House of Commons

European Scrutiny Committee

Fifty-fourth Report of Session 2010–12

Documents considered by the Committee on 1 February 2012, including the following recommendations for debate:

The European External Action Service

Report, together with formal minutes

Ordered by The House of Commons
to be printed 1 February 2012

HC 428-xlix
Published on 9 February 2012
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

EC	(in "*Legal base*") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)
EP	European Parliament
EU	(in "*Legal base*") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

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

Further information

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

Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website: http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx.

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

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1 The European External Action Service

(33638) — —	Report by the High Representative to the European Parliament, the Council and the Commission on the European External Action Service

Legal base	—
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 25 January 2012
Previous Committee Report	None; but see (31439) 8029/10: HC 5–xvii (2009–10), chapter 1 (7 April 2010); also see (31445) — and (31446) 8134/10: HC 5–xvii (2009–10), chapter 2 (7 April 2010)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; for debate in European Committee B

Background

1.1 Prior to the coming-into-force of the Lisbon Treaty, in 1999, the office of High Representative for Common Foreign and Security Policy was introduced by the Amsterdam Treaty. Javier Solana was the sole occupant of that position. Together with an increasing number of officials in the Council Secretariat, he assisted the Council in foreign policy matters, through contributing to the formulation, preparation and implementation of policy decisions. He acted on behalf of the Council in conducting political dialogue with third parties. The six-monthly rotating Presidency was in charge of chairing the External Relations Council, representing the Union in CFSP matters, implementing the decisions taken and for expressing the EU position internationally.

1.2 Under the Lisbon Treaty, new arrangements came into being. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, appoints the High Representative; he or she is subject, together with the President of the Commission and the other members of the Commission, to a vote of consent by the European Parliament.

1.3 At their informal meeting in Brussels on 19 November, ahead of the entry into force of the Treaty of Lisbon (TEU) on 1 December, EU Heads of State or Government agreed on the appointment of Baroness Catherine Ashton as the High Representative of the Union for Foreign Affairs and Security Policy (HR).

1.4 The High Representative now exercises, in foreign affairs, the functions that were previously exercised by the six-monthly rotating Presidency, the High Representative for CFSP and the Commissioner for External Relations. According to Articles 18 and 27 TEU, the High Representative:

- conducts the Union's common foreign and security policy;

- contributes by her proposals to the development of that policy, which she will carry out as mandated by the Council, and ensures implementation of the decisions adopted in this field;
- presides over the Foreign Affairs Council;
- as one of the Vice-Presidents of the Commission, ensures the consistency of the Union's external action and is responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action;
- represents the Union for matters relating to the common foreign and security policy, conduct political dialogue with third parties on the Union's behalf and expresses the Union's position in international organisations and at international conferences;
- shall be assisted by a European External Action Service (EEAS).

1.5 Article 27(3) TEU constitutes the legal basis for the Council decision on the organisation and functioning of the EEAS.

> "In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission."

European Council Guidelines on the EEAS

1.6 According to the guidelines, the EEAS was to be a single service under the authority of the High Representative, with an organisational status reflecting and supporting the High Representative's unique role and functions in the EU system. The EEAS would help the High Representative ensure the consistency and coordination of the Union's external action as well as prepare policy proposals and implement them after their approval by Council. It would also assist the Presidents of the European Council and the Commission, as well as the Members of the Commission in their respective functions in the area of external relations, and ensure close cooperation with the Member States. The EEAS should be composed of single geographical (i.e., covering all regions and countries) and thematic desks, which would continue to perform under the authority of the High Representative the tasks currently executed by the relevant parts of the Commission and the Council Secretariat. Trade and development policy as defined by the Treaty should remain the responsibility of relevant Commissioners of the Commission.

1.7 With respect to its staffing:

— EEAS staff should be appointed by the High Representative and drawn from three sources: relevant departments of the General Secretariat of the Council and of the

Commission, and Member States' diplomatic services. Recruitment should be based on merit, with the objective of securing the services of staff of the highest standard of ability, efficiency and integrity, while ensuring adequate geographical balance;

— in order to enable the High Representative to conduct the European Security and Defence Policy (ESDP), the EU's crisis management structures should be part of the EEAS, under the direct authority and responsibility of the High Representative.

1.8 The EEAS should be a service of a *sui generis* nature, separate from the Commission and the Council Secretariat, with administrative budget and staff management autonomy and its own section in the EU budget, to which the usual budgetary and control rules would apply, and which the High Representative would propose and implement. It was to be guided by cost efficiency and aim at budget neutrality.

1.9 Overseas, the Commission's delegations would become Union delegations under the authority of the High Representative and be part of the EEAS structure. They should contain both regular EEAS staff (including Heads of Delegation) and staff from relevant Commission services. All staff should work under the authority of the Head of Delegation. EU delegations should work in close cooperation with diplomatic services of the Member States and play a supporting role as regards diplomatic and consular protection of Union citizens in third countries.

The EEAS Council Decision

1.10 This is described in detail the Committee's first Report.[1]

1.11 In its essentials, the Council Decision appeared to be true to the European Council guidelines. As well as supporting the High Representative in fulfilling her mandate (and assisting the President of the Commission and of the European Council) the EEAS would "equally extend appropriate support to the other institutions and bodies of the Union, in particular the European Parliament."

1.12 Overseas, each Delegation would be led by a Head of Delegation or equivalent, with authority over all staff and activities of the Delegation and accountable for the overall management of the work of the delegation and for ensuring the coordination of all actions of the Union. The Head of Delegation would receive instructions from the High Representative; in areas where the Commission exercises the powers conferred to it by the Treaties, the Commission may also issue instructions to the Delegations, which should be executed under the overall responsibility of the Head of Delegation.

1.13 A goodly part of the HR's Explanatory Memorandum was taken up with the Commission/EEAS nexus, which was detailed in Article 8 of the draft Decision ("Programming").[2]

1.14 Following the guidelines, the draft Decision set out who should comprise the EEAS and how they would be recruited. The High Representative would act as authorising officer

1 See headnote: (31439) 8029/10: HC 5–xvii (2009–10), chapter 1 (7 April 2010).

2 *Ibid*, paras 1.17–1.21.

for the EEAS section of the General Budget. Provisions should be adopted relating to the staff of the EEAS and their recruitment and the Financial Regulation should be adopted in order to ensure budgetary autonomy necessary for the smooth operation of the EEAS.

1.15 The HR concluded by noting that:

— a report to the Council on the functioning of the EEAS would be produced in 2012;

— in the light of experience, the Council, acting on a proposal by the High Representative, should review this Decision in accordance with Article 27 TEU, no later than the beginning of 2014.

The previous Government's view

1.16 These are set out in first Report under reference.[3] In his Explanatory Memorandum of 30 March 2010, the then Minister for Europe (Chris Bryant) noted that, even after the decision was adopted, there would be a wide range of organisational, procedural and cultural issues to be tackled over the Belgian and future Presidencies, to ensure that the Service emerged as a credible and effective institution.

1.17 Nonetheless, the then Minister believed that, overall, the Decision covered the key issues. Ones that are of particular relevance in the present context are (the then Minister's emphasis):

> "The Decision mentions the EEAS playing a supporting role for **consular protection.** A number of Member States would like the EEAS to have a role in consular affairs. We believe that the Treaty only provides for Member States to undertake consular functions. The Council's paper to the European Council in October 2009 on guidelines for the EEAS suggested that it might play a 'supporting' role, which we see as the facilitation of contact between Member States. Ministers have been clear that the UK will continue to have responsibility for the provision of Consular Services to UK nationals.
>
> [...]
>
> "On **Political-Military Structures** the Government agrees that they should be within the EEAS to ensure maximum coherence. The October 2009 European Council conclusions stated that the EU's political-military structures (CPCC, CMPD, EUMS)[4] should be inside the EEAS. We are glad that this Decision confirms that view. We see this as the most effective way for the High Representative and the EEAS to be able to act across the whole of the stabilisation spectrum. The discussions in Brussels are now looking at the detail of how they will all interact within the EEAS. Members States are clear that the staff of the EU Military Staff should remain as national secondees and not become temporary agents. The EEAS will also include the Joint Situation Centre (SITCEN) which is the intelligence portal for the EU. We will, however, want to be assured that arrangements are put in place in the service to

3 *Ibid*, paras 1.26–1.29.

4 Civilian Planning Conduct and Capability (CPCC), Crisis Management and Planning Directorate (CMPD), EU Military Staff (EUMS).

ensure that the coherence of EU crisis management activity is improved, with closer links between operations, policy and assistance.

[...]

"The EEAS will be **staffed** by officials from the Commission, the Council Secretariat and Member States rotating into the service for fixed periods. Once the EEAS is at full capacity, the aim is for there to be equal numbers of staff from the three sources. The Government believes that the appointments should be on merit and not based on quotas for individual Member States, the Commission or Council Secretariat. Staff selection procedures will also need to provide a level playing field which is robust enough to ensure secondees have the right skills.

"The Government believes that it is important to ensure that the UK is properly represented in the EEAS, both at its headquarters and in the EU delegations. We have identified a pool of people from within the Foreign Office and across Whitehall Departments who have expressed an interest in being seconded to the EEAS and who would contribute effectively to the formulation and delivery of EU external policy. If they are recruited by the EEAS, they would go onto Special Unpaid Leave and would become part of the EEAS as Temporary Agents. They would be paid by the EEAS with the FCO paying only for training, salary during training and any top up required of their allowances. We would expect them to return to UK service at the end of their EEAS tour."

1.18 Looking ahead, he noted that:

— a Commission proposal outlining the implications for the EU budget relating to the establishment of the EEAS was expected once the Council has adopted the Decision;

— the European Council-endorsed guidelines stated that "unnecessary duplication of tasks, functions and resources with other structures should be avoided" and that the establishment of the EEAS should be guided by the "principle of cost-efficiency aiming towards budget neutrality";

— the next stage was likely to be political agreement in the Council by the end of April;

— the Council would then need to discuss this with the European Parliament, as some of the aspects were subject to Co-Decision.

The previous Committee's assessment

1.19 The previous Committee thanked then Minister for having been assiduous in keeping it informed about the development of this document, and for having submitted his Explanatory Memorandum so soon after its publication, so that it could be considered before the dissolution of Parliament.

1.20 The previous Committee noted that, while the draft Council Decision had remained faithful to the guidelines and timeline endorsed by the European Council, it was somewhat short of the finished article.

1.21 The previous Committee also noted that the Minister did not refer to adoption of the Decision before the end of this month, but had said that the Council would be "seeking political agreement" on it by then. They understood that there was no inwardness in this formulation (which was normally used in the context of co-decision), but felt that it did nonetheless, if perhaps unconsciously, acknowledge "the elephant in the room", i.e., the European Parliament (EP). The previous Committee recalled that the HR had said that her proposals "shall take effect on the day of the adoption of the amending Budget of the European Union providing for the corresponding posts and appropriations in the EEAS" — put otherwise, could be implemented only as and when the European Parliament did so. And all the indications thereto were that it was endeavouring to make its agreement to this and the associated staff and financial regulations dependent on changes to this Council Decision, particularly with regard to the Deputy Secretary General positions (with regard to which powerful voices, it seemed, wished to see three political Deputy Secretaries General, broadly reflecting the political balance of the EP, who would deputise for the HR when necessary). That three politicians should be embodied in an official organisation, and stand between the equivalent of a permanent under secretary and his or her staff, seemed to the previous Committee a bizarre notion — but it was nonetheless in play, in a situation in which the EP had demonstrable leverage.

1.22 The previous Committee also noted that the crucial proposals in Article 8 on the programming of the EU's external cooperation programmes remained open to discussion. The complex arrangements set out therein seemed to them much more to reflect unresolved "turf wars" and the inherent difficulties of a position that had a large footprint in two institutions, rather than a formula consistent with the "principle of cost-efficiency aiming towards budget neutrality". As a consequence, the previous Committee said that it was unable to understand the division of responsibilities between the EEAS and the Commission, particularly with respect to development and neighbourhood policies.

1.23 On the plus side, the previous Committee found the then Minister's position on the provision of consular services to UK citizens overseas to be commendably clear and robust.[5] Even so, he had nothing to say about what impact he thought the creation of a world-wide EU diplomatic service, delivering technical assistance and in charge of an expanding EU common foreign and security policy, would have on Britain's capacity to promote her own bilateral interests in the major centres of power and opportunity, which would remain crucial to the UK's future as a global economic and political actor.

1.24 With a general election imminent, the normal option of holding the Council Decision under scrutiny while the Minister provided further information was not available to the previous Committee. But nor did the previous Committee feel able, on the basis of the information presently available, to clear it. The third option — a debate, ahead of adoption — was also not possible. In all the circumstances — and recognising that this would not take place until there was a new Parliament — the previous Committee considered that a debate at that later stage was the best available option.

5 For the previous Committee's consideration of this matter, see (29353) 5947/07 + ADDs 1–2: HC 16–xvii (2007–08), chapter 1 (26 March 2008) and the subsequent debate in the European Committee on 23 June 2008, the record of which is available at http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080623/80623s01.htm.

1.25 Given the importance of the proposal, which — the Minister's assurances on consular protection notwithstanding — was nonetheless likely to be the most significant change in the conduct of British foreign policy for many years, the previous Committee recommended that this debate should be on the Floor of the House. It asked the Minister, when it took place, to provide a detailed outline of what had been transferred to the EEAS. The Committee further asked for clarification of the arrangements that had been decided upon under Article 8 between the EEAS and the Commission in the programming of the EU's external cooperation programmes, and his or her views on:

— how they fulfilled the "principle of principle of cost-efficiency aiming towards budget neutrality"; and

— the impact of this new global diplomatic service on Britain's ability to promote her bilateral interests.

1.26 In the meantime, the document was retained under scrutiny.

1.27 Though only to be consulted on this Council Decision, the European Parliament then sought to use its powers of co-decision regarding three related issues (the staffing regulation, the financing regulation and the EEAS budget) to extend their influence over the EEAS's composition, its status — the EP pressed for it to be part of the Commission; the HR and Council wished it to be *sui generis* — and the EU's Common Foreign and Security Policy — which, the Lisbon Treaty notwithstanding, remains inter-governmental and thus under Member States' control.

1.28 The previous Committee accordingly recommended that the EEAS staffing and financial Regulations that emerged from these negotiations also be debated together with the Council Decision, and in the meantime likewise retained the draft Regulations under scrutiny.

1.29 That debate took place on 14 July 2010, [6] at the end of which the House agreed the following motion:

> "That this House takes note of European Document Nos. 8029/10 and 11507/10, draft Council Decisions establishing the organisation and functioning of the European External Action Service; European Document No. 8134/10, draft Regulation on the Financial Regulations for the European External Action Service; and an unnumbered draft Regulation amending Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those Communities; and supports the Government's policy to agree to the Decision establishing the External Action Service at the Foreign Affairs Council in July 2010."

1.30 The Council Decision establishing the EEAS was adopted by the Council on 26 July 2010.[7]

6 See *HC Deb*, 14.07.10, cols 1034–1060; the record is also available at http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100714/debtext/100714-0003.htm#10071434000003.

7 See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:201:0030:0040:EN:PDF for the full text of the Council Decision.

The High Representative's Report[8]

1.31 Article 13(2) of the Council Decision requires the High Representative to submit a report to the European Parliament, the Council and the Commission on the functioning of the EEAS by the end of 2011; and for that Report to cover, in particular, the implementation of Article 5(3) and (10) and Article 9.

1.32 Article 5 deals with Union delegations. Article 5(3) says that Head of Delegation shall receive instructions from the High Representative and the EEAS, and shall be responsible for their execution.

1.33 Article 5(10) says that Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.

1.34 Article 9 deals with the EU's External action instruments and programming. It lays down that:

— management of the Union's external cooperation programmes is under the responsibility of the Commission without prejudice to the respective roles of the Commission and of the EEAS in programming;

— the High Representative shall ensure overall political coordination of the Union's external action, ensuring the unity, consistency and effectiveness of the Union's external action, in particular through the following external assistance instruments:

- the Development Cooperation Instrument;
- the European Development Fund;
- the European Instrument for Democracy and Human Rights;
- the European Neighbourhood and Partnership Instrument;
- the Instrument for Cooperation with Industrialised Countries;
- the Instrument for Nuclear Safety Cooperation;
- the Instrument for Stability.

1.35 The report begins by noting the particularly challenging *Political Context* in which the EEAS was launched — the global economic crisis, tensions in the Euro zone and the Arab Spring in particular. It says that the EEAS is not about replacing national diplomatic services but "in making a more effective and cost efficient use of resources". It sees the EEAS as offering "a historic opportunity to rise above the debate on the ratification of the Lisbon Treaty to deliver new substance to the EU's external action".

1.36 The report then reviews what has been happening in a number of key areas, viz:

8 Available at http://eeas.europa.eu/top_stories/2012/050112_eeas_report_en.htm.

— the Arab Spring, for example, the launch of joint crisis platforms with the Commission in Libya and Tunisia; working with the Commission to develop a comprehensive strategy;

— the HR and EEAS's proactive role in international coordination efforts, together with the UN, the Arab League and other major actors like Turkey, for example, during the Libya crisis;

— a stronger voice in the Middle East Peace Process;

— a continued lead by the HR in international efforts aimed at finding a diplomatic solution to the Iranian nuclear issue;

— EEAS leading and coordinating CSDP operations and assistance to tackle piracy off the Horn of Africa and its underlying causes;

— together with the Council and Commission, formulating a more effective policy towards the EU's strategic partners;

— decisive engagement in the complex political tensions in the Western Balkans; and

— addressing the significant upgrade in the EEAS's crisis response responsibilities.

1.37 In this context, the report notes that the HR and senior officials have been very active in supporting the work of the European Parliament through regular participation in Plenary debates and meetings, and intensified cooperation on the identification and planning of election observation missions.

1.38 Turning to *Lisbon Tasks*, the report reviews the ways in which HR and EEAS have:

— responded to the consequential changes in Presidency responsibilities (for example, chairing the Foreign Affairs Council and Defence Ministers and Development Ministers Councils; 504 statements covering different matters from 1 January–9 November 2011); and

— contributed to the consistency of the EU's external action.

1.39 In this regard, the report observes that:

— it is too soon to make a judgement on the respective roles of the EEAS and the Commission in the programming and implementation of EU external assistance because the current multi-annual financial framework and the 10th EDF were already in place when the EEAS was established;

— the transfer of Presidency responsibilities has gone remarkably smoothly in bilateral delegations and been welcomed by third countries;

— the situation has been more challenging in multilateral delegations;

— the important principle is that all EU delegation staff work under the Head of Delegation, who can refer issues involving both the EEAS and the Commission back to headquarters for further discussion if necessary.

1.40 With regard to progress on implementation of Article 5(10) of the EEAS, the report says:

> "These issues have been at the centre of discussions with Member States that the EEAS has established with Secretaries General of Foreign Ministries and their personal representatives. The EEAS has been very forthcoming in its support for general diplomatic relations, including the sharing of political reporting, more active and substantive meetings between Heads of Mission and thematic co-ordination arrangements. A pilot project for local exchange of classified information is being developed in cooperation with Member States. The EEAS hopes that the necessary security approvals at national level will be in place quickly so that the new system can become operational.
>
> "Some Member States have expressed a strong interest in seeing EU delegations develop capacity for consular support for EU citizens who find themselves in difficulty in third countries. On the other hand, a number of Member States are clearly opposed to the EU taking on a greater role in this area, which they see as a national competence. The key point is that it is difficult to see how this objective could reasonably be achieved 'on a resource neutral basis' as required by the EEAS decision. It would certainly not be responsible to raise citizens' expectations about the services to be provided by EU delegations, beyond their capacity to deliver in such a sensitive area. And the existing expertise within the EEAS in this area is extremely limited. However, over the past year we have also seen that the EU Delegations can play an important role in the coordination of evacuations of citizens and that pragmatic solutions can be found on the ground."[9]

1.41 The report then reviews a number of *Organisation Issues*, centring on Structure, Staffing/Recruitment, Budget and financial management issues, Management of Resources in Delegations, Security and Training.

1.42 Finally, the HR says that the EEAS will continue to work on all the areas covered by this report, taking account of "the welcome recent suggestions from a number of Foreign Ministers"[10] and input from the European Parliament, the Commission and the Council Secretariat; and that priority areas will include:

— consolidating the capacity to deliver policy substance, concentrating on the priority areas established by the High Representative;

— increasing substantially the emphasis on the work of the EU delegations as the front-line presence of the EU's external action, including through strengthened co-operation with embassies of Member States; and accompanied by a progressive transfer of resources from headquarters to delegations;

— progress in building a shared organisational culture for the EEAS drawing on the strengths of its component and getting the best from the three main sources of staffing (national diplomats and permanent officials from the Commission and the Council);

9 Paras 19 and 20 of the High Representative 's report.

10 See non-paper from 12 foreign ministers at Annex 1 to the chapter of our Report.

— attention to resolving outstanding issues in the relationship with the Commission, including upstream working on policy issues, management of staff in delegations, and reporting lines and financial responsibilities.

The Government's view

1.43 In his Explanatory Memorandum of 25 January 2012, the Minister for Europe (Mr David Lidington) welcomes Baroness Ashton's report, which, he says, demonstrates that she is accountable and transparent to Member States. The Minister says that his focus has been on ensuring that the Service establishes itself in a way that is in the UK's interests, acting in those areas where it has been agreed that it should act. He notes that the first year has presented challenges, for instance in bringing together staff from three different working cultures (Commission, Council and Member States) in a context of dramatic foreign events: the Arab Spring and a backdrop of global economic crisis.

1.44 The Minister then continues as follows:

Key policy issues

"The EEAS has begun to have a positive impact on UK security and prosperity. The report highlights key areas where it has 'delivered new substance to the EU's external action' (paragraph 5). These include the Arab Spring, the Libyan crisis, the Middle East Peace Process, the Iranian nuclear issue, counter-terrorism in the Horn of Africa, policy towards key strategic partners and the Western Balkans. HMG considers that the EEAS has performed particularly strongly in its work on the Southern Neighbourhood and the Western Balkans. The UK is committed to continuing to play a positive role in influencing the future direction of the Service. We continue to encourage it to focus on issues where it can complement and add value to the work of EU Member States' diplomatic services and support the delivery of UK international objectives.

Lisbon Tasks

"The report outlines the main provisions of the Treaties in terms of the Common Foreign and Security Policy (paragraphs 9–17), including transferral of the responsibilities of the rotating Presidency in the area of foreign policy to the HR and to the EEAS; giving the HR responsibility to ensure consistency of the EU's external actions, including by co-ordinating external relations policies within the Commission; and in establishing EU Delegations as part of the EEAS under the authority of the HR. The report notes that there has been progress in each of these areas. The report observes that recent clarifications on legal and competence issues in multilateral settings should 'lead to a more visible and active EU presence in future'. HMG will continue to ensure the EEAS only acts in line with the Treaties, with a focus on areas where it can have a positive impact on the UK's interests.

Instructions given to EU delegations by the EEAS

"As foreseen by the 2010 Council Decision, the report (paragraph 18) addresses the challenge for EU delegations in responding to instructions from both the High Representative and the EEAS, as well as directly from the Commission in areas of Commission competence. Guidelines are under preparation to alleviate any outstanding difficulties.

The role of EU delegations in supporting Member States in their diplomatic relations and their role in providing consular protection to citizens of the Union

"The report (paragraphs 19–20) highlights the EEAS' support for sharing political reporting and co-ordination arrangements with Member States. The UK has been clear from the outset that the EEAS will only represent the UK where we agree that we want the EU to represent the Member States and where we or the Treaties mandate them to do so, for example, agreed positions in the field of Common Foreign and Security Policy. The report notes that some Member States have "expressed a strong interest in EEAS consular support, others are clearly opposed [to expansion] in this area, which they see as a national competence". The report highlights that providing consular protection would be impossible on a resource neutral basis. HMG continues to hold the view that Member States are best placed to provide consular protection and we have made this clear.

Staffing

"A total of 3,611 staff are employed by the EEAS in Brussels or in EU delegations across the World. 3,480 of these were existing EU staff members that transferred from the Commission and the Council Secretariat. 1,551 of these staff work in Brussels; the remainder in delegations. The report (paragraphs 23–27) highlights the EEAS' progress towards its objective of one third of policy staff coming from national diplomatic services by mid 2013. So far they are on target, with 19% of all staff currently seconded from Member States. We are working in the FCO to promote secondment to the EEAS as a stepping stone in the career of talented UK officials, so that we can ensure strong British representation both in Brussels and in the work of delegations abroad. The Foreign Secretary has said that it is important that British citizens are represented in all EU institutions — including the EEAS. UK nationals already hold a number of senior positions, including on the EEAS Management Board. We estimate that there are now 200 British officials working in the EEAS.

Budget (paragraphs 28–32)

"The 2012 EEAS budget is increasing by 5.34% by comparison with the 2011 budget. The EEAS originally asked for 5.8%. The UK argued strongly against any increase. In the current fiscal climate we continue to consider that the EEAS budget should remain frozen in real terms.

"We accepted an EEAS budget increase only as part of a wider deal that sees the total increase in Heading 5 — the budget for EU institutional and administration costs that the EEAS comes under — increase by just 1.3% in nominal terms. Allowing for inflation, that represents a real terms cut in EU administrative spending which the Government considers to be a good deal for the UK taxpayer. We continue to remind the EEAS and other Member States that the Council decision establishing the EEAS commits the Service to the principle of cost-efficiency aiming towards budget neutrality.

Future priorities

"We welcome Baroness Ashton's commitment to consolidating the EEAS' capacity to deliver policy substance; an increased emphasis on the work of the EU delegations as opposed to headquarters; progress in building a shared organisational culture; and the resolution of outstanding issues in the relationship with the Commission.

"HMG is committed to continuing to play a central and leading role on the EU's external agenda. In 2012, we will continue to engage actively with the EEAS to ensure it focuses on delivering value for money for the UK taxpayer by promoting British prosperity, security and values. We are clear that EU action must not replace the work of national diplomatic services. But working collaboratively can enhance the impact of UK bilateral action. We want to see the EEAS concentrate on areas where EU engagement adds value to action by Member States because of the EU's particular weight and credibility — notably in the Neighbourhood, with strategic and emerging powers, on conflict prevention and development in Africa, and on Iran."

1.45 Finally, the Minister:

— notes that, while the 2012 EEAS budget was agreed last year as part of the overall 2012 EU budget negotiations, the negotiations on the EU Multi-annual Financial Framework 2014–2020 continue;

— notes that the report is likely to be the subject of discussion both in the Council and by the European Parliament but the precise arrangements for this are not yet clear; and

— encloses the 8 December 2011 non-paper on the EEAS from 12 Foreign Ministers (which we reproduce at the Annex to this chapter of our Report).[11]

Conclusion

1.46 **We are grateful to the Minister for his helpful Explanatory Memorandum, and for including a copy of a non-paper of 8 December 2011 from 12 Foreign Ministers — which does not include the Foreign Secretary, and upon which he himself makes no comment.**

[11] See p. 16

1.47 **One issue upon which the Minister does comment, however, is continuing to ensure that the EEAS only acts in line with the Treaties, with a focus on areas where it can have a positive impact on the UK's interests. This is as it should be, which is why elsewhere in this Report[12] we also welcome the General Arrangements that the Government has negotiated, to ensure that the vital distinction between Member State and EU competence in international organisations is respected.[13]**

1.48 **He also, equally properly, reiterates his view that Member States are best placed to provide consular protection. This is particularly apposite, given the Commission proposal for a Directive on Consular Protection for citizens of the Union abroad, which we consider elsewhere in this Report,[14] and which, though only at the draft stage, indicates that the impulse towards an unnecessary level of EU involvement in this area is still evident.[15]**

1.49 **Though these are early days, we think that this report on the EEAS's first year is an appropriate moment for these and other issues to be debated. We therefore recommend that the report should be debated in European Committee B.**

Annex: Non-paper on the EEAS

Non-paper on the European External Action Service
from the Foreign Ministers of Belgium, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland and Sweden

"The creation of the office of High Representative of the Union for Foreign and Security Policy and of the European External Action Service (EEAS) under the Treaty of Lisbon has the potential to enhance the effectiveness and coherence of the EU's external action in a fundamental way. We have strongly backed this idea from the start and have a major interest in a strong and efficient EEAS. Several Member States have since presented proposals on the further development of the EEAS, e.g. the Benelux and Austria in April 2011.

"Since the launch of the EEAS in December 2010, the High Representative and EEAS senior management have taken important steps with a view to making the EEAS fully operational. The relevant structures were swiftly established, allowing it to start tackling the great variety of tasks within its remit.

"Building a new service is a complex process that needs time. We strongly welcome the in-depth discussion initiated by Executive Secretary General Pierre Vimont and Chief Administrative Officer David O'Sullivan in particular in the areas of political demarches, local coordination and recruitment procedures.

[12] See (33345) (33358) at chapter 18 of this Report.

[13] See (33345) and (33358) at chapter 18 of this Report.

[14] See (33569) at chapter 7 of this Report.

[15] See (33569) at chapter 7 of this Report.

"By the end of the year, the High Representative will present a first general report on the functioning of the EEAS, which will be followed in 2013 by an overall review of EEAS organization and functioning and of the EEAS Decision. We would like to join efforts to further enhance the effectiveness of the EEAS and to help it develop its full potential. With a view to the High Representative's upcoming report, we believe the following issues should be discussed:

"**1. Preparation of the Foreign Affairs Council**

— "A key function of the High Representative is to chair the Foreign Affairs Council (FAC). Ways to further optimize the identification of political priorities should be explored here. A yearly FAC agenda planning could be an important tool in this connection, taking into account necessary short-term adjustments of the agenda. Also, the EEAS could be tasked more regularly to produce preparatory policy and/or decision-making papers to be circulated sufficiently in advance of FAC meetings.

"**2. Coordination with the Commission**

— "Close cooperation between the EEAS and the Commission is essential for effective and coherent EU external action. As Vice-President of the Commission, the High Representative plays a key role in coordinating the external relations aspects within the Commission. To ensure that foreign policy aspects are fully reflected in the discussions of the Relex Commissioners and, where appropriate, with other Commissioners, the EEAS should jointly prepare such meetings together with the Secretariat-General of the Commission.

— "Initiatives of the High Representative together with the Commission on issues relating to foreign policy play an important role in driving the EU's external action. Relevant EEAS units should be involved in preparatory work within the Commission from the outset of such initiatives. Does the EEAS have the right organizational structure to ensure effective cooperation with the Commission on all external action aspects?

— "A swift implementation of policy initiatives is a precondition for the EU's impact in the area of external relations. We should consider ways to ensure the effective coordination of the funding of CFSP activities and non-CFSP actions.

"**3. Internal EEAS procedures**

— "The EEAS has already made important progress in developing an 'esprit de corps'. Further work on EEAS internal manuals or guidelines would be helpful in developing established practice. The EEAS has also made progress in the area of joint training. Additional common training initiatives could be envisaged, making use of existing training facilities both at the EU level and within Member States.

— "Practical cooperation between the EEAS and the Commission and the Council Secretariat (meeting premises, infrastructure) should be reviewed to maximize EEAS effectiveness.

— "The result of the ongoing debate on the update of CSDP tools should be mirrored in due time by the adoption of new EEAS crisis management procedures and guidelines.

"**4. Building up Delegations to their full potential**

— "An EU Delegation can function effectively only if the Head of Delegation receives all necessary information in good time and can fully focus on political priorities, and if a Delegation can manage its administrative expenditures efficiently.

— "With regard to instructions that Delegations receive from Commission Directorate-Generals, it is important to ensure that the EEAS and Heads of Delegation are directly involved.

— "The Commission is responsible for implementation of the EU's budget. The Financial Regulation has been amended to allow for this task to be sub-delegated to the Head of Delegation. In our view Heads of Delegations should be able to further delegate the management of operational tasks to their Deputies. The Financial Regulation should be amended accordingly.
— "Given its focus on both CFSP and 'community' tasks, the EEAS has rightly been set up as an institution 'sui generis' with its own budget line. This means that the management of a Delegation's administrative expenditures cannot be concentrated in one hand. Here, too, we should examine whether the Financial Regulation needs to be amended to solve this problem.
— "A further key to maximizing Delegations' effectiveness is optimal cooperation and coordination with Member State embassies also examining infrastructure-sharing arrangements and pooling of available resources. The setting-up of a secure communications network should be a major priority. We welcome the ongoing work in the area of demarches: how can they be made more efficient and transparent, how can meaningful Member State involvement be guaranteed? Additional steps should be taken to further strengthen the political analysis and political reporting capacity of Delegations.
— "The role of the EEAS in the area of consular protection should be further explored, in line with the Treaty.
— "The creation of defence and security attachés in EU delegations, as proposed by the EEAS, should also be considered.

"**5. Full involvement of Member States**

— "To avoid the setting up of a new structure disconnected from the Member States, there should be a close interaction between the EEAS and the Member States. In this regard, an important prerequisite for EEAS effectiveness is the close involvement of Member State personnel.
— "In order to fully exercise its functions according to the Treaty, an adequate representation of Member States diplomats in the EEAS, in particular in the field of CFSP, is key. It is envisaged that by 2013 one third of EEAS staff (AD level) should be from Member States. In our view, the path to the implementation of this target should be spelled out in detail with a concrete timeline, building on the official report of the High Representative of June 2010. The EEAS should clearly indicate in this connection which resources it considers necessary, within the agreed framework of a sound EU budget. Until the one third target has been reached, no new outside recruitment should take place. All vacancies must be advertised accordingly at all levels, in particular for those positions covered by the CCA (Consultative Committee on Appointments) Decision and for all Heads of Division posts.
— "Progress has been achieved with regard to the recruitment process. However, further steps are necessary. The EEAS should make proposals to improve the information of candidates. When selected for an interview, candidates should have enough time (more than 8 days) to allow for travel and work arrangements. The length of time the process takes has also acted as a deterrent to applicants. We welcome work on streamlining these procedures. In our view, timing should be synchronized with the annual summer staff rotations practised by many Member States. Ideally, vacancies should be advertised early enough to allow the selection process to be finalized in January. In line with the EEAS Decision, a proper EEAS staff rotation system should also be established, covering positions at both Delegations and headquarters. The recruitment process should ensure a level playing field for all applicants.
— "The EEAS human resources management be strengthened so as to ensure that the various EEAS personnel components are fully integrated. The CCA should be made

fully operational. As agreed upon, a special session of the CCA should be organized to review the recruitment process and elaborate recommendations to correct shortcomings.

"In the medium term more fundamental issues should be addressed, possibly as part of a review of the EEAS Decision of July 2010. These could include e.g. the programming of financial instruments."

2 Euratom Research and Training Programme 2014–18

(33496) 17936/11 COM(11) 812	Draft Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014–2020) complementing the Horizon 2020 — the Framework programme for Research and Innovation

Legal base	Article 7 Euratom; consultation; unanimity
Document originated	30 November 2011
Deposited in Parliament	8 December 2011
Department	Business, Innovation and Skills
Basis of consideration	EM of 20 December 2011
Previous Committee Report	None, but see footnote
Discussion in Council	See para 2.9 below
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

2.1 In our Report of 18 January 2012, we drew to the attention of the House proposals[16] to establish the Horizon 2020 Framework Programme for Research and Innovation for the period 2014–2020. In doing so, we noted that this was the latest in a series of Multiannual Framework Programmes set by the EU in the field of research and development,[17] and that it would bring all EU funding for research into a single overarching framework as part of the *Innovation Union* flagship initiative under the Europe 2020 strategy, but with particular emphasis on excellence in science, industrial leadership, and societal challenges. It would also set out how the Programme is to be implemented, including the financial controls and arrangements for monitoring and evaluation, together with a set of general principles covering such matters as the need to take account of expert external advice, to engage with the public, and to comply with certain ethical principles.

16 (33492) 17932/11 (33493) 17933/11 and (33495) 17935/11: see HC 428–xlvii (2010–12) chapter 5 (18 January 2012).

17 The most recent of these, covering the period 2007–13, is the Seventh Framework Programme for Research and Technological Development.

The current proposal

2.2 The current document is part of the overall Horizon 2020 package of measures, but deals with Euratom-related elements of the EU's next framework programme for the period 2014–2018.[18] As with the main Horizon 2020 proposals, it brings together into a single Regulation the content of the programme to be funded (and with emphasis being given to the same three areas highlighted in Horizon 2020), and it also replicates with only minor adaptation the various detailed rules governing the implementation of Horizon 2020.

2.3 The programme's general objective is to improve nuclear safety, security and radiation protection, and to contribute to the long-term decarbonisation of the energy system in a safe, efficient and secure way. The Commission has proposed an overall budget of €1.789 billion, of which €710 million would relate to indirect actions for the fusion research and development programme; €355 million to indirect actions for nuclear fission, safety and radiation protection; and €724 million to direct actions by the Commission's Joint Research Centre (JRC). However, the provision for work on fusion research and development does not core funding for the International Thermonuclear Experimental Reactor (ITER) project, which the Commission is proposing to take "off budget", and handle through a separate funding mechanism.

2.4 The programme also identifies a number of specific objectives. In the case of indirect actions, these include:

- supporting safe operation of nuclear systems;
- contributing to the development of solutions for the management of ultimate nuclear waste;
- supporting the development and sustainability of nuclear competences at EU level;
- fostering radiation protection;
- moving towards demonstration of feasibility of fusion as a power source by exploiting existing and future fusion facilities;
- laying the foundations for future fusion power plants by developing materials, technologies and conceptual design;
- promoting innovation and industry competitiveness; and
- ensuring the availability and use of research infrastructures of pan-European relevance.

2.5 The JRC will undertake work on nuclear safety and security in support of relevant EU legislation, and its activities include:

18 This last date differs from that in Horizon 2020 because the Euratom Treaty limits the duration of research programmes to five years.

- improving nuclear safety (including fuel and reactor safety, waste management and decommissioning, and emergency preparedness);
- improving nuclear security (including nuclear safeguards, non-proliferation, combating illicit trafficking, and nuclear forensics);
- raising excellence in the nuclear science base for standardisation;
- fostering knowledge management, education and training; and
- supporting EU policy on nuclear safety and security and the related evolving legislation.

Support will also be given to cross cutting activities both within the Euratom programme and between that programme and the non-Euratom parts of Horizon 2020, and international co-operation with third countries and international organisations will be promoted. Priorities for indirect actions will be set on the basis of inputs from national authorities and research stakeholders, whilst, in the case of the JRC, they will be established through consultation with the policy Directorates General of the Commission and the JRC Board of Governors.

The Government's view

2.6 In his Explanatory Memorandum of 20 December 2012, the Minister of State for Universities and Science at the Department for Business, Innovation and Skills (Mr David Willetts) recalls that the UK's top priority in the next Multi Annual Financial Framework is budgetary restraint, and that the Prime Minister has stated that the maximum acceptable expenditure increase is a real freeze in payments. He adds that the Government considers that funding in this area should wherever possible aim to deliver a clear impact and demonstrable EU added-value.

2.7 The Minister says that the UK welcomes the timely adoption of the Horizon 2020 proposals in general, and agrees that the items covered in this proposal are of key importance to the future development of nuclear research in Europe in the context of fostering sustainable growth, addressing societal challenges and maintaining Europe's position at the global forefront of research. It also supports the work being undertaken by the JRC to promote nuclear safety and security, and welcomes their continuation and reinforcement in the current proposals. However, the Government is strongly of the view that the full costs of developing the ITER should, in the interests of transparency and accountability, be brought back within the formal EU budget processes, and it will be arguing strongly to that effect in the negotiations on this text.

2.8 Finally, he points out that, on the issue of a common EU view on the main issues related to waste management from discharge of fuel to disposal, the UK has unique reactors and also has fuel types that others in Europe do not. It may therefore have some issues in signing up to a common view, depending how high-level this view may be.

2.9 As regards timing, the Minister says that there was a preliminary exchange of views at the Competitiveness Council on 6 December 2011, and that there will be an informal Council discussion on 1–2 February

Conclusion

2.10 **Since the Euratom research programme involves considerable expenditure in an area of obvious interest, it is clearly right that this proposal should be drawn to the attention of the House, though — as we have noted — it is closely related to the wider Horizon 2020 proposals on which we have reported separately, and many of its detailed provisions are similar. Consequently, there would be a case for clearing it, but for the concerns which the Government has expressed over the funding arrangements for International Thermonuclear Experimental Reactor (ITER) project. In view of this, we think it right to hold the document under scrutiny, pending further information on how this issue will be resolved.**

3 Financial audits

(a)	
(33497)	Draft Directive amending Directive 2006/43/EC on statutory audits
16971/11	of annual accounts and consolidated accounts
COM(11) 778	
+ ADDs 1–2	Commission Staff Working Papers
(b)	
(33513)	Draft Regulation on specific requirements regarding statutory
16972/11	audit of public-interest entities
COM(11) 779	
+ ADDs 1–2	Commission Staff Working Papers

Legal base	(a) Article 50(1) TFEU; co-decision; QMV (b) Article 114 TFEU; co-decision; QMV
Documents originated	30 November 2011
Deposited in Parliament	8 December 2011
Department	Business, Innovation and Skills
Basis of consideration	EM of 19 December 2011
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Introduction

3.1 The Commission proposes both a Regulation and a Directive in the area of statutory financial audit of companies. They lay down conditions for carrying out such audits, rules on the organisation and selection of auditors and rules on the supervision of compliance by auditors with those requirements. The Commission states that its main aims are to deal with (1) the expectation gap (the gap between the public perception of the assurance that

auditor provides and what auditors actually do provide); (2) risks that there is a conflict of interest and that this impairs the independence of auditors; (3) barriers to entry into the market for listed and large companies; (4) additional compliance costs due to fragmented national regulation; and (5) lack of effective national and EU-wide supervision over audit firms.

The documents

The Directive

3.2 It amends the existing Statutory Audit Directive (2006/43/EC), and deals with statutory audit. Some elements of the Directive apply to all statutory auditors (for example, qualification and registration as a statutory auditor). For other elements (for example, fees, audit reporting, quality assurance, investigations and penalties) the Directive deals with non-Public Interest Entity audits and the special rules that will apply to the audits of Public Interest Entities (PIEs) are dealt with by the Regulation.

3.3 The Directive proposes the following:

- amendment of the existing Statutory Audit Directive to allow it co-exist with the draft Regulation;
- an expanded definition of Public Interest Entities (PIEs): formerly included all listed companies, credit institutions, but now additionally to include payment institutions, electronic money institutions, investment firms, alternative investment funds, undertakings for collective investment in transferable securities (UCITS), central securities depositories and central counterparties;
- removal of EU ownership rules under which audit firms must currently be 75% owned by licensed auditors;
- a pan European "passport" for statutory auditors to allow audit firms to provide statutory audits in Member States other than the Member State in which they have been approved and removal of the existing aptitude test replaced by three year adaptation period as defined in the Recognition of Professional Qualifications Directive, during which their practice would be under the supervision of a qualified member of that profession, followed by an assessment;
- a ban on contractual clauses which restrict the choice of auditor ("Big 4 only clauses");
- stricter rules for audit oversight, by not allowing inspection of audits to be delegated from audit oversight bodies to professional accounting bodies;
- Member States to require that audits are carried out in accordance with International Standards of Auditing (ISAs). Member States can only add to these standards where national legal requirements exist, but only where the result would be a standards that conformed to the draft Regulation.

Regulation

3.4 The Regulation proposes the following:

Scope

3.5 The Regulation applies to Public Interest Entities (PIEs) as defined in the draft Directive (see above) and audit firms who carry out the audits of public-interest entities.

Independence

3.6 The Regulation:

- requires auditor or audit firm to take all necessary steps to avoid any conflicts of interest or potential conflicts at all levels. Requires the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards to specify these policies and procedures which are approved by Commission subject to a procedure involving the European Parliament or Council set out in the ESMA Directive;

- prohibits former audit partners from taking up a role in the audited entity for two years after leaving the audit firm. The prohibition is one year for other members of the audit team;

- limits fees for "related financial audit services" to 10% of the audit fee paid by the audited entity. Related financial audit services include, for example, audits of interim financial statements, assurance on corporate governance statements, assurance on corporate social responsibility matters, and assurance on regulatory returns. "Related financial audit services" are not classified as "non-audit services";

- imposes a ban on an auditor of a PIE from providing certain non-audit services because they entail a conflict of interest: tax consultancy; general management and advisory services; bookkeeping and preparing financial statements; designing internal control or risk management related to the preparation of financing information; valuation services; actuarial and legal services; designing financial IT systems for PIEs in financial services; internal audit; investment banking or investment advising. The ban is also applied to all audit firms from the same network providing such services to the audited company or its subsidiaries within the EU;

- some non-audit services (human resources services and providing comfort letters for investors on an issue of shares) may be provided by the auditor subject to approval by the company's audit committee;

- other non-audit services (designing and implementing financial IT systems for listed companies (other than those in financial services) and due diligence services on mergers and acquisitions and providing assurance on the audited company to other parties in a financial or corporate transaction) can be provided by the auditor subject to prior approval by the national audit regulator;

- forces audit firms who exceed certain size criteria to turn into pure audit firms. They will not be permitted to provide, or belong to a network that provides, non-audit

services to Large PIEs. The criteria are those audit firms who both generate more than one-third of annual audit revenues from Large PIE's and belong to a network with combined annual audit revenue in the EU of more than €1,500 million (£1,284 million);[19]

- large PIEs are defined as the largest 10 issuers of shares in each Member State issuers of shares but in any case listed issuers with end year market capitalisation of €1,000 million (£856 million); or (for credit institutions, insurance cos., investment firms etc) with balance sheet total exceeding €1,000 million (£856 million); or (for alternative investment funds or UCITS) total assets under management exceeding €1,000 million (£856 million). Limits ownership in non-audit service providers by audit firms and ownership of audit firms by non-audit service providers.

Performance of the statutory audit

3.7 The Regulation:

- requires auditors to maintain "professional scepticism" ("an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud and a critical assessment of audit evidence");

- auditor to report to competent authorities incident which has serious consequences for the integrity of the audit activities of the firm. Auditor to report suspected fraud to the company, and if the company does nothing about it, report it to the competent authority;

- auditor to comply with International Standards on Auditing (ISAs), provided they conform with this Regulation.

Audit reporting

3.8 The Regulation:

- expands the audit report to include the methodology used, including how much of the balance sheet has been directly verified, significant internal control weaknesses, the extent to which the audit was designed to detect fraud, key areas of risk of misstatement, identify each member of the audit team and details on the level of materiality applied to perform the audit. Report not to be longer than four pages or 10,000 characters;

- requires separate private report from the auditor to audit committee of the audited company to present and justify the audit work carried out;

- requires the auditor of PIE to report to competent authorities supervising the PIE where certain criteria have been met (for example material breach of laws). Duty to report to supervisor facts which auditor becomes aware of when carrying out audit of

19 Throughout this Report the exchange rate used is €1= £0.8558.

an undertaking having close links to the PIE. Regular dialogue to be established between auditor and regulator of banks and insurance companies.

Transparency reporting

3.9 The Regulation:

- requires audit firms to publish annual financial reports on themselves including total turnover divided into fees for statutory audit, fees from related financial services. Annual Transparency Report by the auditor on its ownership, governance, quality control, PIE audits, independence;

- requires for audit firms who generate more than one third of their annual revenues from audit of large PIEs to publish a corporate governance statement as part of their Transparency Report.

Appointment of auditors by PIEs

3.10 The Regulation states that:

- all PIEs are to have an Audit Committee comprised of non executive members and a majority independent — one member with competence in auditing and another member with competence in accounting/auditing. This requirement will not apply to Undertakings for Collective Investment in Transferable Securities (UCITS), Alternative Investment Funds, a company whose sole business is to act as issuer of asset backed securities, or an unlisted credit institution issuer of debt securities below €100 million (£86 million);

- audit Committees are to justify recommendations regarding audit appointments. For new appointments two audit firms to be identified at the Annual General Meeting (with one recommended by audit committee). At least one audit firm with less than 15% of total audit fees from large PIE audits in previous year in the Member State must be one of those invited to tender. Recommendations for banks and insurance companies can be vetoed by the competent authority;

- contracts between the PIE and a third party concerning appointment or restricting the choice of a particular auditor are null and void;

- audit firms must be appointed for a minimum of two years. Auditors of PIE must rotate after six years, unless joint auditors have been in place, when rotation must happen after nine years. There is a four-year cooling-off period. The audited entity can exceptionally ask the national audit supervisor to reappoint the auditor for a further two years (or in the case of joint audit, three years);

- the key audit partner(s) responsible for carrying out the audit must cease their participation in the audit after seven years from the date of appointment has elapsed. There is a three-year cooling off period. The most senior personnel involved in the audit must also be gradually rotated;

- an audited entity and statutory auditor are to inform competent authority of dismissal or resignation of auditor. Audit committee, a shareholder, or competent authorities can bring a claim to dismiss the auditor to the national courts if there are proper grounds;

Oversight of auditors of PIEs

3.11 The Regulation requires:

- national competent authorities to assess audit market concentration and report to ESMA, EBA and EIOPA, which will report to Commission, EU Central Bank and European Systemic Risk Board;
- the six largest audit firms in terms of statutory audit of large PIEs in a Member State to produce and submit, to the competent authority, a contingency plan;
- competent authorities of Member States to cooperate with each other where necessary, coordinated by ESMA; ESMA to issue guidelines on common standards on content and presentation of, for example, audit report, audit committee report, oversight by audit committee, auditor transparency report, audit rotation, auditor dismissal, enforcement, exchange of information, quality assurance reviews, colleges of regulators. There is no Member State adoption procedure for these guidelines, and therefore these guidelines will be applied directly in Member States;
- ESMA to develop draft regulatory standards to allow for statutory auditors to obtain a "European Quality certificate" although such certificate provides no legal right to act as a statutory auditor;
- that colleges of competent authorities may be established to help Quality Assurance, Investigation, European Quality Certificate, Cooperation with on investigations, Administrative Sanctions with regard to auditors;
- That ESMA and competent authorities may conclude cooperation agreements with third countries on exchange of information.

The Government's view

3.12 The Minister for Employment Relations, Consumer and Postal Affairs at the Department for Business, Innovation and Skills (Mr Edward Davey) deposited an Explanatory Memorandum in Parliament dated 19 December 2011.

3.13 He explains that any policy on auditor regulation needs to balance four key objectives:

i) avoiding excessive concentration in supply;

ii) securing independence in auditor judgements;

iii) securing high quality audits more generally; and

iv) not imposing additional burdens on business unless these can be objectively justified.

Scope

3.14 The Government is cautious about the proposal to extend the definition of PIEs to all the entities proposed: some of them are small, and the extension of a PIE regime to them may be unduly onerous.

Independence

Ban on non-audit services by auditor

3.15 The Government will want to consider whether the perception of auditor independence can best be enhanced by a ban on non-audit services by the auditor.

Restriction on audit related services

3.16 The Government would be concerned about restricting fees for "related financial audit services" to any percentage of the audit fee paid by the audited entity. The auditor is particularly well suited to provide certain audit related services and, provided there is full transparency to the audit committee, the Government believes there are strong efficiency gains to the company from not restricting audit related services further. UK Ethical Standards, to which auditors are subject, already set out requirements to ensure independence.

3.17 Depending on the group structure, the audit fee of the listed entity very small in relation to the audit fee of the whole group — this would mean that the 10% restriction would allow hardly any related financial audit services.

Pure audit firms

3.18 The Government sees that audit quality and competitiveness could be damaged by establishing a pure audit firm and see no justification as to why focussing on audit services would "significantly reinforce audit quality".[20] There are also doubts about the proportionality of this measure, and it risks putting into doubt the employment of many thousands of people employed in audit and non-audit services in the affected audit firms. Those forced to become Pure Audit Firms are members of global networks, and the proposal does not consider the harmful effect on the members of their network based outside the EU, who would not be Pure Audit Firms, but continue to offer non-audit services.

3.19 In order to avoid being classified as a Pure Audit Firm, large audit firms will start pursuing the audits of smaller PIEs. They will then be competing directly against those audit firms outside the Big 4. This may then achieve the opposite result that the Commission desires, reducing the market share of smaller audit firms.

[20] See Commission impact assessment, p. 35.

Performance of the statutory audit

3.20 Audit firms have been criticised for not always applying sufficient scepticism, and UK regulators have examined this issue carefully. Measures around professional scepticism might be better effected via Ethical Guidelines. The Government would welcome a consideration of situations when the auditor should report to the competent authorities.

3.21 The Government supports the adoption of the clarified International Standards on Auditing (ISAs) in the EU, which we consider an important element of strengthening the European framework for the performance and oversight of statutory audits. HMG believes that ISAs should be adopted for the audits of all companies which require a statutory audit. It will be important to allow limited national "add-ons" where they are necessary to meet specific national legal requirements relating to the scope of statutory audits.

Audit reporting

3.22 The Government supports further consideration of the role of audit and the auditor report. However, enforced identification of each member of the audit team in the audit report would run to many pages.

Transparency reporting

3.23 In addition to the transparency reporting requirements of the Statutory Audit Directive, audit firms in the UK are already subject to the UK Audit profession's voluntary code of practice on disclosing audit profitability. In addition, audit firms established as limited liability partnerships or companies are obliged to publish accounts. For this reason, the Government believes UK audit firms should already be transparent.

3.24 The ICAEW and the Financial Reporting Council published "The Audit Firm Governance Code" in 2010. This provides a formal benchmark of good governance practice against which the eight audit firms which together audit about 95% of the companies listed on the main market of the London Stock Exchange can report for the benefit of shareholders in such companies.

Appointment of auditors by PIEs

3.25 Some of the Commission's proposals are highly interventionist, and the Government will want to consider if these could reduce audit quality.

3.26 The UK market for the largest audits is very concentrated. Many feel that this is not in the public interest as it increases the risk should one of the largest auditors leave the audit market. In the UK, the Office of Fair Trading announced on 21 October 2011 that it had decided to refer the market for the supply of statutory audit services to large companies in the UK to the Competition Commission for investigation. It will carry out its own comprehensive investigation, to see if there are any features of that market which prevent, restrict or distort competition and, if so, what action might be taken to remedy them. It is required to report by 20 October 2013.

3.27 It will be extremely hard for PIEs to find the required two people with audit and accounting skills to sit on their Audit Committee. This may therefore not be achievable.

3.28 The Government supports a review of whether restrictive covenants, such as clauses in lending agreements made by banks, are unfairly restricting competition in the audit market.

3.29 The Government supports a review of contingency planning for a potential failure of a major audit network.

3.30 It also supports an exploration of the likely demand for, and consequences of permitting Member States to lift ownership requirements for audit firms. This could be useful in two circumstances: to allow firms to recapitalise in the event of audit firm collapse, and to allow firms to grow their practices to enable them to enter the audit market for the largest companies.

3.31 Mandatory audit rotation may be a way of opening up the market to alternative audit firms, but it runs the risk of disenfranchising audit committees. In the absence of a change in audit committee selection behaviour it would also not necessarily lead to a reduction in market concentration.

3.32 The Government supports efforts to stimulate more frequent tendering of audits, without mandating it (for example on a comply or explain basis), which would incentivise competition and best practice, whilst not penalising success. The audit committee should certainly explain the basis for the audit committee's recommendation to the Board and to shareholders as to whom should be appointed as auditor, how long the current auditor has been in post, and when a tender was last conducted.

EU Passporting

3.33 The UK's current position is that all migrating auditors should pass an aptitude test. However, the Common Content project (a collaboration between nine of Europe's leading accountancy Institutes) may offer a way to link some of the big mobility ideas in the proposal as it focuses on harmonising learning outcomes across major EU professional accountancy body qualifications.

3.34 Provided there are adequate safeguards for audit quality, the Government supports audit firms in one Member State being able to audit those in another.

Contingency plans

3.35 The Government supports the development by major audit firms of contingency plans.

Oversight

3.36 In relation to auditor oversight it is important that the regime is effective and proportionate and allows sufficient flexibility for the audit regulator to fulfil its responsibilities.

Oversight and Role of ESMA

3.37 The Government supports greater co-operation between national audit supervisors. It questions whether this creates the need for ESMA or a similar organisation to have the power to issue guidelines or draft regulatory technical standards at an EU level, or whether this can be left to national audit supervisors.

3.38 Much progress has been made to improve the quantity and quality of dialogue between auditors and financial services supervisors, in the UK since the events leading to the banking crisis. The Government will want to consider if EU regulation in this area may impact on the development of trust and openness between auditor and regulator.

Subsidiarity

The Commission's view

3.39 The Commission's view is that EU rules in the audit sphere have left a lot of discretion to Member States, who have chosen to rely on self-regulation by the audit profession. The financial crisis has pointed up the weaknesses in self-regulation. If the problems in the audit field were solved at Member State level, then differences would appear in the regulatory framework and this would seriously undermine the single market. Audit should be harmonised across the EU because of the interconnected nature of securities markets, financial actors, the cross-border activities of many Public Interest Entities. An EU level approach would avoid the risk of regulatory arbitrage.

3.40 Legislation covering investor protection and financial institutions is already enacted at EU level.

The Government's view

3.41 Several elements of these proposals could be achieved only by amendment of existing EU law such as the amendment of restrictions on the ownership of audit firms, or the facilitation of cross-border mobility of auditors across the EU. The Government will be considering whether the proposals are consistent with the principle of subsidiarity and, in particular, whether certain of the proposals would be better dealt with at a national level. The Commission claims that its actions are proportionate in the context of the financial crisis. The Government will be considering whether it agrees with this.

Consultation

3.42 The Government has established a stakeholder group to give representatives of the auditing profession, preparers of accounts, investors and regulators the opportunity to share views on the proposals and to understand their impact on UK business. The Government has already met representatives audit firms of different sizes to discuss these proposals. The proposed Directive will be published on the BIS website with a request for views and comments on costs, benefits and any practical issues arising.

3.43 Many of these proposals were examined by the European Commission in their Green Paper. Responses to that consultation have been independently reviewed by Goethe

University[21] and a large majority of respondents were against the most contentious proposals in the Commission's proposal.

Impact assessment

3.44 An Impact Assessment checklist has been produced. The Commission has produced its own impact assessment. In the Government's view the principal weaknesses of the Commission's Impact Assessment are as follows:

- it does not sufficiently recognise the risk of unintended consequences of its proposals including critically a reduction in audit quality;
- it makes an incorrect comparison, stating that "the benefits of audit quality could be estimated as the savings on future losses that will not be incurred thanks to increased audit quality." It sets the €4.6 trillion cost of the financial crisis as the background to the changes, implying that the risks of the proposals are to be measured against this. This assumes that it was audit failures which led to the financial crisis, and that that these regulatory proposals would have prevented the financial crisis.

Financial implications

3.45 The Commission's Impact Assessment estimates the additional annualised direct costs of its proposals on audited entities outside financial services (strengthened audit committee, tendering costs every six years,[22] preparation of additional internal report by auditor, improved and expanded audit report) as set out below.

Costs €'000				
	Very large PIE	*Large PIE*	*Medium PIE*	*Small PIE*
Annual cost increase	*173*	*119*	*92*	*8*

Costs £'000				
	Very large PIE	*Large PIE*	*Medium PIE*	*Small PIE*
Annual cost increase	*148*	*101*	*79*	*7*

Timetable

3.46 The first Council working group on the proposal is expected under the Danish presidency in four to five meetings between January 2012 and mid-May with the aim of agreeing a progress report for agreement at the May Competitiveness Council. It is

21 http://www.accounting.uni-frankfurt.de/index.php?id=1025?&L=1.

22 The Commission's Impact Assessment is on the basis of tendering every 9 years, but this Explanatory Memorandum has adjusted the calculation to every six years.

expected that the European Parliament will also start considering the proposal at the start of 2012. It is likely that the Cypriot presidency will also continue to consider the proposal.

Conclusion

3.47 **We thank the Minister for his helpful memorandum.**

3.48 **We take note of the Government's concerns with these proposals, particularly the level of intervention proposed in the draft Regulation.**

3.49 **We ask the Minister in due course to provide us with an overview of the consultation process currently taking places, and at the same time with an update on the negotiations. On the latter, we are particularly interested to know how many other Member States share the UK's concerns.**

3.50 **In the meantime both documents remain under scrutiny.**

4 A *Europe for Citizens* Programme 2014–20

(33565) 18719/11 COM(11) 884	Draft Council Regulation establishing for the period 2014–20 the programme *Europe for Citizens*
+ ADDs 1–2	Commission Staff Working Papers: Impact assessment and Summary of impact assessment

Legal base	Article 352 TFEU; unanimity; EP consent
Document originated	14 December 2011
Deposited in Parliament	20 December 2011
Department	Culture, Media and Sport
Basis of consideration	EM of 26 January 2012
Previous Committee Report	None
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

4.1 The Lisbon Treaty amended the Treaty on European Union ("TEU") to include a number of new provisions grouped together under the heading "democratic principles." One of these — Article 11 TEU — concerns the relations between the EU institutions and citizens. It requires EU institutions to maintain "an open, transparent and regular dialogue with representative associations of civil society" and to provide opportunities for citizens "to make known and publicly exchange their views in all areas of Union action." The Commission, in particular, must carry out broad consultations and ensure that EU actions

are coherent and transparent. In addition, a new citizens' initiative enables citizens from across the EU to join together to press for EU action on matters of transnational concern.

4.2 Many of the democratic principles set out in Article 11 TEU are already reflected in the EU's current Europe for Citizens Programme which has a budget of €215 million for the period 2007–13. The Programme supports actions which bring people from different communities together (for example, through town twinning), encourage the active participation of civil society in shaping EU policies, promote inter-cultural dialogue and increase awareness of common values, history and culture.

The draft Regulation

4.3 The purpose of the draft Regulation is to establish a new Europe for Citizens Programme for the period covered by the EUs Multiannual Financial Framework for 2014–20. It sets out the objectives of the new Programme, the types of action which it is intended to support, and the proposed budget.

The legal base

4.4 The Commission has proposed Article 352 of the Treaty on the Functioning of the European Union (TFEU) as the sole legal base for the new Programme. This Article provides for the adoption of EU measures, should EU action "prove necessary, within the framework of the policies defined by the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers." The European Parliament has no power of co-decision and cannot, therefore, propose amendments to the draft Regulation, but its consent is required before the Council, acting unanimously, may formally adopt the Commission's proposal. In its Impact assessment (ADD 1), the Commission says that the use of Article 352 is necessary because no other Treaty Article provides a suitable legal base, and adds that "the involvement of national parliaments and the European Parliament would enhance the democratic nature of the proposal."[23]

Objectives

4.5 The Programme has two principal objectives which are reflected in two funding "strands". The first strand, called "Remembrance and European citizenship", concerns initiatives associated with remembrance, including modern European history and the factors underlying the rise of totalitarian regimes, commemoration of victims, and issues of identity. EU funding under this strand would give preference to actions involving young people which encourage tolerance and reconciliation. The second strand, called "Democratic engagement and civic participation", seeks to develop citizens' understanding of the EU policy-making process, improve opportunities for citizens to become involved in political and economic decision-making, and encourage volunteering.

4.6 Both strands would be complemented by a range of "horizontal actions" designed to add value by ensuring that the results of EU-funded projects are widely disseminated and

23 See p. 21 of ADD 1.

sustainable structures developed to enable policy makers to hear and act on the views articulated by citizens.

4.7 The draft Regulation identifies the types of activity which the Programme is intended to support. They include town twinning, the development of transnational networks, support for organisations of general European interest (such as think tanks), debates and studies on aspects of European history (especially remembrance of crimes committed under Nazism and Stalinism) and on common values, and initiatives to raise awareness of the functioning of the EU. All actions supported by the Programme would have to be implemented on a transnational basis or demonstrate a clear European dimension.

Participation in, and implementation of, the Programme

4.8 Acceding, candidate and potential candidate countries would be entitled to participate in the Programme, as would Iceland, Liechtenstein and Norway. Potential beneficiaries of funding include local authorities, think tanks, educational and research institutions, and civil society organisations.

4.9 The Programme would be implemented by the Commission on the basis of annual work programmes developed in consultation with Member States. It is intended to complement, not duplicate, other EU funding instruments and programmes by embedding the democratic principles set out in Article 11 TEU in a broad range of policy areas without, however, replacing existing sectoral dialogues.

4.10 The draft Regulation provides for regular monitoring of the Programme on the basis of performance-related indicators, as well as regular external, independent evaluation. The Commission is required to produce an interim evaluation report by the end of 2017, a communication on the continuation of the Programme by the end of 2018, and an ex-post evaluation report by July 2023.

The budget

4.11 The Commission proposes a Programme budget of €229 million for the period 2014–20, which would also include an element of funding for the "corporate communication of the political priorities of the European Union" insofar as they concern the objectives set out in the draft Regulation.

4.12 In its accompanying explanatory memorandum, the Commission says that there is a substantial need to continue to support initiatives which make it easier for citizens to engage with and understand the European Union, including its history and origins in the aftermath of two world wars. The Programme seeks to stimulate debate on EU-related issues at local, regional and national level and to reach out to those who would not otherwise become involved in EU policy or decision making processes.[24]

24 See p. 2 of the Commission's explanatory memorandum.

The Government's view

4.13 The Minister for Culture, Creative Industries and Communications (Ed Vaizey) notes, first, that the use of Article 352 TFEU as the legal base for the draft Regulation engages the EU Act 2011. He continues:

> "Under the terms of the EU Act 2011, prior approval by an Act of Parliament is needed before UK agreement can be given to EU legislation whose basis is Article 352. There is an exemption from that requirement if the new measure only extends or renews an existing measure without changing its substance. The existing Europe for Citizens programme for 2007–2013 covers similar measures, but the new programme builds on those. Further analysis will be undertaken to conclude whether the exemption covers the new programme."[25]

4.14 Turning to the substance of the new Programme, he says that it would have "no new impact on UK domestic policy" as it covers areas of activity which have been supported for some time. He continues:

> "The proposal reflects the UK Government's aim of localising action to the lowest possible level and emphasises the empowerment of individuals."

4.15 He identifies potential synergises with Government policies and opportunities for UK organisations to seek EU funding:

> "The proposals to encourage and enable civic participation reflect and have the potential to compliment the aims of the Big Society agenda in England, of which two of the key strands are empowering communities and encouraging social action, including volunteering.
>
> "The establishment of a new Europe of Citizens programme would also ensure that a source of funding at European level would continue to be available to UK civil society organisations working in this field.
>
> "The programme aims to support the promotion of European integration through town-twinning and citizens meetings, bringing together people from local communities across Europe to share and exchange experiences, opinions and values, to learn from history and to build for the future. This funding stream could be beneficial to UK local authorities and organisations.
>
> "The programme has potential to support youth organisations to contribute to the Positive for Youth vision, including those offering National Citizen Service opportunities, through covering how Europe impacts on what happens locally. In December 2011, the Government published a new cross-government statement of policy for young people aged 13–19 in England called Positive for Youth, which sets out a vision for society that is positive about young people. A cornerstone of the statement is giving young people a voice in their local community and its democratic processes — so that young people have a sense of belonging, communities become

25 See the para headed Impact on United Kingdom Law.

stronger, and the services that are offered locally have the best chance of making an impact.

"The programme may also be of benefit to projects and organisations in the fields of culture and sport at a grassroots level, supporting participation in communities."

4.16 Notwithstanding his support for the broad objectives of the new Programme, as well as the Commission's efforts to reduce administrative burdens, the Minister underlines the importance which the Government attaches to achieving "a real freeze in payments year on year from the actual level of payments in 2011" under the next Multiannual Financial Framework. He says that the Government will therefore need to examine whether the new Programme represents value for money and will recommend a reduction in the budget proposed by the Commission. He adds that the Government will not agree budgets for individual programmes until negotiations for the Multiannual Financial Framework have been completed.

4.17 Finally, the Minister says that he intends to undertake an informal consultation of stakeholders.

Conclusion

4.18 **We note that, under section 8(6) of the European Union Act 2011, an Act of Parliament to approve the draft Regulation before it is formally adopted by the Council may not be required if any one of five possible exemptions applies. Two exemptions would appear to be relevant in this case. The first, under section 8(6)(a), would apply if the draft Regulation makes provision "equivalent to that made by a measure previously adopted under Article 352 TFEU." The Explanatory Notes accompanying the Act suggest that this would cover a proposal based on Article 352 TFEU which is, in substance, the same as a previous measure agreed by the UK. The legal base for the Europe for Citizens Programme for 2007–2013 cites Article 308 of the EC Treaty (the precursor to Article 352 TFEU) and Article 151 of that Treaty.**

4.19 **The second possible exemption, under section 8(6)(b), would apply if the draft Regulation were considered simply to "prolong or renew" a measure previously adopted under Article 352 TFEU. The Act does not specify whether the extension or renewal may include changes to the substance of the earlier measure. However, the Explanatory Notes indicate that this exemption is only intended to cover an extension in time of an existing Article 352 TFEU measure.**

4.20 **The Minister's Explanatory Memorandum appears to suggest that the Government is principally considering the scope for applying the section 8(6)(b) exemption. We question whether it is entitled to do so, since the draft Regulation undoubtedly goes beyond a simple extension of the existing Citizens for Europe Programme, not only through the introduction of a number of substantive changes but also through the use of a different legal instrument (a draft Regulation instead of a Decision). We therefore ask the Minister to clarify which, if any, exemption he considers may apply and to explain why.**

4.21 **In light of the Government's intention to seek a reduction in the size of the budget proposed by the Commission, we ask the Minister for a clearer indication of the areas within the proposed new Programme where he considers that EU funding would be particularly beneficial in adding value, and those areas where it would not. Pending the Minister's reply, the draft Regulation remains under scrutiny.**

5 European Maritime and Fisheries Fund

(33590) 17870/11 + ADDs 1–2 COM(11) 804	Draft Regulation on the European Maritime and Fisheries Fund repealing Council Regulation (EC) No 1198/2006 and Council Regulation (EC) No 861/2006 and Council Regulation No XXX/2011 on integrated maritime policy

Legal base	Articles 42, 43(2), 91(1), 100(2), 173(3), 175, 188, 192(1), 194(2) and 195(2) RFEU; co-decision; QMV
Document originated	2 December 2011
Deposited in Parliament	5 January 2012
Department	Environment, Food & Rural Affairs
Basis of consideration	EM of 12 January 2012
Previous Committee Report	None
Discussion in Council	See para 5.10
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

5.1 Financial support to help attain the objectives of the Common Fisheries Policy (CFP) is currently provided by the European Fisheries Fund (EFF). This has a budget of €4.3 billion for the period 2007–2013, and seeks to ensure the sustainable exploitation of aquatic resources, to provide a sustainable balance between the resources and fishing capacity of the EU fleet, to strengthen the competitiveness of the sector and the development of economically viable enterprises, to foster the protection of the environment and natural resources, and to improve the quality of life in areas dependent upon fishing. Member States are required to draw up national strategic plans and operational programmes to achieve these objectives, and the measures at their disposal include public aid for the permanent or temporary withdrawal of fishing capacity; investment on board vessels; socio-economic measures; assistance to aquaculture, and towards processing and marketing; agri-environment measures; and assistance towards the development of ports and other infrastructure.

The current proposal

5.2 In this document, the Commission has proposed that, for the period 2014–2020, these arrangements should be replaced by a European Maritime and Fisheries Fund (EMFF), thus extending them for the first time to provide support for the Integrated Maritime Policy.[26] The objectives of the new Fund would be to:

- promote sustainable and competitive fisheries and aquaculture;
- foster the development and implementation of the EU's Integrated Maritime Policy in a way which complements Cohesion Policy and the CFP;
- promote a balanced and inclusive territorial development of fisheries areas;
- foster the implementation of the CFP.

In order to achieve this, it would have an overall budget of €6.6 billion for the period in question, with €1.047 billion being devoted to the direct management of Integrated Maritime Policy by the Commission, and € 5.5 billion to the remaining shared activities (of which €4.535 billion would be for the sustainable development of fisheries, aquaculture and fisheries areas, €477 million for control and enforcement, and €358 million for data collection).

5.3 In order to achieve this, the Funds would be structured around four pillars:

— Sustainable development of fisheries

The intention would be to foster the transition to sustainable fishing, which is more selective, produces no discards, does less damage to the marine environment, and thus contributes to the sustainable management of marine ecosystems; and to provide support focussed on innovation and value added, making the fisheries sector economically viable and resilient to external shocks and to competition from third countries. Specific measures could include those aimed at innovation, advisory services, partnerships between scientists and fishermen, the promotion of human capital and social dialogue, facilitating diversification and job creation, health and safety on board, support to systems of Transferable Fishing Concessions, support for the implementation of conservation measures under the CFP, limiting the impact of fishing on the marine environment, innovation linked to the conservation of marine biological resources, the protection and restoration of marine biodiversity and ecosystems, mitigation of climate change, product quality and the use of unwanted catches, fishing ports, landing sites and shelters, and inland fishing.

— Sustainable aquaculture

The aim would be to achieve an economically viable, competitive and green aquaculture, capable of facing global competition and providing EU consumers with healthy and high nutrition value products. Specific measures could include innovation, investments in off-shore and non-food aquaculture, new forms of

26 (32002) 14284/10 + ADD 1: see HC 428–viii (2010–11), chapter 4 (17 November 2010) and HC 428–xxxix (2010–12), chapter 9 (26 October 2011).

income and added value, management, relief and advisory services, promoting human capital and networking, increasing the potential of aquaculture sites, encouraging new aquaculture farmers, promotion of aquaculture with a high level of environmental protection, conversion to eco-management and organic aquaculture, aquaculture providing environmental services, public health measures, animal health and welfare measures, and aquaculture stock insurance.

— Sustainable development of fisheries areas

The proposal seeks to reverse the decline of many coastal and inland communities dependent on fishing through adding more value to fishing and fishing related activities, and through diversification to other sectors of the marine economy. This would involve integrated local development strategies, and the use of Fisheries Local Action Groups to pursue objectives related to the CFP, aquaculture, diversification, local heritage and local fisheries and maritime governance.

— Integrated Maritime Policy (IMP)

This is intended to support cross cutting priorities which generate savings and growth, but which Member States will not take forward on their own, such as marine knowledge, maritime spatial planning, integrated coastal zone management and integrated maritime surveillance, the protection of the marine environment (and in particular biodiversity), and adaption to the adverse effects of climate change on coastal areas.

5.4 In addition to these four pillars, the new Fund will include accompanying measures, such as data collection and scientific advice, control, governance, fisheries markets, voluntary payments to Regional Fisheries Management Organisations, and technical assistance. However, it will not extend to operations which increase the fishing capacity of vessels, the construction of new vessels, or the decommissioning or importation of vessels, the temporary cessation of fishing activities, experimental fishing, the transfer of ownership of a business, and direct restocking (unless for experimental purposes, or as an explicit conservation measure).

5.5 The EMFF is one of five funds[27] that would be covered by the Common Provisions Regulation, and it would therefore fall under a Common Strategic Framework (CSF), which would replace the current approach of establishing separate sets of strategic guidelines for the different instruments, and aims to ensure all funds contribute effectively and in a coherent way to the EU 2020 agenda.

The Government's view

5.6 In his Explanatory Memorandum of 12 January 2012, the Parliamentary Under-Secretary for Natural Environment and Fisheries at the Department for Environment, Food and Rural Affairs (Mr Richard Benyon) notes that the general aim of the EMFF is to support the objectives of the Common Fisheries Policy (CFP), and that the subsidiarity

27 The other four are the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Agricultural Fund for Rural Development.

principle applies. However, he points out that the provisions to further develop the EU Integrated Maritime Policy include actions on maritime spatial planning and integrated coastal zone management, many of which the UK believes are better carried out by Member States. In particular, the Government has reservations on the way in which this could establish a precedent for the Commission to lead in these areas, and so cut across existing national policy and implementation. In view of this, the UK is working with other Member States to build opposition towards potential Directives in these areas, and will be taking this stance during negotiations with the Commission.

5.7 As regards the other three pillars, the Minister says that the mechanisms to support the proposals on sustainable fisheries are consistent with current proposals on CFP reform and sustainability, and include an end to funding the decommissioning of vessels; support to end the practice of discards and reduce unwanted catches; and improved measures for stimulating innovation. In the case of aquaculture, many of the measures proposed reflect those available for fisheries, but also include additional options for fish health, in line with the Commission's aim of improving competitiveness and providing support to ensure future food supplies (though he adds that the UK would have concerns if the Commission imposed requirements for expenditure, widened regulatory requirements, or increased its direct management of the sector). As regards the sustainable development of fisheries areas, he says that the provisions build on those in the current EFF, with support being possible to encourage innovation by adding value to fisheries and aquaculture products and diversifying economic activities, and to capitalise on local environment assets including local actions to combat climate change, and with a greater emphasis as well on supporting Natura 2000 sites. The Minister adds that this is also an area where there is the possibility for synergies with other EU funds, in particular the European Regional Development Fund, which can be used to help diversification through research and development, or for increasing the competitiveness of small and medium enterprises.

5.8 As regards the delivery, management and control of the new Fund, the Minister says that the priority is to see a reduction in the administrative burdens and complexity or an increase in flexibility and proportionality of the scheme compared with the current EFF. However, despite reassurances from the Commission, he is concerned that this will not be the case, and says that the UK will be looking to persuade the Commission to address these issues. In particular, he notes that each Member State would need to prepare a partnership contract to ensure that its operation of these five funds worked in a coordinated and complementary way towards national targets, and he says it will be necessary to be sure that value is added at each level with unnecessary overlap removed, that decisions are always taken at the most appropriate level, and that administrative burdens which add costs to the public purse and to final beneficiaries are kept to a minimum. He also says that it will be necessary to produce one Operational Programme for the delivery of the fund in the UK and a National Strategic Plan for aquaculture, and that clarity is needed from the Commission on the Common Strategic Framework and its impact on the specific proposals for each EU fund.

5.9 Finally, the Minister observes that, although a budget of €6.6 billion proposed by the Commission incorporates some new activities, it is likely to represent a real increase, whereas the agreed UK position is to see a reduction in real terms. This area must therefore support an overall EU budget which grows by no more than inflation.

5.10 As regards timing, the Minister says that this draft Regulation will be adopted with the proposals for the reform of the CFP, and that an Impact Assessment will be provided alongside the one being prepared for those. In the meantime, the Government is currently preparing to consult industry and other external stakeholders.

Conclusion

5.11 **Insofar as one of the aims of this draft Regulation would be to provide funding to support the proposed reform of the Common Fisheries Policy, it is clearly important, in addition to which it would go beyond the current European Fisheries Fund in promoting the development of the Integrated Maritime Policy as well. At the same time, the very breadth of the measure raises questions not only about the desirability of the Commission involving itself in certain areas of the Integrated Maritime Policy best left to Member States, but also about the extent to which the proposal lacks a certain focus and the priority to be given to the different activities covered by it, including in particular reform of the Common Fisheries Policy as opposed (say) to support for aquaculture.**

5.12 **We were therefore pleased to see that the Government intends to provide an Impact Assessment, and that this will cover the financial implications so far as the UK is concerned. In view of this, we propose to hold the document under scrutiny until that information is available, but, in the meantime we are drawing it to the attention of the House.**

6 Coordination of social security between the EU and Switzerland

(33298) 16231/11 COM(11) 671	Draft Council Decision on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons as regards the replacement of Annex II to that Agreement on the coordination of social security schemes.

Legal base	Articles 48 and 218(9) TFEU; QMV
Department	Work and Pensions
Basis of consideration	Minister's letter of 17 January 2011
Previous Committee Report	HC 428–xliv (2010–12), chapter 7 (14 December 2011)
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

Background and previous scrutiny

6.1 In December 2010, the Council adopted a Decision which proposed changes to the social security provisions of an Agreement between the EU and Switzerland on the free movement of persons. The changes were intended to take account of new EU rules on the coordination of social security systems which extended their scope of application to those who are not, and never have been, economically active (perhaps because of sickness or disability). The Decision established the position to be taken by the EU within the EU-Swiss Joint Committee, the body authorised under the Agreement to make changes to the detailed arrangements for social security coordination. The Decision cited Article 79(2)(b) of the Treaty on the Functioning of the European Union (TFEU) as its legal base. This Article is subject to the UK's Title V opt-in and the Government decided not to opt in because it considered any extension of social security rights to be unacceptable.

6.2 Unusually, the EU-Swiss Joint Committee refused to endorse the Decision. According to the Commission, the Swiss were unwilling to accept that different arrangements for social security coordination should apply solely for the UK because it had decided not to opt into the position agreed by the EU (Ireland also decided not to opt in, and Denmark is excluded from all EU Title V measures, but both chose to align themselves with the EU position). In order to overcome the Swiss objections, the Commission proposed a new draft Council Decision which is, in substance, the same as the Decision adopted in December 2010, but cites as its legal base Article 48 TFEU instead of Article 79(2)(b) TFEU. The change to the legal base is significant as the Commission and other Member States do not accept that the UK's opt-in applies in the absence of a Title V legal base. The adoption of the draft Decision on an Article 48 legal base would, in their view, mean that all Member States would be bound by the EU position. More detailed background on the draft Council Decision — and on a similar Decision proposing changes to the social security provisions of the European Economic Area Agreement — is contained in our Forty-ninth Report.

6.3 The Minister for Employment (Chris Grayling) told us that, notwithstanding the absence of a Title V legal base, the Government considered that the new draft Council Decision was a measure "pursuant to Title V of the Treaty" and that the UK's Title V opt-in applied. The Government would continue to press for the reinstatement of Article 79(2) TFEU and had asked the Commission to justify the change of legal base. The Government had also asked the Council to refer the draft Decision to the Court of Justice for an advisory opinion on its compatibility with the EU Treaties and was exploring "the legal avenues open to us should the Council refuse our request and try to proceed with the proposal on the basis of Article 48 [TFEU]."[28] He indicated that the draft Decision was likely to be adopted by the Council on 15 December 2011.

6.4 We noted that the new draft Decision raised the same issues as a recent Decision — also based on Article 48 TFEU — to amend the social security provisions of the EEA Agreement. We highlighted the legal and practical difficulties associated with the Government's assertion that its Title V opt-in applies to EU proposals which do not cite a Title V legal base. Although the Government's position, expressed by the Minister for

28 See paras 9 and 10 of the Minister's Explanatory Memorandum of 16 November 2011.

Europe in his letter of 10 November 2011, is that "the UK is not bound by a measure which creates JHA obligations unless we have opted in pursuant to the Protocol [. . .] irrespective of whether a JHA legal base has been cited", the Employment Minister appeared to accept in his oral evidence on the EEA Agreement that the UK would be "technically" bound by the changes made to both the EEA and EU-Switzerland Agreements.[29]

6.5 We asked the Minister why the UK had not exercised its right to seek an advisory opinion from the Court of Justice, rather than relying on the Council to do so, and to provide further information on the reasons why the EU-Swiss Joint Committee was unable to reach an agreement on the Decision adopted in December 2010. We also asked whether the Government intended to challenge the validity of the Decision, if adopted by the Council on an Article 48 TFEU legal base.

The Minister's letter of 17 January 2012

6.6 The Minister first addresses "the Government's tactics in requesting the Council to refer the draft Decision to the Court of Justice for an advisory opinion on its compatibility with the EU Treaties." He explains:

> "During the later stages of the negotiations, we asked the Commission and the Presidency to refer the matter to the Council in the first instance; however the request was not acted upon. In my view this was because other Member States wanted to move forward rapidly to allow the Decision to be adopted in Council before an opinion could be given. In view of this we decided not to pursue that route as it would serve no purpose, but to lodge instead an application under Article 263 TFEU to annul the Council Decision and a further application under Article 278 TFEU to suspend the Decision. These applications were lodged on the same day the Decision was adopted in Council on 16 December 2011."

6.7 Turning to the reasons why the December 2010 Council Decision was not accepted by the EU-Swiss Joint Committee, the Minister says:

> "The Commission stated that the Swiss rejected arrangements which did not include the participation of the UK. This did not make clear that the Swiss did make further proposals. These were not discussed in further negotiations between the EU Member States, and I can only assume that the Commission issued a new proposal changing the legal base in order to work round the UK's opt-in. We made clear our concerns about the hasty and superficial approach that was taken, both procedurally and over substance, but while these concerns were noted, other Member States still chose to proceed."

6.8 Finally, the Minister says that he will keep us informed of further developments concerning the UK's legal challenge and that the Government will lay before Parliament a Written Ministerial Statement on its opt-in decision.

29 See Oral Evidence on Coordination of Social Security within the European Economic Area — Application of the UK's JHA Opt-in; see HC 1710–i, Q 21.

Written Ministerial Statement of 26 January 2012

6.9 The Written Ministerial Statement sets out the factors influencing the Government's decision not opt into the Council Decision and to challenge its validity in the Court of Justice. It concludes:

> "By taking legal action against the Commission in both the EEA and EU-Switzerland Agreements, I believe the Government is able to underline an important point of principle concerning the interpretation of the Treaty on the Functioning of the European Union and this action demonstrates how seriously the Government takes our obligations to protect our rights under the Treaty."[30]

Conclusion

6.10 **The adoption of two Council Decisions — one amending the social security provisions of the EEA Agreement, the other the equivalent provisions of the EU-Switzerland Agreement — on the basis of Article 48 TFEU indicates an irreconcilable difference of opinion between the UK, on the one hand, and the Commission and the remaining Member States, on the other, regarding the circumstances in which an EU proposal should cite a Title V legal base and, if it does not, whether the UK is entitled to invoke its Title V opt-in. We therefore welcome the Government's decision to initiate proceedings in the Court of Justice to challenge the validity of both Council Decisions, not only because it should establish the correct legal base but also because it might help to clarify the circumstances in which the UK's Title V opt-in applies, especially as regards EU measures which do not cite a Title V legal base.**

6.11 **We ask the Minister to keep us informed of developments, including the outcome of the UK's application for the draft Decisions to be suspended pending the Court's ruling on their validity. Meanwhile, the draft Decision remains under scrutiny.**

30 See http://www.parliament.uk/documents/commons-vote-office/8.DWP-EUSwitzerlandAgreementOpt-inDecision.pdf

7 Diplomatic and consular protection of Union citizens in third countries

(33569) 18821/11 + ADDs 1–2 COM(11) 881	Council Directive on consular protection for citizens of the Union abroad

Legal base	Article 23(2) TFEU; QMV
Document originated	14 December 2011
Deposited in Parliament	21 December 2011
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 20 January 2012
Previous Committee Report	None; but see (32627) —: HC 428–xxv (2010–12), chapter 1 (4 May 2011); and (29353) 5947/08: HC 16–xxiii (2007–08), chapter 5 (4 June 2008); HC 16–xvii (2007–08), chapter 1 (26 March 2008) and HC 16–xii (2007–08), chapter 2 (20 February 2008); also see (28304) 6192/07: HC 41–xvi (2006–07), chapter 2 (28 March 2007) and HC 41–x (2006–07), chapter 5 (21 February 2007)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

7.1 Article 20 EC (and Article 46 of the EU Charter of Fundamental Rights) provided that every EU citizen should, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.

7.2 Council Decision 95/553/EC made provision for action by the Member States in cases such as, for example, arrest and detention, accident or serious illness, acts of violence, death and repatriation and for advances of money for citizens in difficulty. The "Lead Country" mechanism became the main vehicle for implementing the Article 20 EC obligations. The Council also created a working party on consular cooperation (COCON) to organise exchanges of information on national best practices and draw up guidelines on the consular protection of EU citizens in third countries. Experience during the south Asian Tsunami and in Lebanon in 2006 demonstrated that these arrangements were able to handle serious crises as well as routine individual cases. Nonetheless, the Commission's 2007 Green Paper argued that further measures, and much greater Commission involvement, would fulfil the Article 20 EC rights more effectively and put forward a number of proposals covering the full range of consular services. This was debated in the

European Standing Committee on 15 May 2007, when the Committee welcomed the Commission's contribution to the ongoing debate on how to improve the efficiency and effectiveness of the consular assistance provided by Member States to one another's nationals, but noted the legal, political and practical difficulties of many of the proposals, and agreed with the Government's approach as laid out in its written response to the Commission.[31]

7.3 The Green Paper was intended to stimulate debate and launch a process of consultation. The Commission then brought forward detailed proposals for Community action in Commission Communication 5947/08, *Effective consular protection in third countries: The contribution of the European Union Action Plan 2007–2009*, together with Commission Staff Working Documents containing an Impact Assessment and Summary of Impact Assessment (Addenda 1 and 2). This covered the full range of consular services:

— improving the information available to EU citizens on consular matters, both on their rights, and on seeking advice and assistance;

— improving the links with third countries to ensure that all EU citizens have access to consular assistance, including seeking agreement from third countries for Commission delegations to exercise a duty of protection in appropriate cases;

— broadening the entitlement to consular assistance, to include non-EU family members of EU citizens;

— establishing EU procedures to identify and repatriate remains of EU citizens who die abroad;

— simplifying procedures for providing financial advances to citizens of other EU member states;

— establishing common consular offices, to provide assistance to all EU citizens in third countries;

— the Commission becoming involved in organising joint consular training for officials.

7.4 As the previous Committee's Reports noted, the then Government, from the outset, regarded the paper's contention that these articles meant that every EU citizen had a right to consular assistance as problematic. It noted that, in common with the majority of other EU member states, consular assistance was provided as a matter of policy, rather than of obligation, and that the exercise of that policy was discretionary; while Article 20 EC placed an obligation on Member States to exercise their consular assistance policies in a non-discriminatory way as among EU citizens, this was not the same as creating a right to consular assistance; and that, under existing international law, consular relations were between States, which meant that the active role the Green Paper envisaged for the EU institutions in the delivery of consular assistance to EU citizens was likely to involve legal difficulties.

31 See *Stg Ctte Deb* cols 3–16; available at http://www.publications.parliament.uk/pa/cm200607/cmgeneral/euro/070515/70515s01.htm.

7.5 The then Government's preference instead remained for building on existing national capacities and continuing to improve co-ordination between Member States, rather than creating new systems which might complicate or duplicate effort. There was concern, given the Commission's lack of expertise in providing consular assistance, over the idea of the Commission becoming involved in consular service delivery (for example, the provision of training for consular staff). Also over the resource implications, the possible duplication of existing structures and/or the creation of an unsustainable financial burden.[32]

7.6 For its part, the previous Committee noted that:

— consular services are the responsibility of Member States;

— the provision of consular services is the area in which diplomatic missions interface with members of the public most often and most critically, with matters of great sensitivity often at issue, in the most challenging circumstances and when the individuals concerned are at their most distressed and vulnerable;

— consular services are, unsurprisingly and quite rightly, at the top of Ministers' and officials' agenda, at home and abroad;

— a good level of cooperation between Member States already existed, and work was underway to improve it further, whereas it was difficult, if not impossible, to envisage circumstances in which missions staffed by officials responsible to the Commission could begin to provide a service of the same standard, with the level of immediate accountability that ensured that it remained thus;

— while there might be scope for practical support in specific circumstances, it was hoped that the Government would resist the expansionist elements in these proposals with vigour and determination.

7.7 More detailed consideration, including the then Minister's views, are set out in the then Committee's Reports, in the conclusion of the more recent of which it Committee recommended that the Communication be debated in European Committee B.[33]

7.8 Before that debate took place the previous Committee received further information about the Government's position, including a copy of its comments on the Commission Action Plan (which formed the Annex to that chapter of its Report).[34] The then Minister said that other Member States had made broadly similar points, although only one had commented at a similar level of detail. The then Government shared the Commission's overall desire to improve consular co-operation at EU level, agreed that there was scope to improve Member States' consular assistance further still, through joint work and co-ordination, and would continue to work with colleagues to do so. Although the Government had reservations about some of the proposals in the Action Plan, the then Government recognised "the Commission's wish to contribute to this discussion". The

32 All of these concerns were expressed in the Government's response to the public consultation that the Green Paper launched, which was annexed to the previous Committee's report of 28 March 2007. See headnote: (28304) 6192/07: HC 41–xvi (2006–07), chapter 2 (28 March 2007).

33 See headnote: (29353) 5947/08: HC 16–xvii (2007–08), chapter 1 (26 March 2008) and HC 16–xii (2007–08), chapter 2 (20 February 2008).

34 See headnote: see (29353); 5947/08: HC 16–xxiii (2007–08), chapter 5 (4 June 2008).

then Minister reported that, despite doubts expressed by a number of Member States, the Commission intended to go ahead with their proposed study of consular legislation and practice, though had undertaken to take on board Member States' comments to avoid duplication with previous exercises.[35]

The previous Committee's assessment

7.9 The previous Committee concluded that this further information, and particularly the UK comments on the Commission Action Plan, which was received subsequent to the debate recommendation, should be made available to the House in time for the debate.

7.10 In the meantime, the previous Committee noted that, in addition to commenting on specific proposals, the UK comments reiterated two major points of principle:

> "that it is for member States to take forward any actions in the consular area. We welcome co-operation with the Commission where it is appropriate, but we believe it is important to respect the correct division both of formal responsibility and of practical expertise"; and
>
> "we do not accept that Articles of the Treaty Establishing the European Community (TEC) and the Lisbon Treaty establish or confirm a legal right to consular assistance. Under the domestic law of some Member States nationals do have such a right. But in many others, including the UK, consular assistance is provided as a matter of policy. Article 20 TEC provides for the provision of consular assistance to unrepresented Member States' nationals on the same terms as it is provided to their own. It does not require setting minimum or equal standards for consular assistance amongst Member States."[36]

7.11 The debate took place in the European Committee B on 23 June 2008, at the end of which the Committee agreed the following motion:

> "That the Committee takes note of European Union Document No. 5947/08 and Addenda 1 and 2, European Commission Communication, Diplomatic and consular protection of union citizens in third countries; recalls that such Communications are not legally binding; underlines that the provision of consular assistance remains a matter for Member States; and in this context, welcomes the Commission's Communication as a contribution to continuing reflections on promoting consular co-operation among EU Member States"[37]

The next Commission Communication

7.12 The next Commission Communication, *Consular protection for EU citizens in third countries: State of play and way forward* (COM(2011) 149) set out to:

35 Other detailed comments from the then Minister are set out in the previous Committee's most recent Report: see (29353); 5947/08: HC 16–xxiii (2007–08), chapter 5 (4 June 2008).

36 Ibid.

37 *Stg Com Deb* cols 3–17; available at http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080623/80623s03.htm.

— take stock of the European Union's contribution to effective consular protection in third countries as announced in the Commission's Action Plan 2007–2009;

— present the way forward based on the experience gained and "the renewed institutional framework";

— fulfil "the Commission's Treaty obligation to report every three years on the application of Article 23 of the Treaty on the Functioning of the European Union (TFEU) on consular protection, as announced by the Commission in its Report under Article 25 TFEU on progress towards effective EU Citizenship 2007–2010" ; and

— contribute "to implementing Action 8 of the "EU Citizenship Report 2010 — Dismantling the obstacles to EU citizens' rights", which the Commission described as "a strategic initiative of the Commission, focusing on obstacles citizens still face, notably when moving cross-border, and presenting remedies to them."

7.13 The Communication was also described as a first response to the invitation from the European Council, in the Stockholm Programme (the European Council's Justice and Home Affairs plan for 2010–2014, agreed by Heads of Government in December 2009) to "consider appropriate measures establishing co-ordination and cooperation necessary to facilitate consular protection in accordance with Article 23 Treaty on the Functioning of the European Union (TFEU)".

7.14 The Commission noted that:

— the relevant provisions of the Lisbon Treaty are Article 35 TEU, Articles 20(2)c and 23 TFEU and Article 46 of the Charter of Fundamental Rights;

— Article 23(2) TFEU provides that "Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State."

7.15 With regard to the legal framework, the Commission asserted that:

— the Lisbon Treaty "abandons the previous logic of intergovernmental sui generis decision-making" and "reinforces and clarifies the capacity of the Union to act";

— Article 23 TEU "confers a clear individual entitlement for the citizen of a Member States to be treated equally by the consular authorities of another Member State in the territory of a third country where his/her Member State is not represented";

— Article 23 TFEU is subject to judicial review;

— "National courts have to apply Article 23 TFEU as any other provision of Union law"; and that "a refusal decision is subject to judicial review and in accordance with established case-law on State liability may render liable for harm caused".

7.16 The Communication also stated that, as well as replacing the previous approach of intergovernmental *sui generis* decision-making, the Lisbon Treaty empowered the

Commission with the right to propose directives establishing coordination and cooperation measures to facilitate such protection.

7.17 It also noted the Council Decision of 26 July 2010 establishing the European External Action Service provides that EU delegations shall "upon request by Member States, support them in their diplomatic relations and in their role of providing protection to EU citizens in third countries on a resource-neutral basis."

7.18 The Communication asserted that citizens were not sufficiently aware of the Treaty provisions relating to equal treatment regarding consular protection, that the number of cases where EU citizens had requested consular protection from another member state was low, and that the Commission should make Article 23 TFEU more effective. It argued that financial reimbursement between Member States, for assistance provided by one for the citizens of another, was not commonly used and that third country nationals who were EU citizens' family members were often excluded from consular assistance, with decisions on assistance taken without clear criteria.

7.19 The Communication outlined: what had been done in relation to its 2007–2009 Action Plan regarding information measures; the present scope of consular protection; and stepping up joint efforts in crisis situations and as regards common resources. The Commission noted that it had launched an information campaign on provision of consular protection, and had jointly organised (with the EU Presidencies) seminars to discuss consular issues and information exchange. The Commission also noted that it had produced an analysis of the extent and nature of discrepancies between Member States' provision in the consular field and a study of "common practices" among Member States

7.20 The Communication also detailed the efforts by the EU Delegations regarding crisis work, several examples where other Member States had assisted other EU nationals and the usefulness of teleconferences and the EU secure website in co-ordinating and facilitating Member States' consular work.[38] The Commission explained that, since November 2007, the EU Civil Protection Mechanism, if requested by Member States, could activate the Commission's Monitoring and Information Centre, and outlined the ways in which, since then, it had been used to give access to a wide range of civil protection resources available from 31 participating countries (the Member States, EEA countries and Croatia), most recently during the Libya crisis.

7.21 The Communication grouped its proposals into three categories:

Increased awareness raising through targeted communication measures

Raising awareness of the Treaty provisions was seen as a joint responsibility of the Commission and Member States; the websites of national Foreign Ministries should provide information of the Treaty provisions and a link to the Commission's website; Member States' missions should disseminate information regarding consular protection (including contacting local travel and residents'

38 Details of which are available at http://ec.europa.eu/consularprotection.

associations); since, according to the Commission, Member States' consular officials were still at least partially unaware of the Treaty provisions on consular protection, it was preparing a "training kit" for national consular staff. In addition, national best practices should be further discussed and promoted.

Enhanced certainty under the Lisbon Treaty

According to the Commission, the different levels of consular facilities and protection offered by Member States made cooperation and coordination by consular and diplomatic authorities challenging; the scope and considerations of consular protection for unrepresented EU citizens should be clarified and coordination procedures should accordingly simplified; with this in mind, the Commission intended to present legislative proposals within the next 12 months establishing the coordination and cooperation measures necessary to facilitate consular protection and addressing the issue of financial compensation for consular protection provided to third country nationals in crisis situations. The Commission would also consider the provision of consular assistance to third country family members of EU citizens; and a possible update of the format of Emergency Travel Documents based on a cost-benefit analysis. The Commission would continue to promote the inclusion of consent clauses in mixed and bilateral agreements (under international law, the consular protection of a citizen by another State requires the consent of the receiving state) and was already encouraging Member States to do likewise in their own agreements with third countries.

Improved burden sharing and optimised use of resources

The Communication argued that the current rules on reimbursement for consular protection in times of crisis are frequently not applied in practice, and proposed to examine how to facilitate further and simplify reimbursement procedures and encourage synergies with existing tools of financial support. The Communication saw EU teams of national consular staff as a way of improving burden-sharing and coordination, but said that their feasibility and added value should be considered first. The Communication noted that the High Representative was due to submit an initial report by the end of 2011 on the functioning of the EEAS, including in the area of consular protection; in the meantime EU delegations could assist further in informing unrepresented EU citizens about consular protection offered by Member States.

7.22 In his Explanatory Memorandum of 18 April 2011, referring to the provisions in Articles 20(2)(c) and 23 TFEU for EU citizens in third countries to receive consular assistance from any other Member State on the same basis as the nationals of that State where their own government is not represented, the Minister for Europe (Mr David Lidington) said:

> "It is the Government's view this does not establish a right to consular assistance but that it establishes a principle of non-discrimination in the provision of consular assistance by Member States if an EU citizen's own State is not represented."

7.23 The Minister supported efforts to improve information awareness about existing rights amongst EU citizens and consular officials, and said that FCO consular guidance to staff in British embassies, high commissions and consulates provided clear instructions to provide consular assistance to unrepresented EU nationals. The Minister also supported the idea of further training in this regard, on a cost-effective basis, and said that the UK also played a full part in working with other Member States, including through regular teleconferences and the EU secure website.

7.24 The Minister continued as follows:

> "In line with the Treaties and the Council Decision of 26 July 2010 establishing the European External Action Service, the Government is clear that there is no role for the EU institutions in defining the assistance that Member States provide or in providing frontline consular assistance. In addition, any role by the EEAS in helping to support implementation of Article 23 TFEU must be resource neutral. It is unclear how the proposals for common offices and/or teams would be compatible with these principles, and the Government therefore has significant reservations about these proposals.
>
> "The Government will need to consider carefully any legislative proposals to ensure that they respect the division of competences set out in the Treaties. This includes any proposals covering the terms on which Member States extend consular protection to third country nationals. Given that consular assistance is included in the Citizenship part of the TFEU the Commission can now make legislative proposals "establishing the coordination and cooperation measures necessary to facilitate such protection". However such legislation must be necessary (i.e. it must address a problem that cannot be resolved through existing frameworks of cooperation), in accordance with the principle of subsidiarity, and must be limited to the competence provided in the Treaty.

7.25 With regard to the *Financial Implications*, the Minister said:

> "The Commission is obliged to publish impact assessments before tabling legislative proposals. One of the two suggested legislative proposals relates specifically to financial compensation arrangements. We need to see further detail on this before we can assess any financial implications for the UK.
>
> "Any future proposals stemming from this Communication that involve an extension of responsibilities to Member States' citizens in third countries may have an impact on Member States' diplomatic networks. We will consider seeking a Commission Impact assessment that takes full account of the prospective impact on national diplomatic budgets."

7.26 The Minister concluded by noting that the timetable for discussion in the Council and Parliament had yet to become clear.

Our assessment

7.27 We recalled, and endorsed, the views of the previous Committee (c.f. paragraph 7.06 above).

7.28 We also noted the motion agreed at the end of the European Committee debate on the Commission Action Plan (c.f. paragraph 7.11 above).

7.29 Conversely, the Commission seemed determined on a path that was likely to lead to increasing pressure for a "right" to a common level of consular protection for all Member States' citizens in third countries and for a leading role by EU delegations in ensuring its provision.

7.30 The Minister's reservations were equally plain, and we endorsed them too. In order to enable him to develop them further, and for the Commission to have the benefit of the views of the House as a whole at the earliest opportunity, we recommended that the Communication be debated in European Committee B.

7.31 That debate took place on 12 July 2011, at the end of which the Committee agreed the following motion:

> "That the Committee takes note of European Union Document COM (2011) 149, relating to consular protection for EU citizens in third countries; recalls that such Communications are not legally binding; underlines that the competence for consular protection remains with Member States; and agrees with the Government's approach to the EU's consular work." [39]

The draft Council Directive

7.32 The draft Directive has as its aims:

— to clarify the content and operability of the right of unrepresented EU citizens to consular protection under equal conditions;

— to simplify cooperation and coordination between consular authorities.

7.33 The draft Directive would replace Decision 95/553/EC regarding consular protection for EU citizens in view of the legal framework established by the Lisbon Treaty. It lays down the cooperation and coordination measures necessary to facilitate consular protection for unrepresented EU citizens. It also gives effect to "action 8" of the "EU Citizenship Report 2010 — Dismantling the obstacles to EU citizens' rights", whereby the Commission is tasked with increasing the effectiveness of the right of EU citizens to be assisted in third countries by the diplomatic and consular authorities of all Member States.

7.34 The Commission's Explanatory Memorandum concludes that there is currently scope for further improvement regarding consular protection for unrepresented EU citizens and sets out areas where the Commission considers that further clarifications are necessary.

Beneficiaries

7.35 The Commission once again notes that every citizen holding the nationality of a Member State of the Union which is not represented by a diplomatic or consular authority

39 *Stg Com Deb* cols 3–12; available at: http://www.publications.parliament.uk/pa/cm201012/cmgeneral/euro/110712/110712s01.htm.

in a third country (hereafter "unrepresented citizen") shall be entitled to protection by the diplomatic or consular authorities of another Member State under the same conditions as its nationals. Citizens holding the nationality of more than one Member State of the Union are to be considered to be unrepresented if none of their Member States of nationality is represented by a diplomatic or consular authority in a third country. Family members of unrepresented citizens who themselves are not citizens of the Union are deemed to be entitled to consular protection under the same conditions as the family members of nationals of the assisting Member State who themselves are not nationals.

Absence of representation

7.36 A Member State is considered not to be represented in a third country if it has no accessible embassy or consulate established on a permanent basis in that country. An embassy or consulate established on a permanent basis is considered to be accessible if it can effectively provide protection and is within convenient travel distance and reasonable time, i.e., if unrepresented citizens are able to reach the embassy or consulate and return to their place of departure the same day, via means of transport commonly used in the third country, unless the urgency of the matter requires swifter assistance. The embassy or consulate is to be considered not accessible if it is temporarily not in a position to provide effective protection, in particular if it is temporarily closed in case of crisis. Honorary Consuls shall be regarded as equivalent to accessible embassies or consulates within the scope of their competences pursuant to national law and practices.

Access to consular protection

7.37 Unrepresented citizens may choose the Member State embassy or consulate from which they seek consular protection. A Member State may represent another Member State on a permanent basis and Member States' embassies or consulates in a third country may conclude arrangements on burden-sharing, provided that effective treatment of applications is ensured. Member States shall inform the European Commission of any such arrangement in order to enable publication on its dedicated website.

Identification

7.38 An embassy or consulate shall respond to a request for protection if the applicant establishes, by producing a passport or identity card, that he or she is a citizen of the Union. If unable to produce a valid passport or identity card, nationality may be proven by any other means, if necessary following verification with the diplomatic and consular authorities of the Member State of which the applicant claims to be a national. These provisions shall apply, *mutatis mutandis*, as regards proof of the existence of a family relationship between the unrepresented citizen and his or her family.

Types of assistance

7.39 Consular protection shall include assistance in the following situations;

— arrest or detention;

— being a victim of crime;

— serious accident or serious illness;

— death;

— relief and repatriation in case of distress;

— being in need of emergency travel documents.

7.40 The draft Directive details what consular officials should do in each of these cases. It also provides that:

— EU Member States' consular meetings in third countries can be chaired by the EAS;

— in the event of crisis, and upon request, Member States may be supported by existing intervention teams at Union level including consular experts, in particular from the unrepresented Member States; and

— the EU Lead State in a third country should be in charge of coordination and leading assistance and assembly operations for unrepresented citizens in case of crisis, and if necessary ensure evacuation to a place of safety.

The Government's view

7.41 In his Explanatory Memorandum of 20 January 2012, the Minister of Europe (Mr David Lidington) says, on the question of *Subsidiarity*:

> "We believe that a Directive on consular protection is not necessary and that these issues are best handled by Member States themselves. We wholeheartedly believe in European consular and crisis cooperation, but outside any formal legal framework, which we do not believe necessary."

7.42 The Minister then recalls Articles 20(2)(c) and 23 TFEU (which provide for EU citizens in third countries, where their own government is not represented, to receive consular assistance from any other Member State on the same basis as the nationals of that State), and reiterates his previous position, viz:

> "It is our view that this does not establish a right to consular assistance but that it establishes a principle of non-discrimination in the provision of consular assistance by Member States if an EU citizen's own State is not represented. Consular assistance (the UK term equivalent to 'consular protection' as referred to in Article 23 TFEU) is a matter for Member States. Article 23 TFEU imposes an obligation on Member States in respect of unrepresented EU citizens; however, it is for the Member States to fulfil that obligation. The role of the EU is limited to the establishment of coordination and cooperation measures as necessary to facilitate consular protection, as provided for by Article 23 TFEU. We do not consider that this role should include any attempt to prescribe the level of protection a Member State should provide, nor should it include provision of consular protection by the EU itself."

7.43 Restating his view that a Directive is not required in the area of consular protection or that Decision 95/553/EC does not needs repealing, the Minister says that he does support efforts to raise awareness about consular assistance amongst EU citizens and consular officials, which he says is explained to British nationals in the FCO publication *Support for British nationals abroad: A guide.* He goes on to say that he will need to consider carefully how this Directive will affect or augment the Government's ability to provide consular services to British nationals and unrepresented EU citizens in third countries. From a UK perspective, the following areas will, he says, require further negotiations in the Council Working Group on Consular Affairs (COCON).

"**Article 2, tiret 3**: —*'Family members of unrepresented citizens who themselves are not citizens of the Union are entitled to consular protection under the same conditions as the family members of nationals of the assisting Member State who themselves are not nationals'.*

"The European Commission has assured us that this provision is not intended to compel Member States to provide consular assistance to non-EU citizens, but that the same level of assistance should be provided to non-EU citizen family members of unrepresented EU citizens, as the State provides to non-EU citizen family members of its own nationals. We believe that this language needs to be much clearer to avoid misinterpretation. Provision of consular assistance to non-British family members of British nationals would be inconsistent with UK consular policy — we state publicly that (apart from our obligations towards unrepresented EU nationals, and the informal arrangements for helping unrepresented Commonwealth nationals) 'we cannot help non-British nationals, no matter how long they have lived in the UK and what their connections are to the UK'.

"**Article 3, tiret 2**: — *'A Member State is not represented in a third country if it has no accessible embassy or consulate established on a permanent basis in that country'.*

"We are not clear why the European Commission have sought to define 'not represented'. The Commission's Explanatory Memorandum states that, *'Citizens of the Union at least need to be able to reach the embassy or consulate and return to their place of departure the same day, via means of transport commonly used in the third country, unless the urgency of the matter requires swifter assistance. The embassy or consulate is not accessible if it is temporarily not in a position to effectively provide protection, in particular if it is temporarily closed in case of crisis'.* We will discuss this tiret with other Member States and the European Commission to ascertain the reasoning and possible legal implications behind this tiret. We accept the final sentence of the tiret as read.

" **Article 6, tiret 2**: — *'The consular protection referred to in paragraph 1 shall include assistance in the following situations*:

(a) arrest or detention;

(b) being victim of crime;

(c) serious accident or serious illness;

(d) death;

(e) relief and repatriation in case of distress;

(f) need of emergency travel documents.'

"The types of assistance that can be given to unrepresented EU citizens are replicated here from Decision 95/553/EC. The only addition is, 'need of emergency travel documents". These are all subject to Article 6(1) of the Directive — and thus need to be provided at same level as to our own nationals. Nonetheless we remain concerned that defining types of cases where assistance must be given will lead us open to legal challenge if assistance is not given, or is delayed. We believe that these types of decisions are best made locally, by the relevant experts on the ground. UK consular assistance is provided at the discretion of the Foreign Secretary. Local factors such as security, the law, transport, medical facilities and relations with the local authorities, as well as the circumstances of each individual case, may all affect the help we can provide.

"**Article 7 — General Principle:** — '*Member States' diplomatic and consular authorities shall closely cooperate and coordinate among each other and with the Union to ensure protection of unrepresented citizens under the same conditions as for nationals'*.

"We are concerned that the words, 'and with the Union' implies a consular role for the European Union and External Action Service (EAS). In line with the Treaties and the Council Decision of 26 July 2010 establishing the European External Action Service, the Government is clear that there is no role for the EU institutions in defining the assistance that Member States provide or in providing frontline consular assistance. In addition, any role by the EEAS in helping to support implementation of Article 23 TFEU must be resource neutral.

"Articles 8 —11 inclusive — Coordination and cooperation measures: —

"We are concerned by any move to be prescriptive about exactly how assistance is given. As currently drafted, it may be argued some Articles could be interpreted as prescribing a level of consular assistance beyond that provided by the UK to UK nationals, for example, stating that the embassy or consulate should provide assistance with drafting petitions for pardon. This could leave the Government open to legal challenge if consular assistance, for whatever reason, is not provided as prescribed. Long-standing UK policy is that consular assistance is provided at the discretion of the Foreign Secretary.

"**Articles 12 and 13 — Financial procedures**

"We are concerned that these paragraphs are too prescriptive, particularly as the UK will only consider a discretionary loan to UK nationals in very exceptional circumstances. Furthermore, we view a reimbursement mechanism between Member States as unnecessarily bureaucratic when the current system works well on good will.

"**Article 14 — Local cooperation:** — *'Unless otherwise agreed by the Ministries of Foreign Affairs centrally, the Chair shall be a representative of a Member State or the Union delegation decided locally'.*

"MFA representatives on the Council Working Group on consular affairs (COCON) have already agreed that the chair shall be a Member State, unless agreed otherwise by Capitals. We see no need to reopen that discussion and will lobby the Commission to remove it from the Directive.

" **Article 15 — crisis cooperation:** — *'Member States and the Union shall closely cooperate to ensure efficient assistance of unrepresented citizens. Member States and the Union shall inform each other about available evacuation capacities in a timely manner. Upon request Member States may be supported by existing intervention teams at Union level including consular experts, in particular from the unrepresented Member States'.*

"While we agree on the desirability of EUMS keeping each other informed about evacuation capacity (and there are already mechanisms to do this), we are concerned that this paragraph tries to place unrealistic constraints on Governments involved in evacuation operations; aims to increase the role of the EU Civil Protection Mechanism, which facilitates the coordination of mutual assistance between Member States and third countries in disasters, in supporting consular crises, and possibly paves the way for EU Consular Rapid Deployment Teams."

7.44 With regard to the *Financial Implications*, the Minister says:

"We do not believe that this Directive will have anything other than minor financial implications on the Consular Service. This Directive does not alter our commitments during an evacuation scenario. We will continue to evacuate EU citizens alongside British Nationals in a non-discriminatory fashion. The decision to charge other EU countries for this service lies with Ministers. It is unusual, but not unheard of, to be charged by other Member States, who have evacuated British Nationals in a crisis."

7.45 The Minister concludes his comments with two general observations, viz:

"The provision of consular services to the general public is one of the Government's three foreign policy priorities.

"Keeping that service democratically accountable to Parliament, flexible, and able to respond to need, whilst delivering a professional product to our citizens and unrepresented EU Nationals is a key objective for the Government. We will be working closely with other likeminded governments in the coming months to ensure that these concerns are reflected in the Directive."

7.46 Finally, looking ahead, the Minister says that the Commission's proposal is not expected to be included in a Council agenda during the current Presidency, but may be taken forward towards the end of the next Presidency.

Conclusion

7.47 **At chapter 1 of this Report we consider the first report by the High Representative of the Union for Foreign Affairs and Security Policy (HR) on the European External Action Service (EEAS).[40] The HR's report refers to Article 5(10) of the EEAS Council Decision, which requires Union delegations, on the request of Member States, to provide support to their diplomatic relations with third countries and in the area of consular assistance to EU citizens. We note that the HR says some Member States have expressed a strong interest in seeing EU delegations develop capacity for consular support for EU citizens who find themselves in difficulty in third countries, but that, on the other hand, a number of Member States are clearly opposed to the EU taking on a greater role in this area, which they see as a national competence. The HR herself says:**

> **"The key point is that it is difficult to see how this objective could reasonably be achieved 'on a resource neutral basis' as required by the EEAS decision. It would certainly not be responsible to raise citizens' expectations about the services to be provided by EU delegations, beyond their capacity to deliver in such a sensitive area. And the existing expertise within the EEAS in this area is extremely limited. However, over the past year we have also seen that the EU Delegations can play an important role in the coordination of evacuations of citizens and that pragmatic solutions can be found on the ground."**

7.48 **These remarks suggest that the EEAS's ambitions are more limited than those set out in the 2007 Green Paper — the EEAS view perhaps being that, with limited resources and many other challenges, the provision of consular services , other than in a supportive role, is not an additional area in which it would be sensible to seek to involve itself. As the HR acknowledges, it is also something to which a number of Member States are clearly opposed.**

7.49 **That being so, it might be asked why, given his principled position, the Minister is not seeking to oppose this draft Directive *per se*. Perhaps he has decided that it is better to concentrate resources on fighting bigger issues; and that, in this instance, the better course is to ensure that the Directive is drafted in such a way that the satisfactory elements in Council Decision 95/553/EC are preserved and nothing is introduced that would undermine UK interests or inappropriately alter the proper balance of responsibilities in this highly sensitive area.**

7.50 **All the Minister's detailed concerns and observations on the draft Directive seem entirely reasonable. We also endorse the high priority that the Government attaches both to the provision of consular services and to keeping this service democratically accountable to Parliament, flexible, able to respond to need, and professionally delivered.**

7.51 **We look forward to hearing from the Minister in due course about how the upcoming negotiations are developing — and, in any event, in good time before any**

40 See (33638) — at chapter 1 of this Report.

proposal is put to the Council, so that if necessary a further debate can take place before then.

7.52 **In the meantime, we shall retain the document under scrutiny.**

8 Taxation

(32715) 9270/11 + ADDs 1–3 COM(11) 169	Draft Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity

Legal base	Article 113 TFEU; consultation; unanimity
Department	HM Treasury
Basis of consideration	Minister's letter of 12 January 2012
Previous Committee Report	HC 428–xxxi (2010–12), chapter 6 (29 June 2011)
Discussion in Council	Not known
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

8.1 Directive 2003/96/EC, the Energy Taxation Directive, which came into effect in January 2004, provides an EU framework for taxation of energy products and electricity. It sets minimum rates of taxation, as well as the optional tax reliefs allowed by Member States, applicable to energy products when used as motor or heating fuels and to electricity, rather than as raw materials or for the purposes of chemical reduction or in electrolytic and metallurgical processes. In general terms the Directive does not define structural rules for energy taxation (for example, the tax base used, such as energy or carbon content, or the differential between national tax rates on competing energy products).

8.2 Market-based (or economic) instruments (MBIs) are financial incentives or disincentives used as a tool to address market failures or achieve other policy objectives. They can take various forms, such as indirect taxes or subsidies. In April 2007 the Commission issued a Green Paper to stimulate discussion on developing the use of MBIs in relation to EU environmental and energy objectives, including through a revision of the Energy Taxation Directive.[41]

8.3 In April 2011 the Commission presented this draft Directive to revise the Energy Taxation Directive. In an accompanying Communication the Commission set out the

41 (28524) 8255/07 + ADD 1: see HC 41–xx (2006–07), chapter 4 (2 May 2007) and HC 41–xxxiii (2006–07), chapter 19 (2 October 2007).

context and aim of the draft Directive. It asserted that energy taxes can be used to promote greater energy efficiency and reduced carbon emissions as well as to raise revenues. It suggested the aim of the legislative proposal was to bring the present Energy Taxation Directive more in line with the EU's energy and climate change objectives and that the proposal would serve to:

- ensure consistent treatment of taxation of energy sources and provide a level playing field amongst energy consumers using different fuels;
- provide a more coherent framework for the taxation of renewables, and
- provide an energy taxation framework that complements the EU Emissions Trading System,[42] whilst avoiding overlap with it.

The Commission argued that it is important to restructure energy taxation so as to encourage energy efficiency and the use of environmentally friendly sources. It suggested the draft Directive would help Member States meet their Europe 2020 commitments on emission reduction in a cost effective way.[43]

8.4 The draft Directive contains a large number of complex provisions. In summary they would:

- introduce a new mandatory requirement for Member States to operate both of two tax bases for the taxation of energy products — one would be to cover the carbon emissions associated with the use of energy products and the other would be to cover the energy content of each product, that is the net calorific value of each energy product;
- revise the existing minimum rates for energy products so as to set EU minimum rates for each of the tax bases and to introduce automatic indexation of these rates by reference to the EU wide consumer price index;
- require, in addition to the existing requirements for meeting the EU minimum rates, national tax rates to be structured in a way that ensured competing energy products were taxed in relative proportion to their tax base — this would mean that for the carbon emissions tax base, national tax rates for competing energy products would have to be set at the same rate per carbon emission, even if they were above the minimum rate, and similarly, for the energy content tax base, competing energy products would have to be taxed at the same rate per energy content;
- introduce new mandatory exemptions from the carbon emissions tax on energy products subject to the EU Emissions Trading System; and
- remove or limit various optional tax reliefs, for example by withdrawing the existing provisions that allow Member States to tax the commercial use of diesel in the transport sector at a lower level than diesel put to private use.

42 See http://ec.europa.eu/clima/policies/ets/index_en.htm.

43 (32716) 9267/11: HC 428–xxxi (2010–12), chapter 6 (29 June 2011).

The Commission proposed that a revised Directive would come into force in 2013, although several provisions would be phased in up to 2023.

8.5 The draft Directive was accompanied by the Commission's lengthy impact assessment and a summary of that assessment. The assessment sought to justify the Commission's proposal on grounds of subsidiarity, claiming that, although Member States can increase energy tax rates or introduce a carbon emissions related tax, single market distortions arise because there is no harmonised structure. The assessment considered six policy options on the basis of single market and fair competition, environmental effectiveness and budgetary impacts. These policy options encompassed the following ideas:

- revision of EU minimum rates on the basis of energy content;
- revision of EU minimum rates on the basis of carbon emissions;
- revision of the structure of the Energy Taxation Directive, by introducing EU minimum rates based on two elements — energy content and carbon emissions;
- revision of the structure of the Directive, by introducing an additional uniform carbon tax on top of existing energy taxes;
- restructuring the EU minimum rates for motor fuels, by incorporating a carbon element in the commercial diesel rates and aligning the energy tax base on the same value per energy content;
- restructuring the EU minimum rates for motor fuels, by requiring that the relationships between minimum rates are the same for those set at national level.

The Commission's preferred policy contained elements from several of the six options. The assessment recognised that the budgetary and economic impacts depend on how Member States choose to implement the proposals and that they are therefore difficult to predict.

8.6 When we considered this proposal, in June 2011, we said that:

- clearly it posed significant problems;
- a review of the Commission's impact assessment and explanatory memorandum had led us to question whether the predominant legislative purpose of the proposal was compliance with energy and climate change objectives, rather than the good functioning of the internal energy market that could only be achieved by harmonisation of energy taxes in Member States;
- we would like the Government's views on this;
- we very much shared the Government's subsidiarity concerns about the proposed structural provisions to define the tax bases of Member States' energy taxes and the provisions to define the differential between national tax rates on competing energy products;
- if we had been able to consider this matter earlier we would have recommended the House to adopt a Reasoned Opinion on these issues, as provided for in Protocol (No 2) to the EU Treaties; and

- as part of our political dialogue with the Commission, our Chairman was, however, writing to its President to express the extent of our concerns, as in an annexed text.

As for the remainder of the content of the draft Directive, we noted the various difficulties for the UK described to us by the Government. So before considering the matter further we asked to hear about progress in negotiations in addressing those difficulties. And in that context we were encouraged that the Government's hand was strengthened by the need for Council unanimity on the proposal. Meanwhile the draft Directive remained under scrutiny.[44]

The Minister's letter

8.7 The Economic Secretary to the Treasury (Miss Chloe Smith) first addresses our request as to the Government's view on whether the predominant legislative purpose of the draft Directive is compliant with energy and climate change objectives, rather than the good functioning of the internal energy market, as the legal base would suggest, saying that:

- the Government has considerable sympathy with our comments;
- in principle the Commission could have used a Treaty base appropriate for legislation primarily containing fiscal provisions aimed at environmental objectives, that is Article 192(2)(a) TFEU, rather than the single market Treaty base for indirect tax measures, that is Article 113 TFEU;
- the Government's objections and views on the proposal would not, however, materially change;
- it would continue to have serious doubts that such a proposal meets the subsidiarity test even when viewed through an environmental prism, given that there would be no amendment to the greenhouse gas limits;
- rather than lowering emissions as such, the proposal would force Member States to deliver the previously agreed level of emissions reduction through changes to the energy tax rules;
- either legal base requires agreement on the basis of unanimity; and
- this remains consistent with the Government's position and, as we had noted, strengthens its hand in the negotiations.

She adds that the Government notes that we share its subsidiarity concerns and it has registered these concerns during negotiations on the proposal.

8.8 Turning to the progress of negotiations the Minister tells us that:

- The Polish Presidency oversaw a complete run through at official level of the proposal's technical provisions;
- there is general agreement that they are complex and controversial;

44 See headnote.

- Member States are deeply divided on the substance;
- there are those that share the Government's opposition to key elements of the proposal, notably to the mandatory dual tax base (that is, one tax base to cover carbon emissions of fuels and the other to cover energy content), the "relativities requirement" (that is, a requirement for national tax rates to be structured so that competing energy products are taxed in relative proportion to their tax base) and the automatic indexation of EU minimum tax rates;
- on the other hand there are several Member States which support the general direction of the proposal, whilst having particular national issues with specific aspects,
- the Presidency sought to put this matter before Ministers at the November 2011 ECOFIN Council with a view to agreeing a political steer for direction of future work on the proposal;
- it suggested that the level of disagreement on key elements of the proposal meant that consensus on the current draft could not be achieved — therefore, to make progress, the proposal should be amended;
- it suggested that it should remain for Member States to choose whether or not they introduce a carbon emissions related tax, abandoning the "relativities requirement" and continuing discussions on setting new EU minimum levels of energy taxation;
- this issue was, however, dropped from the ECOFINn agenda following a pre-meeting discussion that demonstrated a clear split amongst Member States;
- those that support the Commission's proposals argued against Ministerial level discussions on the grounds these would as yet be premature;
- those Member States who, like the Government, oppose key elements of the proposal favoured a Ministerial steer along the Presidency's suggested lines;
- it will now fall to the Danish Presidency to take this matter forward;
- the Government knows that the Presidency is keen to make progress in the negotiations — having had a carbon tax for many years Denmark strongly supports the Commission's proposal; and
- given the complex and contentious nature of the proposal, the Government expects, however, that the negotiations will go on for some considerable time and that any agreed revision of the present Directive is likely to be significantly different to the Commission's proposal.

Conclusion

8.9 **We note what the Minister says about the legal base for this proposal and the question of subsidiarity. Whilst we understand her point about the Government's view of the proposal, and the need for unanimity, whichever legal base is used, we suggest that the Government ought, as a matter of a principled approach to law-making, to**

insist in the Council that EU legislation be based on the correct Treaty provision. We should be grateful for a Government response to this suggestion.

8.10 **We note also that the Commission has not responded to our own representations on this issue and we are pursuing this with its President.**

8.11 **As for the progress of negotiations we are grateful to the Minister for the information she gives us and look forward to her further accounts of developments in due course.**

8.12 **Meanwhile the draft Directive remains under scrutiny.**

9 Financial services: European social entrepreneurship and capital venture funds

(a) (33534) 18491/11 + ADDs 1–2 COM(11) 862	Draft Regulation on European social entrepreneurship funds
(b) (33535) 18499/11 + ADDs 1–2 COM(11) 860	Draft Regulation on European capital venture funds

Legal base	Article 114 TFEU; co-decision; QMV
Department	HM Treasury
Basis of consideration	Minister's letter of 30 January 2012
Previous Committee Report	HC 428–xlvii (2010–12), chapter 15 (18 January 2012)
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

9.1 The Commission promotes, partly in the context of the Europe 2020 Strategy, the value of the Single Market Act, the Small Business Act and the Innovation Union in support of small and medium-sized enterprises (SMEs).[45]

45 The Commission's latest documents on these policies are (32702) 9283/11 (32691) 9040/11, (32560) 7017/11 and (33505) 18244/11 + ADD 1: for the first three see HC 428–xxvii (2010–12), chapter 7 (18 May 2011) and HC 428–xxi (2010–11), chapter 6 (23 March 2011); we will be considering the fourth shortly.

9.2 One of the levers identified in 2011 by the Commission in re-launching the Single Market Act was the encouragement and development of social entrepreneurship. It defines a social business as an enterprise with the primary objective of achieving a social impact rather than generating profit for owners and shareholders, which operates in the market through the production of goods and services in an entrepreneurial and innovative way, and which uses surpluses mainly to achieve these social goals.

9.3 One of the priority initiatives identified in the Single Market Act was the "setting up of a European framework facilitating the development of social investment funds" so as to contribute to a favourable financing framework for social businesses. The aim is to improve the effectiveness of fundraising by investment funds that target these businesses. In July 2011, the Commission launched a consultation on promoting social investment funds,[46] as part of its Social Business Initiative.[47]

9.4 In April 2011 the Commission said it would consider adoption of new rules to ensure that by 2012 venture capital funds established in any Member State could operate and invest freely throughout the EU. In June 2011, it launched a consultation on a European venture capital regime.[48] The aim was to address the fragmentation of the EU's venture capital markets along national lines, that the Commission considered could limit the overall supply of capital for innovative SMEs, and to create a real single market for venture capital funds in the EU.

9.5 Currently the managers of social enterprise and capital venture funds have to comply with the Alternative Investment Fund Managers (AIFM) Directive, Directive 2011/61/EU.[49]

9.6 With the draft Regulation, document (a), the Commission has proposed, in order to encourage the growth of social entrepreneurship across the EU, uniform requirements for the managers of collective investment undertakings that would operate under a designation "European Social Entrepreneurship Fund". With the draft Regulation, document (b), the Commission has proposed, in order to encourage the growth of venture capital across the EU, uniform requirements for the managers of collective investment undertakings that would operate under a designation "European Venture Capital Fund".

9.7 Managers of collective investment undertakings that operated under the designations "European Social Entrepreneurship Fund" or "European Venture Capital Fund" would benefit from uniform requirements for registration and an EU-wide passport. Social enterprise and capital venture funds that did not wish to operate under those designations would not have to comply with the requirements of the Regulation and would not benefit from the EU-wide passport, unless the manager were authorised within the scope of the AIFM Directive.

46 For the consultation document and a summary of responses see http://ec.europa.eu/internal_market/consultations/2011/social_investment_funds_en.htm.

47 (33328) 16628/11: see HC 428–xlv (2010–12), chapter 10 (20 December 2011).

48 For the consultation document and a summary of responses see http://ec.europa.eu/internal_market/consultations/2011/venture_capital_en.htm.

49 See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF.

9.8 When we considered these proposals we noted, in relation to the proposal on social enterprise funds and amongst other matters, that:

- the Government welcomes the Commission's consideration of measures to facilitate EU investment funds targeting social businesses, while also working to ensure EU investors seeking to invest in such funds are better able to do so;
- it broadly supports the Commission's proposals to introduce a "European Social Entrepreneurship Fund" designation and to allow such funds access to an EU-wide passport;
- it believes that exempting listed funds from the investor eligibility criteria would further stimulate the EU social investment market while retaining appropriate consumer protection;
- given eligibility would be extended to beyond professional investors, the Government considers there to be a case for considering whether further protection, for example in assessing whether operators are fit and proper, is desirable beyond the minimum proposed;
- it agrees, in relation to delegated acts that objective criteria should be adopted, but given the diversity and nascent stage of the social investment sector, considers that a permissive and flexible approach should be taken — a non-prescriptive approach to the articulation of principles or basic standards for social impact reporting would be appropriate; and
- it notes that it would be helpful to clarify the interaction between the operation of this proposal and the AIFM Directive and to determine whether funds bearing the European Social Entrepreneurship Fund designation whose assets under management grow beyond €500 million could continue to benefit from that designation.

9.9 As for the proposal on capital venture funds we noted that:

- the Government welcomes the Commission's consideration of measures to improve access to venture capital by EU SMEs with high growth potential;
- it broadly supports the Commission's proposals to introduce a "European Venture Capital Fund" designation and to allow such funds access to an EU-wide passport;
- it considers there to be a case for broadening the scope of eligible investments to ensure European Venture Capital Funds can thrive and channel their investment better while retaining the focus on SME investment; and
- this could include allowing funds of venture capital funds to be invested in and considering whether the proposed minimum 70% level of qualifying investments is appropriate and how it is best applied.

9.10 We heard that:

- the Government had been consulting informally with industry the two proposals since the Commission's consultations were announced;
- stakeholder groups were being established and as part of its consultation with these groups, the Government would be seeking further information on the likely impacts on affected sectors from UK firms; and
- the Government's provisional assessments of the impact of the proposals would be coming to us.

We commented that, although these proposals appeared unexceptionable we would defer further consideration of them until we had the Government's promised impact assessments and information about the views of the stakeholder groups. Meanwhile the documents remained under scrutiny.[50]

The Minister's letter

9.11 The Financial Secretary to the Treasury (Mr Mark Hoban) tells us, in relation to the draft Regulation on social entrepreneurship funds, that the Treasury and the Cabinet Office consulted stakeholders — 14 organisations participated and stakeholders included Big Society Capital, Big Issue Invest, Investment Management Association, the Social Investment Business, Social Finance and UK Sustainable Investment and Finance. He says that the key issues to emerge were:

Likely use of the Regulation

- most stakeholders were broadly supportive of the aims of the draft Regulation, however some adjustments would be needed to ensure the definition and distribution of profits would cater to market needs over the next few years, as set out below;
- stakeholders questioned how this draft Regulation would interact and complement other EU initiatives such as the European Social Fund and European Regional Development Fund;

Definition of a qualifying portfolio undertaking (that is social business)

- the proposal defines social enterprises quite narrowly as supporting marginalised or vulnerable groups;
- there was a strong view from the group that the definition of qualifying portfolio undertaking was too narrow to ensure broad uptake — examples given included a concern that some community cohesion enterprises would be excluded;
- the draft Regulation could be read as not permitting profit distribution before sale of a social enterprise;

50 See headnote.

- stakeholders considered strongly that this could limit use of the scheme unless some profits were able to be distributed;
- they considered that investors who put their funds at risk should be able to generate a reasonable level of financial return, alongside the social return;
- the proposal places limits on annual turnover and annual balance sheet totals for a social business that were generally regarded as too low and could be seen to penalise successful social businesses;
- there was some concern over how social impacts would be measured and how social businesses would demonstrate they were making a "measureable" impact;
- stakeholders expressed a strong preference for broad principles only to be outlined, given that methodologies were at an early stage;

Eligible investors

- the proposed Regulation limits investors to professionals and semi-professionals;
- a number of stakeholders expressed a desire for retail investors to be included, however they understood the Commission's decision of limiting investors as this is an emerging market and considerably more protection would be needed if the scope were to be broadened;
- stakeholders welcomed the potential for retail investors to be included in the future;
- some stakeholders who currently manage social investment funds said that their limits on investors were similar to the Commission's proposal.

Social impact bonds (SIBs)

- many stakeholders believe SIBs or public service delivery contracts to be supporting growth in the sector;
- these are contracts with public authorities where the public authority pays if the social enterprise achieves a certain outcomes, for example, reducing reoffending rates; and
- stakeholders felt it is important that funds are able to invest in these contracts, with SIBs included as a qualifying investment in the proposed Regulation.

9.12 Turning to the draft Regulation on capital venture funds the minister says that the Treasury consulted the British Venture Capital Association, the European Venture Capital Association, the Investment Management Association and the Association of Investment Companies on the key issues. He tells us that:

Benefits and use of the Regulation

- venture capital fund managers have generally welcomed the proposals and are optimistic that they will be able to make use of the proposed passport and European Venture Capital Fund brand;
- they welcomed that the proposal is not overly prescriptive and is permissive of existing national fund structures;
- they are also happy that the proposed regime is optional, meaning that funds would not have to restructure, potentially damaging funding to SMEs in the short term;

Proportionality

- venture capital fund managers consider the reporting requirements to be suitably proportionate for venture capital funds;
- there had been particular concern at the possibility of a requirement for fund managers to appoint a depositary which they feel would be inappropriately costly;
- they considered there was scope tightening and clarification in areas relating to some points of conduct of business to ensure certainty for industry and a harmonised approach to implementation;
- however the more, or more detailed, the requirements, the more difficult and costly it will be for smaller fund managers to comply, and fewer funds would join the regime;

Eligible investors

- stakeholders were pleased to see that the Commission had moved away from restricting eligible investors to those who qualify as professional investors under the Markets in Financial Instruments Directive as traditional venture capital investors rarely would qualify;
- they were concerned, however, at the requirement that investors must commit a minimum of €100,000 in each investment;
- they considered this figure to be higher than the typical size of a venture capital investment;
- they recognise that reducing this threshold would compromise investor protection and were receptive to alternative qualifying criteria such as annual income or an existing portfolio of investments above certain thresholds;

Qualifying investments

- opinions were rather more split on what funds should be allowable as investment, with some parties keen that debt financing should fit within the definition of qualifying investment;
- however the majority were content for qualifying investment to be restricted to equity or quasi equity; and
- the majority also felt that the Commission's proposed split of 70% in qualifying investments and 30% in non-qualifying was sensible.

9.13 The Minister says that the Government has taken stakeholders' comments on board in achieving its position on both proposals.

9.14 The Minister encloses with his letter the Government's impact assessments. That on the draft Regulation on social entrepreneurship funds says, in relation to costs and benefits:

> "It is difficult to give orders of magnitude for this proposal as this affects social entrepreneurship funds, a very nascent market. However since the proposal is voluntary, only those seeking access to the new EuSEF label and associated passporting rights will incur costs. Therefore it can be reliably anticipated to have a net benefit to business of at least zero."

The assessment of the draft Regulation on capital venture funds says similarly, in relation to costs and benefits:

> "While the scale of benefits is difficult to assess at this stage and is dependent upon market take-up, this measure is optional for industry, with firms only opting in if they judge benefits to them to outweigh costs. Under a staged approach in an emerging market segment, incremental benefits are expected initially but there is potential for more significant benefits over time as the market matures."
>
> and
>
> "It is difficult to give orders of magnitude for this proposal. However costs are only borne by those seeking access to the new EVCF label and associated passporting rights, thus the regime imposes no costs unless funds choose to participate. Therefore it can be reliably anticipated to have a net benefit to business of at least zero."[51]

Conclusion

9.15 **We are grateful to the Minister for the information he gives us. We note that the views of the stakeholders have been taken into account in determining the Government's approach to the proposals. Before considering the draft Regulations again we should like to hear about progress in negotiation of the issues mentioned to us**

51 The assessments can be seen attached to the Minister's letter at http://europeanmemorandum.cabinetoffice.gov.uk/.

previously and of those raised by the stakeholders. Meanwhile the documents remain under scrutiny.

10 Financial management

(33576) 18940/11 + ADDs 1–2 COM(11) 914	Draft Regulation on the Hercule III programme to promote activities in the field of the protection of the European Union's financial interests

Legal base	Article 325(4) TFEU; co-decision; QMV
Document originated	19 December 2011
Deposited in Parliament	22 December 2011
Department	HM Treasury
Basis of consideration	EM of 12 January 2012
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

10.1 The Hercule programme was established by Council Decision No.804/2004/EC as an instrument dedicated to fighting fraud, corruption and any other illegal activities affecting the financial instruments of the EU. It brings together three activities (technical assistance, anti-fraud training and assistance for the European Lawyers' Associations) into one structured programme and is administered by the European Anti-Fraud Office (OLAF). In 2007 the programme was extended to cover the period 2007–13 (as Hercule II). Over that period, the programme placed emphasis on fighting cigarette smuggling and counterfeiting to reflect the Commission's legal obligations under the Anti-Contraband and Anti-Counterfeiting Agreement with Philip Morris International that was signed in 2004 and which provided an additional €6 million (£5 million) annually for the programme.

10.2 In 2011, the Commission and OLAF carried out an informal consultation with stakeholders, especially in Member States' operational services and Commission services and EU bodies, to evaluate the implementation of the Hercule II programme and to provide ideas for future objectives. The feedback was positive and stakeholders made suggestions for future activities, technical matters and simplification, which the Commission took into consideration in its impact assessment on whether to continue with the programme or not.

The document

10.3 As the legal base for Hercule II will expire at the end of 2013, the Commission considers that a replacement should ensure the continuity of EU support for the various activities to gather better information, carry out studies and provide training or technical and scientific assistance in the fight against fraud. With this draft Regulation to extend the programme (as Hercule III) to cover the period from 2014–2020 the Commission document presents the conclusions of OLAF's report on the implementation of the Hercule II programme and an impact assessment.

10.4 In the impact assessment the Commission considers four options. Its preferred option is to renew the programme with improved objectives and a better methodology rather than to alter or discontinue it. The budgetary envelope in real prices would be similar to the envelope of the Hercule II programme, approximately €15 million (£12.53 million) annually. This option would enable continuity and even further develop the activities at EU and Member States level in countering fraud, corruption and any other illegal activities affecting the financial interests of the EU.

10.5 Annexed to the draft Regulation are operational objectives for the Hercule III programme, which the Commission says would be in compliance with SMART[52] criteria, as follows:

- to improve the prevention and investigation of fraud, smuggling and counterfeiting, especially of cigarettes, by enhancing transnational and multi-disciplinary cooperation;
- to facilitate the exchange of information, experiences and best practices, including staff exchanges;
- to provide technical and operational support to national investigations, and in particular to customs and law enforcement authorities; and
- to promote a comparative legal analysis to enhance the development of legal and judicial protection of the financial interests of the EU.

10.6 The Commission says that:

- a priority is simplification of the regulatory environment of the programme, in line with other programmes under the Multiannual Financial Framework;
- the programme will be fully consistent with the Financial Regulation and its implementing provisions; and
- the added value of the programme would stem from the savings derived from the collective procurement of specialised equipment and databases used by law enforcement agencies and in specialised training.

52 Smart, measurable, achievable, relevant and timed.

The Government's view

10.7 The Financial Secretary to the Treasury (Mr Mark Hoban) says that:

- the Government supports actions to protect the financial interests of the EU;
- effective preventive action against fraud is especially important and programmes like Hercule may play a useful role; and
- it is important, however, to minimise overlap between this and other programmes, such as Pericles[53] and the 2004 agreement signed with Philip Morris International;
- to this end, and to further inform any decision on the future of the Hercule programme, the Government believes that it would be useful for the European Court of Auditors to produce a Special Report on these programmes' effectiveness, supplementing the Commission's impact assessment;
- the regulatory proposal for Hercule III relates to the next Multiannual Financial Framework (MFF) for EU spending;
- the Government's top priority is budgetary restraint, thereby ensuring that the EU budget contributes to domestic fiscal consolidation;
- the Prime Minister has stated, jointly with his EU counterparts, that the maximum acceptable expenditure increase through the next MFF is a real freeze in payments — this must be year on year from the actual level of payments in 2013;[54]
- over the next MFF, the costs of Hercule III would fall under Heading 1a of the EU budget (Smart and Inclusive Growth);
- growth and competitiveness, both of which are underpinned by innovation, are priority areas for the UK and should have a proportionately larger share of the EU budget that, at most, increases by no more than inflation;
- the Commission's current proposals for very substantial increases in this area are, however, completely out of line with the greater need for budgetary restraint;
- in this light, a final decision on the continuation of the Hercule programme depends on progress in delivering savings in other areas and so may not be made until wider negotiations on the MFF advance further;
- the Government notes with concern that approximately one tenth of the proposed financial envelope is earmarked for administrative costs — given its objective of achieving significant saving in Heading 5 (Administration) over the next MFF, the Government will argue to reduce these costs; and
- while there are no direct financial implications for the UK, adoption of a legal base for Hercule III would imply operational and administrative costs, which the

53 A programme for protection of the euro against counterfeiting.

54 See http://www.number10.gov.uk/news/letter-to-president-of-european-commission/.

Commission estimates, in total, at €123.2 million (£102.0 million) in current prices over 2014–2020 — the UK would partially fund this programme, via its contribution to the general EU budget each year.

Conclusion

10.8 **Whilst, like the Government, we think effective preventive action against fraud is important, we understand the Government's hesitancy about the proposed Hercule III, particularly in the light of the need to avoid an excessive Multiannual Financial Framework (MFF) for 2014–2020. So before considering the draft Regulation further we should like to hear about the Government's progress in securing a European Court of Auditors Special Report on the effectiveness of these sorts of programmes, a reduction in the proposed administrative costs for the programme and compensatory reductions elsewhere in the MFF. Meanwhile the document remains under scrutiny.**

11 Establishing a European Border Surveillance System

(33557) 18666/11 COM(11) 873	Draft Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR)
+ ADDs 1–3	Commission Staff Working Papers: Impact Assessments and Summary of Impact Assessment

Legal base	Article 77(2)(d) TFEU; co-decision; QMV
Document originated	12 December 2011
Deposited in Parliament	16 December 2011
Department	Home Office
Basis of consideration	EM of 10 January 2012
Previous Committee Report	None; but see HC 16–xv (2007–08), chapter 13 (12 March 2008)
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

11.1 In 2008, the Commission published a Communication which proposed establishing a European Border Surveillance System — EUROSUR — to strengthen Member States' border surveillance capabilities and to develop systems for enhanced cooperation and the exchange of information.[55] In the Stockholm Programme, which establishes the EU's

55 See HC 16–xv (2007–08), chapter 13 (12 March 2008).

priorities in the Area of Freedom, Security and Justice for the period 2010–14, the European Council invited the Commission to continue with the phased development of EUROSUR at the EU's southern and eastern external borders in order to promote the use of modern technologies, the development of uniform border surveillance standards and interoperable systems, and better sharing of operational information. At its meeting in June 2011, the European Council called for EUROSUR to become operational by 2013.

The draft Regulation

11.2 The purpose of the draft Regulation is to establish a common framework of rules — called EUROSUR — which would require participating Member States and Frontex (the EU Agency for the management of operational cooperation at the EU's external borders) to exchange information and strengthen mutual cooperation on the surveillance of their external land and sea borders. The draft Regulation is based on Article 77(2)(d) of the Treaty on the Functioning of the European Union (TFEU) which provides for the gradual establishment of an integrated management system for external border controls. The recitals indicate that it is a Schengen-building measure, developing elements of the Schengen border controls *acquis* in which the UK does not participate. The UK is not, therefore, entitled to take part in the adoption of the draft Regulation and will not be bound by it.[56]

The main elements of the draft Regulation

11.3 The draft Regulation seeks to improve Member States' "situational awareness and reaction capability" by strengthening their ability to monitor movements across their external borders and to develop and carry out appropriate control measures to counter illegal cross-border movements.

11.4 The draft Regulation would require each Member State with external land and sea borders to designate a National Coordination Centre for border surveillance which would exchange information and coordinate with other National Centres and with Frontex. Each National Coordination Centre would produce "national situational pictures" containing three layers of information:

- an events layer, recording the incidence of illegal border crossings, cross-border crime, crisis situations (such as a natural or man-made disaster) and any other events which may have a significant impact on external border controls;
- an operational layer, describing the status and position of available assets, areas of operation, and information on environmental conditions at the external border; and
- an analysis layer, containing strategic information (for example on migrant profiles or routes), analytical reports, risk ratings, and imagery of external border areas (including, for example, border permeability maps).

56 By contrast, EUROSUR would include Norway, Iceland, Liechtenstein and Switzerland as Schengen-associated countries.

11.5 Frontex would play a central role in developing EUROSUR. Its tasks include:

- establishing a secure communication network for the rapid exchange of information between the National Coordination Centres;
- producing a "European situational picture" and a "common pre-frontier intelligence picture" (the latter containing information on the geographical area beyond Member States' external border which is not covered by their national border surveillance systems) to provide National Coordination Centres with information and analysis to help prevent irregular migration and cross-border crime at their external borders; and
- facilitating the common application of border surveillance tools, such as satellites and ship reporting systems.

11.6 The draft Regulation would also require Frontex to strengthen its cooperation with a range of EU agencies and entities by establishing formal working arrangements for the exchange of information or the common application of surveillance tools.[57]

11.7 In order to ensure the efficient use of resources and personnel, Member States would have to divide their external land and sea borders into sections, with each section subject to a risk analysis carried out by Frontex. The outcome of the risk analysis would determine an appropriate "impact level" reflecting the extent of any risk to border security at each section. Member States would have to ensure that their surveillance and patrolling activities at each section of their external border were proportionate to the impact level, with a requirement to "provide all necessary support at national level, including information, resources and personnel" where the impact on external border security is considered to be high.

11.8 The draft Regulation includes provision for Member States to conclude agreements with one or more neighbouring third countries in order to exchange information and enhance cooperation in preventing irregular migration and cross-border crime. However, any exchange of information which could be used by a third country to identify individuals or groups at "serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights" is prohibited.[58] Moreover, Member States and Frontex, when applying the draft Regulation, must comply with fundamental rights, including data protection requirements, and "give priority to the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation."[59]

11.9 The Commission anticipates that EUROSUR should be operational by 1 October 2013 in those Member States located at the southern sea and eastern external land borders (Bulgaria, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, the Slovak Republic, Slovenia and Spain) and by 1

57 These include Europol, the Maritime Analysis and Operations Centre, the EU Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency.

58 See Article 18(2).

59 See Article 2(3).

October 2014 in Belgium, Germany, the Netherlands and Sweden. The Commission would be responsible for publishing a Handbook (in the form of a Recommendation) containing technical and operational guidelines and best practice on implementing and managing EUROSUR. Frontex would produce an initial report on the functioning of EUROSUR by 1 October 2015, and every two years thereafter, with the Commission preparing an overall evaluation of EUROSUR by 1 October 2016.

11.10 In its accompanying Impact Assessment (ADD 1), the Commission notes that the EU has 7,400 km of external land borders and 57,800 km of external maritime borders and coastlines. It highlights increasing migratory pressure at the EU's external borders, the dramatic increase in the number of migrants and refugees drowning at sea before reaching EU shores, and the speed and flexibility with which cross-border criminal networks change their routes and methods, as reasons for strengthening coordination and the exchange of information. It says that EUROSUR will "add value" to border surveillance by interlinking existing national and European systems, developing new capabilities, and allowing a more targeted use of resources which should help to reduce the loss of life at sea and the number of illegal immigrants entering the EU undetected, while also increasing internal security.

11.11 As EUROSUR will operate as a decentralised system, building on existing border surveillance infrastructure in Member States, the Commission says that no new EU funding will be needed. It suggests that the total costs associated with establishing EUROSUR are likely to be in the region of €338,7 million, with the bulk of EU funding provided by the External Borders Fund in 2012–13 and from the external borders element of the EU Internal Security Fund from 2014–20. Funding will also be available from the EU's Seventh Framework Research and Development Programme in 2012–13 to support the common application of surveillance tools.[60]

The Government's view

11.12 The Minister for Immigration (Damian Green) notes that the Government "is generally supportive of all new measures that strengthen the security and surveillance of the external borders of Schengen", adding that "it is in our national interest to support this measure" as many of those who illegally cross the EU's external borders will make their way towards the UK and may attempt to gain entry. He believes that EU action is justified as:

> "Better information sharing will help to identify targets such as boats used for irregular migration and cross-border crime more accurately and therefore allow a more targeted timely and cost-efficient use of available equipment for interception. The Government believes that this is an objective which cannot be sufficiently achieved by the Member States alone and which can be better achieved at Union level."[61]

11.13 Although the UK will not participate in EUROSUR and will not be able to use its communication network to exchange information with other Member States, the Minister

60 See p.4 of the Commission's explanatory memorandum.

61 See para 12 of the Minister's Explanatory Memorandum.

says that the UK Border Agency will still be able to share information with Frontex through its Risk Analysis Network and to access intelligence produced by the Frontex Risk Analysis Unit. He continues, "We will monitor the development of EUROSUR and assess the value of the information received from EUROSUR via Frontex."[62]

Conclusion

11.14 **We note that, as the draft Regulation establishing EUROSUR develops part of the Schengen *acquis* in which the UK does not participate, the UK will not take part in its adoption or application. The UK is similarly excluded from participating in Frontex, but the Regulation establishing Frontex includes a specific provision requiring the Agency to facilitate operational cooperation and the exchange of information with the UK (and Ireland) to the extent necessary to fulfil its tasks. As the draft EUROSUR Regulation confers a number of specific tasks on Frontex, we ask the Minister to explain whether the UK would be entitled to see the European situational pictures and common pre-frontier intelligence pictures produced by Frontex and to request information derived from the use of common surveillance tools identified in Article 12 of the draft Regulation.**

11.15 **We note also that the draft Regulation makes provision for Member States participating in EUROSUR to enter into agreements with neighbouring third countries on the exchange of information and on cooperation to tackle irregular migration and cross-border crime. In light of the UK's exclusion from EUROSUR, we ask the Minister whether the UK would be considered a neighbouring third country for the purpose of entering into agreements with other Member States and, if not, on what other basis the UK would be able to seek access to information held in Member States' National Coordination Centres for border surveillance.**

11.16 **Pending the Minister's reply, the draft Regulation remains under scrutiny.**

62 See para 15 of the Minister's Explanatory Memorandum.

12 EU Justice Programme

(33391) 17278/11 COM(11) 759	Draft Regulation establishing for the period 2014 to 2020 the Justice Programme
+ ADDs 1–2	Commission Staff Working Paper: Impact Assessment and Executive Summary of the Impact Assessment

Legal base	Articles 81(1) and (2), 82(1) and 84 TFEU; co-decision; QMV
Document originated	15 November 2011
Deposited in Parliament	25 November 2011
Department	Justice
Basis of consideration	EM of 5 December 2011
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

The document

12.1 This proposal is one of many elements of the multiannual financial framework package, the first stage of which was the Communication "A Budget for Europe 2020", which sets out the European Commission's proposal for overall EU budget financing and expenditure 2014–2020. It concerns the restructuring of the Framework programme for Justice, Fundamental Rights and Citizenship and a detailed proposal for a revised funding programme for Justice (2014–2020) within this framework.

12.2 The draft Regulation establishes a single Justice programme, combining three previous programmes — Civil Justice (JCIV); Criminal Justice (JPEN); and Drug Prevention and Information Programme (DPIP) — into one. This follows from the Communication mentioned above, which stressed the need for rationalisation and simplification of EU funding instruments. The specific objectives of the programme are to promote judicial cooperation in civil and criminal matters, to facilitate access to justice, and to prevent and reduce drug supply and demand.

12.3 The programme will fund actions such as: the collection of data; the development of common methodologies, guides and educational material; monitoring the transposition and assessment of the application of EU legislation; training activities for members of the judiciary and judicial staff; the development, operation and maintenance of IT systems and tools; support for Member States, specialised bodies, national and local authorities and experts for cooperation activities.

12.4 The Commission will adopt annual work programmes in line with the new comitology Regulation,[63] which sets out new rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

12.5 The draft Regulation requires that the Commission, in cooperation with Member States, ensures there is consistency with other instruments. The proposal also sets out a monitoring process for the programme. An interim evaluation report (by mid 2018) will be required as well as an ex-post evaluation report.

The Government's view

12.6 The Secretary of State for Justice (Mr Kenneth Clarke) deposited an Explanatory Memorandum in Parliament on this proposal dated 5 December 2011. He explains that funding schemes have been operated by the EU for many years, and are an established non-legislative mechanism to promote cross-border cooperation on specific issues. The Government supports action which leads to both more effective implementation and also evaluation of EU law, providing it meets priority policy objectives, adds value, and fills a gap which is not met either through other EU action or by the Member States.

12.7 In the justice area it is important both for the rights of those subject to criminal proceedings and for businesses or citizens involved in cross-border civil or family disputes to ensure that there is legal certainty through full compliance with EU law and, where problems have been identified with existing legislation, that action is taken to find solutions to those problems.

12.8 One way of achieving these objectives could be through some of the actions identified in this proposal, the Minister says: for example, the collection of data and statistics, monitoring and evaluation of instruments, impact assessments, training, awareness-raising and exchanges of good practice, innovative approaches and experiences.

12.9 UK interests have received funding from the programmes in the current Fundamental Rights and Justice Framework. For the period 2007–2010 the UK was the third highest recipient of EU funding from the programmes and was successful in obtaining the highest number of awards amongst all Member States from the Criminal Justice programme and the second highest number from the Drugs Prevention programme.

12.10 UK organisations that have received funding include a number of Universities and NGOs and government bodies. For example, since 2007 the National Offender Management Service (NOMS) and London Probation Trust have been successful in obtaining in excess of €3 million (£2,619,300) for projects such as: Developing the use of Technical Tools in Cross-Border Resettlement (DOMICE); Strengthening Transnational Approaches to Reducing Re-offending (STARR); Reducing Influences that Radicalise Prisoners (RIRP); Towards Preventing Violence Extremism (TPVR) and Implementation Support for Transferring of European Probation Sentences (ISTEP).

63 EU/182/2011.

12.11 The Minister says the Government welcomes the merging of the previous separate programmes on civil and criminal justice and the shift to focus on crime prevention that aligning the drug funding to the justice stream will bring. In particular in areas of work which straddle the boundaries between civil and criminal justice (for example European e-justice) it is sensible to provide the flexibility that merging these programmes brings.

12.12 The Government also welcomes this opportunity to reform the EU budget, but not at the cost of higher EU spending overall. Any increase in the funding share of an EU programme must be done through reprioritisation within the EU budget.

12.13 The Government stresses that funding for action in this area needs to comply with its general objective regarding the EU budget. Budgetary restraint remains the UK's top priority, thereby ensuring that the EU budget contributes to domestic fiscal consolidation. The Prime Minister has stated, jointly with his EU counterparts, that the maximum acceptable expenditure increase through the next Financial Perspective is a real freeze in payments. This must be year on year from the actual level of payments in 2011.

12.14 The Government will not agree spend in any programme or policies until the overall EU budget level is set at an acceptable level. While the Commission has not yet provided proposed payment (actual spend) figures for this programme, it is clear that the commitments (planned spend) level it has proposed would lead to payments levels substantially higher than those currently. As the proposal is based on Title V TFEU, the UK has to opt into it in order to be bound by it. This decision has to be taken by 17 March.

12.15 The implications of this proposed Regulation for UK contributions to the EU budget depend on a number of factors. The UK contribution to the multi-annual financial framework (MFF) is provisionally estimated to be 14.5% (pre-abatement) and 11.5% post-abatement. The actual net financial cost to the UK of the 2014–2020 MFF is contingent on both the size of the final MFF and the distribution of spending across programmes within the MFF. These factors determine the level of UK receipts and also affect the size of the UK's abatement. What is clear is that the larger the size of the overall budget, the greater the UK's level of contributions.

Conclusion

12.16 **We thank the Minister for his Explanatory Memorandum, and report this proposal to the House in view of the significant number of UK organisations which are financial beneficiaries of the current Fundamental Rights and Justice Framework.**

12.17 **We note the Government's intentions to achieve a real freeze in payments from the EU Budget over the next seven-year cycle of the Financial Perspectives, with the consequence that it will not agree to individual programmes until the overall level of the EU budget is agreed.**

12.18 **The Government has until 17 March to decide whether to opt into the proposal. We ask that the Minister informs us of the Government's decision together with an explanation of it before that date, at the same providing an update on negotiations if applicable.**

12.19 **In the meantime, the document remains under scrutiny.**

13 Multiannual Framework for the EU's Fundamental Rights Agency 2013–17

(33556) 18645/11 COM(11) 880	Draft Council Decision establishing a Multiannual Framework for the European Agency for Fundamental Rights 2013–17

Legal base	Article 352 TFEU; unanimity; EP consent
Document originated	13 December 2011
Deposited in Parliament	16 December 2011
Department	Justice
Basis of consideration	EM of 10 January 2012
Previous Committee Report	None
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

Background

13.1 The European Union Agency for Fundamental Rights ("the Agency") was established in 2007 to provide specialist advice to EU institutions and to Member States when implementing EU law. It carries out studies and research and disseminates information to help raise public awareness of fundamental rights. The Agency's principal areas of activity are set out in a Multiannual Framework which covers a five-year period and must be agreed unanimously by the Council. Its current Multiannual Framework will expire at the end of 2012 and identifies nine thematic areas as the focus for the Agency's work: racism and xenophobia; discrimination; compensation of victims; rights of the child; asylum, immigration and integration of migrants; visas and border control; participation in the democratic functioning of the EU; data protection; and access to justice.[64]

The draft Council Decision

13.2 The purpose of the draft Council Decision is to establish the Agency's next Multiannual Framework for the period 2013–17. It proposes ten thematic areas, most of which feature in the current Framework. The main changes are:

- the inclusion of Roma integration as a specific thematic area;
- the expansion of the Agency's activities to include police and judicial cooperation in criminal matters — areas previously excluded because the Agency was confined to matters falling within the scope of the EC Treaty, and EU criminal law and police cooperation measures were based on the Treaty on European Union (TEU);
- a specific focus on the victims of crime;

64 See Council Decision 2008/203/EC, OJ No. L 63, 07.03.2008, pp. 14–15.

- a broader definition of the types of discrimination falling within the ambit of the Agency, based on the grounds set out in Article 21 of the EU Charter of Fundamental Rights;[65] and
- removal of the thematic area concerning the participation of EU citizens in the democratic functioning of the EU.

13.3 The Regulation establishing the Agency in 2007 was based on Article 308 of the EC Treaty and the Commission has proposed its successor — Article 352 of the Treaty on the Functioning of the European Union (TFEU) — as the legal base for the draft Decision. This Article provides for the adoption of EU measures, should EU action "prove necessary, within the framework of the policies defined by the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers." The European Parliament has no power of co-decision and cannot, therefore, propose amendments to the draft Decision, but its consent is required before the Council, acting unanimously, may formally adopt the Commission's proposal. In its explanatory memorandum accompanying the draft Decision, the Commission says that the use of Article 352 is necessary "in the absence of any other (more specific) provision."[66]

The Government's view

13.4 The Minister of State for Justice (Lord McNally) says that the work of the Agency "provides a useful tool in measuring the impact of EU legislation on fundamental rights across Europe including, as appropriate, in candidate countries." He cites as an example a comparative legal analysis of the position for gay, lesbian, bisexual and transsexual people across EU States which has provided useful data in an area where there is little research.[67]

13.5 The Minister considers that the Agency "has been mindful of its legal remit" as set out in the 2007 Regulation establishing the Agency and in its current Multiannual Framework. He notes the Commission's view that, with the entry into force of the Lisbon Treaty, all elements within Title V of Part Three of the TFEU establishing an Area of Freedom, Security and Justice — including EU criminal law and police cooperation measures — fall within the ambit of the Agency's activities and that, as a result, there is no need to amend the 2007 Regulation to extend the remit of the Agency. He says that the Government will wish to consider this technical issue further.

13.6 The Minister explains that the use of Article 352 TFEU as the legal base for the draft Decision engages section 8 of the European Union Act 2011. He continues:

> "[A] Minister may vote in favour of the proposal only if one of the subsections (3) to (5) is complied with. The Government will consider the application of these provisions in the course of reviewing the proposal."[68]

65 The grounds are race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, birth, disability, age or sexual orientation.

66 See p.8 of the Commission's explanatory memorandum.

67 See para 18 of the Minister's Explanatory Memorandum.

68 See para 20 of the Minister's Explanatory Memorandum.

13.7 The Minister notes that any additional activity arising from the Agency's new Multiannual Framework would need to be undertaken within the Agency's existing budget. He says that the implications of the draft Decision require careful consideration and that he will provide further information to Parliament in due course.

Conclusion

13.8 **We look forward to receiving a more detailed statement of the Government's position on the draft Decision and ask the Minister, when he reports back to us, to address the following two issues.**

13.9 **First, we ask him whether the Government accepts the Commission's view that, with the entry into force of the Lisbon Treaty, the Agency's remit automatically extends, in principle, to all areas of EU competence under the TFEU, and that the Agency may therefore undertake activities within the field of police and judicial cooperation in criminal matters without any further amendment to its founding Regulation.**

13.10 **Second, we note that, under section 8(6) of the European Union Act 2011, an Act of Parliament to approve the draft Decision before it is formally adopted by the Council may not be required if any one of five possible exemptions applies. We ask the Minister to clarify which, if any, exemption he considers may apply and to explain why. Pending the Minister's reply, the draft Decision remains under scrutiny.**

14 Energy Roadmap 2050

(33563) 18597/11 + ADDs 1–6 COM(11) 885	Commission Communication: *Energy Roadmap 2050*

Legal base	—
Document originated	15 December 2011
Deposited in Parliament	20 December 2012
Department	Energy and Climate Change
Basis of consideration	EM of 11 January 2012
Previous Committee Report	None, but see footnote
Discussion in Council	See para 13.15
Committee's assessment	Politically important
Committee's decision	Cleared

Background

14.1 The Commission says that, although the headline targets in the Europe 2020 strategy include a 20% increase in energy efficiency by 2020, this will not be met unless further efforts are made. At the same time, it has noted that, in order to keep the global temperature increase to below 2□C, the European Council has said that greenhouse gas emissions by 2050 should be reduced by 80–95% compared with 1990, and it put forward in March 2011 a Communication[69] setting out a Roadmap for moving to a competitive low carbon economy in 2050.

The current document

14.2 The Commission has now produced this Energy Roadmap 2050, which explores the challenges posed by delivering the EU's decarbonisation objective, whilst at the same time ensuring security of energy supply and competitiveness. It notes that, although the policies needed to achieve EU energy goals for 2020 are ambitious, they will still be insufficient to meet the 2050 decarbonisation objective, as currently less than half of that will be realised by then. At the same time, it observes that there is uncertainty and inadequate direction as to what should follow the 2020 agenda, but that, if investment is postponed, the cost will be greater, and there will be more disruption, in the longer term. It says that developing post-2020 strategies is therefore urgent, and that, whilst it is not possible to make long-term forecasts, it has attempted in this Roadmap to explore different routes towards decarbonisation, in order to try and reduce uncertainty. However, it stresses that the Roadmap is not intended to replace national efforts to modernise energy supply, but rather to develop a long-term European technology-neutral framework in which such policies would be more effective.

Measures relating to the energy sector

14.3 The Commission points out the energy sector produces the lion's share of man-made greenhouse gas emissions, and that reducing such emissions by 2050 will put particular pressure on it. In assessing the situation, it looks at two "reference" scenarios — one based on current projections of economic development and policies adopted by March 2010 (including targets for renewable energy and greenhouse gas emissions), and the other including the action proposed in the Energy 2020 strategy, and the Energy Efficiency Plan — and five "decarbonisation" scenarios. The latter include (i) high energy efficiency, backed by a political commitment to very high energy savings, (ii) diversified supply technologies, with all energy sources competing on a market basis, and public acceptance of both nuclear energy and carbon capture and storage, (iii) high levels of renewable energy, (iv) diversified supply as in (ii), but with delayed introduction of carbon capture and storage, and a greater emphasis on nuclear energy, and (v) diversified supply, but with no new nuclear construction beyond that already taking place, and a correspondingly greater reliance on carbon capture and storage.

69 (32592) 7505/11 + ADDs 1–3: see HC 428–xxiii (2010–11), chapter 8 (5 April 2011).

14.4 The Commission says that, taken together, these scenarios enable some conclusions to be drawn which can shape current decarbonisation strategies so as to deliver their full effect by 2030 and beyond. These are:

- that decarbonisation is possible, and that the total cost could be slightly less than would be the case under existing policies;
- that decarbonisation would involve a transition to significantly higher capital expenditure and lower fuel costs, including a lower bill for fossil fuel imports;
- that electricity will play a much greater role, including the decarbonisation of transport and heating/cooling, and involving structural changes in the power generation system;
- that electricity prices will rise until 2030, and then decline;
- that the proportion of household expenditure devoted to energy and energy-related products (including transport) will increase until 2030 and decline slightly thereafter, with a similar trend being evident for small and medium-sized enterprises;
- that very significant energy savings throughout the system will need to be achieved under all decarbonisation scenarios;
- that, likewise, the share of renewable energy will rise substantially in each case;
- that carbon capture and storage will have to play a pivotal role in system transformation;
- that nuclear energy will need to make an important contribution, as it remains a key source of low-carbon electricity generation;
- that centralised and decentralised systems of power and heat generation will increasingly inter-act as a result of more renewable generation.

14.5 The Commission says it is likely that global energy markets will become more interdependent, and that the energy situation in the EU will be directly influenced by the situation of its neighbours and by global energy trends. It also points out that the results of the scenarios depend upon finalising a global climate deal, which would also lead to lower global fossil fuel demand and prices, but that that there could be a potential trade-off between climate change policies and competitiveness in some sectors, especially if the EU were to act alone in seeking full decarbonisation.

Moving to 2050 — the Challenges and Opportunities

Transforming the energy system

14.6 The Commission says that:

- *energy efficiency* should remain the prime focus, and be a priority in all decarbonisation scenarios, with the key being its application to new and existing

buildings, and nearly zero energy buildings becoming the norm: however, products and appliances and transport will also have to meet the highest energy efficiency standards, with smart meters and technologies enabling consumers to achieve more controllable and predictable energy bills, with investments by households playing a major role, aided by financial and other incentives, and with an increased role for local organisations and cities;

- a higher share of *renewable energy* beyond 2020 is the second major pre-requisite, the challenge being to drive down its cost through technological development, to integrate local and more remote sources, and to move from a subsidised to a competitive supply, and with incentives being provided to achieve greater economies of scale, more market integration, and hence a more European approach: it adds that storage technologies remain crucial, that renewable heating and cooling are also vital to decarbonisation, and that this will also require a large quantity of biomass for heat, electricity and transport;

- *gas* will be critical for the transformation of the energy system and in reducing emissions in the short to medium term, with greater market integration, combined with more liquidity, diversity of supply sources and storage capacity, and increased incentives to invest in gas-fired power stations: in addition, gas markets are changing, notably through the development of shale gas in North America, and the increasing global nature of liquefied natural gas markets;

- *other fossil fuels* will also need to be transformed with the development of carbon capture and storage (and other emerging "clean" technologies) enabling coal to continue to play an important role in a diversified energy portfolio, with oil remaining in the energy mix, particularly as regards long distance passenger and freight transport, and Europe maintaining a foothold in the global market and keeping a presence in domestic refining;

- *nuclear power* currently provides most of the low-carbon energy consumed in the EU, but some Member States now consider the risks to be unacceptable, particularly after the Fukushima incident, in addition to which there are likely to be increases in costs of safety, decommissioning and waste disposal: at the same time, since nuclear energy can contribute to lower system costs and electricity prices, it will remain in the energy mix;

- the extent to which fuel mixes change over time depends upon *technological progress (including that in ICT), storage and alternative fuels* (such as biofuels, synthetic fuels, methane, and liquefied petroleum gas).

Rethinking energy markets

14.7 The Commission says that this will involve:

- New ways of *managing electricity*, with more flexible generation, storage and demand management as the contribution of renewable generation increases, and improved access to markets for supplies of all types, avoiding the creation of new barriers, and the integration of the electricity and gas markets.

- *Integrating local resources and centralised systems*, in particular by eliminating energy islands, and with the distribution grid accommodating the variable generation from renewable production locally, and a more integrated view being taken on transmission, distribution and storage.

Mobilising investors

14.8 The Commission points out that, in the period to 2050, there will need to be wide-scale replacement of infrastructure and capital (including domestic consumer goods), involving very substantial upfront investments, often with returns over a long period. It says that the EU therefore needs to move now towards cutting the cost of capital for low-carbon investment, and that carbon pricing — notably through the Emissions Trading Scheme (ETS) — can provide an incentive for the deployment of such technologies. However, the Commission stresses that investment risks need to be borne by private investors, unless there are clear reasons to the contrary (for example, there a public good is involved, or support for early movers is needed), in which case it envisages more tailored financing through public institutions, such as the European Investment Bank and the European Bank for Reconstruction and Development, and the mobilisation of the commercial banking sector. At the same time, it suggests that energy subsidies may continue to be needed after 2020, whilst being phased out as market failures are resolved.

Engaging the public

14.9 The Commission says that the social dimension of the roadmap is important, as the transition will affect employment, and so require training and education; the construction of new power stations, renewable installations and transmission lines will require changes in planning procedures; and help may need to be given to vulnerable consumers to cope with the price increases, which will arise whichever policies are followed.

Change at international level

14.10 The Commission says that, in securing and diversifying its supply of fossil fuels and developing other fuels (such as solar energy), Europe must build international partnerships on a broader basis, including those with Norway, the Russian Federation, the Gulf countries and North Africa.

The way forward

14.11 The Commission concludes by reiterating that decarbonisation is possible, and that it will discuss this with other EU institutions and the Member States on the basis of this Roadmap (which it will update regularly). In the meantime, it identifies the ten conditions which must be met to achieve this new energy system as being full implementation of the Energy 2020 strategy; greater energy efficiency; development of renewable energy; high private and public investment in research and development and technological innovation; addressing regulatory and structural shortcomings; a better match between energy prices and costs; the development of new energy infrastructure and storage; a strengthened safety and security framework; a more coordinated approach to international energy relations; and the development of concrete milestones, particularly in the period to 2030.

The Government's view

14.12 In his Explanatory Memorandum of 11 January 2012, the Minister of State at the Department of Energy & Climate Change (Mr Charles Hendry) says that the Roadmap provides a good basis to prompt Member States to make the necessary decisions in the near term to meet longer term decarbonisation goals. It also provides the setting for a discussion of 2030 targets or milestones and of electricity market design prior to another Communication promised next summer. He adds that it is consistent with both existing EU and UK policy statements, and that the Government agrees with the Commission's analysis that a technology neutral approach appears to be the lowest cost pathway to decarbonisation of the energy sector, and on the importance of maintaining the EU's international competitiveness and for global action to tackle climate change effectively.

14.13 However, he cautions that there are three key risks posed by the Roadmap:

- *Competence issues:* The roadmap language includes broad references to the Commission's oversight of nuclear safety and security, yet the Commission has only limited competence on security issues. The Government will therefore resist strongly any extension of the Commission's competence in relation to nuclear security

- *Nuclear safety:* The roadmap highlights the Commission's intention to develop the existing framework of nuclear safety regulation and to seek to set a level playing field for investments. Until the results of the EU stress tests are available, it is premature to conclude that new legislation is needed, and the Government would only be prepared to support this if there was clear evidence from the stress tests that it was needed. Similarly, while it would support improved ease of investment in nuclear energy, it would want to resist unnecessary harmonisation or prescription of regulatory safety approaches across the EU, which would potentially cut across national regulators' responsibilities.

- *EU imposed renewables targets:* Since the Roadmap identifies the 2020 renewable energy target as an efficient driver in the development of renewable energy in the EU and says that timely consideration should be given to options for 2030 milestones, it could be used as a platform to set an EU renewables target for 2030. However, whilst there can be benefits in such medium term milestones or targets increasing investor certainty, the choice of any such target could have an effect on the Government's task of decarbonising the country at minimum cost to the consumer, and binding, stretching renewable targets could undermine any competitive tension which would drive costs down over time.

14.14 As regards timing, the Minister says that the Communication is likely to be the subject of major discussion at an informal meeting of Energy Minister on 19–20 April, with the Energy Council expected to adopt conclusions on 15 June.

Conclusion

14.15 **As the Minister has pointed out, this Roadmap provides a useful — if somewhat theoretical — basis for considering the decisions which will need to be taken if the EU is**

to meet its long-term decarbonisation goals. However, although it seeks to analyse the various options and their possible impact in a range of areas, it does not in itself make any concrete recommendations, being instead essentially a basis for further discussion. Consequently, whilst we are drawing it to the attention of the House, we see no need to hold it under scrutiny, and we are therefore clearing it.

15 Adjustment of fishing capacity to catch opportunities

(33555) 18631/11 —	Special Report No 12/2011 of the European Court of Auditors: Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?

Legal base	—
Deposited in Parliament	16 December 2011
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 12 January 2012
Previous Committee Report	None, but see footnotes
Discussion in Council	See para 15.8 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

15.1 Although the aim of the Common Fisheries Policy (CFP) has been to promote sustainable fishing, the Commission noted in its 2009 Green Paper[70] on the reform of the CFP that over-capacity of the EU fleet continues to be a major obstacle, despite the operation between 1983 and 2002 of a system of Multi-Annual Guidance Programmes, and their subsequent replacement by Member States putting in place measures to adjust capacity of their fleets to the fishing opportunities open to them. The question of over-capacity was the subject of previous Special Reports by the European Court of Auditors in 1993[71] and 2007,[72] and the Court has now produced this further Report, which seeks to examine whether EU measures have effectively contributed to adjusting capacity to available fishing opportunities.

70 (30556) 8977/09: see HC 19–xviii (2008–09), chapter 2 (3 June 2009).

71 (14615) 6888/93: see HC 79–xxxvii (1992–93), chapter 4 (20 October 1993).

72 (29229) 16071/07: see HC 16–viii (2007–08), chapter 1 (16 January 2008).

The current document

15.2 In its examination, the Court sought to establish whether the framework for reducing fleet capacity is clear, and the specific measures taken to achieve this are well defined and implemented. Its audit was carried out between May and November 2010, and involved the Commission and seven Member States (including the UK) selected on the basis of their fleet size and the resources available for adaptation. In particular, it examined the Commission's procedures for approving Member States' operational programmes under the European Fisheries Fund (EFF); the design and implementation of their fishing effort adjustment plans, decommissioning and modernisation schemes, and compliance with capacity restrictions; and their procedures to implement such restrictions.

15.3 The Court found important weaknesses in the framework, in that:

- existing definitions of fishing capacity did not adequately reflect the ability of vessels to catch fish;
- fleet capacity ceilings had little real effect on adapting fishing capacity to opportunities;
- fishing over-capacity had not been defined or quantified;
- the ability to transfer fishing rights had not been considered.

15.4 The Court also found important weaknesses in the design and implementation of measures to reduce over-capacity. These include:

- delays in the implementation of projects, and in setting up management and control systems;
- a lack of assurance regarding the sound design and correct implementation of Member States' fishing effort adjustment plans;
- insufficient justification for objectives for reducing capacity, leading to an increased risk that over capacity was not adequately targeted;
- a risk that investments on board vessels, and funded by the EFF, could increase the ability of such vessels to catch fish;
- incorrect updating of information on the EU fishing fleet register giving details of vessels scrapped with public aid;
- inadequate targeting of selection criteria for vessel decommissioning schemes, resulting in the scrapping of vessels which had little impact on targeted stocks;
- the rates of public aid for such schemes often did not take into account cost-effectiveness on the basis of sufficient objective criteria;
- inadequate reporting of efforts to reduce over-capacity.

15.5 In the light of these observations, the Court has recommended that the Commission should take the initiative in developing actions to effectively reduce over-capacity, in order

to address these weaknesses. It suggests that this might include better defining fishing capacity and considering more relevant and robust measures to balance capacity with fishing opportunities; setting effective limits for fleet capacity; ensuring that the design of fleet effort adjustment plans effectively targets required reductions; clarifying how fishing rights should be treated when vessels are decommissioned with public aid; clarifying whether fishing right transfer schemes have a role in reducing over-capacity, establishing whether the scheme of public aid for on board investments needs to be reconsidered, in order to avoid increasing fishing capacity; and placing unambiguous obligations on Member States to ensure that the fleet register is regularly updated.

15.6 Likewise, the Court also says that Member States should take into account the weaknesses identified, and should take corrective action to eliminate delays in the implementation of the EFF; ensure that any measures to aid investments on board are strictly applied, and do not increase fishing ability; ensure that the fishing fleet register is kept up to date; ensure that selection criteria for decommissioning schemes have a positive effect on the sustainability of targeted fish stocks; ensure that public aid rates for such schemes are cost effective; and use Commission guidelines when producing annual reports on their efforts to balance fishing capacity and opportunities.

15.7 In its response, the Commission agrees with the recommendations in the report, pointing out that some of the points raised were due to the late adoption of the EFF Regulation by the Council, which led to delays in implementation by Member States, which was further complicated by the fact that this had to be carried out at the same time as previous schemes were being closed down. It also observes that the balancing of fishing resources and capacity is only one of the objectives of the EFF, and that it therefore cannot be judged solely on the basis of whether it achieves a reduction in capacity (for example, measures designed to improve the economic viability of enterprises might not result in a reduction in capacity, but nevertheless help to improve the balance between opportunity and capacity). The Commission says that it will follow up the recommendations in the report with Member States in particular through its monitoring and supervisory role under the EFF. It adds that it has brought forward, within the reform of the CFP, proposals for transferable fishing concessions as a market-based approach to reducing capacity.

The Government's view

15.8 In his Explanatory Memorandum of 12 January 2012, the Parliamentary Under-Secretary for Natural Environment and Fisheries at the Department for Environment, Food and Rural Affairs (Mr Richard Benyon) says that discussions on the appropriate balance between fishing capacity and resources, and if such a balance can be defined, are likely to continue during the reform of the CFP. He also comments that several detailed issues identified during the audit of UK policies and procedures have been addressed in order to prevent any future occurrences.

Conclusion

15.9 **This Report by the European Court of Auditors raises a number of valuable points in relation to the way in which EU measures to bring catching capacity into line with fishing opportunities have operated, and, for that reason, we are drawing it to the**

attention of the House. However, as the Minister has indicated, many of the issues in question are being pursued within the discussions on the future of the Common Fisheries Policy, and, for that reason, we are clearing it.

16 Development of innovative lighting technologies

(33572) 18853/11 COM(11) 889	Commission Green Paper: *Lighting the Future — Accelerating the Deployment of Innovative Lighting Technologies*

Legal base	—
Document originated	15 December 2011
Deposited in Parliament	22 December 2011
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 14 January 2012
Previous Committee Report	None, but see footnotes
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 The Commission says that lighting accounts for 14% of EU electricity consumption, and that, as incandescent lamps are being phased out, new energy efficient and eco-friendly technologies are starting to replace them. It identifies solid state lighting (SSL) — based on semi-conducting materials, and comprising light emitting diode (LED) and organic light emitting diode (OLED) — as the most innovative of these, and it notes that, having first been introduced in traffic and car lights, this is already widely used for lighting displays, and is now entering the general lighting market.

16.2 It goes on to suggest that wide-scale uptake could contribute substantially to the sustainable growth objectives of the Europe 2020 strategy (and in particular the target of increasing energy efficiency in 2020 by 20%), but that larger uptake of current SSL products faces a number of challenges, in that they are expensive, unfamiliar to users, subject to rapid innovation, and hampered by a lack of standards. It also says that, although the EU has a wide range of policy instruments to stimulate the uptake of such technologies, it is necessary to consider whether new or additional measures are needed in relation to both the supply and demand sides (and, if so, what).

The current document

16.3 The Commission has therefore brought forward this Green Paper as part of the Digital Agenda for Europe[73] flagship initiative under the Europe 2020 strategy, with the aim of setting out the key issues to be addressed in a European strategy to accelerate the deployment of high-quality SSL for general lighting. It also says that the document has important links to several other flagship initiatives, including Innovation[74] and Industrial[75] Policy, the Energy Efficiency Plan for 2011 the new Horizon 2020[76] framework for research and innovation, the Thematic Strategy on the Prevention and Recycling of Waste, the Key Enabling Technologies Initiative, and Regional Policy Funds.

16.4 The Commission says that SLL is a breakthrough in general lighting in relation to energy efficiency (as it will in the next few years outpace existing technology, allowing significant energy savings, and reduce carbon dioxide emissions); lighting quality and visual comfort (as it offers lighting which has a long lifetime, does not contain mercury and has easily controlled colour and intensity); design and aesthetics; and innovation and business opportunities. It adds that intensive manufacturing and research activities around the world should further improve SSL performance, but it notes that, with market penetration in the EU being currently very low, it faces a challenge in removing barriers to the delivery of SSL's large potential for domestic use and other applications,[77] whilst helping the European industry to remain at the forefront of global competition.

Measures to influence demand

16.5 It suggests that the issues to be addressed so far as consumers and professional users are concerned include:

— Low quality LED products

Many such products emit low-quality cold white light, and life-times are often much shorter than claimed. Consequently, minimum quality requirements are a key factor, and, although Member States are responsible for monitoring the performance and safety of products sold holding the CE marking label, the Commission believes that an efficient market surveillance scheme is a pre-requisite.

— High initial purchase costs

The Commission notes that, although rapid advances in technology have led SSL costs to drop by 30% a year, LED lamps will continue in the foreseeable future to be more expensive than other existing technologies.

— Lack of user awareness

73 (31638) 9981/10: see HC 428–i (2010–11), chapter 28 (8 September 2010).

74 (32042) 14035/10: see HC 428–viii (2010–11), chapter 8 (17 November 2010).

75 (32128) 15483/10: see HC 428–ix (2010–11), chapter 14 (24 November 2011).

76 (33494) 17934/11: see HC 428–xlvii (2010–12), chapter 6 (18 January 2012).

77 Such as advertising panels, traffic and street lights, public offices and buildings.

The Commission says that users do not yet consider SSL as an important low-carbon technology, and are unable to weigh up its costs against its advantages.

— Insufficient or poor product information

The Commission says that the necessary technical properties for consumers to choose an appropriate product are often not provided or are poorly explained.

— Concerns for biological safety

The Commission says that, although an expert study has not identified any evidence that the "blue spectral component" of LED light presents a health hazard, this remains a concern of many consumers.

— Rapid technology obsolescence

The Commission says that users hesitate to use SSL because of continuing price drops and speedy increases in efficacy, and that safety gaps exist in existing technology standardisation.

It also says that large SSL deployment in cities is hindered by high upfront costs, particularly at a time of financial stringency, and that, in the case of private buildings, by the differing interests of landlords and tenants.

16.6 The Commission then identifies a number of initiatives to increase SSL uptake. It notes that a broad range of voluntary and mandatory EU instruments already exist which are regularly reviewed to reflect technological progress and new EU policy, and that changes to reflect recent developments are currently being considered a number of areas, such as the Eco-design and Energy Labelling Directives, the Ecolabel Regulation, the Low Voltage Directive, and the new EU Green Public Procurement criteria. In addition, it notes that a voluntary initiative (GreenLight) encourages non-residential users to install energy-efficient lighting technologies, whilst the International Energy Agency is addressing the issue of SSL global quality by developing a quality assurances scheme.

16.7 The Commission observes that a number of further measures could nevertheless be taken. In the case of consumers, it suggests that the lighting industry and/or consumer associations could organise awareness campaigns, whilst Member States and the industry can ensure that SSL products conform to EU performance and safety requirements. In particular, it advocates the creation of SSL lead markets. In the case of cities, it notes the role of Green Public Procurement and the existence of financial instruments — such as the European Local Energy Assistance (ELENA) and European Energy Efficiency Fund (EEE-F) — for cities to finance feasibility studies, and that they have the potential to become leading markets for SSL. It says that it is therefore considering inviting representatives from cities and the industry to establish a dedicated Task Force to set out a roadmap, including the introduction of innovative financial schemes; to invite cities to use ELENA and EEE-F, existing structural funds and other financial mechanisms to plan the large scale deployment of SSL; to organise a number of awareness raising events; and to examine the use of mechanisms, such as the new Cohesion Policy, to implement large scale pilot, demonstration and deployment actions.

16.8 In the case of public buildings, the Commission again notes the opportunities presented by Green Public Procurement; the extent to which the proposal[78] for a Directive on Energy Efficiency includes elements which could foster the uptake of SSL; and the that requirement in the Energy Performance of Buildings Directive that all new public buildings should become near-zero energy by 2019 will be extended to all new buildings by 2021. As regards residential buildings, it says there is also a need to put in place financial and other incentives, such as innovative contracting models, for users to buy and install new SSL technologies. It also proposes that public authorities should be invited to promote the wide deployment of SSL technologies when they renovate public buildings, and that Member States should provide incentives to consumers to replace lighting systems in their homes by SSL.

Measures to influence supply

16.9 The Commission notes that the European lighting industry is highly innovative, but is fragmented along its supply chain, and that, alongside a number of large global players, it consists of several thousand SMEs. It adds that, although the industry is well positioned as regards the emerging OLED technology, it is struggling to turn leadership in research and development into business success. At the same time, the Commission points out that the wider deployment of SSL will affect lighting as a business, with retrofit activities expected to dominate the market for the next three to five years, underpinned by the phasing-out of incandescent bulbs, and that there will be an increasing emphasis on intelligent lighting systems and services. Also, the customising of lighting characteristics to specific users' requirements will provide new business opportunities, requiring enhanced cooperation by European manufacturers, with others along the value chain (including wholesalers and retailers, urban planners, architects and lighting designers, manufacturers of electrical components and systems, installers, facility managers, the construction industry, and lighting service companies), and with vertical integration already taking place and expected to continue.

16.10 The Commission believes that the next three to five years will also be pivotal in establishing leading SSL market players, with the European industry being in principle in a strong position. However, it notes that it is already under significant pressure from newly, mainly Asian, competitors, and it has therefore suggested a strategic approach for achieving a competitive SSL industry in Europe. This would include translating ideas into marketable products by focussing on technological research, product development and demonstration, and advanced manufacturing; strengthening the SSL value chain; fostering cooperation between the industry and others in the extended value chain, with the industry taking strategic decisions on the future of SSL marketing in Europe; and securing the supply of scarce raw materials and the recycling of end-of-life SSL products. In addition, it says that the further development of the European industry will depend on standardisation, on access to intellectual property rights and to low cost routes of investment, and on learning and training.

78 (32949) 12046/11: see HC 428–xxxiii (2010–12) chapter 2 (13 July 2011) and HC 428–xliii (2010–12), chapter 1 (7 December 2011).

16.11 The Commission then looks at initiatives for strengthening the SSL value chain. It notes the steps taken as regards EU for research and innovation during the period 2007–13, including expenditure under the Seventh Framework Programme on the manufacturing processes for LEDs and OLEDs, materials research, and improving the performance of SSl-based applications; support provided under the Competitiveness and Innovation Programme on raising consumer awareness and supporting Member States in market surveillance activities; and the use of the Structural Funds to enhance the capacity to innovate in SSL. It says it is now considering a number of further actions, including:

- mandating the European Standard Organisations to develop standards;
- pilot actions to raise EU-wide awareness of SSL technologies;
- continuing to fund under the Seventh Framework Programme research on new lighting sources and on novel materials to replace critical raw materials;
- the creation under Horizon 2020 of a Public Private Partnership in Photonics;
- giving priority to SSLs as part of regional smart specialisation strategies under the new Cohesion Policy.

16.12 Finally, the Commission looks at the action which industry might take. It suggests that this might include:

- launching initiatives which extend the scope of business alliances;
- matching public support to a Photonics PPP with a commitment to invest in Europe;
- working with consumers to develop new functionalities for lighting applications to encourage faster uptake;
- working with European Standardisation Organisations to address issues related to SSL, including those relating to safety, environmental aspects, and the measurement of the performance of products and systems;
- further engaging in assessing the full life cycle impact of SSL products;
- using all existing mechanisms for launching vocational and lifelong learning and training.

The Government's view

16.13 In his Explanatory Memorandum of 14 January 2012, the Parliamentary Under-Secretary of State at the Department for Environment, Food & Rural Affairs (Lord Taylor of Holbeach) says that the Government broadly welcomes the Green Paper as it is consistent with its own views and work, and will therefore reply to the consultation expressing its general support for the proposals.

16.14 He notes that the Government has a policy of removing inefficient lighting products from the market in favour of energy efficient alternatives, and that it is therefore working

to encourage the innovation of ultra efficient lighting, recognising that this has the potential to provide significant carbon dioxide emissions savings over and above those produced by alternatives, such as compact fluorescent lamps (CFLs), whilst offering UK companies the opportunity to take advantage of the growing worldwide demand for energy-efficient lighting.

16.15 He adds that the Government has been focusing in particular on two of the issues identified in the Green Paper — the fact that SSL technology currently has a long pay-back period, and that the wide variation in performance of SSL products currently on the market threatens consumer confidence, delays market acceptance and slows down penetration rates. He says that, to address the first of these points, it has recently run a £1.2m challenge to develop LED lighting to replace conventional incandescent lamps: and, in order to address the second, it is participating in two international collaborations which are pushing the development of SSL technologies.[79] He notes that these initiatives support the work being done on a national level to address the main challenges with SSL technologies, including providing better information to governments and consumers about SSL products, and he believes that the Commission should become more actively engaged in both of them, particularly where work on harmonisation and standard development is envisaged.

Conclusion

16.16 **By the standards of many such documents produced by the Commission, this Green Paper provides an interesting and coherent account of recent developments in relation to solid state lighting, and of the measures which the EU can take to promote its uptake. Consequently, whilst we see no need to withhold clearance, we are drawing the document (and the Government's comments on it) to the attention of the House.**

17 Single European Sky

(33603) 5111/12 COM (11) 923	Commission Communication: *Governance and incentive mechanisms for the deployment of SESAR, the Single European Sky's technological pillar*

Legal base	—
Document originated	22 December 2011
Deposited in Parliament	11 January 2012
Department	Transport
Basis of consideration	EM of 23 January 2012

79 The IEA Efficient End-use Electrical Equipment Implementing Agreement (which has developed performance tiers for solid state lighting, and the Super Efficient Appliance Deployment Initiative (SEAD), which is aiming at harmonised testing standards for SLL (and other products).

Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

17.1 The Single European Sky (SES) is an EU initiative to reform the architecture of European air traffic control to meet future capacity and safety needs.[80] The technological element is the SES air traffic management (ATM) research project (SESAR).[81]

The document

17.2 This Communication sets out the main aspects of the Commission's proposals to establish governance and incentive mechanisms for the deployment phase of SESAR and a timetable for implementation from 2012 onwards.

17.3 In the document the Commission says that:

- SESAR is currently in its development phase, overseen by the SESAR Joint Undertaking (SJU), an EU public-private partnership, with 17 members (the Commission, Eurocontrol[82] and 15 private industry partners, including NATS and an airports consortium involving BAA);
- there are more than 80 other participants in the project, including third countries;
- the SJU is responsible for the execution and updating of the European ATM Master Plan (Master Plan), which was developed in conjunction with all relevant stakeholders and involves a detailed programme of actions and measures to plan, research, validate, and support the implementation of a modern European ATM system capable of meeting future capacity demands;
- the SJU is in the process of updating the Master Plan, both prioritising deployment packages which enable the achievement of performance objectives and targets, as well as incorporating International Civil Aviation Organisation (ICAO) concepts to ensure the interoperability of SESAR with other equivalent projects worldwide;
- the Commission convened a high level task force early in 2011 to help in the formulation of its proposals, involving officials from the European Aviation Safety Agency (EASA), Eurocontrol and the SJU, and assisted by a group of experts drawn from a broad range of stakeholders — there were also consultations, workshops and written submissions from stakeholders;

80 See http://ec.europa.eu/transport/air/single_european_sky/single_european_sky_en.htm.

81 See http://ec.europa.eu/transport/air/sesar/sesar_en.htm.

82 The European Organisation for the Safety of Air Navigation: see http://www.eurocontrol.int/.

- it considers that, in order to be effective, SESAR deployment needs to be performance-driven and implemented in a timely and synchronised fashion by relevant stakeholders;
- it intends to develop appropriate governance and incentive mechanisms using the current SES framework and EU funding mechanisms, as well as taking necessary action to encourage early investment from stakeholders;
- consideration will also be given to the needs of specialised groups such as the military and business and general aviation; and
- SESAR is industry-led, and the relevant stakeholders, notably those investing in the new technologies, have a crucial role to play in coordinating and synchronising deployment activities which will be overseen by the Commission.

17.4 The Commission lists SES entities and provisions within the SES framework that it sees as key to the SESAR deployment process:

Entities

- the Single Sky Committee (SSC)[83] and its supporting Industry Consultation Body (ICB);
- Eurocontrol through its Directorate Single Sky, its role as Network Manager and acting through its Performance Review Body (PRB);
- the SJU;
- the EASA;
- National Supervisory Authorities (NSAs);
- a consultative expert group on the social dimension of the SES (established in December 2010).

Provisions

- SES performance and charging schemes as a means to align stakeholders business plans with the Master Plan;
- interoperability implementing rules to support deployment of capacity-enhancing new technologies;
- Functional Airspace Blocks[84] for coherent regional deployment and common procurement; and
- common projects to define arrangements for deployment governance and allocation of EU funding.

83 See http://ec.europa.eu/transport/air/single_european_sky/committee_en.htm.

84 Airspace blocks based on operational requirements and established regardless of state boundaries.

17.5 In the context of preparing SESAR deployment the Commission says that:

- in order to more effectively manage the transition towards future governance and deployment, including synchronisation and timeliness of deployment activities, it has already established a temporary *ad hoc* steering group (the Interim Deployment Steering Group or IDSG) under the auspices of the SSC;
- once the SJU has validated the new technologies, the Commission foresees two distinct sub-phases of SESAR deployment — "industrialisation" (standardisation, certification at EU and national levels and production by ground and airborne equipment manufacturers and their subsequent marketing strategies which will drive the industrialisation process), followed by "implementation" (introduction of the new equipment and procedures by airspace users, air navigation service providers (ANSPs) and airports).;
- stressing the importance of providing for robust industrialisation planning in the Master Plan, it is in a position to assist the certification and standardisation processes through its continued financial support to the EU Standardisation Organisations (ESOs) and through its cooperation arrangements with the US Federal Aviation Administration;
- the EASA also has a crucial role to play in ensuring regulation both keeps pace and is consistent with SESAR developments;
- there is a need to make provision for continuing technological innovation to support the evolving requirements of a modern European air ATM system beyond the expiry of the SJU's mandate (end 2016); and
- the SJU's performance has demonstrated the value of the public-private partnership approach and the Commission will come forward with a proposal regarding its future later in 2012.

17.6 On deployment financing and funding the Commission says that:

- SESAR deployment is estimated to require total investments in excess of €30 billion (£25.06 billion) to deliver significant benefits in terms of cost and operational efficiency, safety, and the environment;
- realisation of these benefits does, however, require carefully orchestrated implementation and strict adherence to timelines by all the players;
- over two thirds of the total investments required for deployment will fall to civil and military airspace users for on-board equipment, €22 billion (£18.4 billion), with the remainder, €8 billion (£6.7 billion) falling to civil and military ANSPs and airport operators for ground-based equipment;
- it is important to ensure that investments are closely linked to the delivery of benefits;
- the targets imposed by the SES performance scheme are an effective driver to secure early investment by ANSPs;

- military and state aircraft and general and business aviation may not, however, have positive business cases, but nevertheless will need to bear the cost of equipping their aircraft with the new technologies and need to be encouraged to do so;
- SESAR investments will be high risk and benefits will not accrue if there is a timing mismatch between on board and ground equipment;
- around €3 billion (£2.5 billion) of EU funds will need to be strategically invested over the period 2014–2024 to ease the risks imposed by negative business cases, and to trigger private investment;
- EU funds should be used to help EU stakeholder and, so far as it is legally permitted, third country stakeholder cooperation in correlation and deployment of key Master Plan deliverables;
- the Trans-European Networks Connecting Europe Facility, targeted at priority infrastructure projects, includes provision for SESAR deployment; and
- other forms of financing need to be researched, such as loans from the European Investment Bank, the SES Charging Regulation (the common charging scheme for air navigation services) and the Emissions Trading Scheme.

17.7 In discussing governance for the deployment phase the Commission says that:

Scope

- it is crucial for the governance and incentive mechanisms for SESAR deployment to be concentrated on activities which have been identified in the Master Plan as critical to the achievement of SES key performance targets;
- geographically speaking, the Commission will initially focus on the immediate SES area, but intends that governance arrangements should provide for deployment to be extended to third countries to achieve a pan-European dimension for SES/SESAR implementation;

Deployment Programme

- the Commission will develop, adopt and update a detailed Deployment Programme, based on, and aligned with, the Master Plan and the Network Strategy Plan as a single reference tool to steer deployment activities and to ensure that tasks are performed as part of a consolidated and coherent process;
- this will include robust project and risk management, monitoring, coordination and synchronisation;
- there will need to be, in addition, alignment of stakeholder investment plans, enforcement and incentivising using the means available in the SES framework, strategic leverage and allocation of funds and corrective action taken where necessary;

- sustained and committed participation of stakeholders is crucial to the deployment process and support and guidance to stakeholders will be an integral part of the Programme;

Governance structure

- it envisages a governance structure comprising three interconnected levels — political, management and implementation, so preserving the essential separation between service provision and regulation;
- it is empowered, under the SES legislation, to produce guidance material for common projects[85] and intends to use this power as a means to set out the fine detail of the arrangements within and between the three levels;
- it will use this guidance to establish roles, responsibilities and accountabilities for the relevant parties and their mutual collaboration arrangements; and
- the structure will have flexibility to allow effective responses to changing circumstances, transparency and to ensure fair competition and no conflict of interest.

17.8 The Commission outlines greater detail of the three governance levels it suggests, saying that:

Political level

- the highest tier would be robust EU political oversight undertaken by the Commission using the available SES Regulations and assisted by the SSC and its ICB, the PRB, Eurocontrol, the EASA, the consultative group on the social dimension of the SES and the European Defence Agency;
- it would retain the authority to allocate EU funds;
- responsibility for establishing working arrangements with third countries, ESOs and relevant non-EU regulatory authorities would rest at this level, as would responsibility for endorsing the Deployment Programme, wider decision-making, enforcement, incentivising, overall monitoring and identification of likely recipients of EU funds;

Management level

- a consortium of relevant aviation industry stakeholders, an industrial partnership, would take on the deployment management role, as "Deployment Manager", though, failing that, the role could be given to an existing entity;

85 Under the SES legislation the Commission may decide to set up common projects for network-related functions which are of particular importance for the improvement of the overall performance of ATM and air navigation services in Europe. Such common projects aim to improve the performance of the European aviation system and may be considered eligible for EU funding.

- the Deployment Manager would have responsibility for drawing up the detailed Deployment Programme and ensuring its execution in a coordinated and timely fashion, following endorsement by the Commission;

- the Network Manager (Eurocontrol) and the SJU will have a close association with the Deployment Manager and provide it with information on the status of deployment and technical advice with regard to enhancement measures for inclusion in the Programme;

- setting up the Deployment Manager as a common project which would require cost/benefit analysis and consultation with Member States and relevant stakeholders and defining the role and tasks to be performed in associated guidance material — this would also lay down the procedure for establishing the industrial partnership and means of securing binding commitment from relevant stakeholders;

- the Deployment Manager would perform all the functions involved in executing the Deployment Programme;

Implementation level

- this will mainly comprise managers of the defined common projects who will effect the decisions of the deployment management level

- this level will, however, also cover implementation of all other SESAR deployment activities not in this category, including military SESAR-related deployment activities; and

- project managers will collect and analyse data and feed information upwards on the status of individual projects, including on any slippage identified.

17.9 In concluding, the Commission reiterates the importance of SESAR to the delivery of the SES and the need for the deployment of SESAR to be carried out in a timely, synchronised and coordinated way prioritising activities that deliver benefits to the performance of the European ATM network and in achieving the prescribed performance targets. It says that it:

- will endeavour to ease the process using the SES framework at its disposal as well as analysing this provision to see what modifications might be needed to align better to the SESAR deployment process;

- intends to take a number of immediate actions, as it estimates it will take several years to put the governance structures in place ready for deployment;

- will, in recognition of Eurocontrol's critical role in SES/SESAR, strengthen cooperation through the conclusion of an EU/Eurocontrol high level agreement;

- will ensure that the Network Management Plan and Master Plan update are properly aligned (as they form the basis for the Deployment Programme), facilitate the industrialisation process;

- will work with the US and within ICAO towards achieving global cooperation and interoperability;
- will have, as agreed by the SSC, the IDSG draw up an interim deployment programme and steer and implement it, which will serve as a "test bed" for SESAR deployment activity and ensure a continuity of activity and smooth transition into the deployment phase proper;
- will, during the course of 2012, define common projects and draw up, consult upon and adopt, appropriate guidance for putting in place the three-tiered governance structure envisaged;
- will clarify interrelationships between players within, and interfaces between, these levels of management and develop possible incentivising mechanisms; and
- intends then, with the help of the SJU and Eurocontrol, to prepare and launch the tendering process for the Deployment Manager role and to establish the future common projects.

The Government's view

17.10 The Minister of State, Department for Transport (Mrs Theresa Villiers), introduces her comments by telling us that the SES and the SESAR are EU initiatives which the Government strongly supports. She then says that:

- overall, the Government welcomes acknowledgement of the central role to be played by industry within a governance structure established on three levels;
- SESAR will have far reaching influence, having financial, operational and regulatory impact — it is therefore as important to establish regulatory oversight as it is to finance new equipment and procedures;
- the Government believes that as airspace is a single continuum, all users and providers must be involved;
- SESAR is patently an issue that covers commercial, general, business and military aviation and there needs to be a governance structure that places industry and the Commission together, with the appropriate support to manage the requirements of the delivery of such a large programme;
- the Government is a staunch supporter of the proposed performance driven approach to deployment and recognises the need to update the SESAR Master Plan to address this;
- the performance objectives for deployment need to be based on network operational needs and to be outcome-focussed, not driven by available technology;

- now that the SES performance scheme[86] is in place it is vital that any SESAR contribution is aligned with the development of existing and future EU-wide performance targets;
- the Government believes that SESAR's aim should be to achieve ATM modernisation by the industry for the industry;
- it supports, therefore, the Commission's vision of a "representative industrial partnership", rather than a public-private partnership, fulfilling the role of Deployment Manager and agrees the need for this partnership to work in close conjunction with the Network Manager, the SJU and the body entrusted to ensure the coordination of the military dimension;
- it believes also that such a partnership should work closely with national authorities (political oversight should be focussed on ensuring network benefits are achieved) and regulators (for regulatory and national security advice);
- care will also be required to ensure that the partnership pays due regard to environmental, legislative and safety concerns and that market factors do not become the drivers;
- while the Government accepts the EU's role in facilitating industrialisation, there must be a clear distinction between this and deployment to avoid confusion of responsibilities and the transfer of the risk from the manufacturer;
- in addition, the Deployment Manager cannot work alone on standardisation and certification and will need significant involvement of NSAs and, indeed, a very clear definition of the roles of all the relevant participants at each level;
- the Government agrees that there is a need for timely, synchronised and coordinated deployment and believes this is best achieved through a robust set of Project Management processes;
- it also agrees that it is crucial for the Deployment Programme to be closely aligned with the Network Management Plan and the Master Plan;
- while it welcomes the intention to update the Master Plan, it is insufficient alone as a management tool — a strategic EU plan also needs to be developed, to ensure that performance improvement, network developments and legislative aspirations are coordinated and coherent;
- in relation to financing/funding, the Government supports arrangements which facilitate private investment to ease the burden on the public purse and on airlines (and in turn passengers);
- it considers that Commission should also give greater consideration to innovative financing mechanisms;

86 (33368) 16582/11: see HC 428–xlv (2010–12), chapter 11 (20 December 2011).

- the Government considers it vital for the allocation of public funds to be very clearly targeted — it must only be made when there is network benefit, where there is no local positive commercial case, or where consensual agreement is reached;
- equally, where that might impact on contestable areas of provision (such as occurs at UK airports), there must be no distortion of the market;
- the Government supports the extension of SESAR deployment to neighbouring countries in Europe and the ultimate aim of achieving global interoperability;
- it will continue to pro-actively engage in relevant European fora and bilaterally and multilaterally with the relevant organisations, other Member States and stakeholders both formally and informally to bring UK influence to bear in the shaping of EU proposals;
- the Government will seek to secure coherent, robust and effective governance and financing/funding arrangements for the SESAR deployment phase which result in an seamless, efficient, modern, safe, sustainable and cost-effective European ATM system, while protecting UK national interests and maximising the opportunities and benefits for UK industry in the delivery of the SESAR programme; and
- the substantive proposals which are to come forward from the Commission will require careful scrutiny to determine the implications of the financing/funding measures envisaged.

Conclusion

17.11 **Whilst we have no questions to ask about this document and clear it from scrutiny, given the importance of the SESAR project, we draw it to the attention of the House.**

18 EU statements in multilateral organisations

(33345) 15901/11 —	Council Note: EU statements in multilateral organisations — General Arrangements
(33358) — —	United Kingdom Statement for the Minutes of the Council

Legal base	—
Document originated	—
Deposited in Parliament	16 November 2011
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 30 November 2011; EM of 1 December 2011
Previous Committee Report	None
Discussion in Council	Discussed on 22 October 2011
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

18.1 The EU Treaties clearly outline the division of competences between the EU and the Member States. Competences not conferred upon the EU in the Treaties remain with the Member States.

18.2 Prior to the entry into force of the Lisbon Treaty, the term "the EU" tended to be used erroneously in a broad sense to describe, variously, action by the European Community alone, or the European Community and the Member States. The Lisbon Treaty removed the distinction between the EU and the EC and conferred "the EU" with legal personality. It also led to the replacement of the Rotating Presidency's role in the conduct of the CFSP by the High Representative, assisted by the External Action Service, and the replacement of the former Commission and Council Delegations international organisations with unified EU Delegations. This meant that to continue to agree statements "on behalf of the EU", regardless of the actual breakdown of competence in the issues covered by the statement, could imply that there was EU competence on areas where competence in fact lay with the Member States. The Council has therefore adopted this Council Note: "EU statements in multilateral organisations — General Arrangements".

Documents

General arrangements

18.3 The following arrangements apply:

- The EU can only make a statement in those cases where it is competent and there is a position which has been agreed in accordance with the relevant Treaty provisions.
- External representation and internal coordination does not affect the distribution of competences under the Treaties nor can it be invoked to claim new forms of competences.
- Member States and EU actors will coordinate their action in international organisations to the fullest extent possible as set out in the Treaties.
- The EU actors and the Member States will ensure the fullest possible transparency by ensuring that there is adequate and timely prior consultation on statements reflecting EU positions to be made in multilateral organisations.
- Member States agree on a case by case basis whether and how to co-ordinate and be represented externally. The Member States may request EU actors or a Member State, notably the Member State holding the rotating Presidency of the Council, to do so on their behalf.
- Member States will seek to ensure and promote possibilities for the EU actors to deliver statements on behalf of the EU.
- Member States may complement statements made on behalf of the EU whilst respecting the principle of sincere cooperation.
- EU representation will be exercised from behind an EU nameplate unless prevented by the rules of procedure of the forum in question.
- EU actors will conduct local coordination and deliver statements on behalf of the EU unless prevented by the rules of procedure of the forum concerned (default setting). Where practical arrangements such as those at the World Trade Organisation, at the Food and Agricultural Organisation and in burden sharing exist for coordination and/or representation, such arrangements will be implemented for the preparation and delivery of the statement on behalf of the EU from behind the EU nameplate.

18.4 The following practical guidelines will apply:

- Should the statement refer exclusively to actions undertaken by or responsibilities of the EU in the subject matter concerned including the CFSP, it will be prefaced by "on behalf of the European Union".
- Should the statement express a position common to the European Union and its Member States, pursuant to the principle of unity of representation, it will be prefaced by "on behalf of the EU and its Member States". The introduction "on behalf of the EU and its Member States" does not preclude references to "the EU" or to "the Member States of the EU" later in the text, where such reference accurately reflects the factual situation.
- Should the Member States agree to collective representation by an EU actor of issues relating to the exercise of national competences, the statement will be prefaced by "on

behalf of the Member States". The introduction "on behalf of the Member States" does not preclude references to the "EU" later in the text, where such reference accurately reflects the factual situation.

18.5 The Member States and the Council, the Commission and the EEAS accept the following disclaimer:

> "The adoption and presentation of statements does not affect the distribution of competences or the allocation of powers between the institutions under the Treaties. Moreover, it does not affect the decision-making procedures for the adoption of EU positions by the Council as provided in the Treaties".

18.6 Should a problem arise in the application of these arrangements that cannot be solved through local coordination, the Head of the EU delegation will refer the matter to the EEAS which will, in close consultation with the Commission, submit when appropriate the matter to Coreper for decision.

18.7 The EEAS and the Commission services will present a report on their implementation at the latest by the end of 2012. In light of this Report, the arrangements could, if so decided by Coreper, be reviewed.

United Kingdom Statement for the Minutes of the Council

18.8 The Government tabled the following interpretative statement when the General Arrangements were adopted by the Council on 22 October.

> "The United Kingdom welcomes the Council endorsement of General Arrangements for EU Statements in multilateral organisations and looks forward to working with EU colleagues to ensure their effective implementation.
>
> "The Arrangements provide a basis for joint action by the EU and its Member States through the various fora and processes in International Organisations, based on a shared understanding that external representation and internal coordination do not affect the distribution of competences under the Treaties and cannot be invoked to claim new forms of competence. In this respect the UK recalls that the Treaties provide that Member States shall exercise their competence to the extent that the Union has not exercised its competence. The references to "national competences" in the Arrangements are to be interpreted in accordance with that principle. These Arrangements are to be read subject to the duty of sincere cooperation under the Treaties and do not in any way extend that obligation.
>
> "The United Kingdom is a strong supporter of an effective EU. When the Member States have agreed a clear position, we have a shared interest in ensuring that our collective voice is heard on the international stage. However, it is also important that when the EU acts externally it takes account of and respects the respective competences of the EU and its Member States.
>
> "Member States will therefore continue to exercise their rights in International Organisations, including by making national statements, participating in statements with other states, or representing EU positions.

"EU actors may only pursue negotiations aimed at securing enhanced participation rights and / or status for the EU in an international organisation or body when expressly authorised by the Council to do so by consensus. These Arrangements are without prejudice to any decision the Council might make on such matters.

"The United Kingdom in particular welcomes the confirmation in the General Arrangements of practical arrangements in burden sharing in multilateral organisations and will continue constructively to participate in and support EU teams working in shared competence fora, including those related to multilateral environmental agreements. The United Kingdom wishes to place on record that any proposed amendments to such arrangements will require the express agreement of the Council.

"In the event of any dispute about the interpretation and practical operation of the Arrangements, before referring it for decision in Brussels, every effort should be made to resolve the issue locally by consensus."

The Government's view

18.9 The Minister for Europe (Mr David Lidington) deposited an Explanatory Memorandum in Parliament dated 1 December 2011. He explains that, since the entry into force of the Lisbon Treaty in December 2009, the Government has been careful to ensure that action within international organisations respects the division of competences between the EU and Member States, and that EU action is limited to the competences conferred upon it by the Treaties. In this regard, the Government has fought hard to ensure that when statements are made in international bodies and organisations that it is clear in what capacity they are being delivered and on whose behalf. The UK has often been isolated in doing this, and its success in securing the General Arrangements reflects the robustness with which it held its line, the Minister says. The General Arrangements ensure that the EU speaks and acts as of right only in the areas in which it is empowered to do so, and in other areas only where Member States have agreed that it should.

18.10 To provide additional clarity on the UK position, the UK (along with Germany and the Commission) tabled an interpretive "statement for the minutes of the Council" on the General Arrangements when they were adopted by the Council on 22 October 2011. The Minister highlights the following three paragraphs as being of note:

- "the Treaties provide that Member States shall exercise their competence to the extent that the Union has not exercised its competence";
- "Member States will therefore continue to exercise their rights in International Organisations, including by making national statements, participating in statements with other States, or representing EU positions"; and
- "EU actors may only pursue negotiations aimed at securing enhanced participation rights and / or status for the EU in an international organisation or body when expressly authorised by the Council to do so by consensus".

Conclusion

18.11 **We thank the Minister for depositing these documents together with an Explanatory Memorandum.**

18.12 **We consider it vital that the distinction between Member State and EU competence in international organisations is respected, and so, in welcoming these General Arrangements, we report them to the House. The first two provisions strike us as particularly important:**

- **"[t]he EU can only make a statement in those cases where it is competent and there is a position which has been agreed in accordance with the relevant Treaty provisions";**
- **"[e]xternal representation and internal coordination does not affect the distribution of competences under the Treaties nor can it be invoked to claim new forms of competences".**

18.13 **We congratulate the Government on this initiative, and ensuring its adoption by the Council.**

18.14 **We ask that the Government deposit the first review of these General Arrangements in due course.**

18.15 **We have no further questions so clear the documents from scrutiny.**

19 Restrictive measures against Iran

(33643) — —	Council Decision 2012/35/CFSP amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran
(33644) — —	Council Implementing Regulation (EU) 54/2012 of 23 January 2012 implementing Regulation (EU) No.961/2010 on restrictive measures against Iran
(33633) — —	Council Regulation (EU) 56/2012 of 23 January 2012 amending Regulation (EU) 961/2010 on restrictive measures against Iran

Legal base	(a) Article 29 TEU; unanimity (b) Article 215 (2) TFEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letters of 18 and 30 January 2012 and EM of 30 January 2012
Previous Committee Report	None; but see (33388) — and (33389) —: HC 428–xliii (2010–12), chapter 23 (17 December 2011); (31779) —: HC 428–i (2010–11), chapter 61 (8 September 2010); (31905) —: HC 428–ii (2010–11), chapter 24 (15 September 2010); and (31937) —: HC 428–iii (2010–11), chapter 15 (13 October 2010)
Discussion in Council	23 January 2012 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

19.1 As the Committee's previous Reports under reference illustrate in detail, the EU has been engaged since December 2006 in a "dual track" strategy — engagement and restrictive measures — regarding Iran's nuclear activities, not simply implementing in the EU, but also strengthening in that context, successive UN Security Council Resolution (UNSCRs).[87]

19.2 UNSCR 1929 of 9 June 2010 imposed a number of further restrictive measures which in broad terms:

— reaffirmed that Iran shall cooperate fully with the IAEA;

— banned new Iranian nuclear facilities and banned Iranian nuclear investment in third countries;

87 See headnote.

— banned exports of several major categories of arms, and further restricted Iran's ballistic missile programme;

— froze the assets of 40 entities, including one bank subsidiary, several Islamic Revolutionary Guard Corps companies, and three Islamic Republic of Iran Shipping Lines subsidiaries, which had been involved in multiple sanctions violations cases;

— froze the assets of and banned travel by one senior nuclear scientist;

— implemented a regime for inspecting suspected illicit cargoes and authorising their seizure and disposal;

— placed restrictions on financial services, including insurance and reinsurance, where there was suspicion of a proliferation link;

— banned existing and new correspondent banking relationships where there were proliferation concerns;

— established a Panel of Experts to advise and assist on sanctions implementation; and

— reaffirmed the dual track strategy (of pressure and diplomacy).

19.3 Consequently, the EU implemented the measures contained in UNSCR 1929 and imposed additional EU sanctions in the following areas:

— the energy sector, including the prohibition of investment, technical assistance and transfers of technologies, equipment and service;

— the financial sector, including additional asset freezes against banks and restrictions on banking and insurance;

— trade, including a broad ranging ban on dual use goods and trade insurance;

— the Iranian transport sector in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; and

— new visa bans and asset freezes, especially on the Islamic Revolutionary Guard Corps (IRGC).[88]

The most recent draft Council Decision and Council Implementing Regulation

19.4 This Council Decision and Council Implementing Regulation enabled the European Union to add further additional individuals and entities to the Annex of Council Regulation 960/2010, subjecting them to an assets freeze and travel ban.

19.5 In his Explanatory Memorandum of 24 November 2011,[89] Minister for Europe (Mr David Lidington) reiterated the Government's commitment to "tough additional EU

88 For further information, see "FACTSHEET The European Union and Iran" at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127511.pdf.

89 See (33388) — and (33389) —: HC 428–xliii (2010–12), chapter 23 (17 December 2011)

sanctions against Iran, aimed at halting its proliferation sensitive activity and making it comply with its international obligations". He noted that:

> "Iran has continued to flout its international obligations. As the November 2011 International Atomic Energy Agency report and the subsequent Board of Governors resolutions demonstrates, Iran continues on its path towards developing nuclear weapons capability. In response to this, HMG announced on 21 November that it was requiring the UK financial sector to sever all ties with Iranian banks, including the Central Bank of Iran, with immediate effect.
>
> "The United Kingdom is determined to press for further robust action against Iran in the UN and EU to send a clear message to the Iranian regime that its continued violation of UN Security Council resolutions and Nuclear Non Proliferation Treaty obligations is unacceptable and that the Iranian government must resume serious and meaningful negotiations without delay.
>
> "The designation by the European Union of further individuals and entities who contribute to the development of Iran's nuclear proliferation sensitive activity or those who assist in the circumvention of sanctions is an important step. The UK Government believes that targeting key individuals and entities is among the most effective measures to target Iran's proliferation sensitive activity. For individuals, in addition to the stigma of being internationally blacklisted, being subject to sanctions prevents travel to acquire new knowledge and contacts. The asset freezing of entities is an effective tool to impact the revenue available for proliferation sensitive activity and will also helped disrupt the transport of goods for use in Iran's nuclear programme.
>
> "We are pressing for these measures to be backed with a further expansion of the scope of the EU sanctions, as mandated by Heads of Government in the Conclusions of the October European Council.[90]
>
> "We remain clear that the dual track policy of pressure and engagement remains in place. Sanctions in place are targeted, proportionate and reversible. Iran is faced with a stark choice: further international isolation and increased economic pressure, or, respect for international obligations and the lifting of sanctions."

19.6 The Minister concluded by noting that the Council Decision and Regulation were due to be adopted at the 1 December 2011 Foreign Affairs Council.

The Minister's letter of 24 November 2011

19.7 The Minister wrote to express his regret that due the urgency of the measures to be adopted he found himself having to agree to the adoption of this Council Decision and Regulation before the Committee had had an opportunity to scrutinise the documents.

19.8 He then continued as follows:

90 The European Council's Declaration is reproduced at the Annex to this chapter of our Report. The European Council Conclusions are available at http://register.consilium.europa.eu/pdf/en/09/st15/st15265.en09.pdf.

> "The recent November IAEA report[91] and the subsequent Board of Governors resolution[92] demonstrate the further progress of the possible military dimensions of Iran's nuclear programme. In the wake of the IAEA report the British Government acted on 21 November to sever all financial ties between the UK financial sector and Iranian banks. We believe it is an urgent priority that the European Union agree a robust response to Iran, including acting to prevent Iran acquiring the goods needed to develop its nuclear programme and halting the financial flows that fund the programme. The Decision and Regulation in question allow further entities and individuals to be subject to an assets freeze and travel ban in all 27 EU Member States. On 23 October, the European Council invited the Foreign Affairs Council to prepare new restrictive measures on Iran and we are, therefore, considering proposals in this regard in the finance sector, the transport sector and oil and gas sectors".

Our assessment

19.9 Although these measures raised no questions in and of themselves, we reported them to the House because of the importance of the political situation that had given rise to them.

19.10 We noted that relations between the United Kingdom and Iran had deteriorated drastically in the wake of the subsequent overrunning of the British Embassy compounds and Residence in Tehran and the consequent expulsion from the United Kingdom of all Iranian diplomats, and that on 1 December 2011, the Foreign Affairs Council had issued the following statement:

> "The Council is outraged by the attack on the British Embassy in Tehran and utterly condemns it. It is a violation of the Vienna Convention. It also deplores the decision to expel the British Ambassador from Tehran. The Council considers these actions against the UK as actions against the European Union as a whole. The EU is taking appropriate measures in response."[93]

19.11 On the same day, the Foreign Affairs Council had also issued Conclusions that:

91 Available at http://www.guardian.co.uk/world/interactive/2011/nov/09/iran-nuclear-programme-iaea-report.

92 According to the IAEA Division of Information: "At the end of deliberations beginning 17 November, the IAEA Board of Governors adopted a resolution on the Implementation of the NPT Safeguards and Relevant Provisions of the UN Security Council Resolutions in the Islamic Republic of Iran.

"The resolution expresses deep and increasing concern about the unresolved issues regarding the Iranian nuclear program, including those which need to be clarified to exclude the existence of possible military dimensions. It also stresses the need for Iran and the Agency to 'intensify their dialogue' aiming at the urgent resolution of all outstanding substantive issues for the purpose of providing clarifications regarding those issues.

"The resolution urges Iran once again to comply fully and without delay with its obligations under relevant resolutions of the UN Security Council, and to meet the requirements of the IAEA Board of Governors. Expressing continuing support for a diplomatic solution, the resolution calls on Iran to engage seriously and without preconditions in talks aimed at restoring international confidence in the exclusively peaceful nature of Iran's nuclear program.

"It further requests the Director General to include in his progress report to the March 2012 meeting of the Board of Governors an assessment of the implementation of this resolution.

"The resolution on the implementation of safeguards in Iran was adopted by a majority." See http://www.iaea.org/newscenter/news/2011/iran-resolution.html.

93 See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/126492.pdf.

— reiterated its serious and deepening concerns over the nature of Iran's nuclear programme, and in particular over the findings on Iranian activities relating to the development of military nuclear technology, as reflected in the latest IAEA report;

— strongly supported the resolution adopted by the IAEA Board of Governors, which the Council says expresses deep and increasing concerns about unresolved issues and stresses the grave concern posed by Iran's continued refusal to comply with its international obligations and to fully co-operate with the IAEA;

— confirmed that it had designated a further 180 entities and individuals to be subject to restrictive measures, which include entities and individuals directly involved in Iran's nuclear activities, which are in violation of UNSC resolutions; entities and individuals owned, controlled or acting on behalf of the Islamic Republic of Iran Shipping Line (IRISL); and members of, as well as entities controlled by, the Islamic Revolutionary Guards Corps (IRGC);

— further agreed that, given the seriousness of the situation, including the acceleration of the near 20% uranium enrichment activities by Iran, in violation of six UNSC resolutions and eleven IAEA Board resolutions, and the installation of centrifuges at a previously undeclared and deeply buried site near Qom, as detailed in the IAEA report, the EU should extend the scope of its restrictive measures against Iran;

— agreed to broaden existing sanctions by examining, in close coordination with international partners, additional measures including measures aimed at severely affecting the Iranian financial system, in the transport sector, in the energy sector, measures against the Iranian Revolutionary Guard Corps, as well as in other areas;

— tasked preparatory Council bodies to further elaborate these measures for adoption, no later than by the next Foreign Affairs Council;

— again reaffirmed the longstanding commitment of the European Union to work for a diplomatic solution of the Iranian nuclear issue in accordance with the dual track approach;

— called upon Iran to respond positively to the offer of negotiations in the EU High Representative's latest letter by demonstrating its readiness to seriously address existing concerns on the nuclear issue;

— reaffirmed that the objective of the EU remains to achieve a comprehensive and long-term settlement which would build international confidence in the exclusively peaceful nature of the Iranian nuclear programme, while respecting Iran's legitimate rights to the peaceful uses of nuclear energy under the NPT.[94]

19.12 In the meantime, we cleared the documents, and, in the circumstances and on this occasion, did not object to the Minister having agreed to their adoption prior to scrutiny.[95]

94 See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/126493.pdf.

95 See headnote: (33388) — and (33389) —: HC 428–xliii (2010–12), chapter 23 (17 December 2011).

The Minister's letter of 18 January 2012

19.13 The Minister wrote to forewarn the Committee of what, by the time we were able to consider it, was then headline news: the imposition by the 23 January Foreign Affairs Council of further restrictive measures against the Iranian regime. As he anticipated, the Council:

— banned the import, purchase and transport of crude oil and petroleum products from Iran into the EU as well as related finance and insurance; already concluded contracts can still be executed until 1 July 2012; a review will take place before 1 May 2012;

— banned imports of petrochemical products from Iran into the EU;

— banned exports of key equipment and technology for this sector to Iran;

— banned new investment in petrochemical companies in Iran as well as joint ventures with such enterprises;

— froze the assets of the Iranian central bank within the EU, while ensuring that legitimate trade can continue under strict conditions;

— banned trade in gold, precious metals and diamonds with Iranian public bodies and the central bank;

— banned the delivery of Iranian-denominated banknotes and coinage to the Iranian central bank;

— banned a number of additional sensitive dual-use goods;

— subjected three more persons to an asset freeze and a visa ban, and froze the assets of eight further entities.[96]

19.14 The Minister regretted and apologised for the scrutiny override (measures then still "subject to intense negotiations", could still change, and in any case were in many aspects classified to impede pre-emptive action), and undertook to submit whatever was finally agreed with an Explanatory Memorandum immediately after the FAC meeting.

19.15 The Minister also explained some of the Government's thinking, viz., that these strong additional sanctions were necessary to persuade the Iranian regimes to step away from its pursuit of its illegal nuclear programme, against a background that had not seen any positive moves from the Iranian regime in recent months, notwithstanding: the November 2011 IAEA report and the subsequent Board of Governors resolution (which set out further progress of the possible military dimensions of Iran's nuclear programme); the subsequent response by the Government on 21 November 2011 to sever all financial ties between the UK financial sector and Iranian banks; and the measures taken on 1 December 2011 by the EU against a further 200 individuals and entities. Instead, the Minister noted, this month Iran had demonstrated further defiance of its international obligations, by announcing the start of uranium enrichment at the Qom facility — which "provocative act

96 The Council statement is available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127444.pdf.

further undermines Iran's claims that its programme is entirely civilian in nature" (the Foreign Secretary on 9 January).

19.16 The Council Conclusions[97] also note that Iran's acceleration of enrichment activities are "in flagrant violation of six UNSC Resolutions and eleven IAEA Board resolutions and contributes to increasing tensions in the region", and call upon Iran to fully cooperate with the IAEA, including in the context of the planned visit by its Deputy Director General for Safeguards. They also reaffirm the EU's longstanding commitment to work for a diplomatic solution to the Iranian nuclear issue in accordance with the dual-track approach; and that a comprehensive and long-term settlement which would build international confidence in the exclusively peaceful nature of the Iranian nuclear programme, while respecting Iran's legitimate rights to the peaceful uses of nuclear energy in conformity with the NPT, remains the EU's objective. The Council accordingly urges Iran to reply positively to the offer for substantial negotiations, as set out in the High Representative's letter of 21 October 2011, by "clearly demonstrating its readiness to engage in confidence building measures and, without preconditions, in meaningful talks to seriously address existing concerns on the nuclear issue."

19.17 In its response of 25 January 2012 the Committee asked the Minister, in his Explanatory Memorandum to put some flesh on these bones, for example, by outlining what key equipment and technology for the petrochemical sector, and which additional sensitive dual-use goods would be affected; and what sort of legitimate trade was envisaged, under what sort of strict conditions. We also asked how did these measures left British companies, both in the EU and in the USA, with regard to important oil exploration activities that had a degree of Iranian participation.

19.18 Also, looking at the Council Conclusions, we asked the Minister to explain not just the Government's thinking but also that of the Union as a whole. We noted that the Conclusions emphasised that a comprehensive and long-term settlement that would build international confidence in the exclusively peaceful nature of the Iranian nuclear programme, while respecting Iran's legitimate rights to the peaceful uses of nuclear energy in conformity with the NPT, remained the EU's objective; and that the Council also urged Iran to reply positively to the offer for substantial negotiations, as set out in the High Representative's letter of 21 October 2011, by "clearly demonstrating its readiness to engage in confidence building measures and, without preconditions, in meaningful talks to seriously address existing concerns on the nuclear issue." We suggested that the House would benefit from an explanation of what the HR's letter said, how these measures related to other international action (by the US and the IAEA), and how the EU action was likely to lead to constructive negotiation rather than — as some critics had already said — prompting the Iranian regime instead to "race for the bomb".

The further Council Decision, Council Implementing Regulation and Council Regulation

19.19 In his Explanatory Memorandum of 30 January 2012, the Minister for Europe (Mr David Lidington) explains these measures as follows:

97 Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127446.pdf.

"The Council Decision under scrutiny introduces the following new measures against Iran:

"**Energy sector**

- Prohibition on the import of Iranian crude oil and petroleum products. It will also be prohibited to provide financial assistance related to the import, purchase or transport of Iranian crude oil or petroleum products. There will be a phased implementation, whereby existing contracts will be allowed to continue until 1 July 2012. There will be a review of this measure by 1 May 2012.

- Prohibition on the import of Iranian petrochemicals. The Decision prohibits all news contracts, but allows for existing contracts to continue for a period of three months.

- Prohibition on the sale of key equipment to, the import from, and the investment in, the Iranian petrochemical sector. The Decision will allow Member States to develop a list of key equipment, which will be adopted in the Council Regulation, which will now be negotiated.

"**Financial measures**

- Asset freeze on the Central Bank of Iran. Assets of the Central Bank will be frozen with immediate effect. But there will be exemptions for trade finance with non designated entities.

- Asset freeze against Bank Tejerat. Assets will be frozen immediately, but there will be a period of two months in which trade contracts will be able to continue.

- Prohibition on Iranian access to EU gold and precious metals markets and the transport to Iran of these goods.

- Prohibition on the export of printed, minted or unissued currency to Iran.

"Trade measures

- Additional dual use goods will be subject to a prohibition, where previously they were licensable by Member States.

"Action against the Iranian Revolutionary Guards Corps and companies involved in circumventing sanctions

- Amendment to the designation criteria. The Council will now be able to impose sanctions against any member of the Iranian Revolutionary Guard Corps or any individual or entity that provides support for the Iranian regime.

- In addition to the CBI and Bank Tejerat, a further 10 individuals and entities will now be subject to an asset freeze and travel ban.

"The Council Regulation implementing Regulation 961/2010 enables Member States to automatically freeze the assets of newly designated individuals and banks. This is

necessary to prevent the risk of asset flight, because asset freezing is an EU competence.

"The Regulation amending Regulation 961/2010 gives legal effect to the exemptions against the Central Bank of Iran and Bank Tejerat. This will ensure that Member States are able to give effect to the measures as set out in the Council Decision i.e. to permit trade contracts to continue for a period of two months for Bank Tejerat and to allow the CBI to continue to provide trade finance for legitimate trade."

19.20 With regard to *Fundamental Rights*, the Minister says that:

— the procedures for designating individuals are compliant with fundamental rights: provision is made for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic needs of listed persons or their dependents and where necessary for extraordinary expenses; decisions by competent authorities of Member States in this regard would be subject to challenge in Member State's courts; prohibitions on transfer of funds and financial services are exempted where necessary for humanitarian purposes, or where necessary for supply of foodstuffs, medical equipment or provision of health care; and provision is also made for exemptions to the travel ban on grounds of urgent humanitarian need;

— the principal Decision and Regulation respect the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial and the right to the protection of personal data; and

— the principal Decision and Regulation say that the Council shall provide designated persons and entities an opportunity to present observations on the reasons for their listing; that where observations are submitted, the Council will review its decision in the light of those observations and inform the person or entity concerned accordingly; and, in addition, the measures will kept under review.

The Government's view

19.21 The Minister goes on to comment as follows:

"The Government is committed to the dual track policy of increasing pressure against Iran in order to persuade it to negotiate seriously about its nuclear programme.

"In January, Iran announced that it had begun to enrich uranium to near 20% at its underground facility at Qom. This is the latest example of Iran continuing to choose a path of provocation. This is an enrichment programme that has no plausible civilian use, in a site that the Iranian authorities hoped to keep secret. The International Atomic Energy Agency has repeatedly expressed its concerns about the possible military dimensions of Iran's nuclear programme, including it its latest report of November 2011 and the subsequent Board of Governors resolution. In response to this report, HMG announced on 21 November 2011 that it was requiring

the UK financial sector to sever all ties with Iranian banks, including the Central Bank of Iran.

"The new measures adopted by the EU on 23 January 2012 represent a significant strengthening of sanctions against Iran. They reflect growing concerns about the nuclear programme and determination to increase peaceful legitimate pressure on Iran to return to negotiations. As well as changing the political calculation for the regime, the sanctions are aimed at preventing Iran acquiring the goods needed to develop its nuclear programme and halting the financial flows that fund the programme. The oil import ban is particularly significant as the EU previously imported 20% of Iran's oil exports. The Government and EU partners have been working with consumer and producer countries around the world to ensure there is no shortage to EU markets and not to undermine the ban. The Council Decision will allow for prior contracts until 1 July 2012 to allow consumers and markets to adjust. And there will be a review of the measure no later than 1 May 2012.

"The new sanctions also restrict the EU's financial cooperation with Iran and protect the EU financial sector from Iran's illicit financial activity. Bank Tejerat was the last major Iranian bank operating in the EU. And while the EU has taken the decision not to impose a full restriction on all ties with the Central Bank of Iran, the asset freeze sends a clear signal that this option remains on the table. Another strand of this latest sanctions package is action against the IRGC, who have become increasingly prevalent in the Iranian economy and are closely associated with decision making on Iran's nuclear programme.

"We remain clear that the dual track policy of pressure and engagement remains in place. Sanctions in place are targeted, proportionate and reversible. Iran has the power to end sanctions and further international isolation by changing course."

19.22 The Minister concludes by noting that the Council Decision and implementing and amending Regulations were adopted at the Foreign Affairs Council on 23 January 2012.

The Minister's letter of 30 January 2012

19.23 In response to the Committee's letter of 25 January 2012, the Minister says that:

— with regard to the Committee's questions on details of key equipment for the petrochemical sector and on additional dual use goods to be prohibited, these issues will be addressed in a further Regulation that will be under negotiation in the EU in the coming weeks. The Regulation will implement those measures in the Council Decision that fall under EU competence. But it has been agreed to move over half of the dual use goods items that were previously subject to licensing in the EU to a full prohibition. In addition, he has proposed some 36 further dual use goods be added to the EU Annex that requires licensing;

— with regard to the restrictions against the Central Bank of Iran, the measure requires all EU Member States to freeze the assets of the bank with the Union; but will allow funds frozen after the date of designation for non-sanctioned trade and its trade finance

function to continue, with the proviso that this does not take place with designated entities and is authorised by competent authorities, on a case by case basis;

— with regard to the impact of the oil measures on British companies involved in joint ventures with Iranian entities, in the lead up to agreeing these measures in the EU the Government has consulted closely with industry and with the range of interested Government Departments to ensure that it understood "the impacts for UK Plc"; the EU measures will not hit joint ventures in third countries, though any interests in Iran or involving designated entities will no longer be able to continue in their current form. The Minister does not anticipate any impact from these new EU sanctions on the strategically important Shah Deniz joint venture in the Caspian Sea;

— "The EU has liaised closely with international partners on these measures, including the US. The recent 'Kirk-Menendez' amendment agreed by the US has the effect of requiring countries to make a 'significant reduction' of their Iran oil purchases over a 180-day period, starting from 31 December; this ties in closely with the EU timetable of banning Iranian oil by 1 July. We will be lobbying other countries globally to join the EU and US in these measures."

— Baroness Ashton's letter of 21 October 2011 was released by her office into the public domain last week (which we reproduce at the Annex to this chapter of our Report);[98] the Minister adds that "we are still waiting for a response to this letter from Iran";

— with regard to how the EU action is likely to lead to constructive negotiations, rather than "a race to the bomb":

> "The government believes the dual track strategy of pressure and engagement is the policy most likely to lead to constructive negotiations with Iran. The EU action is fully in line with that strategy. As the Foreign Secretary said in the house on 24 January,
>
> 'If there were a reasonable hope of [another] policy succeeding, of course there would be a case for it. In the Foreign Office, I regularly review our overall policy and the alternatives to it. However, at every stage, I and my colleagues on the National Security Council reached the view that this is the right policy, as have the Governments…of the entire western world.'"

Conclusion

19.24 **We are grateful for the Minister's endeavours to be as forthcoming as he can in what the Committee acknowledges are very challenging circumstances, and on this occasion and in these circumstances, does not object to his having over-ridden scrutiny.**

19.25 **Although the documents raise no issues in and of themselves, we are again reporting these developments to the House because of the widespread interest in relations between the West and Iran, and are otherwise content for Members to use the many means at their disposal to pursue these matters further, should they so wish.**

98 Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127394.pdf.

19.26 **We now clear the documents.**

Annex 1: Declaration on Iran by the European Council on 23 October 2011

"The European Council remains fully committed to finding a diplomatic solution to the issue of Iran's nuclear programme and urges Iran to fully co-operate in this effort. The European Council reaffirms its grave concern over the development of Iran's nuclear programme and Iran's persistent failure to meet its international obligations. The recent disclosure of a facility intended for enrichment near Qom has further deepened its concerns.

"The European Council urges Iran to heed the requirements of UNSC resolutions and to cooperate fully with the IAEA to resolve all remaining issues and to rebuild confidence in the exclusively peaceful nature of Iran's nuclear programme.

"The European Council also calls upon Iran to agree with IAEA to the scheme of nuclear fuel supply for the Teheran research reactor which would contribute to building confidence while responding to Iran's need for medical radio-isotopes.

"Progress on the Iranian nuclear issue would pave the way for enhanced relations between the EU and Iran and open the way to mutually beneficial cooperation in the political, economic, security and technical fields.

"The European Council will continue to review all aspects of the Iranian nuclear issue and will decide in the context of the dual track approach on our next steps.

"The European Council deplores the continued violations of human rights in Iran. It is deeply concerned about the use of the death penalty, the violent suppression of dissent and the mass trials in post-electoral Iran against journalists, human rights defenders and political activists.

"The European Council expresses its continuing concern about the situation of staff members of European Union Missions and European citizens in Iran who recently have been on trial, and calls upon their prompt and unconditional release."

Annex 2: letter of 21 October 2010 from the High Representative of the Union for Foreign Affairs and Security Policy (HR) to the Iranian authorities:

"H.E. Dr Saeed Jalili
Secretary of the Supreme National Security Council
Islamic Republic of Iran

"Thank you for your letter of 6 September, in reply to my letter of 4 July.

"I welcome your suggestion to resume talks, in order to take fundamental steps for sustainable cooperation. I am convinced that we need a continuous and long-term process of building confidence and developing co-operation, which will allow us to

overcome the existing deficit of confidence in the nature of the Iranian nuclear programme, and bring benefits for all sides.

"In this context, I can confirm that our overall goal remains a comprehensive negotiated, long-term solution which restores international confidence in the exclusively peaceful nature of Iran's nuclear programme, while respecting Iran's right to the peaceful use of nuclear energy consistent with the NPT.

"In order to start such a process, our initial objective is to engage in a confidence-building exercise aimed at facilitating a constructive dialogue on the basis of reciprocity and a step-by-step approach. In this regard, we remain committed to the practical and specific suggestions which we have put forward in the past. These confidence building steps should form first elements of a phased approach which would eventually lead to a full settlement between us, involving the full implementation by Iran of UNSC and IAEA Board of Governors' resolutions.

"We can achieve a full settlement only by focussing on the key issue, which are the concerns about the nature of your nuclear programme, as reflected in IAEA reports, and by developing practical steps aimed at rebuilding confidence in the exclusively peaceful nature of your nuclear programme. Meanwhile, we remain ready to also address other areas of interest to you and to look into ideas you might put forward. However, at this stage, the main focus of our efforts will have to be on rebuilding confidence by developing concrete and practical steps.

"When moving to continuation of our talks, it is crucial to look for concrete results and not to repeat the experience of Istanbul. We have to ensure that when we meet again we can make real progress on the nuclear issue so that both sides can draw concrete benefits.

"Against that background, if the Iranian side is prepared to engage seriously in meaningful discussions on concrete confidence building steps and demonstrate willingness to address the international community's concerns about the nature of its nuclear programme, without preconditions, we would be willing to agree on a next meeting within the coming weeks at a mutually convenient venue.

"Catherine Ashton

"Copy: H.E. Dr Ali-Akbar Salehi
Minister of Foreign Affairs
Islamic Republic of Iran"

20 EU relations with Belarus

(33639) — —	Council Decision 2012/36/CFSP amending Council Decision 2010/639/CFSP concerning restrictive measures against Belarus

Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 16 January 2012 and EM of 26 January 2012
Previous Committee Report	None; but see (33193) —, (33194) — and (33158) 14303/11: HC 428–xxxvii (2010–12), chapter 25 (12 October 2011); (32857) —: HC 428–xxx (2010–12), chapter 16 (22 June 2011); (32435) —: HC 428–xiii (2010–11), chapter 16 (19 January 2011); (32019) —: HC 428–iii (2010–11), chapter 17 (13 October 2010); (31171) —: HC 5–iii (2009–10), chapter 17 (9 December 2009); (30507) — : HC 19–xiii (2008–09), chapter 10 (1 April 2009); (30076) —: HC 16–xxxiii (2007–08), chapter 5 (29 October 2008); and (27458) 8836/06 and (27459) — : HC 34–xxviii (2005–06), chapter 15 (10 May 2006)
Discussion in Council	23 January 2012 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

20.1 The Belarus "Country Profile" on the Foreign and Commonwealth Office website continues to catalogue a litany of repressive and undemocratic behaviour since Alexander Lukashenko won the first Presidential elections in July 1994.[99] These concerns include the disappearance of four opponents of the regime in 1999/2000. Despite repeated appeals from the international community, the Belarusian authorities have rejected all proposals for them to be investigated satisfactorily. In response, in September 2004 the EU decided to apply travel restrictions against the key actors in the disappearances (based on a report adopted by the Parliamentary Assembly of the Council of Europe in April 2004).

20.2 Further sanctions were imposed following the Presidential elections of March 2006. These elections failed to meet OSCE standards: there was arbitrary use of state power, widespread detentions, disregard for the basic rights of freedom of assembly, association and expression, and violent suppression of protests and the detention of peaceful protesters. In response the EU adopted restrictive measures — a visa ban and an asset

99 See Belarus Country Profile at http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/europe/belarus/?profile=politics

freeze — against President Lukashenko, the Belarusian leadership and officials personally responsible for the violations of international electoral standards.

20.3 The measures were renewed, given that there had been no independent investigation into the disappearances, nor any reform of the electoral code, in line with OSCE recommendations, nor any concrete action to respect human rights with respect to peaceful demonstrations: on the contrary, the situation had continued to deteriorate. On 7 April 2008 the Council adopted Common Position 2008/288/CFSP extending the measures by 12 further months until 10 April 2009.

20.4 In so doing, the Council agreed that the restrictive measures provided for by Common Position 2006/276/CFSP should be extended for a period of 12 months, but that the travel restrictions — with the exception of those against the persons involved in the 1999–2000 disappearances and the President of the Central Electoral Commission — should not apply for a reviewable period of six months, so as to encourage dialogue with the Belarus authorities and the adoption of measures to reinforce democracy and respect for human rights; at the end of this six-month period, the Council would re-examine the situation.

20.5 The previous Committee's Reports outlines subsequent shifts in the EU position, as differences emerged among Member States about how best to handle Belarus, given the EU's concerns but also its concern that an increasingly isolated Belarus would be drawn closer to an increasingly assertive and difficult Russia (with unspoken anxieties about the gas supply situation, where Belarus is a key link in the chain).[100] As noted therein, there were a number of exchanges between the Committee and the then Minister for Europe (Caroline Flint), centring on the 12 conditions for engagement set out by the EU in the Commission document "What the European Union could bring to Belarus" published in November 2006[101] and the conduct of the September 2008 parliamentary elections. The EU consensus remained in favour of suspending the visa ban for six months whilst renewing the restrictive measures for a further 12 months; "a strong statement from Council Members"; and continuing "a path of critical engagement" ensuring Belarus understood that the process must be sustained by further Belarusian steps. The then Minister expected at least some positive progress, particularly in the areas of freedom of the media, civil society and elections. If, however, Belarus failed to move toward the necessary reforms, the restrictions would be automatically re-imposed at the end of that six month period, with a unanimous decision required to extend the decision by another six months.

20.6 In a subsequent correspondence, the then Minister reported that the EU had made clear its five priorities — no new political prisoners, freer media, reform of electoral code, liberalisation of NGO environment, and freedom of assembly — and that the Belarusians had "refrained from flagrant human rights abuses" and introduced "a number of small reforms." But progress against the five priorities had been mixed, the positive changes had not been systemic and could be reversed and she was concerned by some negative steps in the immediately preceding couple of weeks — including the arrest of three human rights activists, two of whom had been recognised as political prisoners by the international community during previous periods of detention.

100 See headnote.

101 See http://ec.europa.eu/delegations/belarus/documents/eu_belarus/non_paper_1106.pdf for the full text of the paper.

20.7 Council Decision 2009/969/CFSP extended the restrictive measures until 31 October 2010, whilst suspending the travel restrictions, with the exception of those involved in the 1999 and 2000 "disappearances" and the President of the Central Electoral Commission.

20.8 In his Explanatory Memorandum of 8 October 2010, after briefly reviewing the history of the EU's engagement with Belarus in the same terms as did his predecessors, the Minister for Europe (Mr David Lidington) said that greater EU engagement had not delivered improvements in human rights or democracy. The Belarus authorities had taken a few, mostly cosmetic, steps but progress had stalled, and in some areas deteriorated. Already, in the run up to the Presidential elections, signs of progress were not encouraging. Repressive tactics were being employed in order to discredit opposition parties, whilst intimidating the limited independent media sector. The President's rhetoric on relations with the EU over the last few months continued to be negative. His conclusion was that:

— under these circumstances, lifting the sanctions would suggest that the EU did not consider human rights a priority and be particularly unfortunate timing before elections that were expected to fail to meet international standards;

— but re-imposing sanctions could actually be counterproductive for the EU's broader policy of engagement and the need to maintain a dialogue with the authorities ahead of the Presidential elections.

Our assessment

20.9 We reported this Council Decision to the House for the same reasons as did the previous Committee.

20.10 In so doing, we noted that the Minister had commented in only very general terms about what had happened over the past ten months, particularly in relation to the EU's benchmarks; and had also made no mention of the detained individuals referred to in previous discussion with his predecessors.

20.11 We presumed that the EU would review the election outcome. Bearing in mind the Council's proviso, we asked the Minister to write to us then with his views on the best way forward, and to include information about progress against the EU's Twelve Points and the detained individuals.

20.12 We also cleared the document.[102]

20.13 In January 2011, a further Council Decision amended Council Decision 2010/639/CFSP and resulted in a re-imposition of these measures on those involved in 2006 election violations, including President Lukashenko, and the addition of a new basis for the extant restrictive measures on the basis of involvement in the violations of international electoral standards and the crackdown on the opposition, the independent media and civil society during and after the 2010 Presidential election.

102 See headnote: (32019) —: HC -428 –iii (2010–11), chapter 17 (13 October 2010).

20.14 In clearing the Council Decision, we again left it to others to judge how well the EU had played its hand over the past five years.

20.15 Council Decision 2010/639/CFSP was further revised in June 2011, in the form of an arms embargo and the targeting of further persons, judged to meet the designating criteria, with a travel ban and asset freeze.

20.16 In his Explanatory Memorandum of 10 June 2011, the Minister for Europe (Mr David Lidington) noted that, in the more than five months since what he described as Lukashenko's fixed landslide presidential re-election victory, the Belarusian authorities had provided no fully satisfying explanation for such a violent post-election crackdown, nor had there been any let up in the renewed repression which appeared designed to stamp out dissent and spread fear. The authorities had effectively crushed the leadership of political opposition and civil society organisations in Belarus, were undermining any co-operation between opposition parties and targeting the independent media. The bomb attack on the Minsk metro on 11 April, which had killed 14 people and wounded 200, had further heightened the tense political atmosphere; charges against two men lacked clarity and speculation was rife amongst some independent and international commentators that the authorities themselves were responsible for the attack, in an attempt to distract attention from the economic crisis and to justify the crackdown on dissenters.

Our further assessment

20.17 It seemed to us that neither comprehensive restrictive measures nor the "incentivised" variant, or bilateral or EU human rights overtures, had made any fundamental difference to the Lukashenko regime's sustained rejection of "European standards"; and that, given the support of the Russian authorities, the effectiveness of these further measures must be open to question. We could but hope that they would at least give some degree of comfort to those in Belarus who continue the unequal struggle against repression.

20.18 We also cleared the document.[103]

The most recent changes to Council Decision 2010/639/CFSP

20.19 Council Decision 2010/639/CFSP and Council Regulation (EC) No.765/2006 concerning restrictive measures against Belarus were renewed and amended thus by the at the 10 October Foreign Affairs Council:

— extending the restrictive measures until 31 October 2012;

— inserting a "prior contracts" exemption clause to allow EU individuals/companies to receive funds from a listed entity/individual in respect of a contract or agreement concluded prior to the date of listing;

— updating information held on 12 individuals/entities are already listed;

103 See headnote: see (32857) —: HC 428–xxx (2010–11), chapter 16 (22 June 2011).

— adding 16 more individuals to be targeted with an asset freeze and travel ban.

20.20 The Minister for Europe (Mr David Lidington) commented at the time as follows:

— following a series of releases in August and September, seven out of 40+ political prisoners remained in jail in Belarus, including two ex-presidential candidates (Sannikov and Statkevich). He believed that the remaining prisoners were under intense pressure to seek a pardon, and their physical and mental condition was giving cause for concern. Other than the release of prisoners, the overall pattern of repression against political parties, human rights defenders and civil society remained the same;

— the UK continued to work with European and other partners to maintain pressure on the Belarusian regime. He himself had made a statement on 6 August about the detention of Ales Byalyatski, a prominent human rights defender; and in a statement at the UN Human Rights Committee on 20 September, the UK had again called for Belarus to release and rehabilitate all political prisoners, end politically motivated harassment and intimidation, and conduct a thorough and credible investigation into the allegations of degrading treatment against prisoners;

— while visiting Warsaw for the Eastern Partnership Summit,[104] the Minister had met a group of Belarusian opposition leaders in order to show them moral support and to discuss ways in which they could unify and strengthen in opposition; and the Deputy Prime Minister had given an interview to a Belarusian radio station operating from Warsaw and met a number of Belarusian civil society representative;

— the renewal of the sanctions and addition of new names was politically important as it sent a strong message to the Belarus regime that it was still not doing nearly enough to improve its human rights record; all the political prisoners should not only be released but also rehabilitated (all charges against them dropped); there was no sign of this happening, yet, or any sign from the regime that it planned to cease its policy of repression.

20.21 The Minister concluded by explaining that, in order to deliver as strong a political message to Lukashenko and the Belarus authorities, the EU had pushed to adopt these measures at the 10 October Foreign Affairs Council, and to meet this timing he had himself in the unfortunate position of having to over-ride parliamentary scrutiny.

20.22 On 10 October, the Foreign Affairs Council announced that it had reinforced the restrictive measures on those responsible for the continuing repression of civil society, the political opposition and the independent media in Belarus, and prolonged them until 31 October 2012. The Council noted that: they subjected 192 individuals to a visa ban and an assets freeze, namely those responsible for the violations of international electoral standards in the presidential elections in 2006 and 2010 as well as for the crackdown on civil society and democratic opposition; in addition, the assets of three companies linked to the regime had been frozen while exports to Belarus of arms and materials that might be used for internal repression were prohibited; 16 persons were added to the list of those

104 Held in Warsaw on 29–30 September 2011 under the Polish Presidency; see http://www.easternpartnership.org/publication/2011–10–07/european-press-eastern-partnership-summit-warsaw for further information and comment.

targeted by a visa ban and an assets freeze; and the decisions, including the list of additional designations, would be published in the Official Journal of 11 October 2011.[105]

Our assessment

20.23 As before, we reported these developments to the House because of the level of interest in the EU's relations with its eastern Partners, and continued to hope that these further changes would give some encouragement to democratic forces in Belarus.

20.24 On the question of timing, given the constraint of the "conference adjournment", we did not object to the Minister's scrutiny override on this occasion and in these circumstances.

20.25 We also cleared the documents.[106]

The Minister's letter of 16 January 2012

20.26 In his letter of 16 January 2012 the Minister of Europe (Mr David Lidington) alerted the Committee to a prospective scrutiny over-ride concerning a Council Decision that was to be adopted at the 23 January Foreign Affairs Council, amending Council Decision 2010/639/CFSP. The Minister explained that, since the measures were renewed in October 2011, he had been negotiating with EU partners to expand the listing criteria so that they were not explicitly tied into events that took place around the December 2010 elections, and that:

— the purpose of broadening the criteria was to ensure that the targeted measures remained relevant to the current situation on the ground in Belarus;

— the listing criteria would accordingly be amended to include *"serious violations of human rights or the repression of civil society and democratic opposition"* and *"persons or entities benefitting from or supporting the regime"*;

— agreement of all Member States to expand the criteria was secured only on 12 January;

— Belarus was on the agenda of the 23 January Foreign Affairs Council, where the aim was to announce that the criteria were being extended thus;

— hence, unfortunately on this occasion it had been necessary to override parliamentary scrutiny.

20.27 In its response of 25 January 2012, the Committee referred to the joint statement issued a month ago by the High Representative and the Enlargement Commissioner:

— recalling the anniversary of the start of the brutal crackdown by the Belarus Government on civil society, political opposition and independent media;

105 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/125002.pdf.

106 See headnote: (33193) —, (33194) — and (33158) 14303/11 HC 428–xxxvii (2010–12), chapter 25 (12 October 2011).

— noting that over the subsequent 12 months, the Belarusian authorities have imprisoned peaceful demonstrators, suppressed non-violent protests, and worked to silence independent voices;

— citing credible reports of degrading and inhumane treatment of political prisoners, some of whom have been set free, but not others

— calling for such other political prisoners to be immediately released and rehabilitated, including presidential candidates Andrei Sannikau and Mikalai Statkevich and human rights defender Ales Byalyatski;

— expressing grave concern over new laws that will further restrict citizens' fundamental freedoms of assembly, association and expression and that target support to civil society;

— reiterating that the improvement of bilateral relations with the United States and the European Union is conditional on progress by the Government of Belarus towards the fulfilment of its OSCE commitments and respect for fundamental human rights, the rule of law and democratic principles; and that the United States and the European Union remain willing to assist Belarus as it works to meet these obligations.

20.28 The Committee observed that the rationale behind the proposed changes thus seemed well-founded; would no doubt come as no surprise to the ever-defiant Lukashenko regime, but would also, we hoped, fortify democratic forces; and were also consistent with a well-founded EU (and US) position. The Committee therefore indicated that it was not inclined, at this stage at least, to take issue with the prospective over-ride. They asked the Minister to deposit an EM immediately after the adoption of the Decision, and to include an explanation as to why — given that the Ashton/Füle statement was made in mid-December — agreement on what would appear to be a straightforward expression of the widely-held views in that statement had only been reached so late in the day (the Committee's assumption being that this was not the result of dilatoriness or lack of respect for the parliamentary scrutiny process).

Council Decision 2012/36/CFSP

20.29 This Council Decision expands the listing criteria under which individuals and entities can be targeted with regard to the EU restrictive measures imposed against Belarus. The additional criteria are as follows:

— for serious violations of human rights or the repression of civil society and democratic opposition in Belarus, as listed in Annex V; and

— persons or entities benefitting from or supporting the Lukashenko regime as listed in Annex V.

The Government's view

20.30 In his Explanatory Memorandum of 26 January 2012, the Minister of Europe (Mr David Lidington) says that, since last October:

— there have been no further political prisoner releases;

— credible reports suggest that those remaining in prison are still under intense psychological and physical pressure;

— human rights violations have continued unabated and freedom of expression was further restricted through new legislation.

20.31 The Minister continues his comments thus:

> "Updating the listing criteria so that we are able to target those responsible for serious human rights abuses (not linked to the crackdown following the December 2010 Presidential election) and those who back the regime financially are an important element in the EU's strategy of increasing pressure on the regime through sanctions, while stepping up our support for civil society. The Foreign Secretary and I hosted a group of opposition figures at the Foreign and Commonwealth Office in December to discuss further ways in which we could help. They were grateful for the EU's firm stance on Belarus."

20.32 With regard to the timing issues, the Minister says:

> "We had pushed for an expansion of the listing criteria when the restrictive measures were renewed in October 2011. However some member states opposed this and as the consensus of member states is required it was decided that in order to ensure that the measures were renewed in time and did not lapse they would be renewed using the existing listing criteria. Since renewal we and other like minded member states have continued negotiations with those who previously blocked the expansion of the listing criteria. We finally achieved agreement of all EU member states to implement this listing criteria expansion on Friday 13 January.
>
> "In order to deliver a strong political message to Lukashenko and the Belarus authorities the EU have pushed to adopt these measures at the Foreign Affairs Council on 23 January 2012. In order to meet this timing I found myself in the unfortunate position of having to over-ride parliamentary scrutiny."

Conclusion

20.33 **Given the situation that the Minister describes, and the response to it by the HR and Enlargement Commissioner, purportedly on behalf of the EU as a whole, it seems extraordinary that some Member States were even then resisting adoption of these measures, and continued to do so for as long as they did. It cannot logically have been for fear that individuals or entities would have been wrongly listed, since adding names requires consensus. The Minister is understandably reluctant to say who and why, but those Member States must instead have continued to favour the previous approach, although it has shown itself to have been utterly ineffective.**

20.34 **We accordingly do not object to the Minister's action on this occasion and in these circumstances.**

20.35 **We also now clear the Council Decision.**

21 Taxation: inheritance taxes

(a) (33583) 18953/11 COM(11) 864	Commission Communication: *Tackling cross-border inheritance tax obstacles within the EU*
(b) (33591) 18956/11 + ADDs 1–3 C(11) 8819	Commission Recommendation of 15.12.2011 regarding relief for double taxation of inheritances

Legal base	—
Documents originated	15 December 2011
Deposited in Parliament	(a) 23 December 2011 (b) 5 January 2012
Department	HM Treasury
Basis of consideration	EM of 23 January 2012
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

21.1 Member States are free to impose whatever direct taxation regimes they choose, so long as they do not discriminate against persons, sole or corporate, of other Member States who are subject to the regime.

21.2 In its December 2006 Communication: *Coordinating Member States' direct tax systems in the internal market* the Commission suggested that appropriate co-ordination and co-operation between Member States could enable them to attain their tax policy goals and protect their tax bases while ensuring elimination of discrimination.[107]

21.3 In its November 2011 Communication: *Double taxation in the single market* the Commission was concerned that, whilst Member States remained free to design their direct tax systems to meet their domestic policy objectives and requirements, national tax rules designed with the domestic situation in mind might give rise to inconsistent tax treatment when applied in a cross-border context and an individual or corporate taxpayer in a cross-border situation might suffer discrimination or double taxation or face additional compliance costs, deterring them from taking full advantage of the single market. It asserted that that existing and planned measures to relieve double taxation could not

107 (28173) 17066/06: see HC 41–ix (2006–07), chapter 2 (7 February 2007) and *Stg Co Debs*, European Standing Committee, 6 March 2007, cols. 3–18.

efficiently address cross-border inheritance tax issues and that specific solutions would be required in that field.[108]

The documents

21.4 In its present Communication, document (a), the Commission discusses double taxation of inheritances issues and introduces its Recommendation, document (b), addressed to Members States. It summarises the points made in the staff working document and impact assessment accompanying the Recommendation, covering current rules on inheritance taxation, with an annexed brief summary of Member States' inheritance taxes and list of relevant intra-EU double taxation conventions (DTCs), perceived problems and their scale and suggested solutions.

21.5 The Commission concludes that it:

> "has adopted a Recommendation for a comprehensive system of double taxation relief for cross-border inheritances within the EU and will launch discussions with Member States to ensure appropriate follow-up to this Recommendation;
>
> "is ready to assist Member States in bringing their inheritance tax laws into line with the EU Treaty but will also, in its role as guardian of the Treaties, take the steps it considers necessary to act against discriminatory features of Member States' inheritance taxation rules;
>
> "will prepare an evaluation report in three years time based on monitoring Member States' practices and any changes made as a result of the initiatives presented today;
>
> "may, if the report demonstrates that cross-border inheritance tax problems persist and subject to the results of an Impact Assessment, make an appropriate proposal to eliminate those obstacles."

21.6 The Commission Recommendation is that, in cross-border cases where more than one Member State applies inheritance taxes to the same inheritance:

- an order of priority of taxing rights or, conversely, of granting of relief should be established;
- the overall level of tax on a given inheritance should be no higher than if only the Member State with the highest tax level among the Member States involved had tax jurisdiction over the inheritance in all its parts; and
- a Member State should, as a general rule, grant tax relief for inheritance tax applied by another Member State on immovable property situated in that other Member State, moveable property which is the business property of a permanent establishment situated in that other Member State, moveable property where the deceased had personal links with that other Member State, moveable property where neither the deceased nor the heir has a personal link to the first Member State, provided that inheritance tax is applied in the other Member State by reason

108 (33382) 17044/11: see HC 428–xlvii (2010–12), chapter 25 (18 January 2012).

of a personal link to that State, and moveable property, in cases where a single person has multiple links to different Member States, depending on procedures determined by mutual agreement between Member States.

21.7 The Recommendation is accompanied by a staff working paper, which gives an overview of a number of European Court of Justices judgements (none involving the UK) about inheritance and gift tax and sets out a number of principles the Commission has identified from case law that have been used to inform its Recommendation. The Recommendation is also accompanied by an impact assessment and an executive summary of it. The assessment:

- seeks to justify the Commission's Recommendation on the grounds that the number of problems associated with double taxation and inheritance tax in cross-border situations are increasing;
- discusses the results of two consultations the Commission carried out on cross-border double taxation and a range of policy options; and
- concludes that the most appropriate solution for the Commission is a set of suggestions to Member States on how to improve existing measures.

The Government's view

21.8 The Exchequer Secretary to the Treasury (Mr David Gauke) says that:

- the UK is party to a small number of DTCs, that cover inheritance tax, including five with other Member States;
- in cases not covered by a DTC, the Government grants unilateral relief for inheritance tax paid in other territories, which works well in preventing double taxation in most cases;
- the Government has expressed its continued commitment to addressing double taxation where it occurs and remains willing to engage with the Commission and other Member States on this issue;
- it agrees that double taxation should be eliminated where practical, but considers that the goal of eradicating double taxation completely in all cases is unattainable;
- the Commission's approach regarding the order of priority of taxing rights offers a positive alternative to tax harmonisation; and
- as direct taxation falls primarily within the competence of Member States, the Government reserves, however, the right to enter into DTCs on alternative terms as agreed between the UK and other contracting Member States.

Conclusion

21.9 **As we said in relation to the Commission's Communication *Double taxation in the single market,*[109] we recognise the importance of mitigating the effects of double taxation. But we note that the Government, whilst acknowledging positively the Commission's suggestions, reserves the right to determine itself the terms to be agreed in any DTC with another Member State on inheritance taxation. We applaud this approach and clear the documents.**

22 Macro-financial assistance: The Kyrgyz Republic

(33595) 5075/12 + ADD 1 COM(11) 925	Draft Decision providing macro-financial assistance to the Kyrgyz Republic

Legal base	Article 209 TFEU; co-decision; QMV
Document originated	20 December 2011
Deposited in Parliament	6 January 2012
Department	HM Treasury
Basis of consideration	EM of 19 January 2012
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

22.1 Macro-financial assistance (MFA) is an external instrument of the EU under which macroeconomic financial assistance is granted to third countries close to the EU to help them address acute balance-of-payments difficulties. MFA complements financing provided by the International Monetary Fund (IMF) in the context of an adjustment and reform programme. MFA can take the form of grants financed by the EU budget, or loans, for which the Commission borrows the necessary funds in capital markets (guaranteed by the Guarantee Fund) and lends them on to the beneficiary country. MFA is exceptional in nature and is discontinued once the country concerned can satisfy its external financing needs through other sources, such as the international financial institutions and private capital inflows.

109 *Ibid*.

22.2 MFA operations are based on a number of principles defined by the Council, the so-called "Genval Criteria", which were last confirmed by the ECOFIN Council in October 2002. These stipulate the geographical scope, pre-conditions and principal modalities for implementation of MFA.

The document

22.3 With this draft Decision the Commission proposes MFA for the Kyrgyz Republic of up to €30 million (£27 million), in the form of an even split between a loan and a grant. This would be disbursed in two equal instalments in 2012. The Commission argue that the proposed loan and grant split is justified by the Kyrgyz level of development and debt indicators and is consistent with the treatment given to the Kyrgyz Republic by other international donors.

22.4 The background to the proposal given by the Commission is that:

- in 2009, Kyrgyzstan was affected by the global crisis — GDP growth slowed down from an average rate of 8.5% in 2007–08 to 2.3% in 2009;
- 2010 saw the start of a period of political instability and change in Kyrgyzstan — a popular revolt resulted in April 2010 in deposition of the regime of President Bakiyev, which was followed by inter-ethnic violence in June 2010;
- despite this, the interim government secured a vote for democratic reforms in a constitutional referendum held in June 2010 and free parliamentary elections were held in October 2010, establishing the first parliamentary democracy in the region;
- the elections resulted in a broad coalition government;
- while the political situation remains fragile, presidential elections took place in October 2011 and a newly elected president took office on 1 December 2011;
- before the political developments of 2010, economic growth was expected to rebound in 2010 to 4.5–5.5%;
- economic activity contracted by 10% in the second quarter of 2010 and for the year as a whole, real GDP declined by 1.4%;
- GDP expanded again by 5.5% in the first half of 2011 as the agricultural and mining sectors and remittances recovered;
- in response to these events, the international community pledged support for the country at a donors' conference in July 2010;
- the EU was among the major donors — the Commission pledged up to nearly €118 million (£106 million) of assistance to Kyrgyzstan at the conference;
- the sources of the funding pledged include crisis instruments, such as the Instrument for Stability, Humanitarian Aid and the Development Cooperation Instrument (DCI), and allocations under a number of thematic budget lines;

- this assistance focuses mainly on rural development and the agricultural sector, the education sector, social security and legal reforms;
- it is intended that the EU provides sectoral budget support to Kyrgyzstan under the DCI for a total of €33 million (£30 million) over the period 2011–13 to support reforms in social protection, education and public financial management;
- disbursements under these programmes and projects are taking place over the medium-term and are conditional on the implementation of agreed actions by the Kyrgyz authorities;
- the IMF extended help to Kyrgyzstan in 2010 with a three-month Rapid Credit Facility;
- in June 2011, the IMF agreed with the Kyrgyz authorities on a follow-up arrangement, an Extended Credit Facility (ECF) in the amount of $106 million (£68 million) in support of a comprehensive economic adjustment and reform programme for the period mid-2011 to mid-2014;
- in 2010, the President and the Minister of Finance of the Kyrgyz Republic formally requested MFA from the EU to complement the support from the IMF;
- the Commission has assessed the macroeconomic situation and financing needs of Kyrgyzstan and has concluded that there are important external and fiscal financing needs for the period 2011–12;
- it says that, while these needs are being partly covered by the international community, there are still substantial residual needs — the current account deficit is projected to remain at around 8% of GDP in 2011 and 2012 before gradually declining to about 5% of GDP by 2014;
- based on the projections for the current account, private capital inflows and official financing (excluding budgetary support operations), the IMF programme estimates a balance of payments financing gap of $271 million (£175 million) in 2011 and of $149 million (£96 million) in 2012;
- after deducting net financing from the IMF and disbursements of budgetary support operations from the World Bank, this leaves a residual external financing gap of some $330 million (£213 million) for the two years, to be covered by other donors;
- the proposed MFA operation of €30 million (£27 million) would correspond to about 12.4% of the residual external financing gap for 2011–12;
- in this context, and given the EU's strong political support for Kyrgyz incipient parliamentary democracy, the Commission considers that the political and economic pre-conditions for a MFA operation of a moderate amount are satisfied;
- while the Kyrgyz Republic is out of the normal geographical scope of MFA, the Commission argues that the Genval criteria foresee, in exceptional circumstances, the possibility of approving operations outside that area;

- the MFA would aim at contributing to covering the country's external financing needs, as identified in cooperation with the IMF, would be exceptional and limited in time, would run in parallel to the IMF ECF and would complement support from international and bilateral donors;

- the Commission argues further that the proposed MFA would support the economic reform agenda of the government as agreed with the international donor community; would reduce the short-term financial vulnerability still faced by the economy, while supporting reform measures aimed at achieving a more sustainable balance of payments and budgetary situation over the short-term, would promote policy measures to strengthen public finance management (building on measures supported by the ongoing EU's sectoral budgetary support operation), tax reforms to underpin fiscal sustainability, as well as measures to strengthen the banking system; and

- the Commission argues also that the MFA, by supporting adoption of an appropriate macroeconomic and structural reform framework, would support the effectiveness of the EU's other interventions.

The Government's view

22.5 The Financial Secretary to the Treasury (Mr Mark Hoban) first reminds us of the Government's general approach to EU budgetary matters, saying that:

- it has been clear that it wants to see real budgetary restraint in the EU over the coming years, as well as the longer term, in order to avoid unaffordably high costs to the UK and to UK taxpayers;

- to deliver this goal, it is committed to continuing to work hard in limiting EU spending, reducing waste and inefficiency and ensuring that where EU funds are spent they deliver the best possible value for money for taxpayers; and

- as part of this, it is essential that EU expenditure is closely scrutinised on the basis of value for money.

22.6 The Minister then tells us that the Government:

- supports EU efforts to provide MFA to third countries under exceptional circumstances and on a temporary basis;

- has assessed this proposal to provide MFA to Kyrgyzstan;

- welcomes and supports the recent positive political changes in Kyrgyzstan, including the move towards democracy;

- will, however, continue to review and assess political developments to ensure that the political pre-conditions for MFA are still met and the MFA remains justified;

- is clear that MFA should only be used for external financing support and not for development or other financing, for which there are other existing financial tools and programmes in place, including from the EU;

- notes the Commission's proposal to provide the MFA in an equal split of grants and loans and the reasons for this; and
- believes that, as a general rule, MFA support should primarily consist of loans, whereas grants from the EU budget under MFA should be subject to strict criteria and the grant-loan mix should resemble that of other major donors' financial aid.

The Minister continues that, given these considerations, the Government can overall support the Commission's proposal, which broadly satisfies political pre-conditions and complementarity criteria relating to MFA programmes. It also notes, however, that any MFA assistance to Kyrgyzstan should not result in further deepening its indebtedness.

22.7 Turning to the financial implications of the proposal the Minister says that:

- the MFA would be disbursed in two equal instalments in 2012, each of them containing a loan and a grant element;
- disbursement of the first instalment is expected to take place in the first half of 2012;
- the second instalment, conditional on a number of policy measures, could be disbursed in the second half of 2012;
- the grant element of the assistance, €15 million (£13.5 million), would be financed from commitment appropriations of the 2012 budget, under the budget line for macroeconomic assistance, with payments taking place in 2012;
- in line with the Guarantee Fund Regulation, the provisioning of the Guarantee Fund is expected to take place in 2014 and to amount to a maximum of €1.35 million (£1.2 million) — this corresponds to 9% of the €15 million (£13.5 million) loan expected to be disbursed in 2012; and
- the assistance would be managed by the Commission — specific provisions on the prevention of fraud and other irregularities, consistent with the Financial Regulation, are applicable.

Conclusion

22.8 **Whilst we have no questions to ask about this proposal and clear the document, we draw it to the attention of the House given the importance that both the EU and the Government attach to the stability of Kyrgyzstan.**

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

Department for Education

(33510) 17384/11 —	Report on the annual accounts of the European Schools for the financial year 2010 together with the Schools' replies.
(33571) 18577/11 + ADDs 1–2 COM(11) 902	Commission Communication: Draft 2012 Joint Report of the Council and the Commission on the implementation of the Strategic Framework for European cooperation in education and training (ET2020) — *Education and Training in a smart, sustainable and inclusive Europe*.

Department of Energy and Climate Change

(33326) 16562/11 COM(11) 690	Proposal on the accession of the European Union to the Protocol for the Protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil.

Foreign and Commonwealth Office

(33446) 17510/11 COM(11) 878	Commission Report on the use made in 2010 of Council Regulations No 300/76, No 495/77, and No 858/2004 (on particularly arduous working conditions).

Office of National Statistics

(33545) 18594/11 COM(11) 859	Commission Report on the implementation of Decision No.1297/2008/EC of the European Parliament and of the Council of 16 December 2008 on a Programme for the Modernisation of European Enterprise and Trade Statistics (MEETS).

HM Revenue and Customs

(33605) 5159/12 COM(11) 937	Draft Council decision on a Union position within the EU-U.S. Joint Customs Cooperation Committee regarding mutual recognition of the Authorised Economic Operator Programme of the European Union and the Customs-Trade Partnership Against Terrorism Program of the United States.

Department for Transport

(33577) 18516/11 COM(11) 898	Commission Communication: A European vision for Passengers: *Communication on Passenger Rights in all transport modes*.

Formal minutes

Wednesday 1 February 2012

Members present:

Mr William Cash, in the Chair

Mr James Clappison	Chris Kelly
Michael Connarty	Sandra Osborne
Julie Elliott	Stephen Phillips
Nia Griffith	Jacob Rees-Mogg
Kelvin Hopkins	Henry Smith

1. Scrutiny of Documents

The Committee deliberated.

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.48 read and agreed to.

Paragraph 1.49 read, amended and agreed to.

Paragraphs 2.1 to 23 read and agreed to.

Resolved, That the Report be the Fifty-fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

****

[Adjourned till Tuesday 7 February at 10.00 am.

Standing Order and membership

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

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

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

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

The expression "European Union document" covers —

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

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

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

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

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

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

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

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

Current membership

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

Mr James Clappison MP (*Conservative, Hertsmere*)

Michael Connarty MP (*Labour, Linlithgow and East Falkirk)*

Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)

Julie Elliott MP (*Labour, Sunderland Central)*

Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)

Nia Griffith MP (*Labour, Llanelli*)

Chris Heaton-Harris MP (*Conservative, Daventry*)

Kelvin Hopkins MP (*Labour, Luton North*)

Chris Kelly MP (*Conservative, Dudley South*)

Penny Mordaunt MP (*Conservative, Portsmouth North*)

Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)

Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)

Jacob Rees-Mogg MP (*Conservative, North East Somerset)*

Henry Smith MP (*Conservative, Crawley*)

Ian Swales MP (*Liberal Democrat, Redcar*)