House of Commons

European Scrutiny Committee

Eighteenth Report of Session 2012-13

Documents considered by the Committee on 31 October 2012, including the following recommendations for debate:

Single Market Act II

Financial services: financial instruments

Report, together with formal minutes

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Notes

Numbering of documents

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

> Numbers in brackets are the Committee's own reference numbers.
>
> Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.
>
> Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

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

Abbreviations used in the headnotes and footnotes

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 Single Market Act II

(34297) 14536/12 COM(12) 573	Commission Communication: *Single Market Act II — Together for new growth*

Legal base	—
Document originated	3 October 2012
Deposited in Parliament	5 October 2012
Department	Business, Innovation and Skills
Basis of consideration	EM of 25 October 2012
Previous Committee Report	None, but see footnotes
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	For debate in European Committee A

Background

1.1 This year marks the 20th year of the Single Market, and, according to the Commission, there is clear evidence that a strong, deep and integrated market creates growth, generates jobs, and offers opportunities for European citizens which were not previously there. It also suggests that the development of the Single Market is a continuous exercise, as it is required to respond to a constantly changing world, with new social, technological and demographic challenges, and the need to take into account the pressure on natural resources and climate change (and, more recently, the economic and financial crises).

1.2 The Commission also sees the Single Market as a key tool in achieving the EU's long-term aim of a highly competitive social market economy, and it recalls that the Single Market Act[1] which it presented in April 2011 sets out 12 key action areas[2] and 50 complementary actions to boost growth and strengthen confidence. However, it points out that, in the light of the action taken so far (summarised in Annex II to the Communication) which shows that only one of those areas has been agreed, further progress is needed urgently, and if possible by the end of this year.

1 (32702) 9283/11: see HC 428-xxvii (2010–12), chapter 7 (18 May 2011).

2 Finance for SMEs; mobility for citizens; intellectual property rights; empowerment of consumers; services; networks; the digital single market; social entrepreneurship; taxation; social cohesion; the business environment; and public procurement.

The current document

1.3 The Commission has therefore produced this further Communication — *Single Market Act II* — with a second set of priority actions designed to generate real effects on the ground, which it sees operating in parallel with the paramount need for Member States to transpose and implement Single Market rules (to which it drew attention in a Communication[3] in June 2012, addressing governance in this area).

1.4 The Commission's proposals (which are set out in annex I to the Communication) are divided into the following four main chapters:

- developing fully integrated networks in the Single Market;
- fostering mobility of citizens and businesses across borders;
- supporting the digital economy across Europe; and
- strengthening social entrepreneurship, cohesion and consumer confidence.

Fully integrated networks

1.5 The Commission says that, although transport and energy networks are used by most citizens and businesses every day, these are areas where the Single Market is still incomplete, despite the considerable progress which has been made. In particular, it notes that rail operators from one Member State are still not allowed to transport passengers on lines in another Member State, and that public service contracts can be awarded directly without open procedures; that vessels travelling between the EU's ports are deemed to have left its Customs Territory, meaning that those delivering cargo must go through the same formalities as those arriving from overseas ports, so putting intra-EU shipping at a disadvantage to other methods of transport; that improvements are needed in the efficiency and overall quality of port services; that the absence of a single integrated European airspace management has led to unnecessary delays, with resultant economic and environmental damage; and that, despite the adoption of the third energy package, a fully integrated European internal energy market has yet to be achieved. It therefore says that it will:

- adopt a fourth railway package to open domestic passenger rail services to operators from another Member State, and improve the quality and cost efficiency of rail passenger services;
- adopt a "Blue Belt" package to establish a true Single Market for maritime transport;
- accelerate the implementation of the Single European Sky through a new package of actions to improve the safety, capacity, efficiency and environmental impact of aviation; and

3 (34016) 11125/12: see HC 86-viii (2012–13), chapter 8 (11 July 2012).

- improve the implementation and enforcement of the third energy package and achieve cross-border markets which benefit consumers.

Mobility of citizens and businesses across borders

1.6 The Commission says that mobility of citizens and businesses is at the heart of European integration, and is a pre-condition for the Single Market to deliver on its social, cultural, political and economic potential. In particular, it highlights the need to improve measures to match job offers and jobseekers across Member States so as to contribute to a true European labour market, to enhance mobility for third country nationals working in the EU, and to improve the portability of supplementary social security rights, including pensions; it stresses the need to address the problems which have arisen as a result of access to finance having become markedly more difficult as a consequence of the financial crisis, particularly for start-up businesses and small and medium sized enterprises (SMEs); and it draws attention to the need to provide a positive business environment, notably by developing further the extent to which modern insolvency laws provide a second chance for honest innovators to fail "quickly and cheaply", by reducing the administrative burden arising from different national tax systems and procedures in areas such as VAT, and by protecting investment in intangible assets, such as research and development, patents and know-how. It says that it will:

- develop the EURES job mobility portal into a true European placement and recruitment tool,
- boost long-term investment in the real economy by facilitating access to long-term investment funds; and
- modernise EU insolvency rules to facilitate the survival of businesses and present a second chance for entrepreneurs.

Supporting the digital economy across Europe

1.7 The Commission observes that the digital economy is changing the Single Market profoundly, and has the potential to take integration to a new level, its aim being that all citizens and businesses should have the opportunity to participate, whilst at the same time being protected from illicit trade. In particular, it says that additional efforts are needed to achieve quickly the objectives set in the Digital Agenda for Europe, and that important steps to be taken include tackling the fragmentation of online services along national borders arising from such factors as doubts over payment methods, addressing the challenge of under-investment in the high-speed network, and reaping the benefits of paperless public administration, particularly in relation to cross-border activities. It therefore proposes to:

- revise the Payment Services Directive and make a proposal for multilateral interchange fees to make the payment services in the EU more efficient;
- adopt common rules to reduce cost and increase efficiency in the deployment of high-speed broadband;

- adopt legislation making electronic invoicing the standard invoicing mode for public procurement.

Strengthening social entrepreneurship, cohesion and consumer confidence

1.8 The Commission says that, with the economic crisis hitting the most vulnerable hardest, Single Market policies need to deliver growth without discrimination, allow for economic and social participation, and spur social cohesion. In particular, it highlights the need to improve the enforcement of product safety and market surveillance, and to provide transparent and comparable information for consumers; the importance of improving access to banking services, and of assisting those who may experience difficulties; and the need to enhance the position of social enterprises by measuring and demonstrating their socio-economic benefits; and to ensure that those with disabilities benefit from the Single Market. It says that it will:

- improve the safety of products circulating in the EU through a revised General Product Safety Directive, a new single Regulation on market surveillance, and a flanking action plan;
- adopt a legislative initiative to give all EU citizens access to a basic payment account, to ensure bank account fees are transparent and comparable, and to make switching bank accounts easier.

1.9 The Commission plans to publish all legislative proposals on all these key areas by April 2013.

The Government's view

1.10 In his Explanatory Memorandum of 25 October 2012, the Minister of State for Trade and Investment at the Department for Business, Innovation and Skills (Lord Green of Hurstpierpoint) has the following comments on individual elements in the Communication:

> *Developing fully integrated networks in the Single Market*
>
> "The Government supports further market opening in the domestic rail passenger market, but any EU action must be sufficiently flexible to work with the UK railway industry structure and compatible with domestic plans for reform. Also, EU proposals on the governance of infrastructure management must reduce the burdens on businesses, but should not prevent infrastructure operators and train operators from working together. In addition, the Minister draws attention to the specific Scottish context arising from the often distinct nature of the rail industry and services there, reflecting the distinct Scottish geographic, economic and social structure, and the fact that around 36% of the routes on the Scottish network are classified as rural. He says that the Scottish Government believes that current legislation constrains options around delivery models, and that there is a concern that further European regulation could further restrict its opportunities to achieve a

Scottish railway operated in an integrated manner, attuned to the needs of passengers and delivering better value for money.

"The Government supports action under the "Blue Belt" Package to remove duplication in administrative and customs processes, whilst ensuring that any proposal does not compromise the integrity of national borders and customs controls, impose additional costs on UK businesses, or result in an increase in the EU budget. It also welcomes action to enhance the efficiency and quality of port services, and believes that a free market with vigorous competition between ports is able to deliver this with minimal recourse to public expenditure.

"The Government supports the proposal of a further package of legislative and non-legislative measures for a Single European Sky in order to tackle the fragmentation of European airspace, and believes that greater coordination of the European air traffic network and the safe introduction of new technologies is the best way to deliver a safe, sustainable, cost effective and operationally-efficient network.

"The Government observes that the Third Energy Package aims to tackle regulatory barriers to the creation of a single market, and, whilst it supports further action to improve the implementation and enforcement of that Package, it says that further action is also required to remove planning barriers to energy infrastructure investments, a course which is being tackled through the Commission's proposal for a Regulation on Trans-European Energy Infrastructure.

Fostering mobility of citizens and businesses cross border

"The Government is supportive of EURES as a means of matching jobs and job seekers, particularly in areas where there are shortages, and says that it will maintain a full exchange of UK/EEA vacancies through the Department for Work and Pension's new Universal Jobmatch IT system. It is also supportive, in principle, of legislative proposals for a pensions 'Portability Directive', taking forward draft proposals abandoned in 2008 (and which it supported) covering access to, preservation of rights in, and information on, supplementary pension arrangements (i.e. occupational pensions).

"The Government welcomes initiatives to boost the long-term investment in the real economy by facilitating access to long-term investment funds, and favours the establishment of a third fund regime and brand for retail long term investment funds, rather than amending the undertakings for collective investment in a Transferable Securities Directive. It says that it is awaiting the outcome of the Commission's study of tax issues arising from cross border venture capital investment, but points out that the tax measures currently in place in the UK are necessary and working, and that it is not convinced of the need for EU level action. In particular, it says that double taxation should not be addressed by legislation, but by bilateral double taxation conventions with the option of arbitration in line with the OECD model convention.

"The Government supports the objective of modernising EU insolvency rules, so as to ensure that viable businesses in distress are not forced into liquidation, but can be

rescued and returned to the market. It therefore supports widening the scope of the Insolvency Regulation to include rescue and restructuring procedures, but is concerned that the development of specific rules on EU group insolvencies is too complex and ambitious (although it believes that broad rules on co-operation and communication between individual group entities in insolvency would be helpful). It considers that further work on the costs and benefits of the standard VAT return is required, and that there are other initiatives within the VAT Strategy which could more effectively and rapidly facilitate trade in the Single Market.

Supporting the Digital Economy across Europe

"The Government says that the proposals to support the digital economy are generally welcome, but that it believes further action is required to drive e-commerce and the Digital Single Market in general, noting that, whilst 40% of EU citizens have used the internet to buy goods or services, only 9% have bought from another Member State, and that 35% of internet users do not buy online because of doubts over payment methods.

"The Government welcomes the commitment to revise the Payment Services Directive, adding that any revision must facilitate market entry, update prudential requirements, conduct rules and create a level playing field with new services not currently covered by the Directive. However, it is concerned over EU regulation of interchange fees, and believes that it would be more appropriate for the Commission to develop a methodology for setting such fees, rather than regulating them. It welcomes the Commission's Communication on the implementation of the Services Directive, and urges the Commission to prioritise the actions identified there, but it remains to be convinced of the need for legislative action to address unfair trading practices.

"The Government says that it has a target of providing access to superfast broadband to 90% of UK homes and access to a minimum service of 2 Mbps to the rest by 2015, and therefore supports the Commission's approach of reducing the barriers to the deployment of high-speed broadband, adding that any common rules must support the measures which individual Member States are putting in place to enable broadband rollout. It also welcomes the establishment of the Connecting Europe Facility to support broadband rollout, but says that any funding decision must be taken in the context of the need for overall EU budget discipline. It believes that a review of the Copyright Directive is overdue, and would provide an opportunity to consider the actions needed to make the copyright framework fit for the digital age.

"The Government fully supports measures to increase the uptake of e-invoicing as it offers efficiency savings for both public administrations and suppliers, but believes that any proposals should be flexible enough to reflect existing market provision rather than imposing additional costs on businesses supplying to public administrations. It adds that e-invoicing solutions are well-established and should be encouraged, but that the adoption of e-invoicing in the public sector will need to take into account the expected mandatory requirements for e-procurement under the revised public procurement directive currently under negotiation.

Strengthening social entrepreneurship, cohesion and consumer confidence

"The Government comments that proposals for a revision of the General Product Safety Directive and for an action plan on market surveillance were announced in the first Single Market Act, and have been in development for some time. It says that it supports these proposals in principle, although the details will need to be assessed to ensure that they do not impose additional costs onto businesses.

"The Government supports improving the transparency of bank fees, in order to help consumers to switch smoothly between account providers and improving access to banking. It says that the UK has seen significant developments in these areas as a result of recent national measures taken by Government, regulators, industry and the recommendations of the Independent Commission on Banking, and, as it does not consider that there is evidence to justify EU-level intervention, it looks forward to seeing the Commission's impact analysis of any potential proposal. It adds that it will also be important to ensure that any proposals are justified on subsidiarity grounds, and respect the steps taken by those Member States which have already sought to address these issues nationally.[4]

"The Government supports the principle that disabled people should not be prevented from benefiting from the Single Market, but has already flagged a number of concerns, including the evidence of need for action and the potential for new regulatory burdens on businesses. It believes the starting point for any kind of action should be an assessment of need and the impact on disabled people and on businesses and suppliers, and supports the Commission's expressed evidence-based approach."

Conclusion

1.11 **When we considered the Communication on the Single Market Act in May 2011, we took the view that, although it was an important and wide-ranging document, and dealt with some significant issues, it would on balance be better if these were considered by the House, as and when the Commission brought forward specific legislative proposals. We therefore cleared the document.**

1.12 **Although there are many similarities between that Communication and the current document, we think that the balance of argument now points in favour of the issues being considered at this stage, not least because the EU is at a somewhat pivotal point between the original Single Market Act and its successor, which makes this a convenient moment both to take stock of the progress (or lack of it) so far, and to consider the general direction in which the Single Market is heading (and a number of more specific issues mentioned in the Government's Explanatory Memorandum). We are therefore recommending that the document should be debated in European Committee A.**

4 For example, the UK is in the process of introducing a "7-day switching service", similar to the system currently used in the Netherlands.

2 Financial services: financial instruments

(a) (33277) 15938/11 COM(11) 652	Draft Regulation on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories
(b) (33278) 15939/11 + ADDs 1–2 COM(11) 656	Draft Directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council

Legal base	(a) Article 114 TFEU; co-decision; QMV (b) Article 53(1) TFEU; co-decision; QMV
Department	HM Treasury
Basis of consideration	Minister's letter of 23 October 2012
Previous Committee Report	HC 428-xliv (2010–12), chapter 9 (14 December 2011)
Discussion in Council	13 November 2012
Committee's assessment	Politically important
Committee's decision	For debate in European Committee B before 13 November

Background

2.1 The Markets in Financial Instruments[5] Directive (MiFID) came into force in November 2007, replacing the Investment Services Directive. A core pillar of EU financial markets integration, the MiFID consists of a framework Directive (Directive 2004/39/EC), an implementing Directive (Directive 2006/73/EC) and an implementing Regulation (Regulation No 1287/2006), the latter two made by the Commission. The MiFID sets the legal framework and conduct of business requirements that apply to firms providing investment services (such as brokerage, advice, dealing, portfolio management and underwriting) in financial instruments and the conditions governing the operation of trading venues such as regulated markets. It establishes the powers and duties of national competent authorities in relation to the regulation of these activities and includes rules to protect investors.

2.2 A key change introduced by the MiFID was to abolish the 'concentration rule' under which Member States could require all trading in financial instruments to take place on regulated markets. This has promoted the creation of an integrated EU-wide financial market with new venues such as multilateral trading facilities (MFTs) providing competition to traditional exchanges. Overall, transaction costs are generally held to have decreased. Investors have benefited from greater choice in terms of service providers and

5 The EU definition of financial instruments can be seen at http://register.consilium.europa.eu/pdf/en/11/st15/st15939.en11.pdf, p.168.

products. However, increased market fragmentation and the rapid pace of change in trading structures and strategies, driven in part by the MiFID itself and in part by technological developments such as the growth of computer-based trading, and the international regulatory response to the financial crisis, including G20 commitments to improve transparency in derivatives markets, have been used by the Commission to justify an extensive review of the MiFID.

2.3 In October 2011 the Commission proposed replacing the existing framework Directive (Directive 2004/39/EC) with a Regulation and a Directive. The draft Directive, document (b) would amend specific requirements regarding the provision of investment services, the scope of exemptions from the current Directive, organisational and conduct of business requirements for investment firms, organisational requirements for trading venues, the authorisation and ongoing obligations applicable to providers of data services, powers available to competent authorities, sanctions and rules applicable to third-country firms operating via a branch.

2.4 The draft Regulation, document (a), would set out requirements in relation to the disclosure of trade transparency data to the public and transaction data to competent authorities, removing barriers to non-discriminatory access to clearing facilities, the mandatory trading of derivatives on organised venues, specific supervisory actions regarding financial instruments and positions in derivatives and the provision of services by third-country firms without a branch.

2.5 When we considered these documents, in December 2011, we said that, although it was not spelt out to us, we presumed that the Government was, in principle, supportive of the draft Regulation and the draft Directive. However, we noted the significant number of points the Government wanted clarified or amended during negotiation of the proposals. So we asked, before we would consider the matter further, to hear about progress in addressing these matters. And we asked also to have, in due course, the Government's provisional impact assessment of the draft legislation and an account of the outcome of its consultations with its stakeholder groups to assist our further consideration of the proposals. Meanwhile the documents remained under scrutiny.[6]

The Minister's letter

2.6 The Financial Secretary to the Treasury (Greg Clark) tells us that, although the proposals are continuing to be discussed by officials, the Cypriot Presidency now hopes to move to a political agreement and intends to seek a general approach at the ECOFIN Council of 13 November. So he gives us an update setting out the Government's objectives for clarifying and amending the proposals, its progress towards these objectives and its expectations as to the likely final Council position.

2.7 Before going into the detail of the individual areas the proposals the Minister gives us a brief overview of the Government's position, saying that it supports the general direction of the proposals, including increased competition, greater transparency and oversight for regulators and greater investor protection measures. He then tells us that:

6 See headnote.

New category of trading facility

- the proposals introduced a new category of trading facility, the Organised Trading Facility (OTF);
- this aimed to bring into the scope of the MiFID a number of types of multilateral trading venue which previously had been outside the scope;
- this would impose similar organisational and transparency requirements for these venues as exist for regulated markets and MTFs;
- the Government wanted increased clarity over the types of trading system which would be captured and to ensure that there was sufficient evidence to support any elements in the regime which would necessitate fundamental changes to firms' business models;
- it expects the Council to be in favour of an OTF regime for trading in non-equity instruments only, with equity instruments traded either on regulated markets or MTFs, or through Systematic Internalisers;
- it expects a greater calibration and specification of the OTF regime, in line with its objectives;
- it continues to argue for operators of non-equity OTFs to be able to use their own capital to facilitate client trades, an integral part of market-making in such instruments;

Pre-trade transparency

- the original proposals required continuous publication of current bid and offer prices for all instruments traded on venues;
- the regimes for both equity and non-equity instruments were very similar, and could have led to a significant change to existing market practice, in particular in non-equity;
- the Government wanted greater clarification that the transparency requirements would be applied appropriately, so that liquidity and costs of funding would not be adversely affected;
- it expects the Council to agree to a more tailored regime for equity and non-equity transparency, with clarity over the set of waivers in place to be used by trading venues, providing greater assurance that liquidity will not be adversely affected by the new measures;

Systematic Internaliser regime

- the draft legislation proposed a transparency regime for systematic bilateral trading to complement the one for trading venues;

- the Government was concerned about the possible implications of this regime for non-equity trading, similar to the concerns over pre-trade transparency;
- it expects an agreement that these requirements will be calibrated so that they apply solely to instruments for which there is a liquid market — this notion of 'liquid market' is expected to be defined in the legislation and to provide clarity over both the Systematic Internaliser and the wider non-equity transparency requirements;

Trading obligation for derivatives

- in line with the G20 commitment that sufficiently liquid standardised derivatives should be traded on a multilateral trading venue where appropriate, the proposals set out a requirement that transactions in derivatives declared subject to the trading obligation could only be concluded on a regulated market, MTF, OTF or equivalent third country venues;
- the Government supports this commitment and wanted greater detail in the primary legislation over which derivatives might be declared subject to the obligation;
- it expects the Council agreement to provide sufficient clarity over the criteria to be used to determine which derivatives are sufficiently liquid to be obliged to be traded on trading venues;

Algorithmic and high-frequency trading

- the draft proposals aimed to put in place effective systems and controls for the operation of algorithmic trading strategies and a requirement for the continuous operation of such strategies during trading hours;
- despite supporting greater control and oversight of algorithmic trading, the Government had concerns over the continuous market making requirement and its impact on liquidity and price formation;
- it expects a narrower definition to apply to only those algorithms carrying out market making strategies;
- it remains concerned about attempts to define high-frequency trading, but has worked with the Commission and other Member States to ensure that this definition does not negatively impact the effective functioning of markets;

Third country access

- the current MiFID left rules governing access of third country firms to Member States' discretion — the draft proposals introduced a harmonised regime, with strict equivalence requirements for third country jurisdictions;
- the Government had concerns that this represented a considerable tightening of the current requirements, in particular that many third country jurisdictions would

not meet the equivalence and reciprocal access tests — this would have had a detrimental effect on EU business;

- the Council has broadly been opposed to the proposed regime and the Government expects the equivalence requirements to be removed in full, along with those Articles harmonising the rules for provision of services without a branch;
- it expects the requirement that retail investors be serviced via a branch to be retained, but controlled by Member States, and it supports this solution given the benefits in terms of investor protection;

Competition in relation to clearing and post-trade

- the proposal introduced requirements for venues and central counterparties to provide non-discriminatory access to each other and for the non-discriminatory licensing of indices and benchmarks — this aimed to remove the potential anticompetitive impacts of requiring eligible derivatives to be traded on a trading venue and centrally cleared;
- the Government strongly supports the Commission's proposals in this area and is continuing to argue for their retention in the final legislation;

Regulation of commodities derivatives markets

- the proposals would introduce requirements for EU-wide position limits and position management regimes;
- the Government welcomes the objectives of this regime — supporting liquidity, preventing market abuse, and supporting orderly pricing and settlement conditions;
- it believes that a comprehensive position management regime is the most effective way to achieve these objectives;
- it has been successful in convincing others to include position management, however, the majority also favour hard position limits;
- the Government would aim to have position limits as part of a wider EU framework for position management;
- it was also concerned that there should be sufficient exemptions for firms using commodity derivatives as part of their normal business and to hedge associated risks;
- it expects these concerns to be addressed in the final legislation;

Investor protection

- the proposals introduced a number of elements to improve investor protection;

- these included structured deposits being brought into scope, a reduction in the number of types of product which could be provided on an "execution-only" basis and a requirement for investment advisers to disclose whether they were independent or receiving commission from product providers;
- the Government broadly supports the way the Council text has developed;
- the majority of Member States, however, oppose the ban on payment of inducements to investment advisers;
- the Government expects a provision which will enable the UK to go further and implement the Retail Distribution Review;[7]

Product intervention

- the draft Regulation would give the European Securities and Markets Authority (ESMA) the power to intervene and temporarily restrict or ban the marketing, distribution or sale of financial instruments, in the event of a threat to investor protection or to the orderly functioning of markets;
- other Member States are in favour of these provisions — however, the Government had concerns over the amount of discretion which the ESMA might exercise if it were to intervene in such situations;
- despite some attempts to define the situations in which the ESMA might intervene, the Government's concerns remain over the legality of this element of the proposals;
- it is awaiting the outcome of its legal challenge to Regulation (EU) No 236/2012, on short selling and certain aspects of credit default swaps, which grants very similar powers to the ESMA, and it would expect to follow a similar course of action if these provisions are retained in the MiFID;

Corporate governance

- the Commission's proposals created a number of requirements for firms and venue operators in terms of corporate governance — these are part of wider efforts to address corporate governance issues in the sector and are a part of several other legislative proposals;
- the Government supports the objectives of better corporate oversight and more effective corporate governance;
- it also believes that it is important to harmonise these provisions across the various sectoral legislation; and
- there has been general agreement to align these provisions with the equivalent ones in the Capital Requirements Directive.

7 See http://www.fsa.gov.uk/rdr.

2.8 The Minister also gives us a brief account of the Government's consultations with stakeholder groups, saying that:

- throughout the MiFID negotiations, and to help inform the Government's position and approach, it has engaged with a wide range of financial services industry stakeholders and other interested parties;
- it has met a wide range of trade associations and their members, representing all segments of the financial services industry, as well as non-financial trade associations and firms, small businesses, NGOs, and consumer groups;
- it has hosted and attended several large meetings to give external parties an opportunity to discuss the MiFID negotiations and has met with individual industry, consumer and activist groups on request — engagement has taken place at ministerial, senior official and working level;
- the main thrust of the Government's discussions with the financial sector has been centred on market structure issues such as transparency, algorithmic trading, competition in post-trade infrastructure and the introduction of both the OTF category and the trading obligation for eligible derivatives; and
- conversations have also covered a range of other MiFID themes, including commodities derivatives and position management, investor protection and third country access.

2.9 The Minister encloses with his letter a provisional impact assessment, which suggests that there might be some significant cost arising from the proposals, for example in relation to trading obligation for derivatives and investor protection, and an account of the negotiations in the Economic and Monetary Affairs Committee of the European Parliament.

Conclusion

2.10 **We are grateful to the Minister for this account of where matters stand on these proposals. We note that there has been progress in meeting the Government's objectives. But we note also that for much of what the Government wants the Minister can only say at this stage that it expects to obtain a satisfactory outcome at the forthcoming Council.**

2.11 **On that basis we do not feel able to clear the documents from scrutiny and, instead, recommend them for debate in European Committee B. We would hope that in that debate, which obviously must take place before the ECOFIN Council of 13 November, the Minister will be able to give assurances of a more certain outcome in the proposed general agreement.**

3 Cloud Computing

(34283) 14411/12 + ADD 1 COM(12) 529	Commission Communication: *"Unleashing the Potential of Cloud Computing in Europe"*

Legal base	—
Document originated	27 September 2012
Deposited in Parliament	4 October 2012
Department	Business, Innovation and Skills
Basis of consideration	EM of 22 October 2012
Previous Committee Report	None
Discussion in Council	To be determined
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

3.1 The EU Framework Programme for Research and Innovation, otherwise known as Horizon 2020, is:

> "the financial instrument implementing the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness. Running from 2014 to 2020 with an €80 billion budget, the EU's new programme for research and innovation is part of the drive to create new growth and jobs in Europe:
>
> "Horizon 2020 provides major simplification through a single set of rules. It will combine all research and innovation funding currently provided through the Framework Programmes for Research and Technical Development, the innovation related activities of the Competitiveness and Innovation Framework Programme (CIP) and the European Institute of Innovation and Technology (EIT).
>
> "The proposed support for research and innovation under Horizon 2020 will:

- "Strengthen the EU's position in science with a dedicated budget of €24,598 million. This will provide a boost to top-level research in Europe, including an increase in funding of 77% for the very successful European Research Council (ERC).
- "Strengthen industrial leadership in innovation €17,938 million. This includes major investment in key technologies, greater access to capital and support for SMEs.
- "Provide €31,748 million to help address major concerns shared by all Europeans such as climate change, developing sustainable transport and mobility, making

renewable energy more affordable, ensuring food safety and security, or coping with the challenge of an ageing population."[8]

3.2 The Commission's Digital Agenda for Europe (which replaced the earlier i2010 Strategy) is the first of seven flagship initiatives under the "Europe 2020" strategy.[9] The Digital Agenda focuses on seven priority areas:

— creating a digital Single Market;

— greater interoperability;

— boosting internet trust and security;

— much faster internet access;

— more investment in research and development;

— enhancing digital literacy skills and inclusion; and

— applying information and communications technologies to address challenges facing society such as climate change and the ageing population.[10]

The Commission Communication

3.3 In the introduction to this Communication, the Commission says:

"'Cloud computing' in simplified terms can be understood as the storing, processing and use of data on remotely located computers accessed over the internet. This means that users can command almost unlimited computing power on demand, that they do not have to make major capital investments to fulfil their needs and that they can get to their data from anywhere with an internet connection. Cloud computing has the potential to slash users' IT expenditure and to enable many new services to be developed. Using the cloud, even the smallest firms can reach out to ever larger markets while governments can make their services more attractive and efficient even while reining in spending."

3.4 The Commission wants to enable and facilitate the faster adoption of cloud computing throughout all sectors of the economy. On the basis of an analysis of the overall policy, regulatory and technology landscapes and a wide consultation of stakeholders, undertaken to identify what needs to be done to achieve that goal, the Commission sets out what it sees as the most important and urgent additional actions. The Commission says that the Communication represents a political commitment of the Commission and serves as a call on all stakeholders to participate in the implementation of these actions, which the Commission estimates could mean an additional €45 billion of direct spend on Cloud

8 See http://ec.europa.eu/research/horizon2020/index_en.cfm?pg=h2020.

9 The "Europe 2020" strategy, which was also launched by the Commission in March 2010, is a ten-year strategy for smart, sustainable and inclusive growth, designed to prepare the EU for the challenges that it will face over the next ten years. It was endorsed by the 25–26 March 2010 European Council.

10 See https://ec.europa.eu/digital-agenda/.

Computing in the EU in 2020 as well as an overall cumulative impact on GDP of €957 billion, and 3.8 million jobs, by 2020.

3.5 The Commission says that steps need to be taken to address:

— *Fragmentation of the digital single market* due to differing national legal frameworks and uncertainties over applicable law, digital content and data location; this, the Commission says, ranked highest amongst the concerns of potential cloud computing adopters and providers; and in particular related to the complexities of managing services and usage patterns that span multiple jurisdictions and in relation to trust and security in fields such as data protection, contracts and consumer protection or criminal law;

— *Problems with contracts* related to worries over data access and portability, change control and ownership of the data; for example, concerns over how liability for service failures such as downtime or loss of data will be compensated; user rights in relation to system upgrades decided unilaterally by the provider; ownership of data created in cloud applications; or how disputes will be resolved;

— a *Jungle of standards,* which the Commission says generates confusion through, on one hand, a proliferation of standards and, on the other, a lack of certainty as to which standards provide adequate levels of interoperability of data formats to permit portability; the extent to which safeguards are in place for the protection of personal data; or the problem of the data breaches and the protection against cyber-attacks.

3.6 The Commission says that its approach does not foresee the building of a "European Super-Cloud", i.e. a dedicated hardware infrastructure to provide generic cloud computing services to public sector users across Europe. However, one of the aims is to have publicly available cloud offerings that meet European standards not only in regulatory terms but in terms of being competitive, open and secure. This, the Commission says, does not preclude public authorities from setting up dedicated private clouds for the treatment of sensitive data, but "in general even cloud services used by the public sector should — as far as feasible — be subject to competition on the market to ensure best value for money, while conforming to regulatory obligations or wider public-policy objectives in respect of key operating criteria such as security and protection of sensitive data."

3.7 The Commission therefore proposes three Key Actions:

— Key Action 1: Cutting Through The Jungle of Standards;

— Key Action 2: Safe and Fair Contract Terms and Conditions;

— Key Action 3: Establishing a European Cloud Partnership to Drive Innovation and Growth from the Public Sector.

3.8 The Commission says in its conclusion that it wants to see ongoing policy initiatives such as the data protection reform and the Common European Sales law, which it says will lower barriers to the uptake of cloud computing in the EU. In parallel, the Commission "will deliver on the key actions identified in this Communication in 2013, notably in respect of the actions on standardisation and certification for cloud computing, the

development of safe and fair contract terms and conditions and the launch of the European Cloud Partnership."

3.9 The Commission also says that it "will be vigilant on emerging policy issues which are likely to affect cloud computing's economic and societal potential in fields" such as taxation, public procurement, financial regulation or law enforcement, "where cloud computing's inherent cross-border nature raises questions regarding compliance and reporting obligations."

3.10 The Commission further says that:

— by the end of 2013 it will report on the progress on the full set of actions in this Strategy and present further policy and legislative proposals initiatives as needed;

— over the next two years, the actions outlined will be developed and put into place, and thus "lay the foundation for Europe to become a world cloud computing powerhouse."

3.11 The right progress during this preparation phase will, the Commission says, provide a stable basis for a rapid take-off phase from 2014–2020 during which use of publicly available cloud computing offerings could achieve a 38% compound annual growth rate (around double the rate that would be achieved if the decisive policy steps are not implemented).

3.12 The Commission accordingly calls upon:

— Member States to embrace the potential of cloud computing and develop public sector cloud use based on common approaches that raise performance and trust, while driving down costs, saying that "[a]ctive participation in the European Cloud Partnership and deployment of its results will be crucial";

— industry to cooperate closely on the development and adoption of common standards and interoperability measures.

3.13 These Key Actions are analysed in his Explanatory Memorandum of 22 October 2012 by the Minister of State for Universities and Science at the Department for Business, Innovation and Skills (Mr David Willetts) as follows:

"Key Action 1 on Standards:-

- "The Commission is concerned about the ability of 'strong' vendors to be able to create a monopoly which may result in the cloud computing industry lacking standards, interoperability and data portability.
- "Stakeholders who could be affected by such a state of fragmentation extend beyond the ICT industry to SMEs, public sector users and consumers.
- "The Commission draws two conclusions as a result: (a) in the immediate [future] existing standards will be utilised to develop confidence in cloud computing; (b) in the future an independent certification method will be needed to ensure cohesion in the developing cloud industry along the lines of what the US National Institute for Standards and Technology (NIST) is doing.

- "The European Telecommunications Standards Institute (ETSI), the standards organisation recognised by the Commission as leading on ICT standards, has been tasked with reporting on the standards issues that need to be investigated for European cloud services.[11]

"Key Action 2 on Safe and Fair Contract Terms and Conditions:-

- "The Commission is concerned about how cloud computing contracts may lack the flexibility to be able to accommodate specific demands related to the amount of data storage, processing facilities and services needed by customers.
- "The Commission claims that this lack of bespoke service is resulting in complex contracts being used or service level agreements with extensive disclaimers being given to customers.
- "Concerns have been voiced over data protection and the need to ensure continuity of protection when data is transferred.
- "The Commission is proposing to identify safe and fair contract terms by the end of 2013 by: developing terms for service level agreements that are cloud appropriate; standardise key contract terms and conditions in line with Common European Sales Law; task an expert group to identify safe and fair contract terms for small firms and consumers; review standard contractual clauses applicable to the transfer of personal data; and work with industry to agree a code of conduct for cloud computing providers that will support a uniform application of data protection rules which can be endorsed by the Article 29 WG."[12]

Key Action 3 on Promoting Common Public Sector Leadership through a European Cloud Partnership:-

- "The Commission plans to use the public sector's role as the EU's largest buyer of IT services to leverage the cloud computing market. The European Cloud Partnership (ECP) will be set up in 2012 and its role will be to act as a central body in bringing together industry and the public sector to establish common procurement requirements."

3.14 The Minister also notes the following additional measures to support the three key actions:

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11 The European Telecommunications Standards Institute (ETSI) produces globally-applicable ICT standards, including fixed, mobile, radio, converged, broadcast and internet technologies. It is a not-for-profit organization with more than 700 member organizations from 62 countries and five continents world-wide. It is officially recognized by the European Union as a European Standards Organization. For a more detailed description of ETSI, see http://www.etsi.org/website/homepage.aspx.

12 On its website, the Commission explains that the Article 29 Data Protection Working Party was set up under the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data; has advisory status and acts independently; and is composed of: a representative of the supervisory authority(ies) designated by each EU country; a representative of the authority(ies) established for the EU institutions and bodies; a representative of the European Commission. For the opinion of the Article 29 Working Party on cloud computing, see http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/index_en.htm#h2-1.

— "Stimulation measures — to utilise the research and development opportunities proposed for inclusion in Horizon 2020 on cloud computing for the purposes of this communication; the launch of Digital Service Infrastructure under the European initiative of 'Connecting Europe Facility' which will be a cloud public service; and promote e-skills and digital entrepreneurship in relation to cloud computing.

— "International dialogue — cloud computing to be part of the agenda in international discussions on trade, law enforcement, security and cybercrime; through multilateral fora such as the WTO and OECD; and through free trade negotiations with specific countries.

— "the Commission foresees that cloud computing will need to be utilised as part of furthering the Commission's ambitions of simplifying copyright clearance, management and cross-border licensing as part of the Digital Agenda for Europe. The Commission has identified that there is a need for content distribution models that enhance access to and the use of all sorts of content across different devices and in different territories. In particular, the Commission wants to ensure that users will be able to consume IP content anywhere in the EU without losing access to services they paid for in any other Member State. The Commission is anticipating that the adoption of its proposal for a Directive on Collective Rights Management will address some of the cross-border licensing needs for cloud content as regards music."

The Government's view

3.15 The Minister says that:

> "[a] consistent approach across the EU on building cloud technology capability is to be welcomed because it will be a vital contributory factor towards a functional digital single market as well as ensuring future EU competitiveness in this area against competition from the Asian countries, Australia, USA and Canada which are developing cloud computing strategies too."

3.16 He then continues as follows:

Key Action 1 on Standards

- "At a strategic level, the communication would appear to be complementary to some aspects of HMG's IT procurement strategy as it promotes the adoption of cloud and does not necessitate nor seek to legislate a set of standards as a pre-requisite.

- "HMG would also support the Commission thinking on the importance of forming competitive markets of utility providers with easy switching in order to avoid lock-in and other concerns consumers have.

- "However, HMG has adopted a market led approach to their procurement of cloud computing which gives rise to a number of concerns around the proposals. The primary concern around procurement is that HMG is not convinced that a case has been made by the Commission for an endorsed certification scheme. The

Commission's assertion that a 'cloud group to consider cloud standardisation needs' does not of itself guarantee that the Cloud Group will identify a high level of accuracy as to what certification is needed. Given however that cloud computing utilises mainly commercially based standards and is a very competitive market place it is likely that any certification scheme that actually works will be market led

- "Certification programmes should form naturally in a competitive market. In the case of cloud computing, the market is still developing and has not yet determined which characteristics are essential in order to be able to do this.
- "An endorsed certification scheme may prove to be a barrier for SMEs delivering services in this space. As the market is not yet mature there is a risk that 'strong' vendors use the certification scheme to endorse elements of their existing business models, rather than characteristics which would support the strategic intent of a competitive market with easy switching. Government will monitor the provision of access for SMEs and endeavour to ensure that it is equitable and fair.
- "From an open standards perspective HMG is concerned by the communication's mention of standards as being important at the platform level without an interrelated mention of the importance of data standards.
- "While HMG agrees that the 'Jungle of Standards' is an issue, much of the talk on benefits to SMEs seems to focus on things that are already a part of how the internet operates instead of the emphasis being placed on benefits, or non-benefits, specific to cloud which form the point of view of a provider or a consumer of cloud services.
- "BIS has close contact with ETSI, who are overseeing the initial cloud standards work for the Commission. They will thus be able to monitor the ongoing situation."

Additional Measures

- "The Partial General Approach agreed by EU Research and Innovation Ministers in May 2012 was that one of the six broad lines of activity for ICT in the 'Industrial Leadership' pillar of Horizon 2020 would be cloud computing as part of the 'Next Generation Computing: Advanced Computing systems and technologies, including cloud computing'. This explicit inclusion of cloud computing is an amendment to the Commission's original proposal and is welcome by the UK. Further to this, the UK has also welcomed the inclusion of cloud computing in the 7th Framework Programme's ICT 2013 work programme of a pre-commercial procurement topic on 'High Quality Cloud Computing Environment for Public Sector Needs, Validated Through a Joint Pre-Commercial Procurement (PCP)).
- "HMG welcomes the paper which exposes some of the issues that legislators face when dealing with cloud computing and the IP framework. HMG supports the desire of the Commission to allow users to consume content lawfully when they are away from home and the UK is playing an active part in the negotiations around the Collective Rights Management Directive. However, it should be noted that this

> Directive is only looking at music rights and the interaction between IP and cloud computing has wider ranging scope."

3.17 Finally, looking ahead, the Minister says that the Communication will be introduced by the Commission at the Telecoms Working Group on 30 October, but there has been no commitment from the Cypriot Presidency to draw up any Council Conclusions or to do any further work on this Communication at this stage.

Conclusion

3.18 **It is not at all clear where this exercise is going. The Commission — seemingly impelled by prospective investment and job creation figures whose soundness is not entirely clear (see paragraph 3.4 above) — say that in 2013 it will deliver on the Key Actions set out in this communication, notably in respect of standardisation and certification, the development of safe and fair contract terms and conditions and the launch of the European Cloud Partnership; report on the progress on the full set of actions in this Strategy; and present further policy and legislative proposals initiatives as needed. The actions outlined will be developed and put into place, prior to "a rapid take-off phase from 2014–2020", thus laying "the foundation for Europe to become a world cloud computing powerhouse."**

3.19 **The Minister, however, gives the impression that work has barely begun, and that the relevant Council working group is not seized with the same sense of urgency. He pours cold water on the proposed Key Action 1 approach on standardisation without explaining why the market-driven USA is involving its own National Institute for Standards and Technology, and seems to suggest that some sort of eye can be kept on this issue via the UK's relationship (which is itself unexplained) with European Telecommunications Standards Institute.**

3.20 **He makes no comment on Key Action 2 — developing safe and fair contracts — other than to refer the UK's "active part in the negotiations around the Collective Rights Management Directive" and to note that this covers only the matter of music rights.**

3.21 **And he makes no comment at all about Key Action 3, the proposed European Cloud Partnership.**

3.22 **We would therefore like to Minister to explain his position further:**

- **Does he agree with the goal of "a rapid take-off phase from 2014-2020" and that use of publicly available cloud computing offerings during this period could achieve a 38% compound annual growth rate?**
- **Does he accept the Commission estimates of €45 billion expenditure as well as an overall cumulative impact on GDP of €957 billion, and 3.8 million jobs, by 2020?**
- **How, precisely, does he see the "Jungle of Standards" being addressed? What role does he see for which public bodies in addition to market forces? What role will the UK have in this, particularly via the Article 29 Working Group and the ETSI which are mentioned-in-passing?**

— **How does he see the issue of safe and fair contracts being addressed over and above the negotiations on the Collective Rights Directive? Will he be working with the Commission to identify safe and fair contract terms by the end of 2013, with terms for service level agreements that are cloud appropriate, and standardised key contract terms and conditions in line with Common European Sales Law? Is he content that an expert group is tasked to identify safe and fair contract terms for small firms and consumers; and if so, will the UK be part of it? Does he endorse the notion of a review of standard contractual clauses applicable to the transfer of personal data; and of Commission plans to work with industry to agree a code of conduct for cloud computing providers that will support a uniform application of data protection rules which can be endorsed by the Article 29 WG (whose role, and the UK's part in it, we should be grateful if he would also explain)?**

— **What will be the response of the relevant UK public authorities and UK industry to the Commission's call for "active participation" in the European Cloud Partnership? Does he agree that the deployment of its results will be "crucial"?**

— **Since the UK will be involved in the Telecoms Council Working Group, what approach will he be adopting there, what does he see emerging from its discussions and over what timescales?**

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

4 Sharing of benefits from genetic sources

(a) (34301) 14641/12 COM(12) 576	Draft Regulation on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation in the Union
(b) (34317) 14728/12 COM(12) 577	Draft Council Decision on the conclusion of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation to the Convention on Biological Diversity

Legal base	(a) Article 192(1) TFEU; co-decision; QMV (b) Articles 192(1) and 218(6) TFEU; QMV; consent
Documents originated	(a) 4 October 2010 (b) 5 October 2010
Deposited in Parliament	(a) 9 October 2012 (b) 12 October 2012
Department	Environment, Food and Rural Affairs

Basis of consideration	EMs of 22 October 2012
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information awaited

Background

4.1 Genetic resources, whether from plants, animals or micro-organisms, are used for various purposes, ranging from basic research to the development of products, with users including research institutes, universities and private companies operating in sectors such as pharmaceuticals, agriculture, horticulture, cosmetics and biotechnology. Benefits derived from genetic resources may include the sharing of the results of research and development, the transfer of technologies that make use of them, participation in biotechnological research activities, or monetary benefits arising from the commercialisation of products based on genetic resources, such as pharmaceuticals.

4.2 The Convention on Biological Diversity (CBD) provides the main international framework for measures to conserve biological diversity, and for the equitable sharing of the benefits arising from the utilisation of genetic resources. However, it does not specify how this should be done in practice, and the Nagoya Protocol to the Convention seeks to give effect to this by establishing more predictable conditions for access to genetic resources, ensuring benefit-sharing between users and providers, and ensuring that only legally acquired sources are used. Whilst all parties to the Protocol must take measures regarding user compliance, they are free to decide whether to regulate access, but, if they decide to so, they must implement the detailed provisions set out in the Protocol.

The current documents

4.3 The Protocol, which was adopted in October 2010, is a mixed agreement with shared competence, and, following its adoption, it was signed by the EU and 24 Member States in 2011. These two documents comprise (a) a draft Regulation which would implement those provisions in the Protocol falling within EU competence, leaving Member States to undertake additional measures in parallel to fulfil the remaining requirements, and (b) a draft Council Decision, which would enable the EU to ratify the Protocol, once the Regulation has been adopted.

4.4 More specifically, the draft Regulation would:

- set out the minimum features of due diligence measures;
- oblige all users in the EU to exercise due diligence to ascertain that genetic resources, and traditional knowledge associated with the resources used, are accessed in accordance with applicable legal requirements in provider countries, and that, where relevant, benefits are fairly and equitably shared upon mutually agreed terms;
- require all users of genetic resources to seek, keep and transfer to subsequent users certain information relevant for access and benefit-sharing;

- require recipients of public research funding to declare that they will exercise due diligence;
- oblige users to declare at the point of commercialisation that they have complied with their due diligence obligation

4.5 In order to comply, users could build on existing codes of conduct for access and benefit sharing developed for the academic sector and different industries, and associations of users could request the Commission to recognise a specific combination of procedures, tools or mechanisms overseen by an association as best practice. In addition, competent authorities of the Member States would be obliged to consider that the implementation by a user of recognised best practice reduces that user's risk of non-compliance and justifies a reduction in compliance checks.

4.6 The proposal would also require the Commission to establish an EU Register of trusted collections, and those wishing to be included in the Register would have to undertake to supply to third persons only fully documented samples of genetic resources. Member States would have to verify whether a collection meets the requirements for registration, and users acquiring a genetic resource from such a collection would be considered to have exercised due diligence as regards the seeking of all necessary information. In addition, Member States would be required to check by means of a risk-based approach whether users comply with their obligations under the Regulation, and they would have to ensure that infringements by users are subject to effective, proportionate and dissuasive penalties.

4.7 Finally, the proposed Regulation provides for the creation of a Union platform on access to genetic resources and traditional knowledge associated with them, which would enable related issues to be discussed, and provide non-binding advice.

The Government's view

4.8 These two documents have been the subject of separate Explanatory Memoranda of 22 October 2012 from the Parliamentary Under Secretary for Natural Environment, Water and Rural Affairs at the Department for Environment, Food and Rural Affairs (Richard Benyon), who points out that the Government has made a commitment to show leadership at an EU and international level in protecting biodiversity both at home and abroad, and that it agreed to Council Conclusions in June 2012 committing the EU to ratifying and implementing the Nagoya Protocol as soon as possible before the next meeting of the CBD, expected to take place in 2014. He says that the Government therefore welcomes the draft Council Decision at document (b), except insofar as it would require the EU and Member States to simultaneously deposit their instruments of ratification — a step for which it believes there is no legal obligation, and which would mean that the pace of ratification would be determined by the slowest to do so (and could thus hamper participation in the first meeting of the Parties to the Protocol).

4.9 The Minister says that consideration of the draft Regulation (document (a)) will enable the Government to look in greater detail at the complementary requirements which will have to be undertaken at national level to implement the Protocol and enable the UK to ratify it, but, in the meantime, he draws attention to some preliminary concerns that certain of the measures may not be in accordance with the principle of subsidiarity. For

example, whilst the Commission argues that setting up trusted collections would support the approach to user-compliance, the proposal remains an access-related measure, and it is unclear what additional value the Commission could play in making decisions over the status of trusted collection. Also, much of the detail of the trusted collection system would be set out in Implementing Acts, and the Government says that, before accepting this, it will seek clarity on what would be included in them.

4.10 The Minister suggests that it is also currently unclear what value a Commission focal point would add in providing information on access to genetic resources within the Member States, pointing out that an international clearing house for such information is already envisaged to which each Party to the Protocol will contribute. He says that a full analysis of subsidiarity will be undertaken ahead of the eight week deadline to raise any objection with the Commission, and the Government will have further opportunities to consider subsidiarity in any subsequent proposal.

4.11 As regards specific aspects of the Regulation, the Minister says that:

- "a degree of flexibility is left to Member States regarding the implementation of some elements over which the Government would wish to retain control, in that the proposal does not cover all elements of the Protocol, such as whether to put in place measures governing access to genetic resources and associated traditional knowledge, and would provide for implementing acts rather than delegated acts to determine the finer details of the proposals, thereby maintaining control with the Member States;

- "it is clear that the Regulation would only cover the use of genetic resources accessed after the entry into force of the Protocol for the country that provides the genetic resource, and will not extend to those accessed in areas beyond national jurisdiction or within the Antarctic Treaty Area, and the Government welcomes the legal certainty that this is likely to provide to users;

- "the Government is interested in gauging industry feedback on the proposed due diligence approach which would entail limited burden on both regulators and industry compared with other possible approaches, noting that this approach has been used to address illegal timber use under Regulation (EU) No 995/2010;

- "initial comments on the proposal for a system of Union trusted collections have been mixed, and officials have some concerns on both competence and subsidiarity grounds, which will need to be considered further before the Government takes a view;

- "monitoring compliance remains one of the more complex requirements for all countries to fulfil as part of their commitments to the Protocol, and could be burdensome for regulatory authorities and users alike: although the proposal would apply to all uses of genetic resources and appears to suggest limited, if any, additional burden on existing UK regulatory authorities, further assessment of the amount of work involved will have to be undertaken;

- "although traditional knowledge associated with genetic resources remains within the exclusive competence of Member States, the proposal addresses this where its

use is covered in contracts, and the Government will give further consideration to this, particularly as regards the extent to which the proposals are appropriate, given competence concerns;

- "the Government strongly believes that issues related to indigenous and local communities and their traditional knowledge must remain within Member State competence, seeing no justification for EU action in this regard or for a transfer of competence to the EU;
- "whilst the proposals relating to checks on user compliance appear to be risk-based and proportionate, the Government will have to consider them further, including the elements that any subsequent implementing acts could include;
- "the Government welcomes the fact that the proposed Regulation leaves Member States to decide on appropriate forms and levels of penalties;
- "whilst the Government believes that a Union platform on access would be useful in exchanging views with other EU Member States and stakeholders, it is not convinced that this needs to be established by means of a Regulation, it questions whether it is proportionate to establish such a platform by means of legislation, and, as access is a matter of national sovereignty, it is not convinced that access-related provisions fall within EU competence;
- "the Government welcomes the idea of additional complementary measures aimed at supporting the development of codes of practice, awareness raising measures, communication tools and guidance, but will need to take a further view as to whether it is necessary to include these within the Regulation."

4.12 The Minister says that, whilst his department has commissioned independent research which provided an analysis of the UK sectors likely to be affected, the Government has yet to complete a detailed Impact Assessment on the proposed options, but that it will undertake such an Assessment for any final Regulation, as well as any additional measures required for the UK to ratify the Protocol. He also says that detailed financial consideration of the proposal has yet to be undertaken, although an initial analysis suggests that there would be minimal costs for Government and for users. Finally, he says that, although his department included a web-based consultation, workshop and series of interviews as part of a study for the Government's broad approach to implementing the Protocol, no formal consultation has been yet undertaken on this proposal within the UK, and stakeholders will be consulted further on the proposals in addition to those consultations being conducted at EU level.

Conclusion

4.13 **It is clear that there may be more to the proposed Regulation than meets the eye, including a number of concerns in particular over subsidiarity, and, in noting that the Government has said that it will be undertaking a full analysis of these issues, we would like to stress the importance of our receiving this in good time to allow the preparation of a draft Reasoned Opinion, (deadline: 21 December 2012) if that is seen to be required. We also note that, although the Government has said that it will prepare a**

detailed Impact Assessment for any "final regulation", it is in our view essential to have such an Assessment *before* anything is adopted. We therefore look forward to seeing this, together with a detailed financial consideration of the proposal (which the Government again says has yet to be undertaken). In the meantime, we are holding the documents under scrutiny.

5 Monitoring international trade in drug precursors

(34288) 14394/12 COM(12) 521 + ADDs 1–2	Draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors Commission staff working documents: Impact assessments

Legal base	Article 207 TFEU; c o-decision; QMV
Document originated	27 September 2012
Deposited in Parliament	5 October 2012
Department	Home Office
Basis of consideration	EM of 15 October 2012
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

5.1 The United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, agreed in 1988, establishes a framework for international cooperation to prevent certain chemical substances, commonly used in a variety of industrial processes to manufacture pharmaceuticals and household goods, being "diverted" into illicit drug production. These substances are often referred to as "drug precursors." Article 12 of the Convention requires Contracting Parties (which include the EU and all Member States) to implement a series of measures to control the manufacture and distribution of drug precursors, monitor international trade, report suspicious orders and transactions, ensure appropriate labelling and documentation and, where there is sufficient evidence that a substance may be used for illicit drug production, to provide for a power of stop and seizure.

5.2 Regulation (EC) No 111/2005 ("the 2005 Regulation") establishes harmonised rules on the monitoring of trade in drug precursors between the EU and other third countries in order to prevent their diversion into illicit drug production. It requires individuals or

companies who import or export scheduled substances listed in an Annex to the 2005 Regulation, or who are involved in related intermediary activities, to:

- obtain a licence (for category 1 substances) or register with the competent national authorities (for category 2 and 3 substances);
- notify the competent authorities of any suspicious orders or transactions;
- keep detailed records and documentation of all trade involving scheduled substances for at least three years; and
- ensure that scheduled substances are appropriately labelled.

5.3 The 2005 Regulation establishes a system of import and export authorisation for the most sensitive (category 1) substances, and requires authorities in the exporting Member State to inform destination countries that scheduled substances are being exported to them from the EU by means of a "pre-export notification".

5.4 Twelve substances are listed as "Category 1" substances in the Annex to the 2005 Regulation, including ephedrine and pseudoephedrine. Both substances are commonly used in the manufacture of cold or allergy medicines, but they are also the main precursors for methamphetamine, a synthetic drug which induces physical and psychological effects similar to those associated with cocaine.[13] Although ephedrine and pseudoephedrine are both subject to the control and monitoring measures contained in the 1988 UN Convention and the 2005 Regulation, medicinal products containing these substances are not. The United Nations International Narcotics Control Board (the body responsible for overseeing the 1988 UN Convention) considers that controls on medicinal products containing ephedrine and pseudoephedrine need to be tightened, not least because the substances can be easily extracted and used for the illicit manufacture of methamphetamine.

The draft Regulation

5.5 The draft Regulation proposes a number of changes to the 2005 Regulation to strengthen the control and monitoring of medicinal products containing ephedrine and pseudoephedrine and prevent their diversion into illicit drug production, whilst also ensuring that legitimate trade in such products between the EU and third countries can continue. The changes include:

- requiring competent authorities in (non-EU) destination countries to be given advance (pre-export) notification of the export of medicinal products containing ephedrine and pseudoephedrine (as is already the case for the export of each substance in its raw form);
- specifying the factors to be taken into account by competent authorities when considering whether to register an individual or company wishing to import or export category 2 or 3 substances, as well as the grounds on which registration may

13 See p.2 of the Commission's accompanying Explanatory Memorandum.

be suspended or revoked, so that they are in line with those already applicable for the grant of a licence;

- clarifying the type of information to be provided when notifying suspicious orders or transactions;
- requiring competent national authorities to prohibit the importation or exportation of medicinal products containing ephedrine and pseudoephedrine if there are reasonable grounds for suspecting that they will be used for the illicit manufacture of narcotic drugs or psychotropic substances, and ensuring that they have the necessary stop and seizure powers in order to do so;
- clarifying that Member States may adopt measures to control and monitor suspicious transactions involving non-scheduled substances (drug precursors not listed in the Annex to the 2005 Regulation); and
- including a reference to a new European database on drug precursors which would contain information on all licensed or registered operators and on export, import and intermediary activities involving scheduled substances, as well as information provided by Member States on drug precursor seizures and on methods of diversion and illicit manufacture.[14]

5.6 The draft Regulation includes a new review clause to ensure that a proper evaluation of its effectiveness in preventing the diversion of medicinal products containing ephedrine and pseudoephedrine into illicit drug production is carried out. It also empowers the Commission to adopt delegated acts in a number of areas, including amendments to the Annex of scheduled substances.

5.7 The draft Regulation, like the 2005 Regulation which it will amend, cites the legal base used to implement the EU's common commercial policy (now Article 207 of the Treaty on the Functioning of the European Union), an area which the Commission says falls within the EU's exclusive competence. It suggests that the absence of a specific legal base in existing EU legislation to control the trade in medicinal products containing ephedrine or pseudoephedrine has hindered efforts to prevent their diversion into illicit drug production. Member States have had to rely on national measures which the Commission says have resulted in "a difference of control approaches and actions at the EU external borders."[15]

The Government's view

5.8 The Minister of State for Crime Prevention (Mr Jeremy Browne) says that existing EU legislation controlling the trade in drug precursors functions well and describes the changes proposed by the Commission as,

> "a proportionate response to an identified weakness in the current controls of ephedrine and pseudoephedrine when contained in medicinal products.

14 See also (34286); HC 86-xvi (2012–13), chapter 9 (24 October 2012).

15 See p.17 of ADD 2.

> "The proposals offer a useful mechanism of tracking EU/non-EU trade of medicinal products containing ephedrine and pseudoephedrine without adding unnecessary regulations for other medicinal products which do not present the same risk.
>
> "Since companies trading in medicinal products in Europe frequently work across EU Member States, a combination of national measures will not be as effective as a harmonised approach at EU-level because isolated actions in individual Member States risk shifting the problem from one Member State to the next as the traffickers seek to exploit the 'weakest link' in the Union market.
>
> "EU level guidelines/regulations will mean that companies across Member States will all be subject to the same controls making the illegal diversion of medicinal products containing ephedrine and pseudoephedrine for use in the illicit market more difficult, risky and expensive which will act as a deterrent to the supply of illegal drugs."[16]

5.9 The Minister notes that medicinal products containing ephedrine or pseudoephedrine are not currently controlled in the UK and that, as a result, the volume of trade with non-EU countries, as well as the impact of the changes proposed by the Commission, are difficult to quantify. He says that the Government will consult with industry and stakeholders, including the Medicines and Healthcare Products Regulatory Authority (MHRA), and will need to determine which part of Government would be responsible for issuing a pre-export notification for medicinal products containing ephedrine or pseudoephedrine which are exported to a third country from the UK. The MHRA already issues export certificates on request to UK exporters of medicinal products, where the importing country requires some form of certification, and he suggests that it may be possible to extend this system to the export of medicinal products containing ephedrine or pseudoephedrine. If not, then the responsibility would most likely fall to the Drug Licensing and Compliance Unit of the Home Office, and a fee of £24 would be charged for each pre-export notification, creating an additional burden for companies dealing in these products.

5.10 The Minister welcomes the proposal to include within a new European database on drug precursors information on companies trading in medicinal products containing ephedrine or pseudoephedrine, in order to ensure better monitoring.

5.11 Finally, the Minister notes that the Commission has proposed a legal base relating to the EU's common commercial policy, and adds:

> "While the proposal itself does not cite a Title V legal base, we are considering whether its content makes it a measure pursuant to Title V of Part Three of TFEU, therefore triggering the JHA Opt-in Protocol."[17]

16 See paras 18–21 of the Minister's Explanatory Memorandum.

17 See para 11 of the Minister's Explanatory Memorandum.

Conclusion

5.12 **The changes proposed by the Commission appear to be a sensible and proportionate response to worrying evidence that medicinal products containing ephedrine or pseudoephedrine are being used for the illicit production of methamphetamine. However, we agree with the Government that a stronger evidence base is needed to establish the volume of external trade in these products and the likely impact of the changes on importers and exporters in the UK. We ask the Minister to report back to us once he has consulted industry and other relevant stakeholders. We also ask him to tell us whether he considers that the powers conferred on the Commission to adopt delegated acts are appropriate.**

5.13 **We note the Minister's view that the draft Regulation may constitute "a measure pursuant to Title V of Part Three of TFEU" and thus be subject to the UK's Title V opt-in. We ask him to identify those provisions of the draft Regulation which the Government believes impose obligations derived from Title V and to indicate which legal base or bases should be cited. Meanwhile, the draft Regulation remains under scrutiny.**

6 The European Voluntary Humanitarian Aid Corps

(34256) 14150/12 + ADD 1 COM(12) 514	Draft Council Regulation establishing the European Voluntary Humanitarian Aid Corps

Legal base	Article 214(5) TFEU; ordinary legislative procedure; QMV
Document originated	19 September 2012
Deposited in Parliament	2 October 2012
Department	International Development
Basis of consideration	EM of 22 October 2012
Previous Committee Report	None; but see (32292)17065/10: HC 428-xii (2010–11), chapter 12 (12 January 2011)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

6.1 Since 1992, EU humanitarian aid has been managed by the Directorate-General for Humanitarian Aid and Civil Protection, which was more commonly known as DG ECHO. The EU (Commission plus the Member States) is one of the world's biggest providers of

humanitarian aid funding. Since 1992, operations directed by ECHO have channelled aid to regions in crisis in more than 85 countries.[18]

6.2 Article 214 TFEU introduced, for the first time, humanitarian aid as a policy in its own right in the EC Treaty. As defined in Article 214 TFEU, the EU's operations in the field of humanitarian aid are intended to provide ad hoc assistance and relief for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations; EU and Member States measures "shall complement and reinforce each other".

6.3 Article 214 TFEU reiterates the principles of humanitarian aid, these being compliance with the principles of international law and the principles of impartiality, neutrality and non-discrimination. EU humanitarian aid operations must be coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

6.4 Article 214 (5) refers specifically to a "European Voluntary Humanitarian Aid Corps" (EVHAC), whose objective is "to establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union" (Article 214(5) TFEU). The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall determine the rules and procedures for the operation of the Corps.

The 2010 Commission Communication

6.5 The Commission Communication 17065/10, "How to express EU citizen's solidarity through volunteering: First Reflections on a European Voluntary Humanitarian Aid Corps", set out the DG ECHO and Member States' consultation and discussion in Council working groups, with the aim of tabling legislative proposals to Council and to the European Parliament in 2012. It also includes guiding principles, gaps in the current system and key conditions under which EVHAC must operate.

6.6 It envisaged three possible options:

— creating an "EU certification mechanism" for organisations that respect centrally set EU standards in a number of areas including selection and training of volunteers, volunteer management, back-office functions and/or prevention and preparedness activities;

— combining this option with work on recruitment and the development of rosters for "surge capacities" for the benefit of humanitarian disaster relief organisations which would especially target experienced staff to be deployed in key functions;

— establishing a fully-fledged volunteer scheme, which would include selection, training, matching and deployment of volunteers.

18 See http://ec.europa.eu/echo/index_en.htm for full information on DG ECHO.

6.7 The Commission emphasised the need for any scheme to be demand-driven and to deploy volunteers who had skills and could add value in humanitarian situations, and to avoid a situation similar to that in Haiti in 2010, when it said that a large number of unskilled volunteers arrived and were ineffective, and in some cases disruptive.

The Government's view

6.8 In his Explanatory Memorandum of 21 December 2010, the then Parliamentary Under-Secretary of State for International Development (Mr Stephen O'Brien) said that the UK had some reservations about the EVHAC proposal, mainly regarding the danger of deploying young, inexperienced volunteers to potentially insecure and volatile situations, and had suggested a number of alternatives, including the use of volunteers in back-office functions, allowing more experienced staff to be released to the front line, and deploying volunteers under the umbrella of existing humanitarian organisations. However, he further said, the Commission had taken on board these concerns, which were mirrored by a number of other Member States, and was now emphasising the importance of professionalism, humanitarian principles and safety and security in all of their proposals, and that he was satisfied with the way the Commission was approaching this issue. He noted that "[f]requent consultation and discussion opportunities have allowed us to engage fully with the development of specific proposals and share our views."

6.9 The Minister noted that, going forward, the Commission would continue to consult with Member States and relevant NGOs in 2011, run a limited number of pilots and draw up a preparatory action plan; and that in 2012, it planned to table a legislative proposal, preceded by an impact assessment.

6.10 The Minister expected proposed pilots to provide more information about how the EVHAC scheme would actually work, though it was, he said, already clear that the scheme primarily aimed to encourage the use of more volunteers in humanitarian and disaster relief operations.

6.11 The Minister went on to draw attention to his own Department's strong interest in the plans for developing EVHAC, highlighting the strategic support DFID provided to British volunteering organisations and the specific support to some (VSO, Skillshare, International Service and Progressio) through the Partnership Programme Arrangements (PPA).

6.12 The Minister also drew attention to the announcement by the Prime Minister in October 2010 of the creation of the International Citizens Service, "to give thousands of young adults across the UK the opportunity to join the fight against poverty through volunteering in developing countries." DFID was, he said, working with specialist volunteering agencies (including VSO) to pilot the scheme in the first year, offering places for 1,000 young people, with first year costs of up to £10 million.

6.13 Looking ahead, the Minister said that, although other government Departments had yet to be consulted on this proposal at this time, as more substantive proposals were developed by the Commission on the specifics of how EVHAC would work, DFID would consult with relevant government Departments and civil society organisations.

Our assessment

6.14 Although the Communication raised no questions, we reported it to the House because of the importance of its subject matter, and looked forward to hearing further from the Minister as and when the Commission produced either a more detailed Communication or the draft legislative proposals.

6.15 In the meantime, we also drew this chapter of our Report to the attention of the International Development Committee.

6.16 We also cleared the Communication.[19]

Subsequent developments

6.17 The 17 May 2011 Economic and Financial Affairs Council discussed and welcomed this Communication in its conclusions, "but underlined that such a corps should be cost-effective, should build upon existing national and international voluntary schemes without duplicating them, and be focused on addressing concrete needs and gaps in the humanitarian field."[20]

6.18 In the specific Conclusions on EVHAC, the Council:

— recognised the importance of increasing the professionalism of humanitarian aid actors and the need to address their safety and security, in particular in complex emergencies;

— emphasised the need to set clear requirements for the identification, selection, training and deployment of volunteers;

— acknowledged the need to support local capacities in disaster prevention, preparedness, humanitarian response and post-disaster settings;

— underlined that EVHAC should not encroach upon the Commission's existing humanitarian aid and civil protection budget and that it should be based on a thorough cost-benefit analysis;

— underlined that EVHAC should be cost-effective, build upon existing national and international voluntary schemes without duplicating them and, as part of a global approach, be focused on addressing concrete needs and gaps in the humanitarian field;

— underlined that EVHAC can make a useful contribution to the European and international humanitarian assistance by focusing its activities on supporting existing local humanitarian and civil protection organisations, in cooperation with recipient authorities;

— underlined that EVHAC should not be set up as an operational humanitarian or civil protection organisation in its own right;

19 See headnote: (32292)17065/10: HC 428-xii (2010–11), chapter 12 (12 January 2011).

20 See https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/122072.pdf.

— emphasised the need for EVHAC to provide added value to the EU humanitarian assistance and its beneficiaries, especially in pre- and post-crisis contexts, as well as to increase awareness raising and visibility of EU assistance;

— said that, alongside the results of the preparatory action, the Impact Assessment, and the on-going consultations, its Conclusions should guide the Commission in the assessment of the different options with regard to the framework and management structure of EVHAC.[21]

6.19 On 29 September 2011, the European Parliament adopted a written declaration signed by 381 MEPs on the establishment of a European Voluntary Humanitarian Aid Corps, which (according to the Library of the European Parliament) supports volunteering at EU level and the setting up of the Corps. The declaration:

> "1. Declares that humanitarian action is a fundamental expression of the European value of solidarity;
>
> "2. Stresses that the long European tradition of volunteering is an indispensable part of our common European identity;
>
> "3. Stresses that the EVHAC will bring added value to European citizens by encouraging their active participation and contributing to a more cohesive society;
>
> "4. Calls on the European Parliament and the Council to determine the rules and procedures for the operation of the Corps in response to disasters and to work on setting up the Corps promptly;
>
> "5. Considers that the key components of the Voluntary Service should be the identification and selection of volunteers and their training and deployment;
>
> "6. Emphasises that the Voluntary Service should be demand-driven and needs-based and that security must be of paramount importance;
>
> "7. Instructs its President to forward this declaration, together with the names of the signatories, to the Commission, the Council and the parliaments of the Member States."[22]

6.20 The Library of the European Parliament also says:

> "On the other hand, from the Eurosceptic side, there is opposition to setting up EVHAC on the basis that it will duplicate the work of existing agencies. In this view, humanitarian aid should be left to trained professionals and must be provided by non-governmental organisations and the United Nations."[23]

21 The full Council Conclusions on EVHAC are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122055.pdf.

22 Available at http://www.europarl.europa.eu/sides/getDoc.do?reference=P7_TA(2011)0432&language=EN.

23 See http://libraryeuroparl.wordpress.com/2012/07/20/european-voluntary-humanitarian-aid-corps-briefing/.

The draft Council Regulation

6.21 In its Explanatory Memorandum, the Commission says that:

— interested stakeholders, including the main humanitarian aid organisations (NGOs, the Red Cross and Red Crescent Family, UN agencies), mainstream volunteer organisations, individual volunteers, Member States' representatives and other relevant actors were specifically consulted at two dedicated conferences and through a public on-line consultation;

— different issues related to the Voluntary Humanitarian Aid Corps have been discussed in addition by the Member States within the Council working party on humanitarian aid and food aid (COHAFA);

— consultations also included an online public forum on a suitable name for the Corps, resulting in the choice of "EU Aid Volunteers", which it says "shall be hereinafter used to refer to both the initiative and to the individual volunteers who will be deployed to humanitarian operations."

6.22 The Commission says that an impact assessment report was prepared to examine policy options and their potential impacts, consisting of an Impact Assessment Steering Group involving relevant Commission services; input of an external preparatory study; and lessons learnt and conclusions from two seminars organised with pilot project coordinators. All comments by stakeholders were fully considered and are reflected in the impact assessment report.

6.23 The Commission says that:

— the main problems identified by the impact assessment were:

"(1) Lack of a structured EU approach towards volunteering;

"(2) Poor visibility of EU humanitarian action and solidarity with people in need;

"(3) Lack of consistent identification and selection mechanisms across Member States;

"(4) Insufficient availability of qualified volunteers for humanitarian aid;

"(5) Shortcomings in the surge capacity of humanitarian aid;

"(6) Weak capacity of hosting organisations".

— The policy options examined were:

> "Policy Option 1, including: (1) Development of standards for identification, selection and training of volunteers and (2) Development of certification mechanism for sending organisations;
>
> "Policy Option 2, including the modules under Option 1 plus (3) Support to training for EU volunteers in humanitarian aid, (4) Creation of an EU Register of trained volunteers, (5) Development of standards and a certification mechanism for volunteer management in hosting organisations;

> "Policy Option 3, including all modules under Option 2 plus (6) Support to deployment of EU volunteers, (7) Building capacity in third country hosting organisations, (8) Establishment of an EU Network of humanitarian volunteers. This Option would be implemented in partnership with humanitarian aid organisations which should identify, select and deploy the volunteers;
>
> "Policy Option 4, including all modules under Option 3 implemented in a direct management mode by the European Commission;
>
> "Based on this assessment of the potential economic, social and environmental impacts, Policy Option 3 was recommended as the most efficient and effective option for addressing the problems identified."

6.24 With regard to the draft Council Regulation itself, in her Explanatory Memorandum of 22 October 2012, the Parliamentary Under-Secretary of State at the Department For International Development (Lynne Featherstone) notes that the objective of the EU Aid Volunteers initiative (Article 3) is to:

> "express the Union's humanitarian values and solidarity with people in need, through the promotion of an effective and visible EU Aid Volunteers' initiative, which contributes to strengthening the Union's capacity to respond to humanitarian crises and to building the capacity and resilience of vulnerable or disaster-affected communities in third countries."

6.25 She also notes that the Operational objectives (set out in Article 7) are to:

- increase and improve the capacity of the Union to provide humanitarian aid.
- improve the skills and competences of volunteers in the field of humanitarian aid and the conditions under which they are working.
- build the capacity of hosting organisations and foster volunteering in third countries.
- promote the visibility of the Union's humanitarian aid values.
- enhance the coherence and consistency of volunteering across Member States in order to improve opportunities for Union citizens to participate in humanitarian aid activities and operations.

6.26 Article 7 also includes illustrative indicators of progress towards the achievement of each operational objective, such as (for the second bullet point):

— the number of volunteers trained and the quality of the training on the basis of the reviews and level of satisfaction;

— the number of certified sending organisations applying the standards for deployment and management of EU Aid Volunteers.

6.27 The Minister then continues as follows:

> "The proposal sets out procedures and rules for the following actions:

- "**Standards for candidates and EU Aid Volunteers**: The Commission will develop standards for the efficient and coherent recruitment and preparation of candidate volunteers and deployment/management of volunteers, including duty of care and minimum requirements on subsistence and accommodation.

- "**Certification**: Organisations that would like to select, prepare and deploy EU Aid Volunteers will have to be certified for compliance with these standards. Eligibility requirements and process are to be defined in implementing acts, taking into account their nature and capacity (e.g. Member States' public bodies, NGOs). A different certification mechanism will be established for organisations eligible to receive volunteers.

- "**Identification and selection of candidate volunteers**: EU Aid Volunteers will be open to EU citizens, nationals legally residing in the EU on a long term basis, citizens from candidate and potential candidate countries and from partner countries from the European Neighbourhood Policy. On the basis of an annual work programme, the Commission will publish calls for proposals for the identification and selection of volunteers. The Commission proposes to adopt delegated acts to establish standards for identification and selection of candidate volunteers. Organisations that have been awarded the contracts in response to these calls will identify and select volunteers for training after an assessment of the needs in third countries.

- "**Training and pre-deployment preparation**: The training programme will be organised by the Commission by means of implementing acts; volunteers' prior experience will be taken into account. Candidates will be able to undergo apprenticeship placements or other short term pre-deployment preparation.

- "**Register of EU Aid Volunteers**: Volunteers will be assessed on their suitability for deployment. If successful, they will be included in a Register of EU Aid Volunteers managed by the Commission. The Register will also include those who have already been deployed if they are willing to be considered for future deployment.

- "**Deployment of EU Aid Volunteers**: On the basis of its annual work programme, the Commission will publish calls for proposals for the deployment of EU Aid Volunteers by certified sending organisations. Standards for their deployment will be established by the Commission through delegated acts. Sending organisations will be able to select volunteers from the Register and deploy them to organisations receiving volunteers. The Commission may also deploy volunteers from the Register to the Commission's humanitarian aid field offices or in response operations. The specific terms of deployment will be set out in a contract between the sending organisation and the volunteer.

- "**Capacity building of organisations receiving volunteers**: The Commission can support capacity building actions of receiving organisations to ensure effective management of the volunteers and sustainable impact of their work, including the promotion of local volunteering.

- "**EU Aid Volunteers' network**: The Commission will establish and manage a network. It will facilitate interaction between the EU Aid Volunteers and will also carry out specific activities, including knowledge sharing and dissemination of information and will support seminars, workshops and alumni activities.

- "**Communication, awareness raising and visibility**: The Commission will promote the EU Aid Volunteers initiative and encourage volunteering. The Commission will develop a communication action plan, which will be implemented by all beneficiaries (sending/receiving organisations)."

6.28 At this point, she also says:

> "The UK will study the proposed powers to make delegated and implementing acts carefully to ensure that they are appropriately drafted and follow the correct procedural rules."

6.29 The Minister also notes that:

— financing for EU Aid Volunteers will be drawn from DG ECHO's budget within the 2014–2020 Multiannual Financial Framework (MFF), which is being negotiated separately;

— the Commission's Communication on a "*Budget for Europe 2020*" envisages budgetary commitments for EU Aid Volunteers of €239.1 million in current prices (£191.6 million) over the period 2014–2020;

— the proposal budget breakdown is as follows:

- Training: €58 million (£47 million);
- Deployment: €137 million (£110 million);
- Capacity building: €35 million (£28 million);
- EU Aid Volunteers network: €7.5 million (£6.0 million);
- Certification mechanism: €3.4 million (£2.7 million).

The Government's view

6.30 On the question of *Subsidiarity*, the Minister says:

> "The establishment of the European Voluntary Humanitarian Aid Corps is specifically provided for under Article 214(5) TFEU. However, the UK will wish to study carefully the proposed objectives and planned activities and consider where the EU will bring added value."

6.31 The Minister then continues her comments as follows:

> "The precise scope of activities of EU Aid Volunteers will depend on the separate budget negotiations, but the proposed activities are in line with humanitarian aid principles and the European Consensus on Humanitarian Aid. The initiative will

complement and support activities already carried out across the EU by individual Member States and humanitarian aid organisations in various forms.

"The UK has provided input through discussions at COHAFA, as well as the 25 May 2011 Council Conclusions.

"The UK is concerned that the current proposal, for a €239 million EU Aid Volunteers initiative, is not yet informed by the results of the pilots launched to guide the eventual shape of the fully-fledged initiative. The UK's starting point for negotiations will be to consider whether the volunteering programme would be the most cost-effective way of addressing the problems that have been identified, and to limit the number and scope of the initiative's activities to those where needs are clear and pilot programmes have been evaluated and given a positive assessment. The UK will press for lessons learned in the pilot projects to be taken into account in the elaboration of the initiative's recruitment, training and deployment activities.

"The UK would as a minimum want any EU Aid Volunteers initiative to:

— "respond to identified need and be complementary to existing initiatives in this field within the international system;

— "offer value for money;

— "have objectives grounded in humanitarian principles, including a focus on robust outcome measures such as lives saved;

— "provide for sufficient Duty of Care for those deployed; and

— "undergo thorough independent evaluation which informs any continuation of the initiative."

"The UK will take this approach in COHAFA negotiations and will engage with the European Parliament where necessary."

6.32 The Minister then notes that UK nationals and residents will be eligible to participate and UK humanitarian aid organisations will be eligible to apply for accreditation as a "sending organisation", which she says is extended to:

- non-governmental not-for-profit organisations formed in accordance with the law of a Member State and whose headquarters are located within the Union;
- the International Committee of the Red Cross (ICRC) and the International Federation of National Red Cross and Red Crescent Societies; and
- public law bodies governed by the law of a Member State.

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

"The UK's top priority for the Multiannual Financial Framework (MFF) 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 expenditure increase through the next MFF period is a real freeze in payments, year on year from actual payments in 2013. The UK considers that 'EU as a Global Player' (Heading 4 of the budget) is a priority area and, while the UK's overall objective is to restrain budget size, we consider that this area should have a proportionately larger share of a budget that, at most, increases by no more than inflation.

"The proposal is for a total commitment of €239.1 million at current values (£191.6 million) from the Humanitarian Aid Instrument, with the addition of €9.3 million for administration (£7.5 million), which is to be drawn from the Commission's administration budget. The approved amount will be taken from the overall allocation provided to DG ECHO from the EU Budget under the Multiannual Financial Framework for 2014-2020, the negotiations for which are being carried out in parallel. The Commission's proposal for the Humanitarian Aid Instrument is for an increase €5.9 billion (£4.7 billion) in 2007–2013 to €6.4 billion (£5.1 billion) in 2014–2020 (an 8.47% increase).

"Consistent with the Prime Minister's position, the UK will be judging spend according to payment appropriations rather than commitments. Commitments represent planned spend, while payments represent actual spend with an impact on national contributions. The likely payments that will flow from these commitments mean that individual instruments must also be restrained.

"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. What is clear is that the larger the size of the overall budget, the greater the UK's level of contributions."

6.34 Finally, looking ahead, the Minister says:

— UK policy objectives on this proposal are being finalised in consultation with other Government departments;

— COHAFA began negotiations on the proposal on 12 October 2012;

— negotiations will continue at the monthly meetings until agreement on an amended text has been reached, and are likely to continue into 2013;

— ultimately, the time taken for final agreement to be reached on this proposal will depend on the time required to reach agreement in and between the Council and the European Parliament, but the average length of time for agreement on a proposal of this nature under the Ordinary Legislative Procedure is one year.

Conclusion

6.35 **There is no doubt about the legal base for this initiative, or the need for some sort of arrangements to improve the present situation. But it is extraordinary that a €239 million initiative is not yet informed by the results of the pilots launched to guide its eventual shape; and thus impossible at this juncture to come to any conclusion other than that it appears to have been pushed through to meet an artificial 2012 deadline.**

6.36 **We also find it odd that, with the COHAFA negotiations already under way, UK policy objectives are still being finalised. We would therefore like the Minister to write to us when UK policy objectives have been finalised:**

— **setting out what they are, and explaining how she is planning to achieve her "minimum" and ensure that there are provisions for the initiative to be evaluated and time-limited (c.f. paragraph 6.31);**

— **providing information about the pilot projects in question, what the results were and what the implications are for the initiative; and**

— **providing information about what has transpired by then in the negotiations.**

6.37 **In the meantime we shall continue to retain the document under scrutiny.**

7 Managing the EU's archives

(34183) 13183/12 COM(12) 456	Draft Regulation amending Regulation No 354/83 as regards the deposit of the historical archives of the institutions at the European University Institute in Florence

Legal base	Article 352 TFEU; unanimity; consent
Document originated	22 August 2012
Deposited in Parliament	28 August 2012
Department	Justice
Basis of consideration	EM of 7 September 2012
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

The document

Overview

7.1 The Proposal is for a Regulation that will seek to regularise existing arrangements for the management of the physical historical archives of the European institutions by the European University Institute ("EUI"), Florence, in premises provided on a permanent basis by the Italian government.

7.2 Currently, the European institutions are obliged by Regulation (EEC, Euratom) No 354/83 ("the existing Regulation") to make arrangements for the preservation and provision of access to their archives once records are 30 years old. Although the existing Regulation does not require it, the Council, Commission, European Court of Auditors,

European Economic and Social Committee and European Investment Bank have, as a matter of practice, deposited their physical (paper) archives with the EUI under a series of contracts dating from 1983, 1984 and 2005.

7.3 The proposed Regulation would formalise these arrangements and would also require all the European institutions to deposit their physical archives at the EUI. The European Court of Justice and the European Central Bank have asked to be excluded from the requirement to deposit their archives at the EUI, but may voluntarily deposit their records there if they wish to, and this is reflected in the proposed text. The Proposal will not change the point at which the public can access historical records, which will remain at 30 years.

7.4 A different approach is intended for the European institutions' digital archives, with individual institutions taking responsibility for the permanent preservation of their own digital material. The existing Regulation does not mention digital archives and the proposal to amend the Regulation intends to help address this gap. The proposal therefore includes the provision that the EUI shall have permanent access to each institution's digital archives in such a way as to allow it to fulfil its obligation to make historical archives accessible to the public from a single location once they are 30 years old.

Legal and procedural issues

7.5 The legal basis for the proposal is Article 352 TFEU. The provisions for the historical archives of the European institutions are contained in the existing Regulation, as amended, and the proposed Regulation would amend this further. The EU has competence to adopt measures to support, coordinate or supplement the actions of Member States in the preservation of national culture or educational objectives by virtue of Article 6 TFEU, but the Treaties do not provide the EU with the necessary powers with regard to the historical archives of the institutions.

7.6 For proposals adopted on the basis of Article 352 TFEU, unanimity in the Council the consent of the European Parliament are required.

7.7 As the proposal is being brought forward under a legal base of Article 352 TFEU, under section 8 of the European Union Act 2011 a Minister may vote in favour of the proposal only if one of the subsections (3) to (5) is complied with, the presumption being that an Act of Parliament is required.

The Government's view

7.8 In an Explanatory Memorandum dated 17 September the Minister of State for Justice (Lord McNally) explains that the proposal revisits the current regulatory framework for the deposit by European institutions of their own historical archives to ensure that it reflects existing arrangements. The proposal will have no impact on UK or devolved archives, and relates only to the European institutions' own archives.

7.9 The Government supports clear arrangements for the management and permanent preservation of the EU historical archives, to help ensure transparency and accountability for the institutions and accepts the benefits of bringing long-term clarity to these arrangements. The EUI has been managing the archives of the major European institutions

for nearly 30 years, and this proposal to expand the number of institutions depositing their archives at the EUI moves towards a single central location for researchers to access EU historical material.

7.10 The Government also welcomes the acknowledgement of the need to address the permanent preservation of the European institutions' digital records. However it is unclear from the proposal how this will technically be achieved, and will be seeking clarity on this in negotiations.

Financial implications

7.11 The proposal formalises an arrangement under which another Member State, Italy, hosts the infrastructure of the historical archives of the European institutions at its own cost, while the remaining associated human resource and administrative costs are derived from existing central EU budgets. Existing administrative funding from central EU budgets is EUR 2.31 million (£1.84 million) per annum with no envisaged change to the budget between 2013 and 2019. However, financial implications for the longer term past 2019 are not specified in the proposal. As there are no new costs involved, there are no direct financial implications for the UK from this proposed Regulation.

Legal base

7.12 The Government is satisfied that Article 352 is the appropriate Treaty base for this proposal, there being no alternative. The Government will consider the application of section 8 of the EU Act 2011 in the course of reviewing the proposal.

Conclusion

7.13 **This seems a sensible, uncontroversial proposal. What lends it legal and political significance is the application of the European Union Act 2011 to it.**

7.14 **Section 8 of that Act prevents a Minister from voting in the Council in favour of a proposal based on Article 352 TFEU unless either:**

- **the draft proposal is approved by Act of Parliament; or**
- **is approved by a resolution of both Houses on an unamended motion where its adoption is a matter of urgency in the opinion of the Minister; or**
- **the Minister has laid a statement saying that in his opinion the draft proposal relates to one or more exempt purposes. Exempt purposes are:**

> **"(a) to make provision equivalent to that made by a measure previously adopted under Article 352 of TFEU, other than an excepted measure;**
>
> **(b) to prolong or renew a measure previously adopted under that Article, other than an excepted measure;**
>
> **(c) to extend a measure previously adopted under that Article to another Member State or other country;**

(d) to repeal existing measures adopted under that Article;

(e) to consolidate existing measures adopted under that Article without any change of substance.”

7.15 **The Committee does not consider that this proposal falls within an exempted purpose: the legal obligation on EU institutions to deposit archives at the EUI is new, rather than equivalent to or a consolidation of an existing provision; as are the provisions concerning the EUI as a data processor within the terms of Regulation 45/2001, and concerning the EUI having permanent access to each institutions’ digital archives. We therefore conclude that an Act of Parliament will be required before the Minister can agree to this proposal in the Council. We ask the Minister to confirm this.**

7.16 **We also ask the Minister the reasons for which the Court of Justice and European Central Bank have been excluded from the obligation to deposit their archives with the EUI.**

7.17 **Pending the Minister’s replies, the document remains under scrutiny.**

8 Transport: research and innovation

(34238) 13806/12 + ADD 1 COM(12) 501	Commission Communication: *research and innovation for Europe’s future mobility — developing a European transport-technology*

Legal base	—
Document originated	13 September 2012
Deposited in Parliament	20 September 2012
Department	Transport
Basis of consideration	EM of 28 September 2012
Previous Committee Report	None
Discussion in Council	Not known
Committee’s assessment	Politically important
Committee’s decision	Not cleared, further information requested

Background

8.1 The Commission’s 2011 Transport White Paper sets out its plan for breaking the transport system’s dependence on oil without sacrificing efficiency and mobility by 2050.[24]

24 (32639) 8333/11 + ADDs 1–3: see HC 428-xxvi (2010–12), chapter 3 (11 May 2011) and *Gen Co Debs*, European Committee A, 4 July 2011, cols 3–28.

8.2 Horizon 2020, presently under negotiation, is to be the EU's new funding programme for research and innovation — it highlights smart, green and integrated transport as one of the six major societal challenges where EU research and innovation can make a real difference.[25]

The document

8.3 In this Communication the Commission sets out its views on how transport research and innovation can contribute to the goals of the 2011 Transport White Paper and implementation of the Horizon 2020. In it the Commission summarises results from a review of research and innovation in the EU transport sector, reviews the shortcomings of the EU's transport innovation system and presents initial proposals on how to tackle them. These proposals set out the first stage of a European Strategic Transport-Technology Plan.

8.4 The Commission's ambition is to:

- support employment and economic growth by helping transport's manufacturing industries to shift from a position of competition on cost grounds to one based on the supply of high value-added and low carbon emission services; and
- see a fully integrated transport system that allows travellers and freight to switch seamlessly between modes.

8.5 It envisages a modern transport infrastructure system which would be climate-resilient, involve shorter downtime, lower maintenance costs and include smart (intelligent, ICT-enabled and automated) and green (lighter and recyclable materials) systems and support the use of alternative and low carbon fuels. To help deliver this the Commission proposes strategic actions in four areas, which would be implemented by a range of initiatives.

8.6 The first area of action concerns strengthening the relevance of research and innovation to transport policy. Supporting initiatives would aim to focus transport research and innovation, so that deployment of technology solutions helps to deliver key transport policies. The Commission proposes ten fields for research, where concrete and deployable results must be achieved in the next 20 years. These are broadly split into three research and innovation areas:

- clean, efficient, safe, quiet and smart transport means;
- infrastructure and smart systems; and
- transport services and operations for passengers and freight.

8.7 Building upon existing public and private sector technology roadmaps the Commission would produce new roadmaps for each field to show the funding mechanisms and the key actors involved. The resulting set of roadmaps would be at the heart of the European Strategic Transport-Technology Plan.

25 (33492) 17932/11, (33493) 17933/11, (33495) 17935/11, (33498) 18101/11, (33519) 18100/11: see HC 428-xlvii (2010–12), chapter 5 (18 January 2012), HC 428-li (2010–12) chapter 3 (22 February 2012) and HC 86-xi (2012–13), chapter 4 (5 September 2012).

8.8 The second area of action concerns aligning and coordinating research and innovation activities across sectors where this relates to transport. Supporting initiatives would explore options to improve the governance of the innovation cycle and improve partnering between Member States and public-private sectors. An option to provide regular and reliable information to policy-makers and private-sector stakeholders developing and deploying innovative solutions is also proposed. For this purpose a Transport Research and Innovation Monitoring and Information System would be established and, using funds from Horizon 2020, would help map technology trends and research and innovation capacities.

8.9 The third area of action concerns overcoming silo thinking that has built up within each sector. Supporting initiatives would aim to help break the transport sector's use of traditional technology solutions such as its dependence on oil. The Strategic Transport-Technology Plan would bring together ideas from different sectors such as energy, information and telecommunications services, territorial development and the environment, to encourage innovations and their exploitation. Increasing the competitiveness of SMEs by enabling easier access to finance and EU and international markets would also be considered. The case for further investments in training and education might also be assessed.

8.10 The fourth area of action concerns removing the barriers to new market entrants delivering innovative solutions to the transport sector. Supporting initiatives would be considered if the transport sector did not respond to the incentives. These might include regulatory measures, standards to ensure interoperability or continuity of services and reviewing intellectual property rights, procurement and other financial incentives. Greater access to funding would also be pursued. The Strategic Transport-Technology Plan would support the Commission's funding programmes adopted in the next Multiannual Financial Framework (2014 – 2020) and the European Investment Bank (EIB) would be invited to increase the use of preferential loans under its Risk Sharing Finance Facility[26] and to expand lending in the transport sector to give greater assistance to public and private stakeholders.[27]

8.11 The Commission will be asking the Council and the European Parliament to consider the content of this Communication and in particular to:

- confirm the objective of better aligning transport research and innovation with EU transport policy goals, taking into account the current economic and political reality and the long-term sustainability objectives;
- agree to focus efforts on delivering pioneering and sustainable transport solutions at a EU, national and local level through innovative technologies, new service approaches and entrepreneurship;
- consider how to find the appropriate balance between the various instruments necessary for market uptake and deployment; and

26 The Risk Sharing Finance Facility has been developed by the Commission and the EIB to finance higher risk research, technological development, demonstration and innovation investments (RDI projects).

27 The EIB adopted a revised transport lending policy on 13 December 2011 to reinforce its contribution to this sector, in particular to take account of climate change concerns.

- endorse the approach comprising preparation of a European Strategic Transport-Technology Plan and the options for further actions, as outlined in the Communication.

8.12 The Communication is accompanied by a Staff Working Document which provides preliminary descriptions of the research and innovation areas and fields identified in the Communication.

The Government's view

8.13 The Parliamentary Under-Secretary of State, Department for Transport (Norman Baker) says that:

- the Government is broadly supportive of the objectives in this Communication;
- it believes that strengthening the relevance of research and innovation to transport policy and removing the barriers new market entrants face could help stimulate economic growth and employment;
- this should help to create a transport system that is an engine for economic growth but also one that is greener, safer and improves the quality of life in UK communities;
- the Government supports the research and innovation areas and fields identified in the Communication, many of which align with its own vision — it also wants roads to become safer, less congested and less polluted;
- so the Government supports introduction of the latest technologies and encourages the use of electric and other ultra-low emission vehicles, across all modes, to make transport cleaner and greener; and
- it also wishes to use insights from behavioural science to improve road safety and encourage lower carbon forms of travel.

8.14 The Minister says that, while broadly supportive of the proposed initiatives, the Government also recognises that some of these may result in the Commission bringing forward proposals on new, or amendments to existing, regulation, standards, industrial targets etc and it would consider carefully any such proposals, in particular with regard to subsidiarity.

8.15 The Minister also comments that:

- aligning and coordinating research and innovation activities across transport modes is in line with the 2011 Transport White Paper objective calling for the integration of all transport modes into a single EU transport system;
- this approach has been adopted by the Government's newly announced Transport System Catapult;[28] and

28 See https://catapult.innovateuk.org/transport-systems.

- the Government has committed substantial funding to this initiative as it will bring together organisations to help break down barriers and develop innovative and integrated transport systems.

Conclusion

8.16 **We recognise the potential utility of the Commission's plans for supporting transport research and innovation. But we are concerned about two points. First we would like reassurance that the Commission's reference to the European Strategic Transport-Technology Plan supporting implementation of funding programmes in the next Multiannual Financial Framework does not imply levels of expenditure which the Government opposes in the context of negotiations on the framework. Secondly, we note there may be, as the Minister mentions, subsidiarity issues in the future.**

8.17 **We would expect any Council Conclusions, proposed to endorse the Commission's plans, to contain safeguards on these issues. So before considering this document further we should like to hear about what is proposed in relation to the Council Conclusions. Meanwhile the document remains under scrutiny.**

9 Aviation policy

(34271) 14333/12 COM(12) 556	Commission Communication: *The EU's external aviation policy — addressing future challenges*

Legal base	—
Document originated	27 September 2012
Deposited in Parliament	2 October 2012
Department	Transport
Basis of consideration	EM of 16 October 2012
Previous Committee Report	None
Discussion in Council	Possibly 20 December 2012
Committee's assessment	Politically important
Committee's decision	Not cleared, further information requested

Background

9.1 International aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements. However, in 2002 these were found by the European Court of Justice to be contrary to Article 43 EC (now Article 49 TFEU) where they deny market access to carriers owned and controlled by nationals of another Member State. This in practice marked the start of an EU external aviation policy and an important response from the Commission has been to develop an overall policy for

civil aviation relations with third countries. In advance of a fully developed policy the Commission was mandated to negotiate a comprehensive air services agreement with the US Government and so-called “horizontal agreements” with all third countries to bring Member States’ bilateral agreements with those countries into line with EU law. Horizontal agreements have been negotiated with a number of third countries, so as to alter such air services agreements with Member States as they may have in order to remove discriminatory provisions.

9.2 The last stage in development of an overall policy was the Commission’s 2005 Communication “*Developing the agenda for the Community’s external aviation policy*”. It proposed moving increasingly from bilateral agreements with third countries towards agreements between the EU and those countries — such agreements would be based on the twin objectives of opening up markets and ensuring fair competition. To this end it suggested taking forward an external aviation policy that would:

- continue to bring existing air services agreements into compliance with the European Court of Justice ruling;
- create by 2010 a common aviation area comprising the EU and southern and eastern neighbours; and
- secure comprehensive regional agreements, especially with the US, China and Russia.[29]

The document

9.3 In this Communication the Commission:

- takes stock of progress since its 2005 Communication;
- describes an aspiration to conclude EU-level agreements with more countries;
- proposes development of new and more effective EU instruments to help ensure fair competition; and
- flags-up a need to address the ownership and control restrictions still applied by many countries.

9.4 The Commission reports:

- on developments in establishing the European Common Aviation Area (on which it last reported in its 2008 Communication “*Common Aviation Area with the neighbouring countries by 2010 — progress report*”),[30] including agreements already signed with the Western Balkans, Morocco, Jordan, Georgia and Moldova, one with Israel initialled and negotiations under way or planned with Ukraine, Lebanon, Tunisia, Azerbaijan and Armenia;

29 (26436) 7214/05 + ADD 1: see HC 34-i (2005–06), chapter 15 (4 July 2004) and HC 34-xv (2005–06), chapter 13 (18 January 2006).

30 (30019) 13787/08: see HC 19-i (2008–09), chapter 14 (10 December 2008).

- comprehensive agreements negotiated with the United States, Canada and Brazil; and
- ongoing or hoped for negotiations with other key partners including Turkey, Australia, Russia, China and India.

9.5 Whilst it says that good progress has been made, the Commission recognises that the aviation sector in the EU currently faces low growth and that the fastest growing markets are now outside Europe. This motivates its desire to complete agreements with a wide range of third countries — it estimates that the total economic benefit to the EU would be in the region of €12 billion (£9.41 billion).

9.6 In the Communication the Commission says that:

- it believes that open markets are the best starting point for developing international aviation and that competition should be fair and open;
- it recognises that unfair competitive practices by some third countries injure EU carriers;
- to help address this, it intends to develop, in consultation with stakeholders, more effective EU instruments to protect EU interests against unfair practices;
- this could include replacement of Regulation (EC) No 868/2004 concerning protection for EU carriers against subsidisation and unfair practices by third countries[31] with an instrument that better reflects the realities of today's global aviation sector;
- one immediate way forward could be to develop, at EU level, standard "fair competition clauses" to be agreed and included in all bilateral air services agreements negotiated by Member States; and
- it recognises that restrictions on ownership and control of airlines, which are still being applied by many countries, effectively deny airlines access to new sources of capital and investment.

The Government's view

9.7 The Minister of State, Department for Transport (Mr Simon Burns), noting that the Communication does not include any legislative proposals and does not, therefore, raise any direct subsidiarity issues, says that it does, however, foreshadow future actions which could require careful consideration of the subsidiarity principle in due course, that is:

- new mandates (from Member States) for the Commission to negotiate EU-level air transport agreements with third countries; and
- development of new, more effective, EU instruments to help protect EU interests against unfair competitive practices.

31 (24550) 9340/03: see HC 63-xxviii (2002–03), chapter 10 (2 July 2003).

The Minister continues that, with this in mind, and as the Council formulates its conclusions regarding the Communication, the Government will:

- seek to determine whether external relations outcomes could best be secured at EU or national level; and
- work to ensure that any resulting legislative proposals brought forward by the Commission are appropriate, proportionate and reduce, or at the very least minimise, the regulatory, administrative and cost burden for industry.

9.8 Turning to the policy implications of the Communication the Minister says that:

- the Government agrees that liberal market access provisions, backed up by measures to secure fair competition (level playing fields), are the best way to develop international air services;
- the UK has, for many years, actively sought such provisions and measures in its various bilateral air services agreements;
- the UK's model bilateral air services agreements address fair competition and are sometimes seen as an exemplar by other Member States;
- the Government would expect to have a strong voice in the Commission's consultations on replacing Regulation (EC) No 868/2004 with a new instrument; and
- the Commission's suggestion for the development of standard 'fair competition' clauses for Member States to adopt in their bilateral air services treaties could raise questions on competence and the Government would need to look at closely at any such proposal.

9.9 Finally the Minister tells us that the Cypriot Presidency hopes to agree conclusions on the Communication at the Transport Council on 20 December.

Conclusion

9.10 **Whilst we recognise the utility of EU activity in relation to aviation agreements with third countries, we note the Government's possible reservations on subsidiarity and competence grounds. So we should like to have reassurance as to how the proposed Council Conclusions are developing in this regard, before we consider this document further. Meanwhile it remains under scrutiny.**

10 Rules for participating in Horizon 2020

(33494) 17934/11 COM(11) 810	Draft Regulation of the European Parliament and of the Council laying down the rules for the participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014–20)'

Legal base	Articles 173, 183 and 188 TFEU; co-decision; QMV
Department	Business, Innovation and Skills
Basis of consideration	Minister's letters of 11 September, 5 October and 22 October 2012
Previous Committee Report	HC 428-xlvii (2010–12), chapter 6 (18 January 2012)
Discussion in Council	10 October 2012
Committee's assessment	Politically important
Committee's decision	Cleared

Background and previous scrutiny

10.1 Horizon 2020 is the proposed new EU funding programme for research and innovation covering the period 2014–20. It comprises: an overarching Framework Programme establishing the budget and three priority areas for EU funding covering excellence in science, industrial leadership, and societal challenges; a Specific Programme setting out more detailed objectives and a range of activities eligible for EU support within each priority area; and a separate Framework Programme for research and innovation based on the Euratom Treaty.[32] Our Fifty-second Report of 18 January 2012 describes the background to, and content of, the Commission's Horizon 2020 proposals.

10.2 The draft Regulation forms part of the Horizon 2020 package. Articles 183 and 188 of the Treaty on the Functioning of the European Union (TFEU) require the European Parliament and the Council to establish rules "for the participation of undertakings, research centres and universities" in the EU's Framework Programme and for the dissemination of research results. Stakeholders in industry, academia and civil society, as well as Member States, have expressed concern that existing rules governing participation in EU research and innovation programmes are too complex and onerous. The Commission has therefore proposed a single set of rules covering all aspects of Horizon 2020 which are intended to create a more flexible regulatory framework and make it easier for a broad range of interested stakeholders to participate in Horizon 2020 projects and programmes.

10.3 The Commission highlighted the following new elements in the proposed rules:

32 See (33492), (33493), (33495), (33519) and (33498): HC 428-xlvii (2010–12), chapter 5 (18 January 2012).

- the comprehensive scope of application of the rules, with derogations included to take account of different types of activity (for example, security-related research);[33]
- clearer and simpler rules on the provision of EU funds in the form of grants;
- broader acceptance of the usual accounting practices applied by grant beneficiaries, subject to compliance with certain minimum conditions;
- greater flexibility in rules applying to other forms of funding, such as prizes, pre-commercial procurement, or the use of innovative financial instruments; and
- increased emphasis on improving open access to the fruits of EU-funded research.

10.4 The Minister for Science and Universities (Mr David Willetts) told us that the Government broadly supported the draft Regulation, highlighting in particular the Commission's intention to make Horizon 2020 funds more accessible for SMEs and its commitment to simplifying participation rules, whilst at the same time ensuring sound financial management through more risk-based and less onerous audit procedures. He thought that clearer and simpler rules would help to maintain, or even improve, the level of UK participation in Horizon 2020 programmes and increase EU funding for UK researchers. However, the Minister expressed concern that the provisions on cost reimbursement did not appear to allow for cost recovery on the basis of actual costs incurred or for reimbursement for project coordination, and said that the Government would undertake further analysis of the likely impact of the proposed funding rates for cost recovery on potential beneficiaries in the UK.

10.5 We noted that one of the principal objectives of the proposed new rules was to broaden participation in Horizon 2020 programmes, and that any potential obstacle to increasing the level of UK participation would be a cause for concern. We thought that the Government was right to undertake a further analysis of the potential impact on UK beneficiaries. Meanwhile, we held the draft Regulation under scrutiny and asked the Minister to inform us of the outcome of his analysis.

The Minister's letter of 11 September 2012

10.6 The Minister (Mr David Willetts) informed us that the Presidency intended to seek a partial general approach on the draft Regulation at the Competitiveness Council on 10 October and requested a scrutiny waiver to enable the Government to express its support if the text met the UK's overall objectives for the Horizon 2020 package. He explained that negotiations on the rules for participation in Horizon 2020 programmes would continue throughout September and would focus principally on reimbursement rates and researcher salaries, issues on which Member States continued to hold differing views. He emphasised that any agreement to a partial general approach would not affect the budget for Horizon 2020 which was subject to the outcome of separate negotiations on the EU's Multiannual Financial Framework for 2014-20.

33 See Article 47 of the draft Regulation.

10.7 We thanked the Minister for providing us with a progress report in advance of the October Competitiveness Council but noted that we had yet to receive information on the outcome of the Government's analysis of the impact of the provisions on cost reimbursement for UK participation in Horizon 2020. We therefore considered that it would be inappropriate to grant a scrutiny waiver.

The Minister's letter of 5 October 2012

10.8 In a further update, the Minister (Mr David Willetts) told us that there was "real doubt" that agreement could be reached at the Competiveness Council, but reiterated his desire to be in a position to endorse an agreement if he determined that it was in the UK's best interests and indicated that he might, in those circumstances, override Parliamentary scrutiny.

10.9 The Minister apologised for the delay in providing details of the Government's analysis, adding that the issues were complex and the views of stakeholders had evolved as variations to the proposed funding model emerged during negotiations. He noted that one of the Commission's simplification proposals was to reduce the multi-option funding model available under the EU's existing R&D Framework Programme ("FP7"). In its place, there would be a single funding rate per action (with the same rate applying to all organisations participating in Horizon 2020) and a single flat rate for the reimbursement of indirect costs (for example, utility costs and other overheads). He continued:

> "The funding rate was to be a maximum of 100% of total eligible costs plus a flat rate of 20% of total direct eligible costs to cover indirect costs. By derogation, the rate was to be a maximum of 70% plus 20% (of 70%) for 'near to market actions'. Not in the proposals but also relevant was the Commission's intention to make VAT a reimbursable cost for organisations unable to claim this back under national legislation, which would benefit UK organisations. This was dependent on revisions to the EU Financial Regulation which, including the VAT provision, are due to be adopted by the end of October.
>
> "The absence of an actual cost option for indirect costs, as available in FP7, was unexpected and we were at the time unclear what impact this would have on cost recovery for UK participants and on their willingness to participate in Horizon 2020. The omission of such an option was a step back from previous Commission policy initiatives to encourage institutions across Europe to adopt full cost accounting to support sustainable financing, which the UK has long strongly supported.
>
> "To assess the likely impact of the funding changes we have taken views from the stakeholder group set up to advise BIS on the negotiation of the 'Rules for Participation proposal', which includes representation from the private sector (including an SME), non-profit research and technology organisations, academia, the Research Councils and the TSB. We have noted the formal position statements released by representative bodies such as the Russell Group, Research Councils UK, Universities UK, BUSINESSEUROPE (representing employers) and EARTO (European Association of Research and Technology Organisations). We have also invited SME input via some of the FP7 national contact points and have contacted

a number of individual universities and Research and Technology Organisations (RTOs) for more detailed information.

"The general picture to emerge is that large private sector players welcome the simplification gains from the single funding rate/flat rate and have expressed no strong concerns regarding cost recovery. SME feedback has been sparse but from the few comments received and taking account of the BUSINESSEUROPE paper it would appear that only a very few with high overheads would lose out significantly from the absence of an actual indirect cost option. The sense is that for the majority an indirect cost flat rate of between 20%-30% would be sufficient.

"University views are reasonably consistent. There is a policy push for indirect costs to be reimbursed on the basis of actual costs from the representative organisations but individual universities mostly prefer the flat rate approach with its simplification benefits, though most want a higher rate of around 25%. There is however greater concern over the lower funding rate for 'near to market actions' where universities would not even be recovering their direct costs.

"The absence of an actual indirect cost option would impact most on the non-profit RTOs. These organisations typically have high overheads and many would face a reduction in cost recovery of up to 30%. Feedback suggests that for some the flat rate would have to rise to at least 30% for regular participation to begin to be sustainable. The impact on cost recovery would be worse in 'near to market actions.'

"Most of these findings are consistent with the Commission's own modelling. Based on 100/20 funding, this indicates average increases of 47% for industrial participants, around 8% for SMEs and a drop of about 1% for universities. The most difficult figure to reconcile with our findings is that RTOs would see a drop of only 0.5%.

"The Government has to date called for the reintroduction of an option for all participants to reclaim on the basis of full economic costs, and to allow non-profit participants in close-to-market actions to reclaim their costs at up to 100%. There is broad support amongst Member States for the latter proposal, but positions on Full Economic Costs are more divergent. Some Member States, along with the Commission, argue that reintroducing this option will undermine the simplification agenda by complicating the repayment process. The Presidency has proposed increasing the flat rate for indirect costs to 23% in an effort to address the pressures some participants will face. My priority will be to ensure that any proposal fairly reimburses participants for their activities within a project."

10.10 The Minister told us that he would write again after the Competiveness Council explaining how the single funding rate and flat rate for indirect cost reimbursement had been resolved.

The Minister's letter of 22 October 2012

10.11 The Minister (Mr David Willetts) confirms that the Government supported a partial general approach on the draft Regulation at the Competitiveness Council on 10 October and, as a result overrode scrutiny, adding that,

> "it was not a decision I took lightly"

and that he considered it to be,

> "in the UK's best interests [...] in order to secure favourable changes to the funding provisions."

10.12 The Minister describes the basis on which agreement was reached.

> "The agreement reached on reimbursement was to increase the flat rate for indirect costs to 25% for all participants (up from 20% in the Commission's proposal and 23% in the latest Presidency text). The higher funding rate of 100% of total eligible costs plus the 25% flat rate would also be made available to non-profit organisations (e.g. universities, Research Council institutes and Catapult Centres) in 'close to market actions', where other participants would be funded at 70% plus 25%. In addition, the Commission has committed to producing guidance on what high value infrastructure costs can be included within direct costs. There will be no full economic cost option for indirect costs.
>
> "A full economic cost option was something the UK had been asking for, especially in view of organisations with high indirect costs such as many of the research and technology organisations, but after very difficult negotiations I judged overall that this was a reasonable compromise.
>
> "The higher flat rate will go some way to addressing the shortfall in cost recovery for the high indirect cost organisations. These organisations should also benefit from clearer guidance on what infrastructure costs can be included in direct costs which should lead to more costs previously claimed as indirect costs now attracting 100% reimbursement.
>
> "Having secured flat rate improvements, a resolution was then sought on flat rate and full economic cost. I and other Member States felt able to drop the request for the latter option. This allowed the Presidency to conclude that a working agreement had been reached.
>
> "Notably the Commission also included a new Article 24a, which subjects the funding levels laid down in articles 22a, 23 and 24 to an evaluation as part of Horizon 2020's interim evaluation to assess after three years whether they have had any negative impact on the attractiveness of Horizon 2020. The UK felt this was an important addition to allow ongoing improvement to the programme.
>
> "The other major area of debate before the Council concerned the rate at which the researcher salary element of EU funded projects would be reimbursed. A group of Member States drawn from the newer EU members were seeking a system which would have reimbursed salaries not on the basis of actual national pay rates (as has

> been the case in all EU Framework Programmes to date) but rather using a complex formula based on notional average EU rates similar to that currently used for the Marie Curie mobility schemes in FP7. This would have resulted in very much higher rates across the EU (not just in the newer Member States), which in turn would have meant that far less research could be funded from a given Horizon 2020 budget. This approach would not have been easy for the UK to accept and we were able to ensure its rejection at the Competitiveness Council.
>
> "The substance which was finally agreed is based on existing provisions in FP7. It will allow bonus payments as an allowable expense under certain clearly defined conditions (they are allowed only if they are part of the usual remuneration practices of the participant and paid in a consistent manner whenever the same kind of work or expertise is required and if the criteria used to calculate them are objective and of general application by the participant, independently from the source of funding used) and subject to an overall maximum cap of €8,000 per researcher per year. We were able to resist demands for a much higher cap, or no cap at all, which would have risked greatly increased salary costs and a reduction in the number of projects funded. I believe the text meets our objectives of ensuring that Horizon 2020 remains based on excellence, that it retains the benefits of simplification and that it represents value for money."

10.13 The Minister concludes by explaining what a partial general approach means in this context:

> "[...] that is to say a freeze to negotiations where the Presidency considers textual changes to the negotiation are mature enough to warrant this"

and adds that agreement is,

> "explicitly on the basis that 'nothing is agreed until everything is agreed', including cross-cutting issues with other regulations, such as the overarching Multiannual Financial Framework. This means we have the opportunity to reopen discussion should the need arise."

Conclusion

10.14 **We note that the Commission's proposals to simplify the funding model for participation in Horizon 2020 programmes have received a mixed reception from potential UK beneficiaries, although most appear to accept that the benefits of simplification outweigh any cost disadvantage. We are grateful for the Minister's comprehensive description of the main issues in the latter stages of the negotiations and his summary of stakeholder feedback on their likely impact. We regret that it was not possible for the Minister to provide the information in sufficient time for us to consider granting a scrutiny waiver in advance of the October Competitiveness Council, although we recognise that the issues are complex and that negotiations have gone to the wire. Nevertheless, we think that the agreement reached represents a reasonable and balanced outcome.**

10.15 **We note that the 'partial general approach' agreed by the Council could, in theory, be re-opened at any stage until the wider package of Horizon 2020 proposals, of which the draft Regulation forms part, has been agreed. As, however, the draft Regulation does not include any budgetary elements and is therefore unlikely to be affected by the outcome of negotiations on the Multiannual Financial Framework for 2014 -20 and the level of funding agreed for the Horizon 2020 Framework Programme, we are content to clear it from scrutiny.**

11 Regulation of nanomaterials

(34329) 14869/12 COM(12) 572	Commission Communication: *Second regulatory review of nanomaterials*

Legal base	—
Document originated	3 October 2012
Deposited in Parliament	16 October 2012
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 24 October 2012
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

11.1 Nanotechnology involves the manufacture and use of extremely small materials, and products based upon it are now being used in an increasing number of new applications. However, although the future potential of these products is huge, it is generally accepted that, as they may pose new risks, they should comply with the highest levels of public health, safety, consumer and environmental protection provided by EU legislation. The Commission produced a Communication in 2008, which examined some 60 pieces of legislation, and which concluded that, although in principle these measures cover the potential health, safety and environmental risks arising from nanomaterials, there are a few gaps, and that the implementation of existing legislation could be improved. It therefore proposed that the standards and technical guidance relating to nanomaterials should be reviewed; that any knowledge gaps should be addressed through further research; and that it should continue to monitor the market and intervene where risks are identified for products already in use. It would then provide a further report in 3 years' time.

11.2 The Commission has accordingly produced the current document, which is its Second Regulatory Review of Nanomaterials, and, as such, also responds to a call made by the

European Parliament in 2009 for a review of relevant legislation to ensure that health, environmental and safety aspects are adequately addressed.

The current document

11.3 The Communication notes that a Commission Recommendation (2011/696/EU) produced a definition of nanomaterials[34] which is intended to be used by Member States, EU agencies and companies, and which it says it will use in EU legislation and implementation instruments where appropriate. It also points out, by way of background, that the total annual quantity of nanomaterials on the global market is around 11 million tonnes, having a market value of some €20 billion, with carbon black and amorphous silica accounting for the largest volume and being used in a wide variety of applications. The Commission adds that the group of materials currently attracting the most attention are nano-titanium dioxide, nano-zinc oxide, fullerenes, carbon nanotubes and nanosilver, and that, although smaller quantities are involved than is the case with traditional nanomaterials, usage in some cases is increasing fast, with many materials now being used in applications, such as catalysts, electronics, solar panels, batteries and biomedical products. The Commission adds that the value of products underpinned by nanotechnology is expected to increase from €200 billion in 2009 to €2 trillion by 2015, and that these applications — many of which involve newly founded small and medium sized enterprises (SMEs) — will be essential to the competitiveness of a wide range of EU products on global markets.

Safety aspects

11.4 The Commission points out that, although natural nanoparticles are ubiquitous in the environment (and their presence and behaviour hence well known and understood), limited data exists about manufactured nanoparticles, and that monitoring their presence, and distinguishing them from natural materials, presents major technical challenges. It also says that, where monitoring methods do exist, they often remain to be validated. It goes on to observe that, since 2004, the European Food Safety Authority (EFSA) and the European Medicines Agency (EMA), together with relevant scientific committees, have been working on a risk assessment of nanomaterials, and have concluded that, whilst the methodologies used for conventional materials are generally applicable, specific aspects related to nanomaterials still require further development, and that this will remain so until there is sufficient information available to characterise their harmful effects on humans and the environment. It adds that, whilst this work has also shown that hazards, including potential toxic effects, have been demonstrated for some manufactured nanomaterials, this is not true of all, and that there is no correlation between size and toxicity, meaning that there is still a need for case-by-case risk assessments of the kind currently in place for both food and medicinal products.

34 "..a natural, incidental or manufactured material containing particles, in an unbound state or as an aggregate or as an agglomerate and where, for 50% or more of the particles in the number size distribution, one or more external dimensions is in the size range 1nm–100nm. In specific cases and where warranted by concerns for the environment, health, safety or competitiveness the number size distribution threshold of 50% may be replaced by a threshold of between 1 and 50%...".

REACH and classification, labelling and packaging

11.5 The Commission notes that the production or importation of nanomaterials in annual quantities of more than one tonne is liable to registration by the European Chemical Agency (ECHA) under the Chemicals Regulation (REACH),[35] and may be subject to authorisation or restrictions depending upon their characteristics, whilst Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and materials applies to those nanomaterials classified as hazardous, independent of their tonnage. It adds that the European Parliament has called upon it to evaluate whether REACH should be reviewed as regards the simplified registration for manufactured or imported nanomaterials below one tonne, the consideration of all nanomaterials as new substances, and the need for a chemical safety report for all registered nanomaterials. It says that:

- in the forthcoming REACH review, it will assess possible amendments to the Regulation's annexes to clarify how nanomaterials are addressed in registrations and safety demonstrated;
- when more experience from the evaluation of registrations is available, the ECHA will provide guidance on treating nanomaterials as forms of a bulk substance or as distinct substances, though it suggests that some flexibility will be needed, the key issue being whether registration provides clear information on the safe use for all forms of the substance;
- the ECHA has set up a group to identify best practices for the safety assessment and reporting of nanomaterials in REACH registrations.

Health, safety and environmental protection legislation

11.6 The Commission notes that the European Parliament called upon it to evaluate the need to review a number of legislative areas, including air, water, industrial emissions and worker protection, and it says that:

- work is in hand on the risk assessments and management of nanomaterials in the workplace;
- work is also under way to adapt consumer product legislation in order to introduce specific provisions on nanomaterials, to update the relevant risk assessment processes, to strengthen market surveillance, and to improve information and labelling requirements;
- an evaluation of environmental legislation identified and assessed environmental exposure pathways for nanomaterials, the level of control afforded to their possible release, and the associated risks, but it adds that, although this legislation addresses nanomaterials in principle, there might be challenges which had not been tested in practice.

35 Regulation (EC) No 1907/2006.

Accessibility of information

11.7 The Commission stresses the need for information on nanomaterials and products containing them to be transparent, but says that current experience suggests that, if risks are identified, they could be handled through existing means, such as the General Product Safety Directive (2001/95/EC), or more specific instruments under EU product legislation. It says that it will as a first step create a web platform with references to all relevant information sources.

The Government's view

11.8 In his Explanatory Memorandum of 24 October 2012, the Parliamentary Under Secretary at the Department for Environment, Food and Rural Affairs (Lord de Mauley) says that the Government is concerned at the growing pressure from some Member States towards hazard-based regulatory responses, which do not first seek to understand exposure and consequent risk, and which could impose new costs and burdens for government and industry. He says the UK is therefore supportive of the positions taken in this Communication, which reflect a balanced understanding of the need to safeguard potential health, environmental and safety concerns, whilst ensuring that the economic and societal benefits offered by nanotechnologies are not stifled by overly precautionary regulatory responses.

11.9 The Minister suggests that REACH is the most appropriate legislative framework for the regulation of nanomaterials, in tandem with more specific legislation where this exists (for example on cosmetics and biocidal products), and he agrees with the Commission's view that some changes may be necessary to the current framework to manage the marketing and use of nanomaterials and products more effectively. In particular, he points out that the one-tonne threshold in REACH will exclude some nanomaterials, since many are produced in lower quantities, and that existing test guidelines may also need to be adapted to cover risks specific to nanoparticles: and he believes that these and other issues arising on the implementation of REACH will be addressed by the Commission's review, which is expected in late 2012.

11.10 The Minister also says that better research and better regulation should move forward hand in hand, with the UK funding and remaining closely involved with a great deal of ongoing research into the nature and potential risks of nanomaterials. He adds that the state of knowledge has advanced considerably in recent years, due largely to collaborative research efforts, including those taken forward through the EU's Framework Programme and the OECD's Nanosafety programme.

11.11 The Minister also comments on the European Parliament's call for an inventory of nanomaterials on the market to address the fact that such information is not otherwise yet available. He says that, whilst the UK recognises that national reporting schemes could be an attractive solution, voluntary reporting of nanomaterials has already been trialled in the UK without much success, leading to the conclusion that an interim and proportionate EU-wide reporting measure is the preferred way forward, with data requirements being justified by scientific evidence of actual risk, and not disrupting the functioning of the internal market. He notes that, whilst the Communication commits the Commission to hosting a web platform linking relevant information sources, it also contains an

undertaking to examine further options ‘to increase transparency and ensure regulatory oversight’, which will include consideration of a harmonised EU-wide nanomaterials reporting system.

Conclusion

11.12 **This Communication provides a useful overview of the way in which EU legislation on health, safety and environmental protection applies to nanomaterials, and, as the latter represent a significant (and fast growing) area, we think it right to draw it to the attention of the House. Having said that, it is evident that much of the follow-up action proposed in relation to the classification, registration and evaluation of nanomaterials will take place in the context of the current review of the Chemicals Regulation (REACH), and that any detailed proposals can best be considered in that context. We are therefore content to clear the document.**

12 The EU and the Arctic Region

(34075) 12013/12 + ADDs 1–2 JOIN(12) 19	Joint Communication: *Developing a European Union Policy towards the Arctic Region: Progress since 2008 and next steps*

Legal base	—
Document originated	26 June 2012
Deposited in Parliament	9 July 2012
Department	Foreign and Commonwealth Office
Basis of consideration	Minister’s letter of 19 October 2012
Previous Committee Reports	HC 86-xi (2012–13), chapter 7 (5 September 2012); also see (30227) —: HC 5-xviii (2009–10), chapter 6, (7 April 2010); HC 5-viii (2009–10) chapter 9 (20 January 2010); HC 19-viii (2008–09), chapter 1 (25 February 2009)
Discussion in Council	December 2012 Foreign Affairs Council
Committee’s assessment	Politically Important
Committee’s decision	Cleared

Background

12.1 The Ottawa Declaration of 1996 formally established the Arctic Council as

> “a high level intergovernmental forum to provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic Indigenous communities and other Arctic inhabitants on

> common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic."

12.2 Member States are the eight Arctic countries: Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden, and the United States of America. A category of Permanent Participation also provides for active participation of, and full consultation with, the Arctic Indigenous representatives within the Arctic Council.[36]

The 2008 Commission Communication

12.3 The Commission described the European Union as

> "inextricably linked to the Arctic region (hereafter referred to as the Arctic) by a unique combination of history, geography, economy and scientific achievements."[37]

12.4 It noted that: three Member States — Denmark (Greenland), Finland and Sweden — had territories in the Arctic; two other Arctic states — Iceland and Norway — were members of the European Economic Area;[38] Canada, Russia and the United States were strategic partners of the EU; and the European Arctic areas are a priority in the Northern Dimension policy.[39]

12.5 The Communication sought to provide a general framework for future action and to be the first step towards a more detailed Arctic Policy. It set three main policy objectives:

- "Protecting and preserving the Arctic in unison with its population";
- "Promoting sustainable use of resources"; and
- "Contributing to enhanced Arctic multilateral governance".

Protecting and Preserving the Arctic

12.6 Given the importance of the Arctic region in fighting climate change, the Commission proposed further action on strengthening international efforts to mitigate climate change and suggested multilateral agreements to "prevent and mitigate the negative impact of climate change as well as to support adaptation to inevitable changes". This included working with NGOs and indigenous people on a permanent basis to develop research and monitoring programmes on the effects of climate change on the region.

36 For full information on the Arctic Council, see http://www.arctic-council.org/index.php/en/about-us.

37 The notion "Arctic region" used in this Communication covered the area around the North Pole north of the Arctic Circle. It includes the Arctic Ocean and territories of the eight Arctic states: Canada, Denmark (including Greenland), Finland, Iceland, Norway, Russia, Sweden and the United States.

38 The Commission noted that provisions of the EEA Agreement ensure full participation of the EEA EFTA countries in the Internal Market and in these respects allow for cooperation in fields such as environment, research, tourism and civil protection, "all of great importance for the Arctic.".

39 The Northern Dimension policy, drawn up in 1999, is a common policy shared by four equal partners: the European Union, Norway, Iceland and the Russian Federation. The policy covers a broad geographic area, from the European Arctic and Sub-Arctic to the southern shores of the Baltic Sea, countries in the vicinity and from north-west Russia in the east, to Iceland and Greenland in the west. The policy's main objectives are to provide a common framework for the promotion of dialogue and concrete cooperation, to strengthen stability and well-being, intensify economic cooperation, and promote economic integration, competitiveness and sustainable development in Northern Europe.

Promoting Sustainable Use of Resources

12.7 The Commission said that the Arctic's "large untapped hydrocarbon resources" would contribute to enhancing the EU's security of supply concerning energy and raw materials. However, exploitation would be slow and entail high costs and multiple environmental risks. As climate change altered the geography of the Arctic region, the Commission postulated that areas such as fishing, transport (particularly transit via the "Northwest Passage") and tourism would all become future areas of economic activity in the Arctic. It outlined the nature of present EU and Member State activities, put forward policy objectives and outlined a number of proposals for action.

Enhanced Multilateral Governance

12.8 The Communication highlighted that the Arctic was a "stateless" territory; no country had sovereignty over the area and no specific treaty regime covers activity on the region. There was nonetheless an extensive international framework, including the UN Convention on the Law of the Sea (UNCLOS) and the Nordic Council. It noted that the European Parliament had

> "recently highlighted the importance of Arctic governance and called for a standalone EU Arctic policy urging the Commission to take a proactive role in the Arctic."[40]

12.9 The Commission saw "the parliamentary dimension of Arctic cooperation" as "crucial to raise awareness and to strengthen policy input", and declared that the European Parliament had "been playing a valuable role in this respect." Its main conclusion was that, notwithstanding the range of existing mechanisms,

> "the main problems relating to Arctic governance include the fragmentation of the legal framework, the lack of effective instruments, the absence of an overall policy-setting process and gaps in participation, implementation and geographic scope."

12.10 The EU should "work to uphold the further development of a cooperative Arctic governance system based on the UNCLOS". Proposals for action included to "enhance input to the Arctic Council in accordance with the Community's role and potential", with the Commission applying for permanent observer status in the Arctic Council "as a first step".

12.11 Summing up, the Commission said that it was aiming to provide the basis for "a more detailed reflection", which would "be useful for implementing the EU's strategic initiatives, including the Integrated Maritime Policy." The Communication should also lead to "a structured and coordinated approach to Arctic matters, as "the first layer" of an Arctic policy for the European Union that would "open new cooperation perspectives with the Arctic states, helping all of us to increase stability and to establish the right balance between the priority goal of preserving the Arctic environment and the need for sustainable use of resources."

40 Resolution of 9 October 2008 on Arctic governance.

Our predecessors' assessment

12.12 Though a further Communication was promised with more detailed proposals, the previous Committee felt that sufficiently major policy issues were already raised in this Communication for a debate in the European Committee to be warranted.

12.13 In so doing, they also raised an initial query about the Community's competence to make recommendations in all of the areas covered by the Communication.[41]

12.14 That debate took place on 21 April 2009; at its conclusion, the Committee endorsed the following motion:

> "That the Committee takes note of European Union Document No. COM (08) 763, Commission Communication on the EU and the Arctic Region; welcomes the Commission's Communication as the first step towards an EU Arctic policy; and encourages the Government's active engagement in further discussions to ensure that UK interests are reflected in the EU policy".[42]

The Joint Communication

12.15 In his Explanatory Memorandum of 23 July 2012, the Minister of Europe (Mr David Lidington) stated that the idea of a strategy was replaced by a further set of Council Conclusions in December 2009, which formed the basis for EU work and policy in the Arctic over the subsequent 18 months.[43]

12.16 The Joint Communication is split into two distinct parts:

— the first is forward looking and proposes a set of building blocks for the EU's constructive engagement in the Arctic to tackle the challenge of sustainable development and to promote effective stewardship of the Arctic ecosystem;

— the second highlights the increasing range of activities the EU is already undertaking in the region and specifically fulfils the commitment in the December 2009 Council Conclusions for the Commission to review the issues outlined in its 2008 Communication.

12.17 The Minister noted that the first part suggested that the time was now ripe to refine the EU's policy stance towards the Arctic, take a broader approach, and link it with the Europe 2020 Agenda for smart, sustainable and inclusive growth while continuing to support every effort to ensure the effective stewardship of the fragile Arctic environment. Importantly, the Minister said, the Communication also recognised that the EU's contribution should be supportive of the efforts of Arctic States and take account of the needs of indigenous and local communities.

41 See headnote: (30227) —: HC 19-viii (2008–09), chapter 1 (25 February 2009).

42 See *Gen Co Debs*, European Committee B, 21 April 2009, cols 3–18 and http://www.publications.parliament.uk/pa/cm200809/cmgeneral/euro/090421/90421s01.htm#end for the record of the debate.

43 We set out both the 8–9 December 2008 GAERC Conclusions on the earlier Communication and the December 2009 Council Conclusions at Annex 1 and 2 of this chapter.

12.18 The Minister's summation of the path forward and comments on the increasing range of EU activities in the region is set out in our previous Report.

Subsidiarity

12.19 The Minister said that he did not believe that any issues of subsidiarity arose from the Communication, discussing the issue as follows:

> "The Communication deals with matters of both exclusive and shared competence. The areas of exclusive competence covered in the Communication are:
>
> - Relevant trade issues (for example the ban on the import of seal products, which has proved very controversial with some of the Arctic States, such as Canada); and
> - External fisheries.
>
> "The areas covered by the Communication where the EU and Member States have shared competence are:
>
> - Environment (most importantly issues relating to sustainable development, pollutants and climate change);
> - Transport (in the form of shipping and maritime safety);
> - Energy (promoting the sustainable use of resources, and hydrocarbons in particular); and
> - Research.
>
> "In the area of research, the EU's competence to carry out activities does not result in Member States being prevented from exercising theirs.
>
> "No competences fall within the remit of the EU's Common Foreign and Security Policy.
>
> "This Joint Communication is not a legislative proposal and nor does it propose any future legislation. Moreover, the actions contained with the Communication to undertake further scientific research; share information; fund sustainable development through its regional programmes; and continue engagement with Arctic states, regional fora, and the local northern communities does not impinge [upon] the ability of Member States to conduct equivalent activities in the Arctic. However, the Government will work to ensure that no future moves made by the Commission or the External Action Service will reduce individual Member States' ability to act or engage in these areas.
>
> "We therefore do not believe there are any issues of subsidiarity that arise from the Communication.
>
> "The Communication also mentions the application by the European Commission to the Arctic Council for permanent Observer Status on behalf of the EU. The UK

values its permanent Observer Status at the Arctic Council and is seen as a constructive, able and welcome partner by all of the Members of the Arctic Council. The UK sees no benefit in weakening the direct engagement of the EU Member States given the excellent and constructive relationships the UK and other countries currently enjoy with Member countries of the Arctic Council. We would therefore challenge any attempt to do so on the grounds of subsidiarity."

12.20 The Minister's detailed observations on the Joint Communication are also set out in our previous Report. Overall, he welcomed it as "a sensible approach that is broadly in line with the Government's policy towards the Arctic" and one that "keeps environmental protection at the heart of EU policies affecting the Arctic and recognises and respects the primary role played by the Arctic States in the region." He also enumerated key British interests in the region as:

— the protection of the Arctic environment and ecosystem;

— supporting and encouraging the continued co-operation among the Arctic States, for example through the Arctic Council;

— researching the effects of climate change on the Arctic and the Arctic as a barometer for climate change;

— the potential of the Arctic to strengthen energy security and the sustainable use and safe extraction of resources;

— the opening up of the Arctic to increase shipping and the issues related to that, including the development of a new Polar Shipping Code in the International Maritime Organisation; and the study of the region by UK scientists.

12.21 In terms of what the EU has to offer, the Minister believed that:

— the EU has substantial expertise to offer in developing understanding of the impacts of climate and environmental change in the region;

— as a strong proponent of greater international efforts to tackle climate change, the EU would continue be a key player in helping to address the causes of climate change in the Arctic, in line with the UK's own climate change goals;

— the EU was also well placed to provide support for indigenous peoples of the Arctic through programmes such as the European Regional Development Fund, the Northern Periphery Programme and the Baltic Sea Region Programme;

— such transnational initiatives were often easier and more effective conducted at a European rather than Member State level and can allow indigenous people to manage and adapt to the changes that are being seen in the Arctic. "

12.22 But he also noted that the "main sensitivity for the UK arising from increasing EU engagement in the Arctic is the extent to which it could undermine or restrict direct UK engagement in the region", and said that "while no new specific policies in any of the areas of exclusive and shared competence are proposed, the Government will remain very alert for any hint of competence creep and is determined to ensure that no future moves made

by the Commission or the External Action Service will impinge on or reduce individual Member States' ability to act in these areas."

12.23 He went on to say:

> "A further, linked issue mentioned in the Communication is the application by the European Commission on behalf of the EU for permanent Observer Status on the Arctic Council. The Arctic Council is the pre-eminent forum for discussing Arctic issues, in particular around environment and sustainable development. The EU currently attends Arctic Council meetings as an ad hoc Observer.
>
> "The UK already has permanent Observer Status along with fellow EU Member States France, Germany, The Netherlands, Poland and Spain. Sweden, Finland and Denmark (for Greenland and Faroe Islands) are full Members of the Arctic Council as they have territory within the Arctic. Iceland, currently a candidate country for EU Membership, is also a full Member of the Council, along with Norway, Canada, Russia and the United States.
>
> "The UK values its permanent Observer Status at the Arctic Council and is seen as a constructive, able and welcome partner by all of the Members of the Arctic Council. The UK provides scientific and technical expertise to the Arctic Council's Working Groups. This is something we would continue to provide regardless of the status of the EU with respect to the Arctic Council. We also believe that the Arctic Council would benefit from a dialogue with all countries and organisations that have a legitimate interest in Arctic issues. The Government is currently considering its position [as] regards the Commission's application for permanent Observer Status."

Our assessment

12.24 The Minister had highlighted what he believed the EU could bring to this matter, but also implied that Commission's long-term intentions could adversely affect UK interests. In the short term, we presumed, this revolved around the question of the Commission's ambition to achieve Permanent Observer Status in the Arctic Council. We set out what the Arctic Council website has to say on observer status at Annex 3 of this chapter of our Report,[44] noting that, at first sight, it is only nation States that have been granted Permanent Observer Status; whereas the nine Intergovernmental and Inter-Parliamentary Organisations concerned have been given observer status. It was not clear to us what practical difference there was between Permanent Observer Status and simple observer status. Moreover, we could see no mention of the EU, or of the status of "ad hoc Observer."

12.25 We therefore asked the Minister to tell us more about his understanding of:

— why the Commission was seeking the same status as the present nation State members;

— what he considered the implications of this to be, particularly for UK interests;

44 And do so again.

— if there was any other aspect of the Commission's direction of travel that gave him cause for concern;

— how the Arctic Council determined the outcome of applications for Permanent Observer Status;

— when he expected it to make up its mind concerning the Commission's application;

— what his present view was of the Commission's application.

12.26 In the meantime, we retained the document under scrutiny.

12.27 In view of its ongoing inquiry into Protecting the Arctic, we also drew this chapter of our Report to the attention of the Environmental Audit Committee.[45]

The Minister's letter of 19 October 2012

12.28 The Minister responds as follows:

> ***"Why the Commission is seeking the same status [at the Arctic Council] as the present nation State members;***
>
> "At present, the EU does not have any formal status at the Arctic Council but has been invited by the Chair of the Arctic Council to attend all recent Council meetings on an 'ad hoc' basis. This also includes an invitation to contribute to the work of the Arctic Council's working groups on a similar basis. The Commission is now seeking to formalise its existing status on behalf of the EU.
>
> "Currently three members of the EU, Sweden, Finland and Denmark, are full members of the Arctic Council. Six countries have observer status, including the UK. This gives them the right to attend Arctic Council meetings as observers. This is often referred to as 'permanent' (or more recently 'accredited') observer status to reflect the fact they do not need to be invited and to distinguish them from those that do. The term 'observer states' has also been increasingly used to describe their status, including by the Council itself, although in formal terms, the Arctic Council recognises only one category of 'observer' which comprises all state, inter-governmental and non-governmental observers. As an inter-governmental organisation, the EU will not be referred to as an 'observer state'.
>
> "The Arctic is of growing political importance due to the ongoing impacts of climate change. The Joint Communication proposed targeting actions to further our understanding of the Arctic by investing in Arctic research; developing Arctic monitoring from space; supporting information and observation networks while building know-how and technical expertise.
>
> "It proposed the EU should contribute to the Arctic through its funding programmes, such as the European Regional Development Fund. It also recognised

45 See headnote: HC 86-xi (2012–13), chapter 7 (5 September 2012).

that maintaining international co-operation in the Arctic and supporting its stability was a key interest of the EU and that it should work collaboratively with the Arctic States to achieve this. Given that the Arctic Council is seen as the pre-eminent regional forum for Arctic matters, in particular sustainable development and the environment, obtaining observer status would enable the EU to more effectively contribute to the Arctic debate and achieve the aims set out in the Communication. The Government believes that the UK and the Arctic's interests are best served by a wide dialogue between all organisations and countries with a legitimate interest in the Arctic. The Government considers that the EU having observer status at the Arctic Council would support this objective.

"What he considers the implications of this to be, particularly for UK interests;

"The Commission has been invited to observe all recent Arctic Council meetings on behalf of the EU, almost as a matter of course, and already contributes to the work of a number of Arctic Council working groups. In this regard the opportunities afforded to the Commission have been the same as those afforded to 'permanent' observers.

"Were the Arctic Council to discuss an issue where the EU had competence, there would be a basis for the Commission to coordinate a position on behalf of the EU. In practice, this has not arisen because current arrangements at the Arctic Council prevent observers from contributing to substantive meeting discussions. There would therefore be no additional opportunities afforded to the Commission to intervene on behalf of the EU, or to coordinate a position, than exist currently. However, in the event that observers are in future able to make substantive contributions to Arctic Council discussions then we would work hard to ensure that any Commission intervention supports the UK's interest.

"As the Committee will be aware, the Commission is seeking to enhance the EU's status across a number of international fora. We are clear that any change in the EU's status or participation in any international organisation or forum will be subject to the approval of Member States in the form of the Council. The Council has already expressed its support for Commission observer status at the Arctic Council on behalf of the EU.

"If there is any other aspect of the Commission's direction of travel that gives him cause for concern;

"Not relating to their Arctic policy as currently outlined. As mentioned in the Explanatory Memorandum, the Joint Communication adopts a sensible approach that is broadly in line with the Government's policy towards the Arctic and we note the expertise that the EU can offer, particularly in developing understanding of the impacts of climate and environmental change, and the support it can offer to indigenous peoples of the Arctic.

"More broadly, the Government remains alert to the risk that the Commission's approach to EU external representation poses to our interests. We will continue to monitor the Commission's activity closely, and to make clear that it is for the Council to decide on any changes to the participation or status of the EU in international organisations. In 2008, Members States agreed Council Conclusions which welcomed the Commission's application for observer status. A further set of Council Conclusions in 2009 expressed continued support for the application.

"How the Arctic Council determines the outcome of applications for Permanent Observer Status;

"Following the last meeting of Ministers in May 2011, the Arctic Council agreed on a number of criteria that each applicant for observer status needs to meet. The criteria are that observers must:

- "Accept and support the objectives of the Arctic Council;
- "Recognise Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic;
- "Recognise that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea, and that this framework provides a solid foundation for responsible management of this ocean;
- "Respect the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants;
- "Have demonstrated a political willingness as well as financial ability to contribute to the work of the Permanent Participants and other Arctic indigenous peoples;
- "Have demonstrated their Arctic interests and expertise relevant to the work of the Arctic Council;
- "Have demonstrated an interest and ability to support the work of the Arctic Council, including through partnerships with member states and Permanent Participants bringing Arctic concerns to global decision making bodies.

"Each applicant has submitted written evidence addressing each of these criteria in their applications to the Arctic Council.

"The Deputy Foreign Ministers of the Arctic Council issued a recommendation on the question of the observer applications, following their meeting on 14 May 2012. This stated that the Council will determine the general suitability of an applicant for observer status taking into account, inter alia, the extent to which the observer fulfils the above criteria. This recommendation also pointed to the importance of close dialogue between applicants and Council member states.

"When he expects it to make up its mind concerning the Commission's application;

"It is the Arctic Council's intention to make a decision regarding all outstanding applications for observer status, including that of the Commission on behalf of the EU, at its next Ministerial meeting in May 2013."

"What his present view is of the Commission's application;

"We have ongoing positive dialogue with the other EU Member States who are also observers, as well as the full Arctic Council EU Member States. We have been working closely with these States and the Commission to ensure that the latest Joint Communication is appropriate in tone and respects the existing distribution of competences. The UK notes that Council Conclusions in 2008 welcomed the application and a further set of Council Conclusions in 2009 expressed continued support for it thereby giving the Commission a clear mandate to pursue its application. The UK considers that EU observer status of the Arctic Council would help contribute to the UK's Arctic policy objectives by further strengthening the legitimacy of the Arctic Council and by encouraging a wide dialogue between all organisations and countries with a legitimate interest in the Arctic. We expect a further debate in Council on the Arctic towards the end of 2012."

Conclusion

12.29 **We thank the Minister for his comprehensive response, and now clear the Communication.**

12.30 **We are also again drawing this chapter of our Report to the attention of the Environmental Audit Committee.**

12.31 Annex 1: December 2008 Council conclusions on the European Union and the Arctic region[46]

"1. The Council welcomed the Commission's Communication on the European Union and the Arctic region, considering that it is a first layer of an EU Arctic policy. The Communication is also an important contribution to implementing the Integrated Maritime Policy of the EU.

"2. The Council agreed that the effects of climate change and of human activities in the Arctic have significant repercussions for the European Union as a whole. The European Union should therefore aim at preserving the Arctic in unison with its population and address Arctic challenges in a systematic and coordinated manner in areas such as environment, biodiversity, climate change, chemicals, maritime affairs, energy, research and observation, fisheries and transport, as well as the protection of the livelihood of indigenous peoples. This should have due respect for and take into account the special position and interests of the Arctic areas of the three Arctic Member States, including those areas of one Member State enjoying OCT status and special contractual links with the EU. Furthermore, the Council welcomed the conference 'The Arctic: observing the environmental changes and facing their challenges', organised by the Presidency in Monaco in November 2008.

"3. The goals of the EU can be achieved only in close cooperation with all Arctic partner countries, territories and communities, noting also the inter-governmental cooperation in

46 The draft Council Conclusions at http://register.consilium.europa.eu/pdf/en/08/st16/st16826.en08.pdf were adopted by the Council.

the region. The European Union should enhance its contribution to Arctic multilateral cooperation, in conformity with international conventions, in particular the United Nations Convention on the Law of the Sea, and recognising the role of the Arctic states and that of the Northern Dimension policy. The Council welcomed the decision of the Commission to apply for permanent observer status in order to represent the European Community in the Arctic Council.

"4. The Council agreed that the proposals for action contained in the Communication should lead to a more detailed reflection and looked forward to further examining them in the first half of 2009."

Annex 2: December 2009 Council conclusions on the European Union and the Arctic region[47]

"The Council recalls its conclusions of 8 December, 2008, that welcomed the Commission Communication of 20 November, 2008, on the European Union and the Arctic region.

"The Council welcomes the gradual formulation of a policy on Arctic issues to address EU interests and responsibilities, while recognising Member States' legitimate interests and rights in the Arctic.

"The Council considers that an EU policy on Arctic issues should be based on:

- Effective implementation by the international community of adequate measures to mitigate climate change that are required to preserve the unique characteristics of the Arctic region;
- Reinforced multilateral governance through strengthening and consistent implementation of relevant international, regional and bilateral agreements, frameworks and arrangements;
- The United Nations Convention on the Law of the Sea (UNCLOS) and other relevant international instruments;
- Formulating and implementing EU actions and policies that impact on the Arctic with respect for its unique characteristics, in particular the sensitivities of ecosystems and their biodiversity as well as the needs and rights of Arctic residents, including the indigenous peoples;
- Maintaining the Arctic as an area of peace and stability and highlighting the need for responsible, sustainable and cautious action in view of new possibilities for transport, natural resource extraction and other entrepreneurial activities linked to melting sea ice and other climate change effects.

"Conscious of the need for further work, the Council approves the three main policy objectives proposed by the Commission:

- Protecting and preserving the Arctic in unison with its population;
- Promoting sustainable use of natural resources;

47 Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/111814.pdf.

— Contributing to enhanced governance in the Arctic through implementation of relevant agreements, frameworks and arrangements, and their further development.

"In order to take a next step towards the formulation of an overarching approach to EU policy on Arctic issues:

"1. The Council recognises the particular vulnerability of the Arctic region and its crucial importance to the world climate system. The Council sees a need to give increased attention to the impact of climate change in the Arctic within the framework of the United Nations Framework Convention on Climate Change (UNFCCC) negotiations. It also supports action by appropriate international bodies, such as the Arctic Council, World Meteorological Organization (WMO), and the United Nations Environment Programme (UNEP), to enhance observation, monitoring and research, as well as to reduce the effects of emissions of green house gases, black carbon and other short lived climate forcers in the Arctic.

"2. The Council recognises that EU policies on natural resource management that impact on the Arctic should be formulated in close dialogue with Arctic states and local communities and take into account the importance of sustainable management of all natural resources in that region.

"3. The Council underlines the importance of supporting sustainable development for indigenous peoples, including on the basis of their traditional means of livelihood, and welcomes the Commission proposal to engage in a broad dialogue with Arctic indigenous peoples on the basis of respect for the rights of the indigenous peoples.

"4. The Council supports expanded use of strategic environmental impact assessments, as well as improved monitoring and planning of proposed activities in order to protect sensitive Arctic areas. The Council welcomes commitments and efforts of the Arctic states to develop joint approaches and best practices for minimising negative environmental impacts of exploitation and use of natural resources in the Arctic as well as promotion of energy efficiency and renewable energy. The Council invites the Commission and Member States to examine the possibilities to endorse the revised Arctic Council Offshore Oil and Gas Guidelines of 2009.

"5. In connection with the International Year of Biodiversity 2010, the Council invites Member States and the Commission to support efforts to protect Arctic ecosystems and their biodiversity, particularly by considering measures for protection of biodiversity in the high seas and by encouraging Arctic states to develop marine protected areas (MPAs) on an individual or a cooperative basis. The Council encourages Member States and the Commission together with the European Environment Agency (EEA) to contribute to the Arctic Council work on conducting an Arctic Biodiversity Assessment.

"6. The Council calls for increased support for research on Arctic related issues, in particular to secure the legacy of the International Polar Year 2007-2008, and agrees that this should be adequately reflected in the work programmes of the Seventh Community Framework Programme for Scientific Research and in other community research and innovation activities. A systemic approach to Arctic research should cover aspects ranging

from protecting the environment, including the role of the Arctic region as an important part of the Earth ecosystem, to the effects of climate change and natural resource exploitation on biodiversity, long range transport of hazardous chemicals, local communities and the sustained livelihood of indigenous peoples.

"7. The Council realises that enhanced monitoring and surveillance capabilities together with the appropriate research infrastructure could contribute significantly to Arctic research. The EU should make best use of its existing research infrastructure and be open to the need to enhance and support these capabilities, which may include multifunctional research platforms including satellite based ones. Member States and the Commission are invited to provide appropriate resources, including research infrastructure, in a more coordinated way by jointly supporting monitoring of the effects of Arctic climate change and development of technologies that meet Arctic requirements. Access to research sites in the Arctic, as well as open access to reliable and coherent data and research results, should also be facilitated and further promoted, e.g. according to the guiding principles of the Shared Information and Observation System for Europe (SEIS) and the European Environment Information and Observation Network (EIONET).

"8. The Council invites the Commission together with the EEA and with Member States to contribute towards assessing the state and outlook for the Arctic environment and to put forward possible initiatives to contribute to the "Sustaining Arctic Observing Networks" (SAON) process with a view to expand the scope and improve the coordination of observation and monitoring throughout the circumpolar Arctic.

"9. The Council notes that the EU can play an important role in contributing to the reduction of hazardous pollution in the Arctic and invites the Commission to present a work plan for continued monitoring, research, restriction of use and destruction of hazardous chemicals released into and inside the Arctic or through long range transport. Member States and the Commission can reduce the EU share of persistent chemicals in the Arctic by making the use of such substances subject to restriction or authorisation pursuant to the EU chemicals legislation. According to the Registration, Evaluation, Authorization of Chemicals (REACH) regulatory regime, priority of the authorization procedure should be given to substances with persistent, bioaccumulative and toxic properties.

"10. The Council notes that in the implementation of the Integrated Maritime Policy special attention will be paid to the Arctic and underlines that harvesting of Arctic marine living resources should be managed on the basis of scientific advice as part of an ecosystem perspective. It stresses the need to promote a precautionary approach to new fishing activity in Arctic high seas, as well as measures for protecting marine biodiversity in areas beyond national jurisdiction. The Council expresses its readiness to consider a proposal to put in place a regulatory framework for the part of the seas not yet covered by an international conservation system by extending the mandate of relevant Regional Fisheries Management Organisations or any other proposal to that effect agreed by the relevant parties. Until such a framework is in place, the Council favours a temporary ban on new fisheries in those waters.

"11. Recalling the fundamental principle of the Integrated Maritime Policy that each sea region is unique and needs individual attention in balancing its uses in a sustainable

manner, Member States are encouraged to contribute to strengthening the protection of the Arctic marine environment through their support for initiatives in the International Maritime Organisation (IMO) and in other relevant organisations having an influence in the Arctic area, including those related to the management of fisheries as well as to the conservation and sustainable use of other marine living resources.

"12. The Council welcomes and encourages the progress being made within IMO, in particular the amendment of the existing guidelines for ships operating in polar waters and the agreement to develop a new mandatory instrument for ships operating in polar waters. The Council recognises the important work on Arctic marine issues carried out by the Arctic Council, including the recent Arctic Marine Shipping Assessment (AMSA), and its recommendations on enhancing marine safety.

"13. The Council stresses the importance that Member States in their capacity as flag, port and coastal states should continuously promote and monitor the full implementation and further improvement of existing rules on navigation, maritime safety and security, vessel routing systems and environmental standards derived from the applicable international conventions in the Arctic, in particular within the IMO framework. On matters of vessel traffic monitoring, the Council notes the usefulness of including the Arctic as far as possible in relevant international monitoring systems and in present and future navigation and communication satellite systems.

"14. The Council underlines the need to further explore the options and consequences of exchanging Automatic Identification System (AIS) information with non-EU/Europeans Economic Area Arctic states and to assess to what extent operational assistance in the field of pollution prevention and response can be extended to the Arctic area. To this end, the Council invites the Commission to examine, with the full support of the SafeSeaNet High Level Steering Group, the possible development of a policy of access rights to define the relations of SafeSeaNet with other information systems used by third countries.

"15. The Council also invites Member States and the Commission to offer to work closely together with the Arctic states in order to reinforce the assistance that may be provided for search and rescue purposes and other emergencies and needs in the Arctic.

"16. With respect to the gradual opening, in the years to come, of trans-oceanic Arctic routes for shipping and navigation, the Council reiterates the rights and obligations for flag, port and coastal states provided for in international law, including UNCLOS, in relation to freedom of navigation, the right of innocent passage and transit passage, and will monitor their observance.

"17. The Council recognises the Arctic Council as the primary competent body for circumpolar regional cooperation and expresses its continued support for the applications by Italy and the Commission to become permanent observers in that body. The Council encourages Member States, and the Commission together with the EEA to continue to contribute to the work of relevant Arctic Council working groups.

"18. The Council believes that the EU should actively seek consensus approaches to relevant Arctic issues through cooperation also with Arctic states and/or territories outside

the EU, Canada, Greenland, Iceland, Norway, the Russian Federation and the United States, as well as with other relevant actors with Arctic interests.

“19. The Council attaches great importance to the strong links between the EU and Greenland as well as the Arctic European Economic Area/EFTA countries, Iceland and Norway. Greenland has close historical and constitutional ties to Denmark and is part of the Overseas Countries and Territories (OCT) association. The Council welcomes that a broader and more structured relationship with Greenland is being developed within the bilateral EU-Greenland Partnership, to further mutual interest and concrete areas of cooperation.

“20. The Council notes that the Arctic is also one of the priority areas of the revised Northern Dimension policy, a common policy between the EU, Iceland, Norway and the Russian Federation. It encourages development of the ND Arctic Window without duplicating work within the mandates of the Arctic Council or the Barents Euro-Arctic Council. In particular, the Council notes that further consideration would be needed on how indigenous peoples could be included in the deliberations on the ND Arctic Window.”

Annex 3: Observer status at the Arctic Council

“Observer status in the Arctic Council is open to:

- non-arctic states
- inter-governmental and inter-parliamentary organisations, global and regional
- non-governmental organisations.

“Criteria for admitting observers:

“As set out in the Declaration on the Establishment of the Arctic Council and governed by the Arctic Council Rules of Procedure, observer status in the Arctic Council is open to non-Arctic States; inter-governmental and inter-parliamentary organisations, global and regional; and non-governmental organisations that the Council determines can contribute to its work.

“In the determination by the Council of the general suitability of an applicant for observer status the Council will, inter alia, take into account the extent to which observers:

- Accept and support the objectives of the Arctic Council defined in the Ottawa declaration.
- Recognize Arctic States’ sovereignty, sovereign rights and jurisdiction in the Arctic.
- Recognize that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea, and that this framework provides a solid foundation for responsible management of this ocean.
- Respect the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants.

- Have demonstrated a political willingness as well as financial ability to contribute to the work of the Permanent Participants and other Arctic indigenous peoples.
- Have demonstrated their Arctic interests and expertise relevant to the work of the Arctic Council.
- Have demonstrated a concrete interest and ability to support the work of the Arctic Council, including through partnerships with member states and Permanent Participants bringing Arctic concerns to global decision making bodies.

"Role of observers:

"Decisions at all levels in the Arctic Council are the exclusive right and responsibility of the eight Arctic States with the involvement of the Permanent Participants.

- Observers shall be invited to the meetings of the Arctic Council once observer status has been granted.
- While the primary role of observers is to observe the work of the Arctic Council, observers should continue to make relevant contributions through their engagement in the Arctic Council primarily at the level of Working Groups.
- Observers may propose projects through an Arctic State or a Permanent Participant but financial contributions from observers to any given project may not exceed the financing from Arctic States, unless otherwise decided by the SAOs.
- In meetings of the Council's subsidiary bodies to which observers have been invited to participate, observers may, at the discretion of the Chair, make statements after Arctic states and Permanent Participants, present written statements, submit relevant documents and provide views on the issues under discussion. Observers may also submit written statements at Ministerial meetings.

"Six non-arctic countries have been admitted as Permanent Observer States to the Arctic Council:

1. France
2. Germany
3. The Netherlands
4. Poland
5. Spain
6. United Kingdom

"Nine Intergovernmental and Inter-Parliamentary Organisations have been given observer status:

1. International Federation of Red Cross & Red Crescent Societies (IFRC)
2. International Union for the Conservation of Nature (IUCN)
3. Nordic Council of Ministers (NCM)
4. Nordic Environment Finance Corporation (NEFCO)
5. North Atlantic Marine Mammal Commission (NAMMCO)

6. Standing Committee of the Parliamentarians of the Arctic Region (SCPAR)
7. United Nations Economic Commission for Europe (UN-ECE)
8. United Nations Development Program (UNDP)
9. United Nations Environment Program (UNEP).[48]"

13 Chemical Weapons Convention

(34357) — —	Council Decision relating to the 2013 Review Conference of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

Legal base	Article 15 TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 29 October 2012
Previous Committee Report	None; but see (28691) HC 41-xxvi (2006–07), chapter 9 (20 June 2007); also see (28303) HC 41-viii (2006–07), chapter 9 (30 January 2007) and (26080) HC 42-xxxvi (2003–04), chapter 15 (10 November 2004)
Discussion in Council	19 November 2012 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

13.1 The Chemical Weapons Convention (CWC) bans the development, production, stockpiling, transfer and use of chemical weapons and requires their destruction. It entered into force on 29 April 1997. It is the first multilateral disarmament agreement which aims to ban an entire category of Weapons of Mass Destruction (WMD) in a verifiable manner. The Organisation for the Prohibition of Chemical Weapons (OPWC) oversees the implementation of the CWC.

13.2 On 17 November 2003 the European Council adopted Common Position 2003/805/CFSP on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of WMD and means of delivery. The CWC was included as one such multilateral agreement.

13.3 On 12 December 2003 the European Council adopted an EU Strategy against the Proliferation of WMD. In this the EU agreed to reinforce the WMD Conventions including the CWC.

48 See http://www.arctic-council.org/index.php/en/about-us/partners-links for full information on Arctic Council Observer status.

13.4 On 10 November 2004, we cleared the first Joint Action in support of the OPWC. This enabled the EU to support the OPCW in relation to the EU WMD Non-Proliferation Strategy. The focus was on capacity-building among National Authorities so as to enable them to implement the CWC and to engage in the peaceful application of chemistry.

13.5 Most recently, on 20 December 2011, we cleared the fifth such EU measure in support of the OPWC, all of which had the same central objectives:

— to enhance the capacities of States Parties to fulfil their obligations under the Convention;

— to enhance the preparedness of States Parties to prevent and respond to attacks involving toxic chemicals;

— to enhance international cooperation in the field of chemical activities;

— to support the ability of the OPCW to adapt to developments in the field of science and technology; and

— to promote universality by encouraging States not Parties to join the Convention.

13.6 It was designed to support six projects, involving: national implementation, verification and universality; international cooperation; visits by representatives of the Executive Council to chemical weapons destruction facilities; science and technology; preparedness of States Parties to prevent and respond to attacks involving chemicals; and the Africa Programme.

13.7 Like its predecessors, the programme was to be managed in accordance with the rules and procedures applicable to the EU general budget, with the Commission responsible for ensuring that the EU contribution was implemented properly; a financing agreement with the OPWC stipulated that it would ensure visibility of the EU contribution; the Commission, in association with the Presidency, would report on the implementation of the EU contribution; the projects were to be funded by the CFSP budget, at an estimated cost of €2.3 million; with the UK contributing approximately 17% into the CFSP budget, the cost to the UK would be around €391,000.

13.8 As before, the proposals raised no questions. Important though the work undoubtedly was and is, we did not consider that this sensible and modest addition to a well-established programme of cooperation warranted a substantive Report to the House, and cleared it accordingly.[49]

The 2007 Common Position

13.9 In his 13 June 2007 Explanatory Memorandum, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Geoffrey Hoon) said that the purpose of this Common Position was to strengthen the CWC and the OPWC by seeking a successful outcome of the Second Review Conference: it would "task the EU to promote compliance

49 See (33539): HC 428-xlv (2010–12), chapter 16 (20 December 2011).

with the Convention, including the timely destruction of all chemical weapons, and by enhancing its verification regime and striving for Universality".

13.10 Details of the issues to be promoted are set out in our Report under reference.[50]

13.11 The then Minister said that countering WMD proliferation and making the world safer from global terrorism remained an important international strategic priority for the FCO and a key UK priority; this included the aim of strengthening the CWC and supporting the aims of the OPC. He described the UK position as "working towards a successful outcome from the Second Review Conference of the Chemical Weapons Convention, one that builds on the successful framework established by the First Review Conference". He welcomed the Common Position, "as it sets out EU priorities for the Second Review Conference which are consistent with our own", and said that "[a]long with partners, we believe that adoption of this Common Position will encourage States Party to engage and help focus efforts to achieve consensus during the preparatory process and during the Conference itself".

Our assessment

13.12 We had no questions to put to the Minister, and cleared the document.

13.13 On this occasion, however, we considered a short Report to the House appropriate. Noting that the Conference was due to be held from 7-18 April 2008, we asked the Minister to write to us as soon as possible thereafter with his assessment of what the Review Conference had achieved, how the Common Position had contributed to it, what the major continuing challenges then were and how he thought that the UK and EU could best contribute to tackling them.[51]

The further draft Council Decision

13.14 The draft Council Decision says that:

— the EU's objective shall be to strengthen the CWC by building on the progress achieved so far in destroying declared stockpiles of chemical weapons and the prevention of their re-emergence, through, *inter alia*, enhancement of the Convention's verification regime, improvement of national implementation as well as efforts towards achieving universality;

— the EU shall aim to strengthen the Convention also by adapting the implementation of the Convention in light of the changing security environment and developments in science and technology and by emphasising that the Third Review Conference should provide political support and broad guidance for the work to be undertaken in the inter-sessional period on the future priorities of the OPCW;

— to attain these objectives, the Union shall put forward concrete proposals to the Third Review Conference due to take place from 8 to 19 April 2013.

50 See (28691) HC 41-xxvi (2006–07), chapter 9 (20 June 2007).

51 *Ibid*.

13.15 Article 2 of the draft text outlines what the EU shall do for the purposes of these aims and objectives. This includes:

- contributing to a full review of the operation of the CWC at the Third Review Conference, taking into account in particular scientific and technological developments, and to building a solid foundation for addressing challenges the Convention will be faced with in the future;
- helping to build consensus for a successful outcome and promoting, *inter alia*:
  - reaffirmation of the comprehensive nature of the prohibition of chemical weapons, taking into account developments in science and technology since the Second Review Conference;
  - the development and implementation by the Technical Secretariat of targeted, tailor-made approaches on achieving the universality of the CWC, in close coordination and cooperation with States Parties, also in view of the fact that at least one State not Party to the Convention, Syria, admitted in July 2012 possession of chemical weapons;
  - reaffirmation of the obligation of chemical weapons possessor states to destroy their chemical weapons and recognition of the achievements so far in eliminating chemical weapons through:
    - welcoming the efforts undertaken and the progress made by possessor states to destroy their declared stockpiles and "highlighting the fact that we are well underway towards a world free of chemical weapons";
    - calling upon chemical weapons possessor states to complete destruction of their chemical weapons stockpiles in the shortest time possible;
    - reiterating the importance of systematic verification of destruction by the Technical Secretariat;
    - consideration of ways of enhancing the OPCW's ability to deal with conflict and post-conflict situations involving chemical weapons;
    - emphasising that whilst expertise and capacity to deal with chemical weapons as well as abandoned and old chemical weapons should be retained, the OPCW must also continue its adaptation to the new security environment;
  - further strengthening of the verification regime with regard to activities not prohibited under the Convention, with a view to strengthening prevention of re-emergence of chemical weapons;
  - continuous improvement of national implementation measures through: adopting a targeted and tailor-made approach in encouraging and assisting States Parties which are yet to adequately implement the CWC; offering assistance to States Parties in need, as exemplified by the European Union Joint Actions and Council Decisions in support of OPCW activities; strengthening national export controls which are required to prevent the acquisition of chemical weapons and

implementing appropriate measures to enhance chemical safety and security; exploring potential synergies between the OPCW and other relevant international organisations as regards implementation support and capacity building;

— implementation of the provisions of the Convention on consultations, cooperation and fact-finding, and in particular the challenge inspection mechanism;

— continued strong support of OPCW activities related to assistance and protection, in particular retaining the Organisation's capabilities and expertise and enhancing the capacity of the Technical Secretariat and the States Parties to prevent, respond to and mitigate misuse or attacks involving toxic chemicals;

— fostering international cooperation in accordance with the Convention;

— enhancement of the OPCW's contribution to global anti-terrorism efforts, in particular by: calling for practical cooperation between OPCW and relevant organisations with the aim of eliminating the risk of chemical weapons being acquired or used for terrorist purposes, including possible terrorist access to materials, equipment, and knowledge that could be used in the development and production of chemical weapons; and underlining the need to work towards strengthening global chemical safety and security, including assisting States Parties with the implementation of practical and targeted measures which at the same time could contribute to enhancing cooperation with regard to peaceful uses of chemistry and assistance and protection;

The Government's view

13.16 In his Explanatory Memorandum of 29 October 2012, the Minister for Europe (Mr David Lidington) says that:

— countering WMD proliferation is a key UK priority;

— making the world safer from global terrorism and WMD is an important international strategic priority for the Foreign and Commonwealth Office;

— the UK aims to strengthen the CWC and is supportive of the aims of the Organisation for the Prohibition of Chemical Weapons.

13.17 He also says that the Government:

— is working towards a successful outcome from the Third Review Conference that builds on the successful framework established by the Second Review Conference;

— welcomes this Common Position "as it sets out EU priorities for the Third Review Conference which are consistent with our own";

— along with partners, believes that adoption of this Common Position will "encourage States Parties to engage and help focus efforts to achieve consensus during the preparatory process and during the Conference itself."

Conclusion

13.18 **The importance of the CWC, and the OPCW, is underlined by the situation of — and in — Syria, as well as the ever-present threat of international terrorism. Like the previous Committee, we consider that a short Report to the House on the EU's preparations for this important Review Conference is appropriate.**

13.19 **As before, we ask the Minister to write to us as soon as possible thereafter with his assessment of what the Review Conference has achieved, how the Common Position has contributed to it, and how he thinks the UK and EU can best contribute thereafter to tackling the major continuing and new challenges.**

13.20 **We now clear the document.**

14 Restrictive measures against Iran

(a) (34361) —	Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran
(b) (34362) —	Council Implementing Regulation (EU) No.945/2012 of 15 October 2012 implementing Regulation (EU) No.267/2012 concerning restrictive measures against Iran
(c) (34093) 12453/12 JOIN(12) 21	Joint Proposal for a Council Regulation amending Regulation (EU) No.267/2012 concerning restrictive measures against Iran

Legal base	(a) Article 29 TEU; unanimity (b) Article 215 (2) TFEU; QMV (c) Article 215 (1) TFEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 30 October 2012
Previous Committee Report	None; but see (33818) —: HC 428-lvii (2010–12), chapter 13 (18 April 2012); (33643) —, (33644) — (and 33633) —: HC 428-xlix (2010–12), chapter 19 (1 February 2012); also see (33388) — and (33389) —: HC 428-xliii (2010–12), chapter 23 (7 December 2011); (31779) —: HC 428-i (2010–11), chapter 61 (8 September 2010); (31905) 13082/10: 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	15 October 2012 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	(a) and (b) cleared (c) not cleared

Background

14.1 As the Committee's previous Reports (referred to in the headnote) illustrate in detail, the EU has been engaged since December 2006 in a "dual track" strategy — with both 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 Resolutions (UNSCRs).[52]

14.2 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;

— 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).

Council Decision 2010/413/CFSP

14.3 As well as implementing the measures contained in UNSCR 1929, the EU imposed additional EU sanctions in the following areas:

52 See headnote.

— 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).

14.4 Council Decision 2010/413/CFSP was adopted by the 26 July 2010 Foreign Affairs Council,[53] together with a Regulation (Council Regulation (EU) 961/2010) extending the list of entities and individuals subject to an assets freeze.

14.5 We cleared both documents at our first and second meetings on 8 and 15 September 2010.[54]

14.6 Last November, the Minister for Europe (Mr David Lidington) said that a recent IAEA report and the subsequent Board of Governors resolution demonstrated the further progress of the possible military dimensions of Iran's nuclear programme. The British Government had now severed all financial ties between the UK financial sector and Iranian banks; a further Council Decision and Council Implementing Regulation, by enabling the EU to add more individuals and entities to the Annex of Council Regulation 961/2010, subjected further entities and individuals to an assets freeze and travel ban in all 27 EU Member States. The Foreign Affairs Council was also considering more proposals in the finance sector, the transport sector and oil and gas sectors.

14.7 On 1 December, in the wake of the overrunning of the British Embassy compounds and Residence in Tehran, expulsion of the British Ambassador and consequent expulsion from the United Kingdom of all Iranian diplomats, the Foreign Affairs Council issued Conclusions that:

— 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;

53 The text of the Council Decision is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0039:0073:EN:PDF.

54 See headnote: (31779) —: HC 428-i (2010–11), chapter 61 (8 September 2010) and (31905) 13082/10: HC 428-ii (2010–11), chapter 24 (15 September 2010).

— 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.[55]

14.8 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.[56]

14.9 The Minister then wrote on 18 January 2012 to forewarn the Committee of what, by the time we were able to consider it, was 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;

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

56 See headnote: (33388) — and (33389) —: HC 428-xliii (2010–12), chapter 23 (7 December 2011).

— 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.[57]

14.10 The Minister also explained some of the Government's thinking, viz., that these strong additional sanctions were necessary to persuade the Iranian regime 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: 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 further undermines Iran's claims that its programme is entirely civilian in nature" (the Foreign Secretary on 9 January).

14.11 The Council Conclusions[58] also noted that Iran's acceleration of enrichment activities were "in flagrant violation of six UNSC Resolutions and eleven IAEA Board resolutions and contributes to increasing tensions in the region", and called upon Iran to cooperate fully with the IAEA, including in the context of the planned visit by its Deputy Director General for Safeguards. They also reaffirmed 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, remained the EU's objective.

14.12 We cleared the subsequent Council Decision, Council Implementing Regulation and Council Regulation at our meeting on 1 February 2012.[59]

57 The Council statement is available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127444.pdf.

58 Which are available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127446.pdf.

59 See headnote: see (33643) —, (33644) — and (33633) —: HC 428-xlix (2010–12), chapter 19 (1 February 2012).

Council Regulation (EU) No 267/2012 of 23 March 2012

14.13 In his Explanatory Memorandum of 16 April 2012, the Minister for Europe said that this Council Regulation expanded on the detail of the measures agreed in Council Decision 2010/413/CFSP, giving legal effect to the measures that fell under EU competence to implement; and also consolidated measures that appeared in the relevant regulation, Regulation (EU) No.961/2010.

14.14 In a covering letter, the Minister said that:

— there was some urgency to conclude negotiations on the Regulation at the 23 March Foreign Affairs Council so that the adoption would not impact on the renewed focus on upcoming E3+3 (UK, France, Germany, US, Russia and China) talks with Iran on its nuclear programme;

— as a result a finalised text was not agreed on until the day before the FAC meeting;

— he hoped that Iran would seize the opportunity to demonstrate to the international community that it was taking a different path, but had seen no evidence that Iran had shifted its position;

— it was therefore essential to keep up the pressure, so as to send a strong message to the regime that they should negotiate seriously or face increasingly hard-hitting sanctions;

— for these reasons he had reluctantly agreed to the adoption of the Decision before the Committee was able to scrutinise the documents.

Our assessment

14.15 Our most recent Report under reference included statements by both the High Representative of the Union for Foreign Affairs and Security Policy and the President of the European Council following the meeting on 14 April in Istanbul between the E3+3 and the Iranian nuclear negotiator, Dr. Saeed Jalili, in order to address the international community's concerns on the exclusively peaceful nature of the Iranian nuclear programme. A further meeting was planned on 23 May in Baghdad. The EU statements were, appropriately, in moderately upbeat terms. Whether or not they bore fruit, or were shown to be another false dawn, remained to be seen. In the meantime:

— though largely the technical follow-up to the substantive changes of January 23, we felt that this merited being drawn to the attention of the House because of the interplay — at least in the EU's mind — between the restrictive measures and this latest E3+3 endeavour to engage the Iranian authorities in a sustained process of serious dialogue on the nuclear issue;

— in the circumstances described, the Committee did not object to the Minister having agreed to its adoption prior to parliamentary scrutiny.[60]

60 See headnote: (33818) —: HC 428-lvii (2010–12), chapter 13 (18 April 2012).

Council Decision 2012/635/CFSP and Council Implementing Regulation (EU) No.945/2012 of 15 October 2012

14.16 In his Explanatory Memorandum of 30 October 2012, the Minister for Europe (Mr David Lidington) says that in September 2012 the IAEA Board of Governors passed a strong resolution, expressing "serious concern" about continuing uranium enrichment and heavy-water related activities in Iran, and stating that Iranian co-operation with the Agency was "essential and urgent". He draws attention to the resolution having been "passed by a significant majority — 31 out of the 35 countries on the Board", and notes that the IAEA also reported that Iran had tripled its enrichment capacity at the Fordow facility and continued to deny the IAEA access to important information and sites: "This indicated that Iran was continuing to expand a programme which could have no plausible civilian justification."

14.17 The Minister also notes that, prior to this, the European Council, at the end of June 2012, had stressed its serious concerns about the nature of Iran's nuclear programme and the urgent need for Iran to comply with all its international obligations, including full implementation by Iran of UNSC and IAEA Board of Governors resolutions; and urged Iran to "decide whether it is willing to commit to a serious negotiation process aimed at restoring the confidence in the exclusively peaceful nature of the Iranian nuclear programme. Iran has to engage constructively by focussing on reaching an agreement on concrete confidence-building steps and addressing the concerns of the international community."

14.18 The Minister continues as follows:

> "In the light of these concerns and a continued failure on the part of Iran to show a readiness to address the international community's concerns in negotiations, EU Foreign Ministers agreed at the Gymnich informal ministerial in Paphos on 7-8 September that a new package of EU sanctions should be prepared for adoption at the 15 October Foreign Affairs Council. This should expand existing measures in the major areas of energy, finance, trade and transport.
>
> "A package was duly presented to the 15 October Foreign Affairs Council and adopted. It should be translated into legally binding language for incorporation into an EU Regulation in the next few months, most likely at the 10 December Foreign Affairs Council. On 18-19 October 2012, the European Council welcomed the conclusions and the adoption of the additional restrictive measures by the Council on 15 October with the aim of achieving a serious and meaningful engagement from the Iranian regime."

14.19 The Minister then explains that the Council Decision introduces the following new measures against Iran:

> ***"Trade***
>
> "A further extension of the ban on exporting equipment for the Iranian Energy Sector; allowing prior contracts to be honoured only until 15 April 2013;

“A ban on exporting graphite; allowing prior contracts to be honoured only until 15 April 2013;

“A ban on exporting metals: defined as ‘raw and semi-finished metals’; allowing prior contracts to be honoured until 15 April 2013;

“A ban on exporting naval equipment for ship building and maintenance; allowing prior contracts to be honoured until 15 February;

“A ban on exporting software for integrating industrial processes; allowing prior contracts to be honoured until 15 January 2013.

“Energy sector

“A gas embargo: A prohibition on import, purchase or transport of Iranian natural gas;

“A ban on construction of oil tankers.

“Finance

“A financial cut-off, prohibiting all but specifically licensed trade with a notification system for humanitarian (sic) up to EUR 100,000 and similar payments (up to EUR 40,000);

“A full listing of the Central Bank of Iran except to permit channels for the provision of liquidity and repayment of debts;

“A full ban on the public provision of export credit guarantees (adding short term to the already prohibited medium and long term).

“Transport

“A ban on the flagging and classification of Iranian oil tankers and cargo vessels;

“A ban on the leasing /chartering of vessels for the transport or storage of Iranian oil.

“New Designations

“The Decision also imposes an asset freeze on further Iranian companies. The designations including (sic) all of Iran’s leading energy companies, their subsidiaries and front companies and the key Iranian Energy Ministries.”

Joint Proposal for a Council Regulation amending Regulation (EU) No.267/2012 concerning restrictive measures against Iran

14.20 The Minister notes that: the original document 12453/12 was published on 12 July 2012; it is still being discussed; there have been substantial changes; and that he expects the final version to be included in the main EU Regulation referred to in paragraph 14.18; and that he will submit another Explanatory Memorandum then.

The Government's view

14.21 The Minister comments 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.
>
> "Throughout 2012 there have been various announcements by Iran recording continued progress on the ground with its programme, in particular the installation of more centrifuges at its underground facility at Qom. In this, Iran is continuing on its 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 its latest report of September 2012 and the subsequent Board of Governors resolution.
>
> "The new measures adopted by the EU on 15 October 2012 represent a tightening of sanctions against Iran. They reflect real 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 sanctions adopted remain targeted to this end, for example pursuing trade in commodities (select metals for example) of high value to Iran's programme.
>
> "The new sanctions also reframe the EU's financial cooperation with Iran moving from a framework where all transactions were permitted unless prohibited to one where transactions above 10,000 euros are prohibited until permitted or exempted. Importantly this will bring greater scrutiny of transactions for EUMS competent authorities. It will also introduce an EU-wide measure akin to the step the UK took in November 2011 in severing all ties with the Iranian financial sector under the UK CT Act. The effect should be to further protect EU financial institutions from Iran's illicit financial activity. The EU has also taken the decision in this round to impose a fuller restriction on ties with the Central Bank of Iran.
>
> "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."

The Minister's letter of 30 October 2012

14.22 The Minister says that, firstly, he regrets that he found himself in the position of having to agree to the adoption of these measures before the Committee had had an opportunity to scrutinise the documents, but that unfortunately the timelines were extremely tight: "a final text was agreed on the afternoon of Friday 12 October and was then adopted by the Foreign Affairs Council on Monday 15 October. Therefore the need to override of scrutiny was, regrettably, unavoidable."

14.23 The Minister then says that the measures themselves were subject to intense negotiation, and include action to limit Iran's access to key materials and equipment that could be used in its nuclear programme, target key industries that help to fund the programme and include action in the five main areas described in his Explanatory Memorandum (see paragraph 14.19 above).

14.24 The Minister continues by saying that it is an urgent priority that the European Union continues to have a robust response to continued Iranian defiance of its international obligations, including acting to prevent Iran acquiring the goods needed to develop its nuclear programme and halting the trade and financial flows that fund the programme.

14.25 He also comments in the same terms as in paragraph 14.21 above.

14.26 He concludes by reiterating how seriously he takes the responsibility to keep the Committee informed on issues concerning sanctions and his regret that on this occasion an override of scrutiny was unavoidable.

Conclusion

14.27 **Although these measures are now fully in the public domain, we are nonetheless reporting them to the House because of their inherent political importance.**

14.28 **For the same reason we draw them to the attention of the Foreign Affairs Committee.**

14.29 **We now clear the documents (a) and (b), and, on this occasion and in these circumstances, do not object to the Minister having agreed these further measures.**

14.30 **As document (c) remains under discussion, we shall continue to retain it under scrutiny.**

15 Index of convictions of nationals from third countries

(27709) 11453/06 COM(06) 359	Commission working document on the feasibility of an index of third-country nationals convicted in the European Union

Legal base	—
Department	Home Office
Basis of consideration	Minister's letter of 21 August 2012
Previous Committee Report	HC 34-xxxvii (2005–06), chapter 21 (11 October 2006)
Discussion in Council	No date set

Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

15.1 The 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters[61] provides for the exchange of criminal record information. Article 13 of the 1959 Convention provides for the making of specific requests for information, whilst Article 22 requires each Contracting Party to inform any other Party of all recorded criminal convictions in respect of nationals of that Party.

15.2 A previous Committee subsequently considered a Commission White Paper which reviewed the systems within Member States for recording convictions and which made a number of criticisms of the arrangements under the 1959 Convention. In the White Paper the Commission referred to "three main problem areas". These were, first, a difficulty in rapidly identifying the Member State in which an individual had been convicted. The White Paper pointed out that, although the 1959 Convention required signatories to notify each other when foreign nationals are convicted, it did not require the Contracting Party of nationality to include such convictions in their national registers. Secondly, the White Paper referred to "difficulties in obtaining information quickly and by a simple procedure" and asserted that the mechanism for requests for mutual assistance under Article 13 of the 1959 Convention did not work as it should and that national courts often took the view that the procedure for obtaining details of an individual's previous offences in another Member State was "cumbersome, unfamiliar and incompatible with the constraints of domestic proceedings". Thirdly, the White Paper suggested that there was difficulty in understanding the information provided, because the information entered in the national register varied considerably from one country to another.

15.3 The White Paper discussed various options for improving the exchange of information on convictions, including facilitating bilateral exchanges between the Member States concerned, the networking of national criminal records offices, and the setting up of a "genuine European central criminal records office". The White Paper identified disadvantages with each of these options, and suggested instead a "hybrid" solution which, as a first stage, would involve creating a "European index of offenders" (i.e. an index of personal data identifying the individual and the Member State in which he was convicted, but without any details of the offence or of the sentence) which would serve to identify the Member State in which the person concerned had previously been convicted and from which details of the offence and sentence could be obtained.

15.4 The White Paper had noted that the mechanism under Article 22 of the 1959 Convention for centralising information in the state of the convicted person's nationality did not apply to a national of a country which was not party to the 1959 Convention. In relation to information on convictions of nationals of EU Member States, the Justice and Home Affairs Council of 14 April 2005 decided to continue to rely on the State of nationality as the source for criminal record information.

61 European Treaty Series No. 30.

The Commission's working paper

15.5 The Commission's 2006 working paper discusses the feasibility of an index of third-country nationals convicted within the European Union. The Commission notes that it is currently not possible to rely on the State of nationality to obtain comprehensive information about convictions of third-country nationals elsewhere in the EU. The proposed index would permit a Member State requiring criminal record information to receive an immediate notification of which other Member States hold information on the person in question.

15.6 In the Commission's view, such a system would operate in a series of steps. At the first stage the Member State of conviction would provide the index with information sufficient to identify the convicted third-country national, but without requiring the content of the criminal record to be communicated. This identifying information would be used by the requesting Member State to consult the index in order to be informed which Member State has the relevant criminal history, with subsequent requests for criminal record information being dealt with bilaterally by the Member States concerned.

15.7 The Commission states that its feasibility study shows that there is little difference, in terms of complexity, between an index limited to third-country nationals and a full index, but that a limited index would require less storage and processing capacity. The cost would also be around 40% less.

15.8 The Commission notes that most national criminal record systems contain only text-based (or alphanumeric) information, although it also notes that those in the UK and Cyprus also contain fingerprints. The Commission suggests that establishing the identity of a third-country national raises more problems than it does for EU nationals, and concludes that alphanumeric information on the identity of third-country nationals "will therefore be unreliable in a certain number of cases". The Commission goes on to discuss the possibility of an index containing biometric information, either generally or limited to certain categories of serious crime, and concludes by submitting a questionnaire to the Member States to allow the various options to be examined further.

Previous scrutiny

15.9 In her Explanatory Memorandum of 17 August 2006 the then Parliamentary Under-Secretary of State at the Home Office (Joan Ryan) stated that the general UK position on the exchange of criminal record information was "positive". The Minister noted that the Commission's working paper indicated that further debate would be necessary and that further information had been requested from Member States to allow this debate to take place. The Minister stated that the UK would await the receipt of this information before committing itself to a view on how the index should work.

15.10 The Minister also noted that financial implications may arise from the practical impact of the proposal, in particular from setting up an interface between IT systems in the UK and the index, but that these would be considered further when the options for an index were discussed.

15.11 The working paper has been kept under scrutiny since 11 October 2006,[62] during which time the Committee has been updated on further work being undertaken on the feasibility study.

15.12 On 27 September 2010, the Parliamentary Under-Secretary of State for Crime Prevention (James Brokenshire) wrote to us about a report compiled by Unisys, a global IT company, on behalf of the Commission:

> "Further to Meg Hillier's letters of 10 December 2009 and 26 January 2010 I am writing to update the Committee on developments to the Commission's work on the feasibility of an index of third country nationals convicted in the European Union.
>
> "The UNISYS study has now been completed. Its main recommendation is that Member States should use a decentralised exchange system of criminal records information on third country nationals (ECRIS-TCN) to find out whether third country nationals have convictions elsewhere in the EU. There is no requirement for countries to store biometric information such as fingerprints on their criminal record; instead countries would be required to store alpha-numeric information on third country nationals.
>
> "UNISYS also recommended that Member States examine the possibility of creating an integrated fingerprint search system (CRIS-FIN). Very much a test bed for now, CRIS-FIN would look at fingerprints within a wider identification context and cover all convictions and not just those of non-EU nationals. This would be a significant piece of work, not least because fingerprints are not used by the majority of Member States on their criminal conviction register. The UK is significantly ahead of the game on fingerprints because most UK convictions already have an attached fingerprint record. The UK, through the ACPO Criminal Records Office, is also already in receipt of EU funding to look at fingerprints within a criminal conviction context so may well be able to take a leading role with any CRIS-FIN project should it move forward.
>
> "The UNISYS report is not a formal legislative proposal from the Commission. The current five-year JHA work programme, the Stockholm Programme, includes an invitation for the Commission to propose a register of third-country nationals who have been convicted by the courts of the Member States. The latest timetable we have seen suggests the draft directive could be issued in 2011. Any formal proposal from the Commission will be subject to the usual scrutiny procedures."

The Minister's letter of 21 August 2012

15.13 The Minister writes to say that the timetable suggested in the letter above – that a draft Directive would be published in 2011 – has not been met. The Government believes that this is because the Commission has not yet conducted the required, detailed, internal impact assessment. It understands that work on this commenced in February this year and that an interim report was submitted at the end of May 2012. The final report is expected in

62 See headnote.

late September/early October. It will then be considered within the Commission itself, through inter-service consultation. The Minister therefore does not expect any proposal to issue until February 2013 at the earliest.

Conclusion

15.14 **We thank the Minister for the regular updates received from the Home Office over the years this working document has been kept under scrutiny.**

15.15 **This is an important topic, both legally and politically; but given this preparatory working paper will be superseded by a Commission proposal next year, we are content to clear it from scrutiny.**

16 Aviation: remotely piloted aircraft systems

(34236) 13438/12 SWD (12) 259	Commission Staff Working Document: *Towards a European strategy for the development of civil applications of remotely piloted aircraft systems (RPAS)*

Legal base	—
Document originated	4 September 2012
Deposited in Parliament	20 September 2012
Department	Transport
Basis of consideration	EM of 1 October 2012
Previous Committee Report	None
Discussion in Council	None planned
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 For over 60 years, remotely piloted aircraft systems (RPAS — sometimes referred to as Unmanned Aircraft Systems (UAS) or drones) have been used to perform a variety of tasks that would otherwise have been done by manned aircraft. Such tasks can often be performed more efficiently and more safely by not having a pilot on board the aircraft. RPAS currently represent a relatively small segment of the global aerospace market. However, they constitute one of the more dynamic areas of the aerospace industry. What attracts so much attention to them is the potential for expansion and new roles in both defence and civil applications. Although RPAS development for civil use is at a relatively early stage, many uses are emerging.

16.2 At the Paris International Airshow in 2011 the Commission launched a consultation, known as the "UAS Panel Process", with the aim of contributing to a strategy for the

development of civil applications of RPAS in the EU, leading to the integration of RPAS into everyday operational airspace. The consultation process consisted of two elements:

- a call for stakeholders to provide information and comments on the need for a strategy; and
- five thematic workshops, which considered the barriers to full exploitation of civil (commercial, corporate and government non-military) RPAS in the EU and discussed possible ways to overcome them.

The document

16.3 This Commission Staff Working Paper presents the outcome of the consultation process and summarises the key issues to be addressed to foster the development of RPAS in the EU, as follows.

Findings of Workshop 1 — RPAS industry and market

16.4 The current market is dominated by the military, which is driving technology development and market expansion. The application and use of RPAS within the military environment has grown almost exponentially over the past ten years — largely driven by operations in Iraq and Afghanistan, where they are routinely operated into airfield and operational airspace. However, the increase has not been reflected in the commercial market. Whilst a large number of potential applications have been identified for commercial and public safety use with the opportunity for significant cost savings, progress on the civilian side has been modest.

16.5 It is forecast that the worldwide RPAS market will double over the next decade to represent an annual procurement and R&D market of $11.3 billion in 2020. Currently the US dominates the market with nearly 70% of procurement and R&D. The Commission is concerned that the US has such a dominant position and believes that it is imperative for the EU to take action now if the EU market is to benefit from the predicted growth.

Findings of Workshop 2 — safe integration of RPAS into European airspace

16.6 RPAS are considered to be aircraft and therefore are subject to the same aviation rules as manned aircraft. However, there are some significant differences to manned aircraft, the most obvious being the absence of a pilot on board the aircraft. The pilot, or operator, is located at a control station on the ground. Despite this, RPAS have to operate to the same level of safety as manned aircraft. This is challenging since all of the current aviation rules have been developed on the assumption that the pilot would be on the aircraft. A key enabler therefore is developing an equivalent set of rules for airworthiness, personnel and operations that would allow the safe integration of RPAS with other airspace users. In addition key technologies would need to be developed to provide sufficient confidence to the regulator that RPAS can detect and avoid other aircraft, technologies that would replace the pilot's ability to see other aircraft and take avoiding action (sense and avoid).

16.7 As a result most, if not all, RPAS operations are conducted in segregated airspace well away from other air traffic and airport operations. Therefore, whilst there is huge market

potential for civil applications, this remains a distant reality, since operators cannot access the airspace to conduct operations and meet customer demand. Whilst there are many global organisations looking at this problem, including other European organisations, their work is not joined up and they are making very little progress toward defining specific regulations, procedures and standards to the help of the industry.

16.8 The Commission is keen to address this and senses an opportunity to play a leading role to the benefit of the EU industry. It concludes that it should adopt a coordinated approach with EU stakeholders, by developing a roadmap that would define the regulatory steps, linked to the development of technologies that would allow the safe integration of RPAS into European airspace by 2016. The Commission would establish a European RPAS Steering Group to oversee and co-ordinate the work.

Findings of Workshop 3 — radio spectrum requirements for RPAS

16.9 RPAS require radio communication systems for command and control and other key technologies such as sense and avoid and payload operations (sensors, cameras etc.). There is no dedicated spectrum for RPAS, which has to compete for available frequencies with other commercial air traffic and the military. Current civil RPAS operations (mostly R&D) are only possible subject to the ad-hoc availability of frequency assignments. The growth of the RPAS sector is therefore dependent on the availability of radio spectrum.

16.10 Agreements on the allocation of spectrum frequencies is achieved at the World Radiocommunication Conference (WRC), which meets every three or four years. RPAS has been discussed in the past two WRCs, but they have failed to reach an agreement on the best way forward. Most industry, particularly civil aviation and satellite communication, is not willing to concede additional spectrum solely for the use of RPAS.

16.11 The workshop concluded that further studies were required to understand the requirements of RPAS and to include work related to the interoperability with the future air traffic system and satellite communications systems.

Findings of Workshop 4 — the societal dimension of RPAS

16.12 As with manned operations, operators of civil RPAS are responsible for safety of their aircraft and for taking out adequate insurance to cover third party damage to buildings or persons. The insurance market is an emerging one which will develop as the sector grows.

16.13 It is clear that RPAS can be a valuable asset in crisis management situations. The ability to stay on station for prolonged periods of time with cameras and other sensors, without the need to refuel or consider pilot fatigue, makes them ideal for monitoring disaster and security events. National police forces and fire services etc. are all showing an interest in operating RPAS. However, there has been a growing concern from the general public about the use of RPAS in urban areas, particularly in relation to privacy and data protection. Operators are required to take into consideration EU and national legislation when conducting operations and ensure that data is managed sensitively and securely in accordance with these rules. No additional regulatory changes were needed to ensure adequate privacy and data protection.

16.14 The general public does not recognise that a vast proportion of surveillance and monitoring that would be undertaken by civil agencies and other organisations is currently carried out by manned aviation, both fixed wing and helicopters. However, some members of the general public feel genuinely uncomfortable with the development of RPAS due, in part, to their military use. The workshop concluded that development of RPAS needs to be transparent and involve consultations with the general public and representative bodies.

Findings of Workshop 5 — RPAS research and development

16.15 It is recognised that RPAS is an emerging technology within the civil aviation sector, capable of performing a number of tasks in the commercial aviation sector. It is also understood that technologies developed for RPAS will be readily transferrable to civil commercial aviation sector. However, there is still a lot of work to be undertaken before RPAS is readily accepted into European and global airspace alongside other commercial air transport and airspace users.

16.16 There is a huge amount of research currently being undertaken by industry and there are several national and EU programmes, looking at a mixture of operational and technological issues. But this research is fragmented and not coordinated to achieve a common goal of accessing airspace and opening up new markets.

16.17 The EU currently funds a number of R&D activities specifically intended to develop, test and validate standards and procedures that will contribute towards this goal and this is likely to continue in the foreseeable future. This R&D will include research into the interaction between air traffic control and RPAS, and in particular, how consideration is given to meet the challenges posed by RPAS in the development of the future air traffic system. Other research will need to be carried out in other critical technology areas, such as command and control and payload data-links, cyber security (including the risk of third party intrusion), systems monitoring, aerodrome operations and information management.

16.18 The workshop concluded that there was a need to streamline and coordinate research in line with meeting the specific requirements of a RPAS roadmap.

Way Forward

16.19 The consultation process concluded that the development of civil RPAS is an important step in the evolution of aviation and that RPAS are capable of supporting the development of a wide range of commercial and government applications, creating a large market of innovative services boosting growth and jobs. However, there remain a number of barriers that will have to be dealt with if this is to be achieved, not least the lack of common harmonised rules for pilots and operators and safety standards relating to airworthiness of RPAS. The consultation process highlighted the need to create a roadmap for the development of non-military applications of RPAS in the EU and for their integration in European airspace by 2016. The roadmap would be based on three pillars (regulation, research and legal issues and public awareness) and would make use of existing structures and working groups to ensure efficient use of resources.

16.20 In the document the Commission proposes to set up a European RPAS Steering Group composed of representatives from key stakeholders (national authorities and industry) to coordinate and implement the work programme to develop the roadmap.

The Government's view

16.21 The Minister of State, Department for Transport (Mr Simon Burns), tells us that the Government welcomes the Commission's initiative. He then explains the background to this statement, saying that:

- Regulation (EC) No 216/2008 (the Basic Regulation) on common rules in the field of civil aviation and establishing the European Aviation Safety Agency (EASA) and Commission Regulations (Implementing Rules) covering the certification of aeronautical and their continued airworthiness (with specific exemptions) have direct legal effect in the UK;

- RPAS with an operating mass below 150 kg are currently under the regulatory control of Member States while RPAS above 150 kg not engaged in military, customs, police or similar services fall within the EASA's competence and have to comply with the Basic Regulation;

- in the absence, however, of harmonised rules, for example, on mutual recognition of certificates and approvals, and comprehensive detect and avoid technology, all current RPAS operations are carried out in segregated airspace away from other airspace users;

- the UK has a healthy RPAS industry compared with the rest of the EU — companies such as BAE Systems and Thales UK are seen as leading players within the EU market;

- they see RPAS as important to the growth of their future aerospace business — the UK industry is, however, a long way behind the US;

- that said, the UK is at the forefront of regulatory development — the Civil Aviation Authority (CAA)'s guidance for operations in the UK[63] has been adopted by many other states across the globe and is one of the key documents being used by the Commission in taking this work forward;

- additionally, the UK has one of the most capable RPAS test and evaluation facilities in the world, the West Wales UAS Environment centred around ParcAberporth on the Welsh coast, currently being used by the MOD to develop its Watchkeeper programme;[64]

- the facility was developed to provide UK industry with the infrastructure to support development of the civil sector — however, there has been relatively little civil activity due to the lack of common and harmonised regulation;

63 See http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=415.

64 See http://www.thalesgroup.com/News_and_events/focus_080807_WATCHKEEPER_%C3%A0_la_pointe_de_la_technol/.

- the UK RPAS sector is frustrated by the lack of progress in developing airworthiness standards and the operational framework to capitalise on market opportunities — the industry is reluctant to commit its resources on development of RPAS whilst the regulation is in such a flux; and

- the Government therefore supports this Commission initiative to develop a clear understanding of the issues and take a harmonised approach to addressing them across the EU and with other global regions through the International Civil Aviation Organisation — the CAA and industry are closely engaged in the various work streams involved in harmonising these requirements.

16.22 The Minister adds that, as completion of this document took longer than expected, the Commission decided to establish the European RPAS Steering Group, suggested in it, in advance of the document being published. He continues that:

- the first meeting of the group took place on 1 July;

- it is expected to ensure delivery of a comprehensive roadmap, defining milestones, the distribution of tasks amongst stakeholders and the timeframe for achieving the goal by the end of the year;

- the EASA will begin its work of drafting Commission Implementing Rules to bring RPAS within the scope of its Basic Regulation, albeit there are likely to be differences to manned aviation; and

- this work is expected to begin in 2013 and draw upon the work being carried out by the European RPAS Steering Group.

Conclusion

16.23 **Whilst we are content to clear this document, given the apparent increasing importance of the development of RPAS, we draw it to the attention of the House.**

17 Multiannual Financial Framework 2014–2020: simplification

(34273) 14358/12 COM(12) 531	Commission Communication: *First simplification scoreboard for the MFF 2014–2020*

Legal base	—
Document originated	20 September 2012
Deposited in Parliament	2 October 2012
Department	HM Treasury
Basis of consideration	EM of 14 October 2012
Previous Committee Report	None
Discussion in Council	None planned
Committee's assessment	Politically important
Committee's decision	Cleared

Background

17.1 In February the Commission published a Communication, *A simplification agenda for the MFF (2014–2020)*, setting out its proposals for comprehensive simplification of rules and rationalisation of programmes relating to the use of EU funds for the next Multiannual Financial Framework (MFF). In the document the Commission said that it "intends to robustly defend its proposals and to produce a scorecard (which it will publish) to 'monitor progress made in the current Simplification Agenda' and to capture changes, and their financial and practical implications, made by the Council and the European Parliament as negotiations [of the MFF] continue".[65]

The document

17.2 In this Communication the Commission sets out its views on the EU budget simplification agenda and negotiations for the Multiannual Financial Framework (MFF) 2014–2020. It highlights the two key vehicles for delivering this agenda as the proposed Financial Regulation[66] and the 57 sector specific legislative proposals (listed in the Commission's Communication, *A simplification agenda for the MFF (2014–2020)*) negotiated for each spend area.

17.3 The Commission welcomes the progress made on the Financial Regulation and welcomes some of the progress made on ongoing sector specific legislative proposals. However, it also identifies concerns in these negotiations and the Communication identifies these issues, with a discussion of some of the general points of concern and then a

65 (33697) 6708/12 + ADDs 1–3: see HC 428-lv (2010–12), chapter 1 (21 March 2012), HC 86-xi (2012–13), chapter 2 (5 September 2012) and HC 86-xiii (2012–13), chapter 1 (17 October 2012).

66 (32428) 5129/11: see HC 428-xvi (2010–11), chapter 1 (9 February 2011) and *Stg Co Debs*, European Committee B, 14 February 2011, cols 3–18.

grid of the main recommendations. The areas the Commission wants to draw most attention to are as follows.

17.4 The Commission:

- says that each party in the negotiation wants simplification but has different specific objectives — the Council is focussed on Member State arrangements, the European Parliament needs to define its objectives more clearly and the Commission is also looking at sound financial management;
- is critical of both the Council and the European Parliament for inserting excessive complexity;
- discusses the goal of reducing the number of programmes, where it specifically supports seeking enhanced harmonization of the rules on the funds covered by the Common Strategic Framework;[67]
- sets out progress on a single sector framework where it perceives that its goals have been diluted or changed by the Council and or the European Parliament — for example, on Erasmus;
- raises criticisms on mainstreaming and synergies — these include greening of direct payments (where the Commission wants to retain a focus on 30% of direct payments being linked to climate friendly policies) and climate change;
- does not want Member States to be able to take a "menu a la carte" approach;
- sets out progress on setting priorities and indicators — most of this section discusses Structural Funds, where the Commission particularly fears a risk that the Europe 2020 priorities on jobs and growth could be weakened and that a dilution of thematic concentration requirements in cohesion policy could undermine progress;
- says that macro conditionality will enhance the impact of expenditure, but also mentions areas such as health where it is concerned that an excess of objectives could dilute focus;
- discusses the state of play on flexible decision making procedures and is critical in particular where its own discretion is reduced;
- is critical, on eligibility rules, of making VAT eligible for funding, as it argues that this would involve compensating national budgets, and of changes to its Horizon 2020 proposal, as this could increase administration burdens; and
- is critical of constraints on its ability to audit spending.

17.5 In its more general discussion, the Commission raises some additional points:

67 (33217) 15243/11 + ADDs 1–4: see HC 428-xli (2010–12), chapter 1 (9 November 2011) and *Gen Co Debs*, European Committee C, 6 March 2012, cols 3–14.

- it is against over specification of spending, for example sub-ceilings, that prevent operational flexibility, and is against the application of comitology to individual selection and grant award decisions;
- it is concerned about any measures that could unnecessarily increase error rates and would affect timely monitoring of spend;
- it welcomes some aspects of recent negotiations as well — for example, efforts to ensure consistency between the Financial Regulation and sector specific proposals;
- it is pleased that the introduction of single sector frameworks has been welcomed by many;
- it is pleased that the Europe 2020 Strategy is receiving broad commitment from Member States and the European Parliament; and
- it welcomes any reduction in complexity for awarding grants of low value.

17.6 In conclusion, the Commission says that it welcomes the acceptance of the bulk of its proposals on simplification, but that it has some serious concerns, highlighting that the areas of highest concern are around restricting operational flexibility and restricting evaluation. In pressing others to take up its recommendations the Commission recalls that simplification is a responsibility for all EU institutions and Member States.

The Government's view

17.7 The Financial Secretary to the Treasury (Greg Clark) first comments generally that:

- the Government is a strong supporter of the principle of simplification;
- there is no doubt that EU financial rules are disproportionately complex and burdensome;
- the effects of overly complex rules are wasted funds, higher rates of error, disproportionate bureaucracy and disincentives to beneficiaries who could otherwise participate and add value to EU programmes;
- the Government is clear, however, of the need to maintain high standards of financial management and propriety, whilst pushing for greater transparency in the way funds are used;
- these concepts can be difficult to consolidate, and require (as the Commission itself explains) a proportionate response;
- the Government generally welcomes the progress made in respect of the new Financial Regulation;
- the Government, regarding the criticism of the Commission on the restrictive criteria for the use of financial instruments, was clear that financial instruments must demonstrably add value and leverage to the EU budget, must be subject to regular scrutiny and reflows (whereby revenues such as capital repayments,

guarantees released and repayments on the principal of loans, will be returned to the instrument) should be the exception rather than the rule, as these sources of income represent an opportunity cost to the EU budget and should be managed appropriately;

- the Government, as a net contributor, has a direct interest in ensuring that potential sources of income to the budget are only diverted elsewhere when it can be shown that this will add real value;

- it agrees that the budget needs the flexibility to use financial instruments as an innovative way of leveraging funds, but disagrees with the Commission on the balance between flexibility and ensuring propriety;

- the Council position on removing delegated acts is a simplification — putting the requirement for *ex-ante* assessments, for example, in the main Regulation rather in a delegated act means Member States can start planning implementation at an earlier stage;

- providing greater clarity on the legal requirements for Member States also reduces uncertainty caused by the Commission changing or re-interpreting the rules midway through the programming period;

- the Government agrees, in the context of the proposed Erasmus for All (Education) programme, that introducing sub-ceilings, fixed amounts for specific actions etc. would reduce the necessary flexibility in the operation of the programme and, indeed, reduce the scope for Member States via Programme Committees to influence budget implementation over seven years; and

- as for the Commission's criticism of *ad-hoc* limitations of audit and monitoring arrangements, whilst the Government fully supports the need for effective monitoring and audit, the Commission has failed to recognise the distinct institutional framework of each Member State — its proposal causes particular problems for those such as the UK, where delivery of programmes is devolved.

17.8 Turning to the sections of the Communication dealing with rationalisation of programmes and simplified implementation mechanisms and procedures the Minister says that:

Reducing the number of programmes

- the Government generally welcomes proposals to rationalise the number of programmes in order to simplify the regulatory landscape;

- it does not support the Commission's position on the merged 'FISCUS' programme and welcomes the Commission's decision to amend its original proposal into two separate Council Decisions for the tax and customs elements;[68]

68 (34197) 13265/12, (34202) 13346/12: see HC 86-xiii (2012–13), chapter 12 (17 October 2012).

- the Government does not believe that the programmes are suited to combination, as tax matters remain primarily a Member State competence, whereas the customs union is an area of exclusive EU competence;
- no compelling justification has been provided for merging the programmes, nor has there been any evaluation or assessment of the possible risks of proposed merger;

Enhancing coherence and clarity of rules

- the Government generally welcomes the simplification achieved in the new Financial Regulation as set out in the Communication;
- it particularly welcomes the new provision that sector-specific rules must comply with the provisions of the Financial Regulation and that derogations, where permitted, must be fully justified;
- this will ensure coherence and enshrine the Financial Regulation as a genuinely overarching document, in contrast to present arrangements where sector-specific rules may derogate at will, which has caused significant disparity, and therefore complexity, across the regulatory landscape;
- the Government is not clear which provisions of LIFE and Horizon 2020 the Commission is referring to when it calls for greater simplification and so cannot comment;
- whilst the Government is generally a supporter of the clear simplification benefits of single sector frameworks, it is less convinced in the specific case of the Common Strategic Framework;
- although Structural and Cohesion Funds clearly have lots of set of opportunities for harmonisation, this is not always the case with the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund — each one of the five funds has its own proposed rules, as well as the joint one;
- on mainstreaming: the Government strongly supports the principles of thematic concentration as a means of maximising the impact of the funds;
- the Government did not believe, however, that the Commission's proposals for ring-fencing of funds properly took into account the full range of activities that could contribute to their activities;
- although the Communication mentions only Member States, the amendments proposed by the European Parliament weaken the core principle of thematic concentration to an even greater extent;
- in regards to greening, the Commission's own impact assessment estimates that these proposals would increase the administrative burden in Pillar I of the CAP by around 15%;

- the Government does not see sufficient justification for this increase in terms of additional benefits;
- a further example of unnecessary complexity is the proposal to increase the resolution of mapping and the length of time paying agencies must retain data, where there is nothing to indicate that such a change is needed or that it would bring about any real improvement;

Focusing on clear priority objectives and indicators

- the Government supports the intention to focus on clear priority objectives and indicators, permitting greater scrutiny of programme impact and success, particularly when focussing on results;
- generally, the Government agrees that the addition of more objectives and indicators (which cumulatively may add costs and reduce the impact of objectives) should be resisted — it agrees with the Commission's specific example in relation to Health and Growth in this respect;
- the Government fully supports the Commission's stated objective of securing 'sound, coherent and comparable monitoring, evaluation and reporting mechanisms' and agrees that 'Weakening of objectives, indictors or reporting requirements in the specific legislative proposals risk undermining the quality of reporting under Article 318 [TFEU]';
- regarding the Commission's criticism of reporting deadlines, the changes introduced by the Council are generally to bring the deadlines back to those for the current period and are based on practical experience of preparing these reports — that said, the Government agrees that timely submission is essential to facilitate timely analysis;
- the Council's position on the 5% performance reserve for the Common Strategic Framework funds will be determined as part of the MFF settlement — however, the allocation of a 5% reserve at such a late stage of programming causes practical problems, particularly when programmes are delivered through multiannual contracts;
- the Government expects the Commission to respect existing treaty provisions on macroeconomic conditionality, rather than seek to impose it;

Using simplified instruments for decision making

- the Government is concerned about the widespread use of delegated acts and implementing acts throughout the budget;
- while in some cases these can be justified, in other instances they either create additional legislative burden or remove or limit control from Member States over important decisions. The Government has been examining the necessity for these acts on a programme by programme basis;

- on legislation for the Common Strategic Framework funds, the Council's position has fully respected the legal position under TFEU, unlike the Commission which proposed a delegated act for the Common Strategic Framework — this was an essential element of its whole approach, as further evidenced by comments elsewhere in the Communication;
- the co-legislators have the right to insist that non-essential elements are brought into the main legislation — the Council has proposed the removal of certain delegated acts to improve clarity, remove uncertainty and speed up the programming process;
- in respect of LIFE, negotiations have supported the balanced use of delegated and implementing acts, removing proposed delegated acts apart from identifying indicators and maintaining the role of the committee to ensure national interests can feed into programme developments;

Cost eligibility rules

- the Government agrees with the Commission's principle that VAT should not generally be an eligible cost (as provided for in the new Financial Regulation), as it effectively facilitates the EU subsidising Member State budgets where national law does not except VAT;

Simplified forms of grants

- the Government generally supports the lighter-touch regime for low-cost grants, including the introduction of prizes (with their associated leverage effect);
- it notes the Commission's changed position on the real cost funding option for grants, which it previously promoted in the design and implementation of the Seventh Framework Programme;
- while it is the case that this form of funding entails more detailed cost calculations than does a flat rate approach, this can be minimised through greater acceptance of beneficiaries' usual accounting practices and more consistent interpretation and application of the rules by Commission project officers and auditors;
- the Government maintains its view that real cost funding (including the funding of indirect costs) is essential for the financial sustainability of non-profit organisations engaged in research, such as universities, and it will continue to pursue this as a long term policy option;

E-Governance

- the Government supports the Commission's aims but believes the longer timescale proposed by the Council is a better reflection of the time needed to scope, procure and implement new IT systems;

More proportionate and cost effective control

- the Government has consistently pushed for stronger financial discipline, but this needs to be balanced against the removal of excessive or unnecessary burdens, particularly on small beneficiaries; and
- it believes there is scope to go further on introducing proportionate controls and a more risk-based approach to audit.

Conclusion

17.9 **Although we clear this document, we draw it to the attention of the House as background to the current negotiations on the next MFF.**

18 Protection of workers from risks arising from exposure to electromagnetic fields

(32944) 11951/11 COM(11) 348	Draft Directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)

Legal base	Article 153(2) TFEU; co-decision; QMV
Department	Work and Pensions
Basis of consideration	Minister's letter of 17 October 2012
Previous Committee Report	HC 428-xxxiii (2010–12), chapter 4 (13 July 2011)
Discussion in Council	Political agreement reached on 4 October 2012
Committee's assessment	Politically important
Committee's decision	Clear; further information requested

Background and previous scrutiny

18.1 In 2004, the Council and European Parliament adopted a Directive to protect workers from risks arising from occupational exposure to electromagnetic fields (radiation occurs whenever heavy electric currents or very strong magnets are used). Workers most likely to be affected include those involved in broadcasting, transport, telecommunications, energy generation and distribution, and engineering, as well as medical staff operating magnetic resonance imaging (MRI) equipment. The health and safety risks of exposure vary in magnitude and can range from severe burns to nausea and dizziness.

18.2 The 2004 Directive set maximum exposure limit values and required Member States to ensure that workers were not exposed to values exceeding these limits. The values were based on recommendations issued by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) in 1998. As the deadline for implementing the Directive

(April 2008) drew nearer, new scientific data indicated that the maximum exposure limit values were too restrictive and would be too costly and difficult to implement in practice. Of more immediate concern was the possibility that some medical MRI procedures would no longer be possible as they would exceed the specified limits. The Directive was therefore amended to delay its implementation until April 2012.

18.3 In June 2011 the Commission put forward a proposal to repeal the 2004 Directive and replace it with a new Directive which would set more realistic exposure limits, give Member States greater flexibility to exceed them under controlled conditions, exempt MRI procedures (provided alternative protection systems were in place) and reduce the overall burden on industry. Our Thirty-seventh Report of 13 July 2011 provides an overview of the draft Directive and the Government's preliminary assessment.

18.4 The Government recognised that the Commission's proposal was a significant improvement on the 2004 Directive, but nevertheless expressed concern that the introduction of binding exposure limits (replacing voluntary guidelines) would impose a disproportionate burden on industry and unduly restrict certain activities such as resistance welding (mainly in the automotive sector). The Government also considered that the Commission's Impact Assessment underestimated the number of businesses likely to be affected by the draft Directive and that compliance costs were likely to be disproportionate to the risks involved.

18.5 The last progress report we received was in November 2011 when the Government informed us that changes proposed by the (then) Polish Presidency were likely to make the Directive more complex and restrictive. The Government indicated that it would press for an outcome "that is sensible, proportionate and does not introduce unnecessary burdens on UK industry, whilst still ensuring adequate worker protection", encourage the Commission and Member States to explore the possibility of a non-legislative solution, and seek a realistic implementation deadline of at least four years.[69] We retained the draft Directive under scrutiny and requested further progress reports. Meanwhile, as agreement on the draft Directive appeared elusive, the Commission put forward a proposal to amend, for a second time, the date for transposing the 2004 Directive, with the European Parliament and Council agreeing a new deadline of end October 2013.[70]

The Minister's letter of 17 October 2012

18.6 The Minister for Employment (Mark Hoban) informs us that there has been significant progress since the former Minister for Employment (Chris Grayling) last wrote to us in November 2011, and asks us to release the draft Directive from scrutiny. He explains:

> "Despite considerable pressure from a number of Member States, the flexibility in the Commission's proposal, including crucial derogation provisions for Medical Resonance Imaging (MRI), military activities and industrial processes, has been

69 See letter of 16 November 2011 from the former Minister for Employment (Chris Grayling) to the Chairman of the European Scrutiny Committee. See http://www.parliament.uk/documents/commons-committees/european-scrutiny/Ministerial%20Correspondence%202010-12.pdf

70 See (33641); HC 428-li (2010–12), chapter 17 (22 February 2012).

retained. This ensures that life saving diagnostic scans will not be prohibited, that unnecessary cost burdens will not placed on the Armed Forces and that important industrial process, vital to the manufacturing sector at large and the automotive industry in particular, will not be restricted or made financially unviable.

"The UK was instrumental in safeguarding this justified, and necessary flexibility, as well as rebutting attempts to introduce other requirements not based on robust scientific evidence.

"In addition, I am pleased to inform you that the UK was pivotal in securing a number of positive changes to the proposal during the Council negotiations, including:

- "A transposition period of three years (as opposed to the standard two years)
- "Positive changes to remove overly burdensome elements from health surveillance and reporting requirements
- "Simplified risk assessment procedures for employers."

18.7 The Minister adds:

"Whilst I remain of the view that a non-legislative solution would have been preferable, I believe that the current text, which is balanced, proportionate and delivers the UK negotiating objectives, whilst still ensuring that workers are protected, represents the best outcome available."

18.8 Turning to the impact of the draft Directive on UK industry, the Minister continues:

"The UK's initial impact assessment estimated that the cost to industry would be approximately £80 million. Ongoing assessment suggests that these costs are unlikely to reduce further, and only a non-legislative approach would make a significant positive change to the potential impact.

"However, much of the uncertainty surrounding the proposal and the risk of additional costs in transposition has been removed through Council negotiations. Furthermore, through extensive engagement with stakeholders, the Government believes that the introduction of a number of cost effective tools and measures on a European, national and sectoral level, to support transposition could reduce these costs by 25% or more. The Government will continue to work with stakeholders as we move towards transposition and implementation to ensure that this directive is transposed in the most effective and sensible way possible."

18.9 The Minister then informs us that the Employment and Social Affairs Council reached political agreement on a Presidency compromise text on 4 October 2012, and adds:

"Whilst being supportive of the text, for the reasons given above, I decided that because parliamentary scrutiny had not been cleared it was only proper that the UK

abstain from the General Approach in this instance. Going forward, I do hope to be able to add the UK's formal support to the position agreed by the Council.

"In relation to the next stage, we anticipate that a significant minority of the European Parliament may look to remove or restrict the vital derogation provisions contained in the proposal and to introduce more precautionary requirements that are not based on robust science. Council will need to be strong and firm in its engagement with the Parliament to ensure the proposal remains proportionate, flexible and scientifically justified. This makes it key for us to be able to work closely with our counterparts in Council. This will be difficult if we maintained our abstention.

"Looking to the future, I understand that discussions are due to commence with the European Parliament and the Commission in December. To allow for the possibility that agreement on a final text with the European Parliament might be progressed in early 2013, and to ensure that we can influence the discussions effectively, I would be grateful if the Committee would consider releasing the proposal from scrutiny at this time.

"I will of course endeavour to keep the Committee updated on further developments."

Conclusion

18.10 **The Minister tells us that significant progress has been made since the last progress report in November 2011, and underlines the pivotal role played by the UK in securing a number of positive changes, but offers no apology or explanation for the absence of an update or progress report in advance of political agreement at the Employment and Social Affairs Council on 4 October. Whilst the Government's decision to abstain means that there has been no formal breach of our Scrutiny Reserve Resolution, the absence of information has deprived us of the opportunity to express a view on the adequacy of the Presidency compromise text before its general acceptance by the Council.**

18.11 **We note the Minister's desire to add the UK's formal support to the compromise text agreed by the Council in order strengthen the hand of the Council in pressing for "a proportionate, flexible and scientifically justified" outcome as it enters into discussions with the European Parliament. We have no desire to impede this process and therefore agree to clear the draft Directive from scrutiny. In so doing, however, we wish to express our deep dissatisfaction at the apparent disregard shown for Parliamentary scrutiny and ask the Minister to write to us explaining the reasons why he was unable to provide us with progress reports in advance of the October Council and how he intends to ensure that his undertaking to update us on further developments will be fulfilled.**

19 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Department for Business, Innovation and Skills

(34232) 13779/12 SWD(12) 264	Commission Staff Working Document — Transnational company agreements: Realising the potential of social dialogue.

Department for Environment, Food and Rural Affairs

(34209) 14635/12 COM(12) 579	Draft Council Regulation fixing for 2013 and 2014 the fishing opportunities for EU vessels for certain deep-sea fish stocks.
(34316) 14687/12 COM(12) 575	Draft Council Decision on the position to be taken within the International Jute Study Group as regards the negotiation of new Terms of Reference beyond 2014.

Foreign and Commonwealth Office

(34340) 15152/12 JOIN(12) 29	Draft Council Regulation amending Regulation (EC) No.765/2006 concerning restrictive measures in respect of Belarus.
(34345) — —	Draft Council Decision on the Union support for the activities of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) in order to strengthen its monitoring and verification capabilities and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.
(34354) — —	Draft Council Decision for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries.

Home Office

(34276) 14179/12 COM(12) 559	Draft Council Decision concerning the signing of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union.

(34277) 14199/12 COM(12) 560	Draft Council Decision on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union.

Department for International Development

(34304) 14634/12 COM(12) 568	Draft Council Decision on the position to be adopted by the European Union within the ACP-EU Committee of Ambassadors concerning the statutes of the Technical Centre for Agricultural and Rural Cooperation.

Department for Transport

(34305) 14656/12 COM(12) 570	Draft Council Decision on the position to be taken by the European Union in the Joint EU/Switzerland Air Transport Committee set up under the Agreement between the European Community and the Swiss Confederation on Air Transport concerning an amendment to the Annex thereto.

HM Treasury

(34275) 13936/12 —	Draft Council Decision amending Implementing Decision 2011/344/EU on granting Union financial assistance to Portugal.
(34278) 14238/12 —	Recommendation with a view to bringing an end to the situation of an excessive government deficit in Portugal.

Formal minutes

Wednesday 31 October 2012

Members present:

Mr William Cash, in the Chair

James Clappison
Michael Connarty
Julie Elliott
Nia Griffith
Kelvin Hopkins
Chris Kelly
Penny Mordaunt
Jacob Rees-Mogg
Henry Smith

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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.—(The Chair.)

Paragraphs 1.1 to 3.23 read and agreed to.

Headnote read, amended and agreed to.

Paragraphs 4.1 to 5.13 read and agreed to.

Headnote read, amended and agreed to.

Paragraphs 6.1 to 18.11 read and agreed to.

Resolved, That the Report, as amended, be the Eighteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

The Committee further deliberated.

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[Adjourned till Wednesday 7 November at 2.00 p.m.

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*)