: Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (1), and in particular Articles 24(11), 31(2), 34(5), 39(4), 43(13), 45(7), 55(2), 57(4) and 67(3).

>> [Commission Implementing Regulation \(EU\) No 809/2014](#)

Legal basis: Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (1), and in particular Articles 58(4), 62(2)(a) to (f) and (h), 63(5), 77(8), 78, 96(4), 101(2).

- [Market measures](#) provide a range of tools including measures to address the situation if normal market forces fail. For example, if there is a sudden drop in demand because of a health scare or a fall in prices because of a temporary oversupply on the market, the European Commission can activate **market support** measures.

The Common Market Organisation (CMO) is a set of rules which regulates agricultural markets in the European Union. It builds on the rules for the common market in goods and services with specific policy tools that help improve the functioning of agricultural markets.

Legislation for Market Measures

Council Regulation

>> [Regulation \(EU\) No 1308/2013](#)

Legal basis: Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 42 and Article 43(2) thereof

- [Rural development programmes](#) provide a framework to **invest in individual projects on farms** or in **other activities in rural areas** on the basis of economic, environmental or social priorities **designed at national or regional level**. Funded through the EAFRD, this covers projects such as on-farm investment & modernisation, installation grants for young farmers, agri-environment measures, organic conversion, agri-tourism, village renewal, or providing broadband internet coverage in rural areas.

Legislation for Rural Development Programmes

Main Regulations

[Regulation \(EU\) n° 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, The Cohesion Fund, The European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Funds, the European Social Fund and the Cohesion Fund repealing Regulation \(EC\) n° 1083/2006](#)

Legal basis: Treaty on the Functioning of the European Union, Article 177

The "Common Provisions" Regulation provides for a shared set of basic rules applying to all [European Structural and Investments Funds \(ESIFs\)](#) including the EAFRD.

[Regulation \(EU\) n° 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development \(EAFRD\) Search for available translations of the preceding](#)

This is the basic act that sets out the specific rules relating to the EAFRD for rural development programming.

Legal basis: Treaty on the Functioning of the European Union, Article 43(2).

[Regulation \(EU\) n° 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy Search for available translations of the preceding](#)

The so-called "Horizontal" Regulation provides the financial management rules for the two CAP funds, the European Agricultural Guarantee Fund (EAGF) which finances market measures and direct payments, and the EAFRD which finances support to rural development. It brings together the rules on cross compliance, farm advisory systems and monitoring and evaluation of the CAP.

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2).

[Regulation \(EU\) n° 1310/2013 of the European Parliament and of the Council laying down certain transitional provisions on support for rural development by the European Agricultural Fund for Rural Development \(EAFRD\)](#)

This Regulation defines transitional rules in order to bridge the gap between two multi-annual programming periods.

Legal basis: Treaty on the Functioning of the European Union, Articles 42 and 43(2).

Delegated acts and implementing acts

Delegated acts supplement or amend legislative acts in relation to elements that are not considered essential, while implementing acts are adopted by the Commission to ensure that legislative acts are applied in a uniform way in all Member States.

[Commission Delegated Regulation \(EU\) No 807/2014 of 11 March 2014 supplementing Regulation \(EU\) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development \(EAFRD\) and introducing transitional provisions](#)

Legal basis: Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (1), and in particular Articles 2(3), 14(5), 16(5), 19(8), 22(3), 28(10), 28(11), 29(6), 30(8), 33(4), 34(5), 35(10), 36(5), 45(6), 47(6) and Article 89.

[Commission Implementing Regulation \(EU\) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation \(EU\) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development \(EAFRD\)](#)

Legal basis: Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (1), and in particular Article 8(3), Article 12, Article 14(6), Article 41, Articles 54(4) and 66(5), Article 67, Articles 75(5) and 76(1),

[Commission Delegated Regulation \(EU\) No 640/2014 of 11 March 2014 supplementing Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance](#)

Legal basis: Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 [\(1\)](#), and in particular Articles 63(4), 64(6) and 72(5), Article 76, Articles 77(7), 93(4) and 101(1), and Article 120.

[Commission Implementing Regulation \(EU\) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance](#)

Legal basis: Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (1), and in particular Articles 58(4), 62(2)(a) to (f) and (h), 63(5), 77(8), 78, 96(4), 101(2).

This is the [Scottish rural development programme](#).

Agriculture and the environment

Integrating environmental concerns into the Common Agricultural Policy aims to head off the risks of environmental degradation and enhancing the sustainability of agro-ecosystems.

The Common Agricultural Policy reflects the two principles, the "polluter pays principle" and the "provider gets principle", in integrating environmental concerns into the policy via two mechanisms:

1) Linking the respect of selected statutory requirements (**Cross-compliance**) of the preceding to most CAP payments and sanctioning non-compliance by payment reductions.

Cross-compliance represents the "baseline" or "reference level" for agri-environment measures. For all requirements falling under cross-compliance, the compliance costs have to be borne by farmers ("Polluter-Pays-Principle").

Legislation

[Council Regulation 73/2009](#) and

Legal basis: Treaty establishing the European Community, Articles 36 and 37 and Article 299(2).

[Commission Regulation 1122/2009](#)

Legal basis: 1) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (1), and in particular Articles 85x and 103za, in conjunction with Article 4

2) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, and in particular Article 142 (b), (c), (d), (e), (h), (k), (l), (m), (n), (o), (q) and (s).

2) Paying for the provision of environmental public goods and services going beyond mandatory requirements (**Agri-environment**)

Agri-environment measures are a key element for the integration of environmental concerns into the Common Agricultural Policy. They are designed to encourage farmers to protect and enhance the environment on their farmland by paying them for the provision of environmental services.

Legislation

The legal obligations that form the reference level for the agri-environment measures are indicated in article 39.3 of [Regulation No 1698/2005](#)

Legal basis: Treaty establishing the European Community, Articles 36, 37 and 299(2)

Agriculture and biodiversity

By managing a large part of the European Union's territory, agriculture preserves farm-genetic resources, bio-diversity, and a wide range of valuable habitats.

'Biodiversity' refers to the variety of life and its processes. The concept is closely associated with 'ecosystems' and 'habitats'. Agricultural biodiversity includes all components of biological diversity of relevance for food and agriculture, and all components of biological diversity that constitutes the agro-ecosystem.

At EU level, the implementation of the [Birds and Habitats Directives](#) form the cornerstone of Europe's nature conservation policy. The legal basis for which lays in Treaty establishing the European Community, Article 175(1) and the Treaty establishing the European Economic Community, and in particular Article 130s respectively.

The [Biodiversity Action Plan for Agriculture](#) was adopted in 2001. It is based on the use of a number of CAP instruments benefiting biodiversity. This includes measures that encompass environmental requirements integrated into market policy and targeted environmental measures that form part of the Rural Development Programmes.

On 3 May 2011, the European Commission adopted a [new strategy](#) to halt the loss of biodiversity and ecosystem services in the EU by 2020.

Agriculture and water

The Common Agricultural Policy supports investments to conserve water, improve irrigation infrastructures and enable farmers to improve irrigation techniques. It also helps to protect water quality.

The main CAP instruments promoting sustainable water management are the following:

Certain rural development measures support investments for improving the state of irrigation infrastructures or irrigation techniques that require the abstraction of lower volumes of water, as well as actions to improve water quality.

The cross-compliance framework includes statutory requirements related to water protection and management arising from the implementation of the [groundwater directive](#) and nitrates directive, as well as GAEC standards. The legal basis on the Groundwater Directive is the Treaty establishing the European Community, Article 175(1).

At EU level;

- the [Water Framework Directive](#) plays a vital role in protecting water quality and quantity. This Directive requires Member States to establish river basin management plans (at the latest by end

2009), and to ensure that water pricing policies provide adequate incentives for users to use water resources efficiently (at the latest by end 2010).

Legal basis: Treaty establishing the European Community, and in particular Article 175(1)

- Urban Waste Water Directive: The [Directive 91/271/EEC on Urban Waste Water Treatment](#) was adopted on 21 May 1991. It has been amended by [Directive 98/15/EEC amending Directive 91/271/EEC](#) and implemented by [Commission Implementing Decision 2014/431/EU of 26 June 2014 concerning formats for reporting on the national programmes for the implementation of Council Directive 91/271/EEC](#)

Legal basis for the 1991 Directive: Treaty establishing the European Economic Community, and in particular 130s

Legal basis for Directive 98/15/EEC: Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (1) and, in particular, Article 5, paragraph 3

- The [Drinking water Directive](#) concerns the quality of water intended for human consumption. Its objective is to protect human health from adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.

Legal basis: Treaty establishing the European Community and, in particular, Article 130s(1)

- Payments under Article 38 of the Rural Development Regulation (discussed above Rural Development Plans) will contribute to the implementation of the Water Framework Directive.

The EU also regulates to protect water quality with respect to nitrates and pesticides (discussed below).

Agriculture and soil protection

The Common Agricultural Policy contributes to preventing and mitigating soil degradation processes. In particular, agri-environment measures (discussed above).

In addition, the provisions of cross-compliance (noted above), notably with respect to the obligation to keeping agricultural land in good agricultural and environmental condition, can play an important role for soil protection.

The European Commission adopted in 2006 a [soil protection thematic strategy](#).

Agriculture and nitrates

EU legislation on nitrates aims at reducing water pollution by nitrates from agricultural sources and at preventing further pollution.

In terms of environmental legislation, the [EU's Nitrates Directive](#) was introduced in 1991 with two main objectives:

- 1) To reduce water pollution by nitrates from agricultural sources.

2) To prevent further pollution.

Legal basis for the directive: Treaty establishing the European Economic Community, Article 130s

The directive is managed by Member States and involves monitoring water quality in relation to agriculture and designation of Nitrate Vulnerable Zones. It also involves the establishment of (voluntary) codes of good agricultural practice and of (obligatory) measures to be implemented in action programmes for nitrate vulnerable zones.

Detailed information can be found on the ["Implementation of Nitrates Directive"](#) web pages.

Agriculture and pesticides

The EU seeks to ensure the correct use of pesticides to minimise the associated environmental and health risks. It also informs the public about their use and about any residue issues that might arise.

In 2006, the Commission adopted two proposals to strengthen the legislative framework concerning pesticides:

- [a proposal](#) to review the [current legislation](#) concerning the placing of plant protection products on the market,
- [a Directive](#) on the sustainable use of pesticides, which will cover the use phase of pesticides.

Legal basis for the directive: Treaty establishing the European Community, and in particular Article 175(1)

The EU also regulates the protection of water quality with respect to pesticides. The Water Framework Directive provides an integrated framework for the assessment, monitoring, and management of all surface waters and groundwater based on their ecological and chemical status.

Mandatory cross-compliance, established by the 2003 CAP reform, includes the respect of statutory requirements arising from the implementation of EU legislation covering the proper use of plant protection products.

Agriculture and renewable energy

The [EU Energy Policy](#) is one of the main priorities of the Commission. It aims at ensuring that the EU has secure, affordable and climate-friendly energy. Renewable energy provides an essential contribution to fighting climate change, improving energy security and creating new jobs and growth including in rural areas.

The [Renewable Energy Directive](#) (RED) 2009/28/EC defines binding targets for each Member State, such that the EU as a whole will reach a 20% share of renewable energy in the overall energy consumption by 2020.

On 30 November 2016, the Commission published a proposal for a [revised Renewable Energy Directive](#) to make the EU a global leader in renewable energy and ensure that the target of at least 27% renewables in the final energy consumption in the EU by 2030 is met.

Legal basis for the two Directives: Treaty establishing the European Community, Article 175(1) thereof, and; Article 95 in relation to Articles 17, 18 and 19 of Renewable Energy Directive (RED) 2009/28/EC, respectively, and for the proposal;

Treaty establishing the European on the Functioning of the European Union, 194(2) **Organic Farming**

In 2007 the European Council of Agricultural Ministers agreed on a [new Council Regulation](#) (Council Regulation (EC) No. 834/2007) setting out the principles, aims and overarching rules of organic production and defining how organic products were to be labelled.

Legal basis: Treaty establishing the European Community, and in particular Article 37

Organic production respects natural systems and cycles. Biological and mechanical production processes and land-related production should be used to achieve sustainability, without having recourse to genetically modified organisms (GMOs).

In organic farming, closed cycles using internal resources and inputs are preferred to open cycles based on external resources. If the latter are used, they should be organic materials from other organic farms natural substances materials obtained naturally, or mineral fertilisers with low solubility.

Exceptionally, however, synthetic resources and inputs may be permissible if there are no suitable alternatives. Such products, which must be scrutinised by the Commission and EU countries before authorisation, are listed in the annexes to the [implementing regulation](#) (Commission Regulation (EC) No. 889/2008).

Legal basis: Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (1), and in particular Article 9(4), the second paragraph of Article 11 Articles 12(3), 14(2), 16(3)(c), 17(2) and 18(5), the second subparagraph of Article 19(3), Articles 21(2), 22(1), 24(3), 25(3), 26, 28(6), 29(3) and 38(a), (b), (c) and (e), and Article 40

Labelling organic foods

Foods may be labelled "organic" only if at least 95% of their agricultural ingredients meet the necessary standards. In non-organic foods, any ingredients which meet organic standards can be listed as organic. To ensure credibility, the code number of the certifying organisation must be provided.

Organic production outlaws the use of genetically modified organisms and derived products. However, the [regulation on genetically modified food and feed](#) lays down a threshold (0.9%) under which a product's GMO content does not have to be indicated. Products with GMO content below this threshold can be labelled organic.

Legal basis: Treaty establishing the European Community, and in particular Articles 37, 95 and Article 152(4)(b)

Since 1 July 2010, producers of packaged organic food have been required under EU law to use the EU organic logo. However, this is not a binding requirement for organic foods from non-EU countries. Where the EU organic logo is used, the place where any farmed ingredients were produced must be indicated.

EU agricultural product quality policy

Agricultural products produced in the European Union (EU) reflect the rich diversity of different traditions and regions in Europe. To help protect and promote products with particular characteristics linked to their geographical origin as well as traditional products, the EU created quality logos, named "Protected Designation of Origin", "Protected Geographical Indication" and "Traditional Speciality Guaranteed".

In concrete terms, the EU product quality schemes relate to agricultural products and foodstuffs, wines, spirits and aromatised wines, which producers or producer groups have registered according to the rules.

Quality schemes are backed by EU marketing standards ([Council Regulation \(EC\) No 1234/2007](#)), laying down product definitions and categories, minimum characteristics and labelling requirements to be respected on the EU single market.

Legal basis: Treaty establishing the European Community, and in particular Articles 36 and 37

Legislation

PDO, PGI and TSG (agriculture products and foodstuff)

[Regulation \(EU\) No 1151/2012](#) of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

Legal basis: Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (1), and in particular Article 24(3) and Article 27

Implemented and delegated Regulations:

[Delegated Regulation \(EU\) No 664/2014 of 18 December 2013 supplementing Regulation \(EU\) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules](#)

Legal basis: Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (1), and in particular the first and second subparagraphs of Article 5(4), the first subparagraph of Article 12(7), Article 16(2), the first subparagraph of Article 19(2), the first subparagraph of Article 23(4), Article 25(3), the first subparagraph of

Article 49(7), the first subparagraph of Article 51(6), the first subparagraph of Article 53(3), and the first subparagraph of Article 54(2)

[Implementing Regulation \(EU\) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation \(EU\) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs](#)

Legal basis: Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [\(1\)](#), and in particular the second subparagraph of Article 7(2), Article 11(3), the second subparagraph of Article 12(7), the second subparagraph of Article 19(2), Article 22(2), the second subparagraph of Article 23(4), Article 44(3), the second subparagraph of Article 49(7), the second subparagraph of Article 51(6), the second subparagraph of Article 53(3) and the second subparagraph of Article 54(2)

[Delegated Regulation \(EU\) No 665/2014 of 11 March 2014 supplementing Regulation \(EU\) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term 'mountain product'](#)

Legal basis: Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (1), and in particular Article 31(3) and (4)

Guidelines

[Guidelines on EU best practice](#)

[Guidelines on labelling of products using PDO-PGI ingredients](#)

PDO, PGI (wine)

[Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.

Legal basis: Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 42 and Article 43(2)

[Regulation \(EU\) No 1306/2013](#) of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2)

Implementing Regulations

[Commission Regulation \(EC\) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation \(EC\) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions](#)

Legal basis: Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (1), and in particular Articles 25(3) and 32

[Commission Regulation \(EC\) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation \(EC\) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products](#)

Legal basis: Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (1), and in particular Articles 52, 56, 63 and 126(a)

[Commission Regulation \(EC\) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation \(EC\) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector](#)

Legal basis: Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (1), and in particular Articles 22, 84, 89, 97, 107, 117, 121(b) and (c)

[Commission Regulation \(EC\) No 436/2009 of 26 May 2009 laying down detailed rules for the application of Council Regulation \(EC\) No 479/2008 as regards the vineyard register, compulsory declarations and the gathering of information to monitor the wine market, the documents accompanying consignments of wine products and the wine sector registers to be kept](#)

Legal basis: Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (1), and in particular Article 115(2) and Article 121

Spirit drinks (geographical indication)

[Regulation \(EC\) No 110/2008](#) of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.

Legal basis: Treaty establishing the European Community, Article 95

Implementing Regulation

[Regulation \(EU\) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation \(EC\) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks](#)

Legal basis: Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (1), and in particular Article 24(3) and Article 27

Aromatized wines (geographical indication)

[Regulation \(EU\) No 251/2014](#) of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products.

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2) and Article 114

The EU promotes quality schemes (laid down in [Regulation \(EU\) No 1144/2014](#)) with campaigns such as "Tastes of Europe". There are also a number of optional quality terms, and separate rules on organic farming.

Legal basis: Treaty on the Functioning of the European Union, and in particular Articles 42 and 43(2)

General Food Law

European citizens need to have access to safe and wholesome food of the highest standard.

In 2002, the European Parliament and the Council adopted [Regulation \(EC\) No 178/2002](#) laying down the general principles and requirements of food law (General Food Law Regulation).

Legal basis: Treaty establishing the European Community, and in particular Articles 37, 95, 133 and Article 152(4)(b)

The General Food Law Regulation is the foundation of food and feed law. It sets out an overarching and coherent framework for the development of food and feed legislation both at Union and national levels. To this end, it lays down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution.

It also sets up an independent agency responsible for scientific advice and support, the [European Food Safety Authority](#) (EFSA).

Moreover, it creates the main procedures and tools for the management of emergencies and crises as well as the [Rapid Alert System for Food and Feed](#) (RASFF).

Biotechnology: Genetically Modified Organisms (GMOs) in agriculture

One example of the many applications of modern biotechnology is the use of GMOs in the food production chain. GMOs are organisms such as plants, animals and micro-organisms (bacteria, viruses, etc.), the genetic characteristics of which have been modified artificially in order to give them a new property (a plant's resistance to a disease or insect, increased crop productivity, a plant's tolerance of a herbicide, etc.).

The legal framework aims to:

- Protect human and animal health and the environment by introducing a safety assessment of the highest possible standards at EU level before any GMO is placed on the market.
- Put in place harmonised procedures for risk assessment and authorisation of GMOs that are efficient, time-limited and transparent.
- Ensure clear labelling of GMOs placed on the market in order to enable consumers as well as professionals (e.g. farmers, and food feed chain operators) to make an informed choice.
- Ensure the traceability of GMOs placed on the market

The building blocks of the GMO legislation are

[Directive 2001/18/EC](#) on the deliberate release of GMOs into the environment

Legal basis: Treaty establishing the European Community, and in particular Article 95

[Regulation \(EC\) 1829/2003](#) on genetically modified food and feed

Legal basis: Treaty establishing the European Community, and in particular Articles 37, 95 and Article 152(4)(b)

[Directive \(EU\) 2015/412](#) amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 114

[Regulation \(EC\) 1830/2003](#) concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms

Legal basis: Treaty establishing the European Community, and in particular Article 95(1)

[Directive 2009/41/EC](#) on contained use of genetically modified micro-organisms. [Regulation \(EC\) 1946/2003](#) on trans-boundary movements of GMOs

Legal basis: Treaty establishing the European Community, and in particular Article 175(1)

These main pieces of legislation are supplemented by a number of implementing rules or by recommendations and guidelines on more specific aspects.

Fisheries & Aquaculture

The Common Fisheries Policy (CFP)

The CFP is a set of rules for managing European fishing fleets and for conserving fish stocks. Designed to manage a common resource, it gives all European fishing fleets equal access to EU waters and fishing grounds and allows fishermen to compete fairly.

Fisheries Legislation

[Regulation \(EU\) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations \(EC\) No 850/98, \(EC\) No 2187/2005, \(EC\) No 1967/2006, \(EC\) No 1098/2007, \(EC\) No 254/2002, \(EC\) No 2347/2002 and \(EC\) No 1224/2009, and Regulations \(EU\) No 1379/2013 and \(EU\) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation \(EC\) No 1434/98](#)

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2)

[REGULATION \(EU\) No 1380/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations \(EC\) No 1954/2003 and \(EC\) No 1224/2009 and repealing Council Regulations \(EC\) No 2371/2002 and \(EC\) No 639/2004 and Council Decision 2004/585/EC](#)

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2)

Aquaculture Guidelines and Legislation

[Strategic Guidelines for the sustainable development of EU aquaculture Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions \(29/04/2013\)](#)

Alien species

[Regulation \(EU\) No 304/2011 of the European Parliament and of the Council of 9 March 2011 amending Council Regulation \(EC\) No 708/2007 concerning use of alien and locally absent species in aquaculture](#)

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2)

[Council Regulation \(EC\) No 708/2007 concerning use of alien and locally absent species in aquaculture](#)

Legal basis: Treaty establishing the European Community, and in particular Article 37 and Article 299(2)

Organic aquaculture

[Commission Regulation \(EC\) No 710/2009 of 5 August 2009 amending Regulation \(EC\) No 889/2008 laying down detailed rules for the implementation of Council Regulation \(EC\) No 834/2007, as regards laying down detailed rules on organic aquaculture animal and seaweed production](#)

Legal basis: Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (1), and in particular Articles 11, 13(3), 15(2), 16(1) and (3)(a) and (c), 17(2), 18(5), the second subparagraph of Article 19(3), Articles 22(1), 28(6) and 38(a), (b), (c), and Article 40

[Regulation \(EC\) No 889/2008 laying down detailed rules for the implementation of Council Regulation \(EC\) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control](#)

Legal basis: Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (1), and in particular Article 9(4), the second paragraph of Article 11 Articles 12(3), 14(2), 16(3)(c), 17(2) and 18(5), the second subparagraph of Article 19(3), Articles 21(2), 22(1), 24(3), 25(3), 26, 28(6), 29(3) and 38(a), (b), (c) and (e), and Article 40

[Council Regulation \(EC\) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation \(EEC\) No 2092/91](#)

Legal basis: Treaty establishing the European Community, Article 37

[Communication from the Commission to the European Parliament and the Council, Building a sustainable future for aquaculture, A new impetus for the Strategy for the Sustainable Development of European Aquaculture](#)

The EU Animal Health Law

The European Parliament and the Council adopted the [Regulation on transmissible animal diseases](#) (“Animal Health Law”) in March 2016. The Regulation was published in the Official Journal on 31 March 2016. The Regulation enters into force on the twentieth day following that of its publication in the Official Journal of the European Union and **will be applicable in 5 years**.

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 114 and Article 168(4)(b)

Overall, the single, comprehensive new animal health law will support the EU livestock sector in its quest towards competitiveness and safe and smooth EU market of animals and of their products, leading to growth and jobs in this important sector:

The huge number of legal acts are streamlined into a single law.

Simpler and clearer rules enable authorities and those having to follow the rules to focus on key priorities: preventing and eradicating disease.

Responsibilities are clarified for farmers, vets and others dealing with animals.

The new rules allow greater use of new technologies for animal health activities - surveillance of pathogens, electronic identification and registration of animals.

Better early detection & control of animal diseases, including emerging diseases linked to climate change, will help to reduce the occurrence and effects of animal epidemics.

There will be more flexibility to adjust rules to local circumstances, and to emerging issues such as climate and social change.

It sets out a better legal basis for monitoring animal pathogens resistant to antimicrobial agents supplementing existing rules and two other proposals currently being negotiated in the European Parliament and Council, on veterinary medicines and on medicated feed.

The animal health law is part of a [package of measures](#) proposed by the Commission in May 2013 to strengthen the enforcement of health and safety standards for the whole agri-food chain. It is the biggest and the first of those to get the approval of the co-legislators. The animal health law is also a key output of the [Animal Health Strategy 2007-2013, "Prevention is better than cure"](#).

EU Plant Health legislation

[Directive 2000/29/EC](#) lists certain harmful organisms that may be targeted by specific control measures if they are:

- listed in annexes I and II (Part A, Section I) and found in the EU for the first time;
- listed in annexes I and II (Part A, Section II) and found in an EU country where their presence was previously unknown.

Legal basis: Treaty establishing the European Community, and in particular Article 37.

Specific control measures may also be targeted at other harmful organisms previously unknown to occur in the EU and which are not listed in the annexes of Directive 2000/29/EC but are of potential economic importance.

If a harmful organism is found in the EU, the country concerned must:

- notify the Commission and the other EU countries;
- eradicate or prevent the spread of the harmful organism.

If there is an imminent danger of introduction or spread of a harmful organism, an EU country should state the control measures it would like to see taken and may temporarily take additional national control measures.

Temporary (emergency) control measures may be taken by the EU if the danger comes from consignments of plants, plant products or other objects originating from countries outside the EU.

Directive 2000/29/EC will be repealed on 14 December 2019 and will be replaced by [Regulation \(EU\) 2016/2031](#) of the European Parliament and of the Council concerning protective measures against pests of plants.

Legal basis: Treaty on the Functioning of the European Union, and in particular Article 43(2)

Agriculture and climate change

The combination of the above legislations are helping to keep the EU green going into 2020, however, the EU also has an Environment Action Programme to 2020.

Over the past decades, and as detailed above, the European Union has put in place a broad range of environmental legislation. As a result, air, water and soil pollution has significantly been reduced. Chemicals legislation has been modernised and the use of many toxic or hazardous substances has been restricted. Today, EU citizens enjoy some of the best water quality in the world and over 18% of EU's territory has been designated as protected areas for nature.

The [7th Environment Action Programme](#) (EAP) will be guiding European environment policy until 2020.

Waste

In line with this the 7th Environment Action Programme sets the following priority objectives for waste policy in the EU.

A. Framework waste legislation

Waste Framework Directive, or [Directive 2008/98/EC](#) (legal basis: Treaty establishing the European Community, Article 175(1)) of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives. This Directive repealed [Directive 2006/12/EC](#) (legal basis: Treaty establishing the European Community, Article 175) of the European Parliament and of the Council of 5 April 2006 on waste (the codified version of Directive 75/442/EEC as amended), [hazardous waste Directive 91/689/EEC](#) (legal basis: Treaty establishing the European Economic Community, Article 103s), and the [Waste Oils Directive 75/439/EEC](#) (legal basis: Treaty establishing the European Economic Community, and in particular Articles 100 and 235). It provides for a general framework of waste management requirements and sets the basic waste management definitions for the EU.

[Regulation \(EC\) No 1013/2006](#) of the European Parliament and of the Council of 14 June 2006 on shipments of waste. This Regulation specifies under which conditions waste can be shipped between countries.

Legal basis: Treaty establishing the European Community, and in particular Article 175(1)

[Decision 2000/532/EC](#) establishing a list of wastes. This Decision establishes the classification system for wastes, including a distinction between hazardous and non-hazardous wastes. It is closely linked to the list of the main characteristics which render waste hazardous contained in Annex III to the Waste Framework Directive above.

Legal basis: Council Directive 75/442/EEC of 15 July 1975 on waste(1), as amended by Directive 91/156/EEC(2), and in particular Article 1(a)

Legislative changes concerning the list of waste and hazardousness properties (applicable from 1 June 2015):

[Commission Decision \(EU\) No 2014/955/EU](#) of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council Text with EEA relevance (OJ L 370, 30.12.2014, p. 44–86)

Legal basis: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, Article 7(1)

[Commission Regulation \(EU\) No 1357/2014](#) of 18 December 2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives (OJ L 365, 19.12.2014, p. 89–96)

Legal basis: Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives, Article 38(2)

[Council Directive 96/61/EC](#) concerning integrated pollution prevention and control

Legal basis: Treaty establishing the European Community, and in particular Article 130s (1)

[Council Directive 85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment, as amended.

Legal basis: Treaty establishing the European Economic Community, and in particular Articles 100 and 235.

[Council Directive 80/68/EEC](#) of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.

Legal basis: Treaty establishing the European Economic Community, and in particular Articles 100 and 235

[Council Directive 76/769/EEC](#) of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations

Legal basis: Treaty establishing the European Economic Community, and in particular Article 100.

Waste Management:

[Directive 2000/76/EC](#) of the European Parliament and of the Council of 4 December 2000 on the incineration of waste

Legal basis: Treaty establishing the European Community, and in particular Article 175(1)

[Directive 2000/59/EC](#) of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues - Commission declaration

Legal basis: Treaty establishing the European Community, and in particular Article 80(2)

[Council Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste

Legal basis: Treaty establishing the European Community, and in particular Article 130s(1)

Ancillary legislation relating to landfill of waste:

[Commission Decision of 17 November 2000](#) concerning a questionnaire for Member States reports on the implementation of Directive 1999/31/EC on the landfill of waste

Legal basis: Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste(1), in particular Article 15

More specific areas of waste legislation.

Health cover

As an EU citizen, an individual is entitled to any medical treatment that can't wait until they get home. They have the same rights to health care as people insured in the country you are in.

An individual should always take their [European Health Insurance Card \(EHIC\)](#) with them as proof that they are insured in an EU country. Alternatively if an individual does not have this card then they may have to pay for your treatment upfront and claim reimbursement once you get home.

EU legislation

[EU Regulation laying down the procedure for implementing Regulation 883/2004 on the coordination of social security systems](#)

[EU Directive on the application of patients' rights in cross-border healthcare](#)

[EU Regulation on the coordination of social security systems](#)

Higher education

An individual has the right to live in an EU country where they are studying for the duration of their studies if:

They are enrolled in an approved educational establishment

They have sufficient income, from any source, to live without needing income support

They have comprehensive health insurance cover there.

EU legislation

[Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#)

[Right to move and reside freely within the EU](#)

Funding:

Between 2014 and 2020, the EU will provide almost €80bn in funding for research, mainly through its flagship research programme Horizon 2020. This funding usually takes the form of grants, to part-finance a broad range of research projects.

Funding opportunities under Horizon 2020 are set out in multiannual work programmes, which cover the large majority of support available. The work programmes are prepared by the European Commission within the framework provided by the Horizon 2020 legislation and through a strategic programming process integrating EU policy objectives in the priority setting.

All of the legislation for Horizon 2020 can be found on the [research portal](#).



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