House of Commons

European Scrutiny Committee

Thirty-eighth Report of Session 2012–13

Documents considered by the Committee on 26 March 2013, including the following recommendation for debate:

Regulatory needs of small and medium sized businesses

Enhanced cooperation and financial transaction tax

HC 86-xxxvii

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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://europeanmemoranda.cabinetoffice.gov.uk/.

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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Report

1 Regulatory needs of small and medium sized businesses

(34750) 7268/13 COM(13) 122 + ADD 1	Commission Communication: *Smart regulation — responding to the needs of small and medium-sized enterprises*

Legal base	—
Document originated	7 March 2013
Deposited in Parliament	8 March 2013
Department	Business, Innovation and Skills
Basis of consideration	EM of 19 March 2013
Previous Committee Report	None, but see footnotes
Discussion in Council	29–30 May 2013
Committee's assessment	Politically important
Committee's decision	For debate in European Committee C

Background

1.1 In pointing out the contribution which small and medium sized enterprises (SMEs) make to the European economy, the Commission also notes that they thrive best in a regulatory environment which meets their specific needs, and it recalls that its Communication[1] in November 2011 on adapting EU regulation to the needs of micro-enterprises builds upon the "Think Small First" principle set out in the Small Business Act[2] by enabling micro-enterprises to be exempted from regulation where justified, by identifying the "Top 10" most burdensome regulations for SMEs, and by improving consultation with them.

1.2 It has now sought in this Communication to review progress in applying the micro-enterprise exemption and in introducing lighter regulatory regimes for SMEs; to introduce the SME scoreboard; and to show how regulatory fitness can be ensured.

The current document

Exemptions for micro-enterprises

1.3 The Commission says that, in the course of preparing its normal impact assessment to accompany a proposal for legislation, it assesses the consequences for SMEs, and analyses whether micro-enterprises can be exempted, and it cites a number of instances where this has been done (such as the "take back" obligation when selling electrical goods, carbon dioxide targets for new passenger cars, tachograph requirements, the need to have a Data

1 (33512) 17818/11: see HC 428–xlviii (2010–12), chapter 21 (25 January 2012).

2 (32560) 7017/11: see HC 428–xxi (2010–12), chapter 6 (23 March 2011).

Protection Officer, and the proportion of women on company boards). However, it also points out that it is not always possible to exempt micro-enterprises, for example where there is clear evidence that a measure would not be able to achieve goals such as the protection of consumers and workers, or the protection of fundamental human rights would be jeopardised.

Lighter regimes for SMEs

1.4 The Commission says that, where exemptions are not possible, efforts are made to tailor regulatory proposals to SMEs, and that recent examples include the carrying out of an energy audit, and rules for participation in public procurement. In addition, it notes that some EU legislation leaves Member States free to decide whether to introduce lighter regimes in areas such as the consultation of workers, food hygiene, waste and annual accounts.

SME scoreboard

1.5 The Commission has already undertaken to issue an annual scoreboard covering regulatory initiatives expected to have a significant impact on SMEs, which will allow all interested parties to identify the progress being made and the main issues involved. The first such scoreboard is contained in a Staff Working Document attached to this Communication, and provides more detailed information on the progress of individual pieces of legislation in 2011 and 2012, as well as burdensome areas of legislation identified by SMEs and by representative organisations through the consultation.

Supporting and consulting SMEs

1.6 The Communication provides the first results of the Commission's consultation in autumn 2012 to identify the top 10 most burdensome pieces of EU legislation for SMEs. It notes that REACH (the Registration, Evaluation, Authorisation and Restriction of Chemicals) was mentioned most frequently, and that other areas included:

- VAT legislation (covering common system of VAT, and the refund of VAT across Member States);
- the General Product Safety Directive;
- the Recognition of Professional Qualifications Directive;
- the Data Protection Directive;
- waste-related legislation;
- labour market-related legislation (covering health and safety, working time, posting of workers, and temporary agency work);
- regulation on equipment in road transport for driving and rest periods;
- procedures for the award of public works, supply, and service contracts; and

- the Modernised Customs Code.

1.7 The Commission reiterates that it remains committed to ensuring that regulation is adapted to meet the needs of SMEs, since it believes that they can thrive best in a business environment in which their specific needs are respected, whilst pursuing its policy objectives, and that, if regulation is necessary, it needs to be designed with them in mind. It adds that it will continue to play close attention to SMEs in its policy development and review, with the Regulatory Fitness and Performance Programme (REFIT) being implemented progressively (with results, including the SME scoreboard, being published annually and open to stakeholder comment).

1.8 The Commission also notes in the Communication that there is work in hand for most of the Top 10 items, notably:

- legislative proposals for general product safety, public contracts, tachographs, and the recognition of professional qualifications;
- reviews underway (or soon to commence) on health and safety legislation, waste legislation, and working time; and
- follow-up actions from previous exercises on REACH and VAT.

1.9 The Commission also undertakes to improve the way it consults SMEs by publishing a rolling calendar of planned consultations on the Your Voice in Europe website, and setting up an alert mechanism under the Transparency Register to inform stakeholders about forthcoming consultations; making increased use of the Enterprise Europe Network, and of SME conferences, to improve dialogue between SMEs and the Commission; and representing the interests of SMEs within the EU institutions through the SME Envoy network and the High-Level Group on Administrative Burdens.

The Government's view

1.10 In his Explanatory Memorandum of 19 March 2013, the Minister for Business and Enterprise (Michael Fallon) welcomes this Communication, and says that the Government has engaged extensively with the Commission in the run-up to its publication. He notes the useful progress in relation to the pledge to minimise burdens for SMEs in new proposals, and that most of the adaptations listed can be expected to bring benefits for SMEs in the UK. He adds that examination of Commission impact assessments confirms that the number of legislative proposals being adapted to help SMEs has increased in recent months, but considers that there is still scope for the Commission to propose such adaptations more frequently, a course of action for which the Government will continue to press.

1.11 The Minister also says that the results of the Top 10 consultation should prove helpful to the Commission as it takes forward its commitment to screen the stock of existing EU legislation to identify areas where regulatory burdens for SMEs can be reduced. He adds that these include many areas which UK business organisations highlighted in their responses to the consultation, and that the Government will be seeking to ensure that the interests of UK SMEs are fully taken into account.

Conclusion

1.12 **Although this Communication is essentially a report on the progress made in lightening the regulatory burden on small businesses, and does not raise any new policy implications, the need to encourage such businesses is an important UK (and EU) priority. This does seem to us an opportune moment for the House to take stock of what has been achieved so far, and what still needs to be done. We are therefore recommending the document for debate in European Committee C.**

2 Enhanced cooperation and financial transaction tax

(a) (33179) 14942/11 + ADDs 1–20 COM(11) 594	Draft Directive on a common system of financial transaction tax and amending Directive 2008/7/EC
(b) (34372) 15390/12 COM(12) 631	Draft Council Decision authorising enhanced cooperation in the area of financial transaction tax
(c) (34692) 6442/13 + ADDs 1–2 COM(13) 71	Draft Council Directive implementing enhanced cooperation in the area of financial transaction tax

Legal base	(a) Article 113 TFEU; consultation; unanimity (b) Article 329(1) TFEU; consent; QMV (c) Article 113 TFEU; consultation; unanimity (amongst the Member States participating in enhanced cooperation)
Document originated	(c) 14 February 2013
Deposited in Parliament	(c) 19 February 2013
Department	HM Treasury
Basis of consideration	(c) EM of 19 March 2013
Previous Committee Reports	(a) HC 428–xxxix (2010–12), chapter 4 (26 October 2011) and HC 428–xli (2010–12), chapter 10 (9 November 2011) (b) HC 86–xxii (2012–13), chapter 13 (5 December 2012), HC 86–xxvi (2012–13), chapter 5 (9 January 2013) and HC 86–xxxiv (2012–13), chapter 1 (6 March 2013) (c) None
Discussion in Council	(a) 10 July 2012 (b) 22 January 2013 (c) Not known
Committee's assessment	Legally and politically important
Committee's decision	(a) Cleared (b) and (c) For debate on the Floor of the House

Background

2.1 In September 2011 the Commission proposed a draft Directive, document (a), to establish an EU financial transaction tax (FTT). This was dependent on the unanimous agreement of the Council and it became obvious that such support would not be forthcoming. This document has remained under scrutiny.

2.2 Under Article 20 TEU and in accordance with Articles 326–334 TFEU nine or more Member States may seek Council authorisation to establish enhanced cooperation amongst themselves by exercising non-exclusive competences of the EU. The Council's authorising Decision is adopted by QMV.

2.3 With this draft Council Decision, document (b), the Commission proposed the Council's authorisation of an enhanced cooperation procedure for the introduction of an FTT. The Member States concerned were Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain. The Commission said that the request of the Member States met the conditions for enhanced cooperation and that the proposed FTT would be largely based on the original proposal, in terms of scope and objectives.

2.4 The draft Decision was adopted by the Council on 22 January. We had asked that the document be debated before the Council decided the matter, but given the Government's failure to meet this request, we recommended instead that it should be debated together with the Commission's proposal for an enhanced cooperation FTT, once we had seen the Government's Explanatory Memorandum about it.[3]

The new document

2.5 The draft Directive to introduce an enhanced cooperation FTT, document (c), is based upon the Commission's original proposal for an EU wide FTT, document (a).

2.6 The Commission says that the policy objectives of the proposal are to:

- avoid fragmentation in the single market for financial services, in the context of the increasing number of uncoordinated national tax measures in place;
- ensure that financial institutions make a fair contribution to covering the costs of the recent crisis and to ensure a level playing field with other sectors from a taxation perspective; and
- create appropriate disincentives for transactions that do not enhance efficiency of the financial markets and which complement regulatory measures aimed at avoiding future crises.

2.7 Key features of the proposal include the following:

3 See headnote. Document (b) was originally referred for debate in European Committee B, a decision reported on 6 March 2013.

- the FTT would have a wide base as well as provisions to prevent the relocation of financial activity outside of the FTT zone;
- as in the original proposal a 'residence principle' would apply, meaning that the tax would be due if any party to the transaction were established in a participating Member State, regardless of where the transaction took place;
- this would be the case both if a financial institution engaged in the transaction were, itself, established in the FTT zone, or if it were acting on behalf of a party established in that jurisdiction;
- an FTT zone financial institution's branches worldwide would therefore be subject to the FTT on all relevant transactions — for example, French and German banks' London and New York branches would be fully subject to the FTT on all their securities and derivatives businesses;
- equally non-FTT zone financial institutions (for example, those in London, Dublin, Luxembourg, New York and Asia) would be taxed whenever they transacted with parties in the FTT zone and whenever they dealt in securities issued by an entity established in the FTT zone or on behalf of such an entity;
- in order to mitigate the risk of relocation, reliance is put on the residence principle to ensure that if any party to the transaction were established in the FTT zone, the transaction would be taxed, regardless of where in the world it took place — financial operators would only be able to avoid the FTT if they were prepared to relocate and relinquish their clients and business in the eleven participating Member States and the Commission hopes that the relatively low headline rates would deter such relocation;
- as "a further safeguard against avoidance of the tax", the proposal also adds an 'issuance principle', meaning that financial instruments issued in the FTT zone would also be taxed when traded, even if those trading them are not established within the FTT zone; and
- in general only equities and bonds would be subject to this issuance principle, however there might be scenarios where other products, such as derivatives traded on organised trade platforms, would also be affected.

2.8 The new proposal is accompanied by an impact assessment and its executive summary. However, rather than a full assessment it refers back to, and supplements with "further additional technical analysis", the assessment for the original EU proposal. The Commission's most recent analysis of the macroeconomic impacts of introducing the FTT suggests that it would not lead to any job losses, whereas its original proposal's impact analysis suggested around 500,000 jobs would be lost. In terms of economic impact, it estimates the present proposal to have a -0.28% impact on EU GDP in the long run, whilst the previous central estimate was -1.76% — the difference stems mainly from revised economic modelling used by the Commission. The Commission also highlights its view that these negative GDP impacts could potentially be negated by spending FTT revenues on growth enhancing public investment, which it estimates could have a positive impact on

GDP of between 0.2 and 0.4%. It expects an enhanced cooperation FTT to generate €31 billion a year, corresponding to 1% of the participating Member States' tax revenues.

2.9 The Commission has proposed separately, in relation to the Own Resources Decision for the period 2014–20,[4] that a portion of the revenue could constitute a new Own Resource for the EU Budget, resulting in a corresponding reduction of the national GNI contributions of participating Member States — however, agreement to this present proposal would not of itself establish the new Own Resource.

The Government's view of the new document

2.10 The Financial Secretary to the Treasury (Greg Clark), says that:

- the UK will not participate in the enhanced cooperation FTT;
- the Government has concerns that introducing an FTT through enhanced cooperation does not meet the conditions of subsidiarity;
- at the January ECOFIN Council the Government abstained on the draft Decision, document (b), to allow enhanced cooperation, given that it was not assured that the proposal would enhance the single market and respect the competences of non-participating Member States;
- following publication of the Commission's proposal for implementation of an FTT through enhanced cooperation, document (c), it is now for Member States to discuss the details in advance of a vote being taken by participating Member States only; and
- the Government will exercise its right under the TFEU to fully and proactively participate in discussions on the design of the enhanced cooperation FTT.

2.11 Noting that the present proposal is fundamentally the same as the Commission's original proposal for a pan-EU FTT, document (a), that it would apply to the 11 cooperating Member States only and that it would extend the reach of the tax by including a provision introducing an issuer principle as a last resort, alongside the residence principle, the Minister says that the change has been made by the Commission, as it believes this would reduce the opportunities for evasion and that risks of relocation of economic activity would be avoided.

2.12 The Minister then comments on the Commission's impact assessment, saying that:

- it gives only very limited detail on how the proposal would impact non-participating Member States;
- specifically, it does not provide any detail on either the contribution to the tax take that the Commission expects from individual non-participating Member States,

4 (33363) 16846/11: see HC 428–xlv (2010–12), chapter 7 (20 December 2011), HC 428–lii (2010–12), chapter 11 (29 February 2012), HC 86–ii (2012–13), chapter 17 (16 May 2012), HC 86–xi (2012–13), chapter 2 (5 September 2012) and *HC Deb*, 31 October 2012, cols. 295–346.

nor an assessment of the economic impacts on non-participants, including for example, impacts on GDP and levels of employment;

- it provides no assessment of the impacts the FTT would have on the existing tax base of non-participants; and
- with the UK having the largest financial services sector in the EU, this lack of impact analysis on such key issues is a clear cause for concern and an issue that the Government will proactively raise in future discussions.

2.13 The Minister says finally that, in addition to concerns over the economic impacts this proposal will have on both the UK and EU, the Government will continue to raise its concerns over other key issues including:

- compliance with EU law and the single market;
- whether the extra-territorial effects would prejudice non-participating Member States; and
- potential problems over double taxation and enforceability.

Conclusion

2.14 **Although the Commission has not withdrawn its proposal for an EU-wide FTT, document (a), it is effectively superseded and we clear it from scrutiny.**

2.15 **As for the draft Directive concerning an enhanced cooperation FTT, document (c), we recommend that it be debated on the Floor of the House, together with document (b), concerning the Council's consent to enhanced cooperation in this field, which we have recommended previously for debate in European Committee B, a decision which we now amend.**[5]

2.16 **We suggest that in the debate Members might like to explore with the Minister:**

- **whether the Commission's stated objectives for an enhanced cooperation FTT have enough relevance to the single market as to justify an Article 113 TFEU legal base rather than some other;**
- **what the Government's subsidiarty concerns, to which the Minister alluded, are;**
- **what progress the Government has had in securing a proper assessment of the impact on non-participating Member States of an enhanced cooperation FTT;**
- **what developments there have been in the Government's thinking in relation to the other key issues mentioned by the Minister — that is compliance with EU law and the single market, extra-territoriality, double taxation and enforceability; and**

[5] *Op cit.*

- **whether, if not wholly satisfied as to the acceptability of an enhanced cooperation FTT as agreed by the Member States concerned, the Government would take action before the Court of Justice.**

2.17 **To facilitate that examination, we should like to have as soon as possible from the Minister, the Government's answers to these five points.**

3 Court of Justice and Civil Service Tribunal

(a) (34724) 7013/13 —	Draft Council Decision increasing the number of Advocates-General of the Court of Justice of the European Union
(b) (34684) 6147/1/13 REV 1 —	Draft Council Decision appointing the members of the committee provided for in Article 3(3) of Annex I to the Protocol on the Statute of the Court of Justice of the European Union
(c) (34703) 6336/13 —	Draft Council Decision appointing the members of the committee provided for in Article 3(3) of Annex I to the Protocol on the Statute of the Court of Justice of the European Union

Legal base	(a)Article 252(1) TFEU; unanimity; — (b) and (c) Article 3(3) of Annex I to the Protocol on the Statute of the Court of Justice of the European Union; QMV; —
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letters of 27 July 2012 and 7 January 2013; EMs of 26 February and 1 March 2013
Previous Committee Report	None; but see HC 86–ix (2012–13), chapter 1 (11 July 2012)
Discussion in Council	June 2013
Committee's assessment	Politically important
Committee's decision	(a) Not cleared; further information awaited (b) and (c) Cleared

Document (a): increasing the number of Advocates-General at the Court of Justice

3.1 On 25 January 2013, the President of the Court of Justice of the European Union (ECJ) sent a request to the Council Presidency for the appointment of three extra Advocates General (AGs) to ECJ to augment the activities of the existing eight AGs.

3.2 The role of AGs is to make reasoned submissions in open court on cases before the ECJ, in particular those which raise a new point of law. In the ECJ's view, the current contingent of AGs will be unable to deliver an opinion within an acceptable time limit for five reasons:

- A rise in the number of cases brought before the Court due to enlargement from 2004–07; post-Lisbon adjustments to the EU's institutional framework; new jurisdiction conferred on the Court by the Lisbon Treaty; and a rise in the number of cases demanding urgent treatment;
- The prospect of a continuation of this trend over the next few years due to Croatian accession; an increase in the number of references for a preliminary ruling by new Member States; an increase in the number of appeals against decisions of the General Court; the transition to full jurisdiction in the field of police cooperation and judicial cooperation in criminal matters; and new jurisdiction in matters of economy and finance;
- The greater complexity of new cases;
- Changes to the Court's operating rules (e.g. two additional Chambers) which have increased the pace of work; and
- An increase in AGs' workload beyond issuing opinions e.g. more complex reviews of judgments delivered by the General Court on appeal and the prospect of AGs taking on an enhanced role in simplified arrangements for the handling of cases on appeal.

3.3 The ECJ has provided costings which indicate that the total cost of three extra Advocates-General is approaching €4 million per year. This includes the salaries of the AGs; salaries of their staff; other expenditure relating to staff; offices; data processing; furniture; technical installations; cars; administration; and publications; plus €715,000 in taxes and pension contributions.

3.4 Before any appointment can take place, the Article 255 TFEU panel must opine on the candidates' suitability. This is followed by a clearance process in London and other capitals. Member States must then hold a mini-Inter Governmental Conference to approve the nomination.

3.5 The ECJ has stated its ambition that one AG take up duties by 1 July 2013, on the occasion of Croatia's accession, and the other two by 7 October 2015, on the occasion of the partial replacement of the members of the Court.

Legal base and parliamentary control

3.6 This proposal is based on Article 252(1) TFEU. As a consequence, section 10(i)(c) of the European Union Act 2011 is engaged. This requires the prior approval of both Houses of Parliament following debates on a motion without amendment before the Government can vote in favour of increasing the number of AGs. The Council Decision is taken by unanimity.

The Government's view

3.7 The Minister for Europe (Mr David Lidington), submitted an Explanatory Memorandum on the ECJ's request dated 1 March 2013.

3.8 He explains that the Government accepts the force of the ECJ's arguments on the grounds that they would increase the capacity of the ECJ to process cases in a timely manner. In its response to the House of Lords European Union Committee's Report on the *Workload of the Court of Justice of the European Union*[6] in June 2011, the Government also recognised the validity of the argument that the number of AGs should be increased since this would assist the ECJ in increasing the speed with which cases can be handled, while also improving the quality of decision-making. British business operating in the single market would be a core beneficiary, the Minister says.

3.9 So the Government's main concern is that an increase in the number of AGs should not incur extra costs to Member States but should instead be met from within the ECJ's existing budget. The ECJ has estimated the cost of three additional AGs to be nearly €4 million a year, of which the UK's proportional contribution would be around €0.5 million. The Government has made clear that additional AGs, in common with any reforms to the ECJ, must be met from within its existing resources and not constitute any increase to the ECJ's budget; if necessary, the Government is prepared to submit a minute statement in Council in which it makes clear that its support for additional AGs is contingent upon the ECJ meeting the cost.

3.10 Poland and the ECJ are keen for the Council to agree this decision at the earliest opportunity in order that the first AG, who will be Polish, can begin work. "They will welcome the UK's consent to this measure and, conversely, would look unkindly on the UK if it rejected the proposal or was thought to be stalling agreement", the Minister explains. As far as he knows, the UK is the only Member State which will submit this proposal to parliamentary approval.

Documents (b) and (c): appointing the Advisory Committee on judges of the EU Civil Service Tribunal

3.11 The draft Council Decision seeks to re-appoint a Committee to provide advice to the Council on the appointment of judges to the EU Civil Service Tribunal (CST). The term of the previous Committee expired on 10 November 2012. The ECJ did not prioritise the creation of a new Committee, having only recently appointed new judges to the tribunal.

6 Fourteenth Report of the European Union Committee, 2010–11 HL 128.

3.12 The CST was established in 2005, and consists of seven judges appointed for a period of six years. This means that there is not a judge from every Member State on the committee: in its current formation, the CST is made up of judges from Belgium, Germany, Poland, Spain, Italy, Netherlands, Ireland, and Luxembourg. Whilst there is currently no UK judge, the court has Common Law representation from the Irish judge, Kieran Bradley. The CST is considered to be a "specialised court" under the terms of Article 257 TFEU. Its specialised field is staff disputes involving the EU civil service.

3.13 Judges are appointed by the Council acting by unanimity, following an open competition and consultation with the committee, which gives an opinion on candidates' suitability for the role.

3.14 The Committee is chosen from among former members of the Court of Justice and the General Court or lawyers of recognised competence, on the recommendation of the President of the CST. The new Committee will sit for a period of four years, with a start date backdated to 10 November 2012.

The Government's view

3.15 The Minister for Europe submitted an Explanatory Memorandum on this proposal dated 26 February 2013.

3.16 He says the appointment of the Committee is a necessary part of the functioning of the CST. The Committee helps to ensure that nominees to the CST are of a high calibre and hold relevant judicial experience. Whilst none of the proposed members of the committee has Common Law experience, the Council is still mandated to ensure a geographical and legal balance on the CST (Article 3(1) of Annex 1 to the Protocol on the Statute of the Court of Justice of the European Union).

Earlier Ministerial correspondence

3.17 The Minister wrote in response to questions raised on the Floor of the House in July last year on earlier reforms to the Court of Justice.[7] We set out his letter of 27 July 2012 in full as further background to the forthcoming debate on document (a):

> "With respect to your question about an increase in the number of judges in the General Court, to reiterate the point I made in the House, the Council concluded that that reform required further consideration. The Government agreed with this conclusion, as it is important the details of this reform are carefully considered. As I mentioned, the issue will be discussed further in the 'Friends of the Presidency' group. To clarify what I said in the House, the Government's view is that there is merit in the proposal to expand the General Court's judiciary, with the aim of addressing the General Court's backlog. It remains our view that a potential increase in the size of the General Court's judiciary could be the right solution, but it is important that Member States discuss and agree the details of this reform in the

7 See the Committee's previous Report, HC 86–ix (2012–13), chapter 1 (11 July 2012), and *HC Deb* , 12 July, 2012, cols. 501–514.

context of a wider discussion on improving the efficiency of the Court and containing its cost.

"With regard to your question about the costs of appointing temporary judges to the Civil Service Tribunal (CST), appointees will be paid only for the days they work, calculated on a *pro rata* basis with the daily rate derived from the salary of permanent judges in the General Court which, according to the Court's figures, was €19,106 per month as of mid-2011. The UK and others have made clear that this cost must be met from within the Court's existing budget.

"With regard to the cost of appointing Vice Presidents to the CJEU, the Court's projections suggest that the extra cost involved in creating the position of Vice President of the Court of Justice is €38,000 per annum (€34,000 in salary, €4,000 in expenses); although it has not provided costings for the Vice President of the General Court, we understand it will be comparable. The Court has not indicated that there will be any additional administrative costs arising from these appointments. However, as with the CST, we have made clear any extra costs must be met from within the Court's existing budget, which should be possible given the small sums involved. In both courts, the rationale for having a Vice President is that the workload of the President has risen considerably over time. The introduction of a Vice President will assist the President in effectively fulfilling his vital duties, be it case management or administration. In both courts, one area where a Vice President could make a significant difference is with respect to the handling of proceedings for interim measures, given the negative consequences of delays for businesses and Member States. The General Court has a particular problem with the handling of interim measures. Some can take over a year to be dealt with, obstructing effective interim judicial protection. In addition, the interim measures take much of the President's time, distracting him from general management of litigation. The appointment of a Vice-President would be an important step towards addressing this problem.

"You asked how altering the composition of the Grand Chamber would benefit a litigant and whether the various changes would save money. You will recall that three reforms have been proposed, namely to increase the Grand Chamber of the Court of Justice by two judges, meaning that 15 judges out of the 27 judges at the Court will be required to sit in the Grand Chamber instead of 13; to reduce the number of presidents of five-judge chambers who sit automatically in the Grand Chamber from five to three; and to increase the quorum for the Grand Chamber from nine judges to 11, and the quorum for the full Court from 15 judges to 17. The logic of these reforms is twofold: to allow presidents more time to manage the cases before their own Chambers; and to increase the expertise of the Court by allowing more judges to gain exposure to the complex and significant cases which the Grand Chamber hears. Together these will play a small part in raising the productivity and expertise of the Court, which will positively benefit litigants who draw on its services. As I am sure you will appreciate, it is difficult to calibrate this benefit in financial terms, but I am confident that, as an efficiency measure that costs nothing to institute, a real saving is implicit in the reform.

"You cited the views of Advocate General Jacobs and Advocate General Sharpston on the question of time taken to litigate cases. I agree with you that these are two influential voices and that, as appointees of the UK government, they have served the Court with distinction. In the Government's view, there is still scope for efficiency measures in the General Court, which go beyond those in the current package of reforms. The House of Lords discussed several of these in its report on the workload of the CJEU. The Government sees merit in many of their suggestions and we will ensure that these are duly considered in the Friends of the Presidency group.

"Finally, you asked whether the Government can reduce the volume of European law which, you argued, is behind the increase in the workload of the Court. As you will know, we have successfully lobbied the Commission to adopt a plan to reduce the overall EU regulatory burden, which will succeed its soon-to-be-completed Administrative Burden Reduction Programme. We have also successfully lobbied the Commission to exempt micro-businesses from the scope of future legislation, unless there is a clear reason not to do so. We are also working with other Member States to call on the EU to implement the commitments in its smart regulation strategy published in October 2010, including a robust evaluation of existing legislation to see whether it remains necessary and workable."

3.18 The Minister wrote again on 7 January to update us on whether additional judges would be appointed to the General Court. Again, we set out his letter in full as background to the Floor debate on document (a):

"As you will recall, in June 2012 the Council set up a Friends of the Presidency group to discuss further potential reforms to the General Court of the CJEU, including additional Judges at the General Court, as well as wider efficiency measures. I am writing now to provide an update on that group's progress on this issue.

"The issue of additional Judges at the General Court was considered by the General Affairs Council on 11 December. No final conclusion was reached at that meeting, and discussions will continue under the next rotating Presidency. I will provide a further update as and when I receive information on how the issue will be handled in future.

"In terms of wider efficiency measures, I understand that the CJEU is currently preparing revisions to the General Court's Rules of Procedure, which it will publish at some point this year. At that point I will of course write to you in accordance with standard scrutiny procedure.

"The intention was that the Friends of the Presidency group would report to COREPER by the end of 2012. Until recently, my understanding was that this intention remained. However, the Presidency has now advised that it no longer intends to produce a formal report, as it does not consider that such a report would be a useful addition at this stage.

"I remain deeply concerned at the extent of the backlog at the General Court, and can assure you that the Government will continue to engage closely with the

Institutions and with other Member States on appropriate measures to address the Court's backlog."

Conclusion

3.19 **We thank the Minister for his Explanatory Memoranda.**

3.20 **We are content to clear documents (b) and (c), which renew the four-year mandate of the Committee which provides advice to the Council on the appointment of judges to the EU Civil Service Tribunal.**

3.21 **We are not content to clear document (a), which provides for the appointment of three new Advocates-General to the ECJ, until the Government is able to clarify on whom the attendant costs will fall. We ask for this information to be sent in good time before the debate on the Floor of the House to approve the Council Decision, as required by section 10(1)(c) of the European Union Act 2011.**

4 Customs and taxation

(a) (34197) 13265/12 COM(12) 464	Amended draft Regulation establishing an action programme for customs in the European Union for the period 2014–20 (Customs 2020) and repealing Decision No 624/207/EC
(b) (34202) 13346/12 COM(12) 465	Amended draft Regulation establishing an action programme for taxation in the European Union for the period 2014–20 (Fiscalis 2020) and repealing Decision No 1482/2007/EC

Legal base	(a) Article 33 TFEU; co-decision; QMV (b) Articles 114, 197 and 212 TFEU; co-decision; QMV
Department	HM Revenue and Customs
Basis of consideration	Minister's letter of 20 March 2013
Previous Committee Reports	HC 86–xiii (2012–13), chapter 12 (17 October 2012), HC 86–xx (2012–13), chapter 12 (21 November 2012) and HC 86–xxii (2012–13), chapter 12 (5 December 2012)
Discussion in Council	(a) 10 December 2012 (b) Not known
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

4.1 The Customs 2013 Programme is an EU action programme, which provides funding for customs activities which support the effective functioning of the single market and fall within the exclusive competence of the EU. The Fiscalis 2013 Programme is an EU funded programme which is designed to improve the operation of taxation administration systems in the single market, through strengthened administrative cooperation between Member States and candidate countries, their administrations and officials. Both programmes end on 31 December 2013.

4.2 In November 2011 the Commission proposed creation of a successor to the Customs 2013 and Fiscalis 2013 programmes, by merging both into a single successor programme, 'FISCUS', which would run from 2014 to 2020. FISCUS would be an administrative cooperation programme, which aimed to share best practice and increase cooperation between Member States and candidate countries, their administrations and officials. Following a decision of the Council and the European Parliament that there should be two separate legal instruments, the Commission withdrew its original proposal and replaced it with two amended draft Regulations, documents (a) and (b).

4.3 The draft Regulation, document (a), is to create a Customs 2020 programme, the purpose of which is to contribute to the Europe 2020 Strategy for smart, sustainable and inclusive growth, by strengthening the functioning of the EU's single market and its customs union. The budget proposed for the seven-year period represents a 45% increase on the Customs 2013 programme. The draft Regulation, document (b), is to create a Fiscalis 2020 programme, the purpose of which is to contribute to the Europe 2020 Strategy, by strengthening the functioning of the tax systems within the Member States and the single market. The budget proposed for the seven-year period represents an increase of 28% on the Fiscalis 2013 programme.

4.4 During previous consideration of these proposals we had heard that satisfactory progress was being made in Council working group negotiation of them, but, although the Government was trying to secure text in both proposals to eliminate JHA obligations, it was considering the need for opting in to the proposals. When we last considered these matters, in December 2012, we heard that:

- the Government had, as a precautionary measure, opted in to both draft proposals;
- negotiations on the Customs proposal had progressed rapidly in the Council working group;
- the Presidency had tabled a new compromise text, which clarified (the important point) that participation in programme activities would be voluntary;
- it had placed the file on the agenda for the Competitiveness Council on 10 December to agree the Council position; and
- the Competitiveness Council would not be asked to agree the budget for the programme — this matter remained dependent on the outcome of the negotiations for the Multiannual Financial Framework for the period 2014–2020.

4.5 We said that we were content to waive scrutiny in accordance with paragraph 3(b) of the Scrutiny Reserve Resolution, but we wished to hear a confirmatory account of the Competitiveness Council. Meanwhile document (a) remained under scrutiny. As for the Fiscalis 2020 draft Regulation, document (b), we said that we awaited a progress report before considering it again and meanwhile this document also remained under scrutiny.[8]

The Minister's letter

4.6 The Economic Secretary to Treasury (Sajid Javid) tells us that on 10 December 2012 the Government was able to vote in favour of the partial general approach for the Customs 2020 proposal, along with all other Member States, at the Competitiveness Council and that the proposal is now going forward for trilogue discussions with the European Parliament.

4.7 The Minister, turning to the Fiscalis 2020 proposal, tells us that:

- negotiations have progressed rapidly on the outstanding issues and he is only now in a position to update us on the latest text;
- the incoming Irish Presidency tabled a compromise text, which clarifies that participation in programme activities is voluntary, removes the JHA content and sufficiently clarifies the scope of the programme, and which the Government believes protects against the extension of activities further into direct tax matters;
- on 24 January COREPER was asked to agree a partial general approach which did not include the budget for the programme (this is be determined in the Multi-annual Financial Framework negotiations) or the use of Article 212 TFEU as a legal base;
- as the proposal is still under scrutiny the Government abstained from the COREPER vote in favour of the partial general approach; and
- the Government welcomes these developments and considers that the proposal forms a good basis for trilogue discussions with the European Parliament.

Conclusion

4.8 **We are grateful to the Minister for this account of where matters stand on these proposals and look forward to hearing of the improvements being secured in the trilogue discussions.**

4.9 **Meanwhile both documents remain under scrutiny.**

8 See headnote.

5 Statistics

(a) (33600) 5089/12 + ADDs 1–2 COM(11) 928	Draft Regulation on the European statistical programme 2013–17
(b) (33844) 9122/12 COM(12) 167	Draft Regulation amending Regulation (EC) No. 223/2009 on European statistics
(c) 34266 14230/12 —	European Court of Auditors Special Report No 12/2012: *Did the Commission and Eurostat improve the process for producing reliable and credible European statistics?*
(d) 34398 15976/12 —	European Central Bank Opinion on the draft Regulation amending Regulation (EC) No. 223/2009 on European statistics (CON/2012/84)

Legal base	(a) and (b) Article 338 TFEU; co-decision; QMV (c) and (d) —
Department	Office for National Statistics
Basis of consideration	Minister's letter of 18 March 2013
Previous Committee Reports	(a) HC 428–liii (2010–12), chapter 7 (7 March 2012) and HC 86–xxix (2012–13), chapter 6 (23 January 2013; (b) HC 86–iii (2012–13), chapter 10 (23 May 2012), HC 86–xix (2012–13), chapter 9 (7 November 2012), HC 86–xxvii (2012–13), chapter 5 (16 January 2013) and HC 86–xxix (2012–13), chapter 6 (23 January 2013); (c) HC 86–xix (2012–13), chapter 9 (7 November 2012), HC 86–xxvii (2012–13), chapter 4 (16 January 2013) and HC 86–xxix (2012–13), chapter 6 (23 January 2013); (d) HC 86–xxvii (2012–13), chapter 5 (16 January 2013) and HC 86–xxix (2012–13), chapter 6 (23 January 2013)
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

5.1 Regulation (EC) 223/2009, commonly referred to as the "European Statistical Law", is the framework legislation for the European Statistical System, comprising the Commission's statistical office (Eurostat) and producers of official statistics in Member States. All other legislation under which EU statistics are produced must be made in accordance with the European Statistical Law. It requires adoption of EU statistical programmes for a period of up to five years. The current programme covers the period 2008–12.

5.2 In December 2011 the Commission presented a draft Regulation, document (a), to provide for the European statistical programme for the period 2013–2017. The programme would provide for the framework for development, production and dissemination of EU statistics, the main fields of activity and the objectives of the actions envisaged. It would set out the priority statistical requirements from the users' perspective, balance them with the resources available in the European Statistical System and take account of the burden on respondents to statistical inquiries.

5.3 We asked to hear about progress in the negotiations and about whether the financial sums proposed for the programme met the Government's general requirements for strict budgetary restraint in relation to the draft Multiannual Financial Framework for 2014–2020. Meanwhile the document remained under scrutiny.

5.4 In April 2012 the Commission proposed in the draft Regulation, document (b), amendments to four key features of the European Statistical Law:

- the coordinating role of the National Statistical Institute (NSI) of Member States;
- the role and professional independence of the head of the NSI;
- self-assessment of the European statistics produced by a Member State and a published statement of confidence in them; and
- enhanced access to administrative data.

5.5 We noted reservations expressed by the Government on aspects of the proposals, related to the professional independence of the head of the NSI and to access to administrative data. So we asked to hear about progress in addressing the problematic issues in working group discussions, whilst keeping the matter under scrutiny.

5.6 The European Court of Auditors' (ECA) Report on Eurostat, document (c), of June 2012 considered particularly whether processes have improved to achieve full compliance with the European Statistics Code of Practice and made a number of recommendations.

5.7 Article 282(5) TFEU gives the European Central Bank (ECB) competence to issue Opinions on Commission proposals for European statistics. The ECB and the European System of Central Banks (ESCB) produce European statistics, but do so under a separate legislative framework, under Protocol No. 4 TEU/TFEU and independently from Eurostat and the NSIs of the Member States. Whilst independent, the two frameworks are intended to be complementary and there is close cooperation. Change to one framework can have an indirect impact on the other, which needs to be taken into account.

5.8 In the Opinion of November 2012, document (d), on the draft Regulation to amend the European Statistical Law, document (b), the ECB sought, in addition to a number of comments, clarification of some issues.

5.9 We have kept both the ECA Report and the ECB Opinion under scrutiny as they play into the negotiations on the two legislative proposals.

5.10 When, in January, we last considered these four documents we noted that, while some improvements to the draft legislation were in prospect, they had yet to be fully secured and others remained as yet only Government aspirations. So we looked forward to further encouraging updates, answering fully the various points we had raised previously, before the draft Regulations were recommended for adoption by the Council at first reading. Meanwhile the draft Regulations and the related ECA and ECB documents remained under scrutiny.[9]

The Minister's letter

5.11 The Minister for Civil Society, Cabinet Office (Mr Nick Hurd) writes first about the draft Regulation concerning the European Statistical Law, document (b), saying that the Presidency has presented a compromise text for trilogue with the Commission and European Parliament following a discussion by the Council working party of the latter's proposed amendments, and giving us an update on the key areas, as follows.

5.12 The Minister, in relation to the role and professional independence of the Head of the NSI, says that:

- current proposals and negotiated amendments in Council continue to be satisfactory as the Government believes they strengthen the professional independence of the heads of all statistical authorities in Member States, while respecting and reinforcing the devolved and decentralised statistical systems of Member States such as the UK;
- proposed amendments by the European Parliament do not affect this position; and
- the independence of the ESCB, as raised in the Opinion of the ECB, remains protected, while the need for cooperation between it and the European Statistical System, as the two producers of EU statistics, is elaborated in both Council and European Parliament proposals.

5.13 In connection with compliance with the European Code of Practice and "Commitments on Confidence" the Minister tells us that:

- a large majority of Member States have rejected the Commission's proposal for mandatory Commitments on Confidence, that is specific statements by Member States about how they would ensure compliance with European Code of Practice in the production of EU statistics;

9 See headnote.

- a Presidency compromise text makes commitments optional and reduces their expected content and purpose;
- the Government has rejected this compromise and will continue to work to strengthen this part of the proposal;
- the current weakened Council compromise does not, however, threaten the subsidiarity principle, lead to a possible direct supervisory and investigatory role for Eurostat or risk political interference in the development of the Code of Practice;
- following the ECA's Special Report, however, the European Parliament has proposed amendments that include a direct supervisory role and investigatory role for Eurostat, imposition by the Commission of fines for Member States that intentionally, or by gross negligence, seriously misrepresent statistical data and powers for Eurostat to publically voice concerns about the quality of the data provided by Member States,
- additionally, it proposes close collaboration with national courts of auditors and close monitoring by national parliaments in quality assurance mechanisms;
- the Government, along with most other Member States, remains opposed to such proposals as they do not respect the subsidiarity principle and unjustifiably give a policing role to the Commission, which itself is a producer of EU statistics; and
- a UK parliamentary scrutiny reservation remains on this part of the proposal.

5.14 The Minister says, in relation to access to administrative data, that the Treasury Solicitor advises that:

- some transposition in national law may be necessary because the Commission's proposal is silent on how the right of access to administrative data should be created in relation to conflicting national law and silent on how the right is to be ensured and regulated;
- the proposal is also silent on how, and by whom, the determination of "necessary" for the production of EU statistics should be made; and
- the silence may be, in effect, the subsidiarity principle at work and therefore it is for the Member States to establish any necessary provisions in national law to give effect to the provisions in the draft Regulation.

5.15 The Minister continues that:

- the UK and Germany have proposed an amendment to the proposal that would make it the explicit responsibility of Member States to establish the right of access and the meaning of "necessary";
- although some transposition in UK law may be necessary, this would ensure that these matters are reserved to the Member State and could not be determined in some future provision by the EU institutions;

- a current Presidency compromise does not, however, include the amendment proposed; and
- a UK parliamentary scrutiny reservation remains on this part of the proposal.

5.16 The Minister adds that:

- the European Parliament has proposed amendments in line with the ECB's Opinion and the Government's position, which, if adopted, would make Member States responsible for establishing the right of access and the meaning of "necessary"; and
- both UK and Germany have informed the Presidency that if the European Parliament amendments were adopted during the co-decision negotiations, the scrutiny reservations may be lifted.

5.17 On the draft Regulation on the European Statistical Programme 2013–17, document (a), the Minister tells us that:

- the Government is content that the amendments negotiated are considered to have adequately addressed its requirements for budgetary constraint, which set out a legally required objective of ensuring that EU statistics are produced within the available resources at the national and EU level;
- the indicative sums set out in the Commission's "legislative financial statement" attached to the draft Regulation relate to those sums the Commission would make available to Eurostat for the implementation of the programme within the overall budget to be agreed by the Council and the European Parliament in the 2014–20 Multiannual Financial Framework; and
- discussions relating to the overall allocation of EU resources to specific functions of the Commission and other EU institutions are still subject to the overall ongoing negotiations on the framework.

Conclusion

5.18 **We are grateful to the Minister for the information he gives us on developments in relation to both of these draft Regulations.**

5.19 **However we emphasise, in relation to the maintenance or lifting of parliamentary scrutiny reserves, that the whole of both draft Regulations remains under scrutiny and that it is for both Houses of this Parliament to decide if they have been cleared from scrutiny.**

5.20 **We have suggested previously that we might wish to recommend these proposals for debate before the Council adopts final texts. We will wish to follow this up if subsidiarity remains an issue. Accordingly we look forward to having further reports of developments from the Minister. Meanwhile the draft Regulations and the related ECA and ECB documents remain under scrutiny.**

6 European Security and Defence College

(a)	
(30713)	Council Decision establishing a European Security and Defence
—	College (ESDC) and repealing Joint Action 2008/550/CFSP
—	
(b)	
(34775)	Council Decision establishing a European Security and Defence
—	College (ESDC) and repealing Joint Action 2008/550/CFSP
—	

Legal base	(a) Article 14 EU; unanimity; (b) Articles 28(1), 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 18 March 2013
Previous Committee Reports	(a) (30713) — : HC 19–xxii (2008–09), chapter 2 (1 July 2009) and HC 19–xxix (2008–09), chapter 2 (28 October 2009) (b) None
Discussion in Council	22 April 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

6.1 The European Security and Defence College (ESDC) was originally proposed by France, Germany, Luxembourg and Belgium at a Summit at Tervuren in April 2003, to provide training in what was described (in his 25 June 2005 Explanatory Memorandum by the then Minister for Europe, Mr Douglas Alexander, that accompanied the original Joint Action) as "the broad range of political, institutional and operational issues which are central to ESDP [the European Security and Defence Policy], with the aim of promoting better understanding of ESDP amongst the relevant Member State civilian and military personnel".

6.2 It has:

— a *Steering Committee*, comprising one representative from each Member to, *inter alia*, establish the annual academic programme of the ESDC, select the Member State institutes which will host the ESDC activities, and agree the annual academic programme;

— an *Executive Academic Board* comprising senior representatives of the institutes providing training each academic year with a main role of implementing the agreed annual academic programme through the ESDC network, developing curricula, reviewing standards and preparing evaluation reports; and

— an *Administrative Secretariat* of up to three staff within the Council General Secretariat (CGS) in Brussels and carrying out administrative support activities in support of the Steering Committee and the Executive Academic Board.

6.3 Member State institutions and the EU Institute for Security Studies make up the training "network".

6.4 Member States that send personnel for training in the ESDC bear the costs incurred. Member State institutions providing training as part of the ESDC network cover the associated organisational costs. The costs of the administrative secretariat in the CGS are covered by either the existing CGS budget or by those Member States that choose to second staff to work within it.

6.5 The ESDC was to deliver two main courses:

— the High-level Course, consisting of five week-long residential courses held in five different Member State institutions, intended for senior military and civilian personnel; and

— the Orientation Course, a one-week course to be held around three times a year, in Brussels, providing a broad introduction to the ESDP for military and civilian personnel.

6.6 On 18 July 2005, the Council adopted Joint Action 2005/575/CFSP establishing the European Security and Defence College.[10] It had been previously cleared by the then Committee at its first meeting following the May 2005 General Election.

6.7 In so doing, the then Committee noted that it seemed as though the UK's success in ensuring that the ESDC would be a "virtual network" aiming to add value at minimal cost in order to improve the effectiveness of an established policy had not been achieved without a struggle; resistance had been necessary not only to proposals for common funding but also to give the ESDC a legal personality, which the then Government feared would have undermined the concept of a "virtual" ESDC. Although no legal or policy questions arose, our predecessors felt that a short Report to the House was appropriate, to illustrate the constant battle that had to be fought to restrain expenditure on, and the institutionalisation of, activity which can clearly be carried out effectively at much lower cost, and in order to congratulate the Minister on the outcome.

Council Joint Action 2008/550/CFSP of 23 June 2008

6.8 Council Joint Action 2005/575/CFSP was replaced by Council Joint Action 2008/550/CFSP of 23 June 2008. [11] This incorporated some practical measures that were designed to allow the College to conduct a broader range of training activities and improve the day-to-day management of the College's activities without the need for major changes to its current organisation.

10 OJ No. L 194, 26.07.05, p.15.

11 OJ No. L 176, 04.07.08, p.20.

6.9 Although modest and sensible, and with no financial implications, we considered the proposed changes warranted a Report to the House. A further review commissioned by the Council, to report in November 2008, was to look into the long-term impact that developments in ESDP would have on the College's future activities and what steps would be required to ensure that the College continued to meet Member States' requirements. Some other Member States seemed more sympathetic to notions that alleged difficulties of ensuring adequate access to suitable conference facilities in Brussels necessitated common funding and giving the ESDC "legal personality".[12]

Further proposed amendments to Joint Action 2008/550/CFSP proposed in 2009 (document (a))

6.10 In his Explanatory Memorandum of 23 June 2009, the then Minister of State at the Foreign and Commonwealth Office (Ivan Lewis) said that the French Presidency had taken up a number of recommendations in the study and proposed a number of changes, including:

— housing the College in permanent accommodation;

— an increase in the number of Secretariat staff from three to 17; and

— a dedicated budget of up to €3.6 million per annum.

6.11 However, following extensive negotiations in Brussels, the 8 December 2008 General Affairs and External Relations Council had endorsed a much more modest version of the Presidency proposals. The ESDC maintained strong support amongst Member States and demand for ESDC courses continued to grow: the then Government supported its work — in particular its focus on both civilian and military training — and its potential for further development along UK policy lines, without duplicating or undermining NATO training arrangements; but, despite "very strong opposition from the majority of Member States", in order to ensure cost effectiveness and a better deal for the UK and ESDP, it had successfully negotiated a significantly more modest deal which would still allow the College to conduct a broader range of training activities of genuine use to Member States and improve the day-to-day management of the College.[13]

6.12 This included a dedicated budget of €850,000 for the first 12 months — down from an initial Presidency proposal of €3.6 million per annum. The budget would be capped at this level until the Joint Action was renegotiated four years later.

6.13 Although initially sharing the then Committee's concerns over giving the College legal capacity, the then Government now accepted that this would be useful: it would be able, for example, to enter into staff contracts, and contracts for equipment such as IT equipment to install its Internet-Based Advance Distance Learning System and to print teaching materials; it would also be able to open a bank account. Giving the College the necessary legal capacity would not mean that it could increase its budget or act outside the scope of the powers given to it under the Joint Action by the Member States.

12 (29699) —: HC16–xxiii (2007–08), chapter 20 (4 June 2008).

13 See (30713) —: HC 19–xxii (2008–09), chapter 2 (1 July 2009) at headnote.

Our assessment

6.14 We agreed that the then Minister and his predecessor had done well in holding to the Government's original position. However, we asked him to explain, if the ESDC was to continue as a "network", why (under Article 2: Legal Capacity) one of the reasons given for its acquiring a legal capacity was "to acquire equipment, *including teaching equipment*" (our emphasis). Was this a stepping stone, from teaching materials to hired class rooms to a new "bricks and mortar" institution? Or was there a more innocent explanation?

6.15 In the meantime we retained the document under scrutiny.

6.16 In a letter of 14 July 2009, the then Minister of State said that the ability afforded to the College to "acquire equipment, including teaching equipment" referred to the Council Secretariat's recommendation in the Future Perspectives paper to "provide the ESDC with its own budget to cover the expenditures for staff and IDL [Internet Distance Learning] equipment". He regarded that as "a welcome reinforcement of the network principle of the College."

6.17 The then Minister concluded by referring to his earlier Explanatory Memorandum, when he had explained that the relevant working group in Brussels "was still discussing the finer details of the ESDC expansion agreement, parts of which are centred on an area that is of fundamental concern to the UK — the budget." This issue, he said:

> "has not yet been resolved but could be concluded and recommended to go to the Council for agreement at short notice. When the Presidency announces the exact timing of when this will go before Council, we will inform the committee. Should there be insufficient time for this to pass scrutiny, we will then use our scrutiny reserve in order to allow Parliament to complete its work."

Our further assessment

6.18 We noted that only in four years' time, when the Joint Action was next reviewed, would it be known if the College's acquisition of a legal personality would indeed reinforce the network principle and not also strengthen the hand of those who hankered after a much more costly "bricks and mortar" institution.

6.19 In the meantime, not having heard from the then Minister since he had said, three months earlier, that discussions on "an area that is of fundamental concern to the UK — the budget" had yet to be concluded, we asked him to tell us what the situation was.

6.20 In the meantime we continued to retain the document under scrutiny.[14]

14 See HC 19–xxix (2008–09), chapter 2 (28 October 2009).

The further Council Decision establishing a European Security and Defence College and repealing Joint Action 2008/550/CFSP (document (b))

6.21 In his Explanatory Memorandum of 18 March 2013, the Minister for Europe (Mr David Lidington), says that this further Council Decision seeks to update the legal framework that governs the ESDC.

6.22 He notes that the courses that the ESDC now coordinates and oversees range from strategic leadership to specialised technical skills in support of the EU Common Security and Defence Policy (CSDP); and that, controlled by EU Member States and supported by a network of training institutions from across the EU — with the UK being represented by the Defence Academy of the United Kingdom based in Shrivenham — ESDC courses are targeted at both military and civilian personnel, mirroring the military/civilian nature of CSDP operations and missions, and are primarily delivered by EU Member States.

6.23 The Minister recalls that, via the Council Decision produced in 2009, the Council agreed to improve the functioning of the ESDC by providing it with a larger secretariat, a dedicated budget, and endowing it with a legal personality. However, "unresolved technical difficulties precluded agreement at that time." The attached Council Decision now seeks to implement the changes that have now been finally agreed.

The Government's view

6.24 The Minister goes on to note that the ESDC:

— supports the delivery of CSDP by providing operationally relevant training to personnel who will deploy on CSDP missions and operations;

— aims to increase understanding of the role played by CSDP, its mechanisms and capabilities;

— brings together civilian and military representatives from EU Member States, and staff from across EU institutions;

— encourages a comprehensive EU approach and fosters greater understanding of the conflict prevention and crisis management tools at the EU's disposal; and

— supports the integration of CSDP within a wider international response by training and engaging with third country nationals, with a particular focus on those countries that provide personnel to CSDP missions.

6.25 He also explains that the new Council Decision maintains the ESDC's two flagship courses: a four day Orientation Course (targeted at mid-level officials who have previous experience in security policy matters) and a Higher Level Course (aimed at those holding or destined for strategic leadership positions in the implementation or development of CSDP), which involves four separate week-long modules at Defence Colleges across the EU, and with respect to which the UK fills its quota of slots. The Minister notes that Member States also offer up additional training in support of CSDP, with recent examples including a Senior Mission Leaders' Course, a Political Advisers' Course, Media Training,

and conflict focused Human Rights and Gender Training. The UK will, the Minister says, continue to encourage training that is clearly targeted at supporting the delivery of CSDP on the ground.

6.26 The Minister then says that the key changes in the new Council Decision are:

> "the provision of a dedicated budget, an increased secretariat, and endowment of a legal personality, allowing the ESDC to implement staff secondments, acquire equipment, notably teaching equipment, hold bank accounts and be a party to legal proceedings."

6.27 He explains that:

> "The dedicated budget will be drawn from within the existing Common Foreign Security Policy (CFSP) budget. There will be no overall budget increase. In addition, EU Member States will be required to approve the ESDC's budget. The ESDC currently has a secretariat of five individuals who are provided on a cost-free basis by EU Member States and the European External Action Service (EEAS). The new Council Decision will increase this to eight staff, with the EEAS funding two slots and Member States providing six seconded experts (the UK does not plan to put anyone forward at this stage). The ESDC's dedicated budget will pay the six seconded experts allowances to cover costs such as accommodation, but their salaries will be funded by the sending EU Member State. The provision of a legal personality will enable the ESDC to enter into contracts and hold a bank account."

6.28 The ESDC Secretariat will continue to be based in EEAS premises and to be reliant on their support in areas such as IT and Human Resources:

> "These changes will provide the ESDC with a more stable platform to support the delivery, review, and continual development of the training provided. This is important given the growth in CSDP activity and requirement to improve the effectiveness of its delivery. Better targeted training for more personnel will have a direct impact on improving existing and new missions including in South Sudan, the Horn of Africa, Niger, Mali, and potentially Libya."

6.29 The Minister then notes that the new Council Decision also:

— outlines the steps that the ESDC is required to take to support the delivery of training, through the further development of its Internet learning platform, learning material, and by supporting cooperation between the various institutions that deliver courses; and

— requires the ESDC to facilitate an alumni network (social networking based), arrange an annual conference and annually review the ESDC's performance against its overall objective to support CSDP in the form of a report to Member States.

6.30 During negotiations on the new Council Decision, the Minister says that the Government insisted on strong monitoring and evaluation procedures, enhanced learning materials and further development of the Internet based learning platform.

6.31 The Minister also confirms that:

— the ESDC will continue to be organised as a network of civilian and military training institutes as identified by EU Member States, and be controlled by a Steering Committee comprised of EU Member States (the UK is represented by the United Kingdom's Permanent Representation to the EU);

— the Steering Committee will continue to be supported by an Executive Academic Board, comprised of EU Member States with responsibility for ensuring the quality and coherence of training activities (the UK being represented by the Defence Academy of the United Kingdom);

— the Defence Academy of the United Kingdom will continue to work with other EU Member States to ensure learning rigour through the Academic Steering Board; this "involves scrutinising course relevance and learning outcomes, and more practically the ESDC has adopted UK Defence Academy delivery practices for the next module of the High Level Course".

6.32 The Minister also notes that the new Council Decision clarifies the role of the Head of the ESDC and how he/she will be appointed: this is important, he says:

> "because it ensures accountability given the provision of a dedicated budget and the need to deliver against specific objectives in support of CSDP. The Head of the ESDC will be accountable to the Steering Committee, and appointed by the EU High Representative for Foreign Affairs following consultation with the Steering Committee. The Head of the ESDC will be a member of the European External Action Service, but EU Member States will be able to directly nominate candidates for this position. This is important as the Head of the ESDC will require appropriate experience to oversee the delivery and review of training, and was something that the UK heavily pushed for during negotiations."

6.33 The provision of courses will continue to be the primary responsibility of EU Member States, with course costs being picked up by the providing country/ies. Course participants will continue to be responsible for funding their travel, accommodation and subsistence.

6.34 The dedicated ESDC budget will be used to:

— support training activities (such as payments to lecturers and the delivery of the CSDP Orientation Course when Member States are unable to do so);

— support the development of learning materials;

— audit the ESDC and cover banking charges;

— support travel to training institutions and partnership countries by the six staff seconded by EU Member States; and

— provide allowances to the six staff seconded by EU Member States to cover costs such as accommodation.

6.35 The reference amount for the first 12 months is €535,000. The provision of a dedicated budget will, the Minister says, provide stability to the supporting secretariat of the ESDC, moving beyond its current set-up of completely voluntary contributions, which

should in turn enable the ESDC to enhance its support to CSDP and better prepare personnel in advance of deploying on a CSDP mission.

Conclusion

6.36 **This new Council Decision overtakes the 2009 draft (document (a)). It would seem that the technical difficulties that precluded agreement at that time (which we understand stemmed from a lack of internal agreement between the European External Action Service and the European Commission) continued to prevent progress towards agreeing a new Council Decision until, after sustained pressure from the Member States, the European External Action Service presented a revised draft Council Decision (document (b)) to Member States on 18 December 2012 (having finally resolved whatever these differences were with the European Commission). It is thus the later draft Council Decision (document (b)) that looks to update the June 2008 Joint Action, which currently governs the ESDC.**

6.37 **It is accordingly no surprise that we have heard nothing from the Minister or from his predecessor until now. Whatever these differences may have been are by the by: the outcome would appear to be entirely in line with the policy pursued by both this Government and its predecessor, of resisting unnecessary expansion and ensuring that the ESDC consolidates and develops the original, and successful, "network model". As with his predecessor, we commend the Minister and his officials for their part in finally bringing about the right outcome.**

6.38 **We now clear both documents.**

7 EU Contract Staff and 'Special Working Conditions' Staff Allowances

(a) (34699) 6580/13 COM(13) 87	Commission Report on the use of contract staff in 2011
(b) (34722) 6830/13 COM(13) 89	Commission Report on the use made in 2011 by the institutions of Council Regulations on standby duty, shift work and particularly arduous working conditions

Legal base	—
Documents originated	(a) 19 February 2013; (b) 20 February 2013
Deposited in Parliament	(a) 21 February 2013; (b) 21 February 2013
Department	Foreign and Commonwealth Office
Basis of consideration	(a) EM of 6 March 2013 (b) EM of 8 March 2013
Previous Committee Report	None; but see (34513) 17322/12 and (34515) 17360/12: HC 86–xxix (2012–13) chapter 2 (23 January 2013); (34056) 11964/12,(34198) 13270/12 and (34206) 13327/12: HC 86–xix (2012–13) chapters 5 and 6 (7 November 2012)
Discussion in Council	Not applicable
Committee's assessment	Politically important
Committee's decision	Cleared; relevant to the debate covering the 2012 Salary Adjustment for EU Staff (decision reported on 7 November 2012

Background and previous scrutiny

7.1 These two new documents, Commission reports on the EU institutions' use of contract staff and "special working conditions" allowances respectively in 2011, are produced for the Council for information purposes. Although we have not previously reported on these documents themselves, we have considered (though not reported on) previous annual reports.[15] Recently we have reported on, and recommended for debate, documents relating to the wider issue of EU staff salary and pension adjustments (for 2012 and 2013) and EU staff reforms.[16]

15 For example, the annual reports on 2010 data, documents (33444) 17492/11 and (33446) 17510/11.

16 See headnote.

Document (a): Report on the use of contract staff

7.2 The Commission is required by Article 79(3) of the Conditions of Employment of Other Servants of the European Union (CEOS) to report annually to the Council on the EU institutions' (and agencies') use of contract staff, including numbers of staff, level and type of posts, geographical balance and budgetary resources per staff "function" group. In the report, the Commission also provides a breakdown of staff on the basis of nationality and Commission department.

7.3 To assist with comparative analysis, the report includes data on contract staff numbers for each year since 2004. This was when the last reform of the Staff Regulations was undertaken to reform career structures and to accommodate an increase in staff numbers due to the accession of ten Member States. To absorb the immediate impact of the reforms and to increase working flexibility, the Commission proposed increased use of contract, as opposed to permanent, staff.

7.4 For the first time since 2004, numbers of EU contract staff have exceeded 9,000 (9,679) representing an overall increase of 9.2% from 2010. Of these 5,977 work at the Commission (62%). Looking at institutions other than the Commission and agencies, the figures show a 33.7% increase 2010–11, including a 30% increase at the Council and a 24.5% increase at the European Parliament.

7.5 The report also notes that:

- the number of UK contract staff has not increased, remaining fairly static compared with previous years at 1.7% of the 2011 total;
- the gender balance remains static as compared with previous years, with women accounting for 63.2% of all contract staff in 2011 (62.7% in 2010); and
- if the Commission continues to reclassify lower function group staff within higher function groups, then the total number of contract staff will have to fall, given a constant overall budget allocation.

Document (b): Report on the use of "special working conditions" allowances

7.6 The Commission is required to report annually to the Council on the allowances given by all the EU institutions to EU staff for working in special conditions by three different Council Regulations: No 495/77 (amended in 2006) on standby duty,[17] No. 1873/2006 on shift work[18] and No 858/2004 on particularly arduous conditions.[19] The Regulations, which implement relevant Articles of the EU Staff Regulations (which set out the terms of

17 Council Regulation (EC, Euratom) No 1945/2006 of 11 December 2006 amending Regulation (EEC, Euratom, ECSC) No 495/77 determining the categories of officials entitled to, and the conditions for and rates of, allowances for regular standby duty, OJ No. L 367, 22.12.06, p.25.

18 Council Regulation (EC, Euratom) No 1873/2006 of 11 December 2006 amending Regulation (ECSC, EEC, Euratom) No 300/76 determining the categories of officials entitled to allowances for shift work, and the rates and conditions thereof, OJ No. L 360, 19.12.06, p.61.

19 Council Regulation (EC, Euratom) No 858/2004 of 29 April 2004 determining the rates and conditions of the special allowances provided for in Article 56c of the Staff Regulations which may be granted to compensate for particularly arduous working conditions, OJ No. L 161, 30.4.04, pp.14–22.

the employment of EU officials), [20] list the categories of staff entitled to the allowances and the conditions of their use.

7.7 This document, which is based on 2011 data, details in relation to each of the three types of allowance the number of staff receiving the allowance in each institution, the total amount of corresponding expenditure and an explanation of why respective allowances have been used.

7.8 Standby or "on call" work, outside of normal working hours, is limited to certain categories of officials, mainly employed in research, ICT, safety/security, technical installation (building) maintenance, CFSP/CSDP support and 'crisis/emergency support for Member States' activities. The remuneration is based on the employee's basic salary, the timing of the duty (weekday or weekend) and the duration of the duty. In 2011, a total of 489 staff (396 at the Commission) received allowances, an increase of 36 compared with 2010 figures. The increase is attributable to both the Court of Auditors introducing ICT standby support services and the European External Action Service (EEAS) being included in the report figures for the first time. As part of the overall total, compared with 2010, a small increase was seen at the Commission (60% of allowances going to staff employed in scientific and technical research at the Joint Research Centre or JRC), whereas Council use of allowances was down by about a third.

7.9 Shift work involves the employee being given an allocation of "out-of-hours" work as part of a team and applies to broadly similar categories of support staff eligible for "standby work" with the addition of those employed in telephone and reception services. The rates of monthly allowance, ranging from €382.17 to €859.84, depend on the number, duration and the timing of the shifts. The total number of staff recipients across the institutions was 257 in 2011. This represents a small increase from the 2010 total of 243, which again is attributable to the Court of Auditors introducing shift work and the inclusion of the EEAS. Commission numbers are slightly down for this type of allowance, but EP numbers show a small increase in its use of telephone/reception shift work.

7.10 Work in particularly arduous conditions allowances are permitted by the respective Regulation for work which is particularly challenging from the point of view of the "safety of the individual" (for example, wearing of particularly uncomfortable personal protective equipment), "the place of work" (for example, high noise levels, dangerous sites) or "nature of work" (for example, handling of corrosive substances). The allowances, partly based on salaries, are calculated for each hour of work on a points system ranging from two, for example, for working in sound exceeding 85 decibels to an upper limit of 50 for an individual wearing a self-contained fire protection suit. These allowances were used exclusively by the Commission for 234 staff members, largely based in the JRC (219) with the rest used for staff in the Office for Infrastructure and Logistics in Brussels. The 2011 awards were highest for individual protection and the working environment and showed a decrease of two compared with 2010 figures.

7.11 Overall, the total amount of expenditure for all three allowances in the EU was just under €4.3 million in 2011 (€1.68 million, €1.93million and €0.6 million respectively on

20 http://ec.europa.eu/civil_service/docs/toc100_en.pdf.

shift, standby and arduous conditions allowances) compared with a total cost of €4 million reported in the 2010 report.

The Government's view

Document (a)

7.12 In an Explanatory Memorandum of 6 March 2013, the Minister for Europe (Mr David Lidington), notes that the number of contract staff has reached its highest level since 2004 but explains that the increase can partly be explained by the delay in fixed-term contract staff selection procedures (CAST) in 2010. The possibility of this delay causing aberrant results for the 2011 report had been predicted by the Commission in its 2010 report. The Government says that if the figures for 2010 and 2011 are combined, the increase of 9.2% is broadly in line with the trend since 2008.

7.13 Placing these figures in a wider context, the Minister recalls that the Commission has previously agreed to contract staff being included in its overall commitment to reduce EU staff numbers by 5% and that the reduction in permanent staff would not be circumvented by increased recruitment of contract staff. This commitment has been cemented by a provision included as part of the overall cut to the EU budget set out in the Council Conclusions on the MFF in February. Heading 5 (Administration) requires "a reduction applied to all EU institutions, bodies and agencies and their administrations of 5% in staff over the period 2013–17". The loss of staff is to be managed "by an increase in working hours for staff without salary adjustment".

7.14 Whilst the Government commits to monitoring Commission implementation of these administrative savings, it is also concerned about the lack of UK staffing representation in the EU institutions. It recognises that although efforts to increase numbers of UK staff are focused on permanent staff recruitment "working in more influential areas of the Commission", a contractual post can act as a first stepping stone to an EU career.

Document (b)

7.15 In an Explanatory Memorandum of 8 March 2013, the Minister says that the €0.3 million increase in institutional expenditure on "serious working conditions" allowances is attributable to the inclusion of the EEAS in the annual report for the first time and a slight increase in shift and standby allowances' usage by the Court of Auditors. The Minister undertakes to continue to monitor closely the usage of these allowances by the institutions and "takes note of this report in the wider context of EU Staff Regulation reform".

Conclusion

7.16 **Since documents (a) and (b) concern the EU institutions' approach to staffing and staffing allowances, they are relevant to documents which we have already recommended for debate in European Committee B covering the 2012 Salary Adjustment for EU Staff. We will therefore make this report chapter available for that debate. Meanwhile, we clear the documents from scrutiny.**

8 Further EU restrictive measures against Iran

(a)	
(34773)	Council Decision 2013/124/CFSP amending Council Decision
—	2011/235/CFSP concerning restrictive measures directed against
—	certain persons and entities in view of the situation in Iran
(b)	
(34780)	Council Regulation 206/2013 implementing Article 12(1) of
—	Regulation (EU) 359/2011 concerning restrictive measures directed
—	against certain persons, entities and bodies in view of the situation in Iran

Legal base	(a) Article 29 TEU; unanimity; (b) Article 215(2) TFEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EMs and Minister's letter of 18 March 2013
Previous Committee Report	None; but see (33753) — and (33754) — : HC 428–lv (2010–12), chapter 7 (21 March 2012); (33191) — and (33192) — : HC 428–xxxvii (2010–12), chapter 24 (12 October 2011); (32666–67) — : HC 428–xxiv (2010–12), chapter 13 (27 April 2011); (31937) — : HC 428–iii (2010–11), chapter 15 (13 October 2010); (31905) 13082/10 : HC 428–ii (2010–11), chapter 24 (15 September 2010); and (31779) — : HC428–i (2010–11), chapter 61 (8 September 2010)
Discussion in Council	10 October 2011 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

8.1 As our previous Reports recall, the EU has been engaged since December 2006 in a "dual track" strategy — engagement and restrictive measures — regarding Iran's nuclear activities, not simply implementing in the EU, but also strengthening in that context, successive UN Security Council Resolution (UNSCRs).

Council Decision 2011/235/CFSP

8.2 More recently, the EU has also sought to improve the human rights situation in Iran through the imposition of additional restrictive measures.

8.3 Thus, on the 21 March 2011 Foreign Affairs Council adopted the following Conclusions:

"1. The European Union is deeply concerned that the human rights situation in Iran continues to deteriorate. The EU is alarmed by the dramatic increase in executions in recent months and the systematic repression of Iranian citizens, including human rights defenders, lawyers, journalists, women's activists, bloggers, persons belonging to ethnic and religious minorities and members of the opposition, who face harassment and arrests for exercising their legitimate rights to freedom of expression and peaceful assembly. The EU reiterates its strong condemnation of the use of torture and other cruel, inhuman and degrading treatment.

"2. The EU calls on the Iranian authorities to live up to the international human rights obligations that Iran has entered into, so as to protect and promote all human rights and fundamental freedoms to which the Iranian people are entitled. In particular it calls on Iran to release immediately all political prisoners and to halt executions.

"3. The European Union attaches great importance to the improvement of the human rights situation in Iran and will increase its efforts to that end. The European Union will also continue to speak out in support of individuals and civil society organizations which stand up for the human rights which all Iranians should enjoy.

"4. The EU is ready to discuss human rights issues with the Iranian authorities and to keep channels of communication open to that end.

"5. The European Union will continue to address human rights abuses in Iran, including by swiftly introducing restrictive measures targeted against those responsible for grave human rights violations."[21]

8.4 Council Decision 2011/235/CFSP accordingly provides the basis for restrictive measures targeted against

"persons complicit in or responsible for directing or implementing grave human rights violations in the repression of peaceful demonstrators, journalists, human rights defenders, students or other persons who speak up in defence of their legitimate rights, including freedom of expression, as well as persons complicit in or responsible for directing or implementing grave violations of the right to due process, torture, cruel, inhuman and degrading treatment, or the indiscriminate, excessive and increasing application of the death penalty, including public executions, stoning, hangings or executions of juvenile offenders in contravention of Iran's international human rights obligations."

8.5 In his Explanatory Memorandum of 8 April 2011, the Minister for Europe (Mr David Lidington), said that the human rights situation in Iran "was deteriorating from an already awful situation", and commented further as follows:

"Iran has executed over 160 people this year, keeps more journalists in prison than any other country, has brutally suppressed recent protests arresting hundreds, and continues to keep key opposition leaders under house arrest and incommunicado.

21 These Conclusions are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/120084.pdf.

We feel it important that the international community and EU exert pressure on Iran to improve the human rights situation and to ensure that the perpetrators of violations do not continue to act with impunity.

"While tough UN, EU and US measures are now in place in response to the nuclear issue, there has been a limited international response to human rights violations and there are regular calls from a variety of directions including human rights defenders and NGOs to impose sanctions. UK and international activity on human rights in recent years has been limited to public statements to highlight the worst abuses and Iran's overall record. These measures would represent concrete action by the EU to improve human rights in Iran for the first time in a number of years.

"We believe that further sanctions on Iran linked to human rights violations would strengthen our overall policy on Iran by: supporting our objective of behavioural change in Iran by actively targeting those most guilty of violating human rights; increasing pressure on the Iranian regime by taking very visible steps to respond to violations; and providing moral support to human rights defenders both inside and outside Iran, by demonstrating concrete action, not just words."

Council Regulation 359/2011

8.6 This Council Regulation provides for the adoption of restrictive measures against persons responsible for serious human rights violations in Iran listed in the annex to the Council Decision and consists of a freezing of the funds and economic resources of those persons.

8.7 The Minister noted that, with regard to the Fundamental Rights aspects:

- the procedures for designating individuals as subject to asset freezes complied with fundamental rights: provision is made for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic needs of listed persons or their dependents and where necessary for extraordinary expenses; decisions by competent authorities of Member States in this regard would be subject to challenge in Member States' courts; prohibitions on transfer of funds and financial services are exempted where necessary for humanitarian purposes, or where necessary for supply of foodstuffs, medical equipment or provision of health care;

- the Regulation respected the fundamental rights and observed the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial and the right to the protection of personal data;

- the Regulation required the Council to provide designated persons and entities an opportunity to present observations on the reasons for their listing; where observations were submitted, the Council was to review its decision in the light of those observations and inform the person or entity concerned accordingly.

8.8 The Council Decision and Council Regulation were adopted at the 12 April 2011 Foreign Affairs Council and came into force, following publication in the Official Journal of the European Union, the following day.

8.9 We cleared the documents, reporting them to the House because of the level of interest in the situation in Iran.[22]

8.10 In a further Explanatory Memorandum and a letter, both of 7 October 2011, the Minister said that the human rights situation in Iran had continued to deteriorate: there had by then been over 500 executions in 2011, and around 48 journalists and bloggers were in prison; it was important that the international community and EU maintained pressure on Iran to improve the human rights situation, both by ensuring that the perpetrators of violations did not continue to act with impunity and providing moral support to human rights defenders both inside and outside Iran.

8.11 The Minister noted that these new and amended legal acts granted no further powers to the European Union, but simply allowed for the addition of new names to the existing legal acts.

8.12 Finally, the Minister noted that the measures were scheduled to be adopted at the Foreign Affairs Council on 10 October 2011 and to come in force, following its publication in the Official Journal of the European Union, on the following day.

8.13 We again cleared the documents with a Report to the House.[23]

8.14 A year ago, the Committee cleared two further Council Decisions. The first introduced prohibitions on: the sale, supply, transfer or export of equipment or software intended primarily for use in the monitoring or interception by the Iranian regime, or on its behalf, of the Internet and of telephone communications on mobile or fixed networks in Iran and the provision of assistance to install, operate or update such equipment or software; and on the provision of goods or technical assistance for use in internal repression. It also added further persons involved in the repression of human rights; and introduced a general clause preventing the circumvention of sanctions.

8.15 The second Council Decision amended Council Decision 2010/413/CFSP so as to transfer the prohibition on the export of internal repression goods from the sanctions targeted at Iran's nuclear programme to the Iran "Human Rights" regime.

Our assessment

8.16 Though the Council Decisions raised no questions, we again reported them to the House because of the continuing level of interest in developments in Iran.[24]

22 See headnote: (32666–67) —: HC 428–xxiv (2010–12), chapter 13 (27 April 2011).

23 See (33191) — and (33192) —: HC 428–xxxvii (2010–12), chapter 24 (12 October 2011).

24 See (33753) — and (33754) —: HC 428–lv (2010–12), chapter 7 (21 March 2012.

Council Decision 2013/124 and Council Implementing Regulation 206/2013

8.17 In his Explanatory Memorandum of 18 March 2013, the Minister says that, following an automatic annual review, the Council decided to:

— prolong the EU restrictive measures in response to serious human rights violations in Iran by 12 months;

— add nine persons responsible for serious human rights violations to the list of those subject to a travel ban and an asset freeze, which brings the number of persons targeted to 87; and

— subject one entity responsible for human rights violations to an asset freeze,

and that Council Decision 2013/124/CFSP and Council Implementing Regulation (EU) 206/2013 were duly presented to the 11 March 2013 Foreign Affairs Council and adopted.

The Government's view

8.18 The Minister says that the human rights situation in Iran continues to be of deep concern, and that:

> "Human rights sanctions against entities and individuals aim to deter human rights abuses by those listed and others who might commit such abuses. They represent demonstrable action against human rights abusers in Iran and complement our statements of condemnation."

8.19 The Minister says that the nine individuals and one entity added are responsible for serious human rights violations in Iran and include judges, prosecutors, authority figures in state media, and the Cyber Police.

8.20 He continues his comments as follows:

> "This Government considers that further sanctions on Iran linked to human rights violations would strengthen our overall policy on Iran by: supporting our objective of behavioural change in Iran by actively targeting those guilty of serious human rights violations; increasing pressure on the Iranian regime by taking very visible steps to respond to violations; and providing moral support to human rights defenders both inside and outside Iran, by demonstrating concrete action. Commentary from Iranians via the FCO's online presence, such as social media, has been positive about the EU measures following previous additions to listings, as have comments from NGOs. Some individuals have also objected to being listed, showing further evidence of the impact such listings can have."

8.21 In a separate letter of 18 March, the Minister says that these newly agreed designations were not made public until after they were adopted, in order to mitigate a significant risk of asset flight; and that the override of scrutiny that followed from his having to agree to their adoption before the Committee had the opportunity to scrutinise them was on this occasion regrettably unavoidable.

Conclusion

8.22 **We continue to report these changes to the House for the same reasons as before.**

8.23 **We do not object to the scrutiny over-ride on this occasion and in these circumstances.**

8.24 **We now clear the documents.**

9 Protecting the EU's financial interests

(34549) 17670/12 —	European Court of Auditors' Opinion no. 8/2012 (pursuant to Article 325 TFEU) on the proposal for a Directive on the fight against fraud to the EU's financial interests by means of criminal law

Legal base	Article 325 TFEU;—
Document originated	12 December 2012
Deposited in Parliament	14 December 2012
Department	HM Treasury
Basis of consideration	EM of 24 February 2013
Previous Committee Report	None; but see (34091) 12683/12: HC 86–xii (2012–13), chapter 10 (12 September 2012)
Discussion in Council	No date set
Committee's assessment	Legally important
Committee's decision	Cleared; further information requested

The document

9.1 This Opinion from the European Court of Auditors welcomes the Commission's proposed Directive to establish equivalent and effective protection of EU funds across the Member States. However the Court does not think the "Union's financial interests" have been clearly defined and welcomes the Commission's intention to introduce a definition in its proposal.

9.2 The current definition in the proposed Directive refers to the EU's budget and the budgets of its associated bodies. The Court concludes that the term "budget" is not appropriate when referring to the European Central Bank, the European Investment Bank, the European Investment Fund, the European Bank for Reconstruction and Development, or the European Stability Mechanism. It considers that the operations of these bodies are of clear financial interest to the EU. It recommends that the definition be clarified to include the EU's financial interests relating to all assets and liabilities managed by or on behalf of

the EU and its institutions, and to all its financial operations including borrowing and lending activities.

9.3 The Court notes that VAT fraud is covered by the proposed Directive and welcomes this inclusion, as it considers that VAT fraud cannot be tackled just at the Member State level.

9.4 The Court also recommends clarification that the corruption of officials, who are paid by the EU institutions, is automatically contrary to the EU's financial interests. This is with regard to the section of the proposal on fraud-related criminal offences.

The Government's view

9.5 In an Explanatory Memorandum dated 24 February 2013 the Financial Secretary to the Treasury (Greg Clark) says that, whilst the UK welcomes action which protects EU funds and reduces fraud against its budget, especially at a time when public resources are scarce, it does not welcome the Court's assertion that VAT fraud is covered by the proposed Directive, nor that such an inclusion would be welcome. Although the Government agrees with the Court's view that efficient co-operation between Member States is needed in the fight against VAT fraud, the control and operation of the VAT system and counter-fraud work are national competences and should remain as such.

Conclusion

9.6 **We hold the Commission's proposed Directive on the fight against fraud on the EU's financial interests by means of criminal law under scrutiny, pending an update on negotiations from the Government.[25] (We wrote on 6 March chasing a response to the conclusion of our Report of 12 September last year.)**

9.7 **We strongly agree with the Government that the inclusion of VAT fraud in the draft Directive would be far from welcome: combating VAT fraud should remain a Member State competence.**

9.8 **We ask the Government to say, when it responds to our Report and letter on the draft Directive, whether it supports the Court's recommendations firstly to redefine the "Union's financial interests" to cover all the assets and liabilities managed by or on behalf of the EU, and all its financial operations, including borrowing and lending activity, and secondly to redefine "corruption". We are particularly interested to know what impact these amendments, if agreed, would have on the scope of national criminal legislation necessary to implement the draft Directive, and whether there is a risk that the Union's "financial interests" could be deemed to cover "own resources".**

9.9 **We also ask the Government to say to what extent it thinks these two recommendations have influenced or will influence negotiations in the Council.**

9.10 **We now clear the Court's Opinion from scrutiny.**

[25] See headnote.

10 Managing the external Schengen borders

(a)	
(34732) 6928/13 COM(13) 95	Draft Regulation establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union
+ ADDs 1–3	Commission Staff Working Documents
(b)	
(34733) 6930/13 COM(13) 97	Draft Regulation establishing a Registered Traveller Programme
+ ADDs 1–3	Commission Staff Working Documents
(c)	
(34734) 6931/13 COM(13) 96	Draft Regulation amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)

Legal base	(a) and (b) Articles 74 and 77(2)(b) and (d) TFEU; co-decision; QMV (c) Article 77(2) TFEU; co-decision; QMV
Document originated	(a)–(c) 28 February 2013
Deposited in Parliament	4 March 2013
Department	Home Office
Basis of consideration	EM of 18 March 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared, but with request for further progress reports

Background

10.1 The Stockholm Programme, endorsed by the European Council in December 2009, establishes strategic priorities to guide legislative and operational planning in the justice and home affairs field for the period 2010–14. It recognises the importance of facilitating access to the European Union in a globalised world whilst at the same time maintaining a high level of security and highlights the potential of new and interoperable technologies to make the management of the external Schengen border more efficient and more secure. In particular, it invites the Commission to put forward proposals for an EU entry/exit system and a fast-track registered traveller programme which are intended to complement existing EU information systems, notably the Visa Information System (containing fingerprint data on visa applicants), Eurodac (containing fingerprint data on asylum applicants) and the Schengen Information System (containing alerts on individuals and other categories of

data, such as stolen identity documents, for use by border control and other law enforcement authorities).

10.2 The Schengen Borders Code establishes the checks which must be applied at the external Schengen border before admitting third country nationals to the Schengen free movement area. They include presentation of a valid travel document, verification of the purpose of the trip, proof that an individual has sufficient means to subsist for the duration of his or her stay, and a check against data held in the Schengen System Information System or in any other relevant database at the point of entry. Most third country nationals are admitted for a short stay which must not exceed a maximum of 90 days in every six month (180-days) period. Calculating the amount of time actually spent within the Schengen area, especially where there are multiple entries and different entry and exit points, is both time-consuming and difficult as there is no centralised or automated system for recording movements to and from the area. Determining the duration of stay in each case is therefore based on stamps indicating dates of entry and exit which are entered manually by border control officials, may be barely legible and are susceptible to forgery or counterfeiting. Moreover, no permanent record remains if travel documents are lost or destroyed after entering the Schengen area.

10.3 The Commission believes that the absence of a consistent, EU-wide record of entries and exits makes it difficult to determine whether an individual third country national has exceeded the period for which he or she is authorised to remain within the Schengen area or to calculate the overall number of illegal migrants (the majority of whom enter legally but overstay) within the EU. It therefore published, in October 2011, a Communication advocating the introduction of technology-based "smart" border controls based on an EU Entry-Exit System (ESS) and Registered Traveller Programme (RTP). The Commission made clear that the EES and RTP would build on elements of the Schengen free movement *acquis* in which the UK does not participate and that the UK would neither take part in the adoption of measures introducing an EU-wide EES and RTP nor be bound by their provisions. Our Forty-eighth Report of 7 December 2011 describes in greater detail the objectives of the proposed EU system of smart borders, the practical implications, and the Commission's initial estimate of costs.[26]

10.4 Documents (a) to (c) are three draft Regulations which together constitute the "smart borders" package. They will affect third country nationals seeking entry to the Schengen free movement area. Although the UK is not part of the Schengen area for border control purposes, UK nationals are citizens of the EU and will not, therefore, be subject to the new rules when travelling to and from the Schengen area.

Document (a) — draft Regulation establishing an Entry/Exit System (EES)

10.5 The draft Regulation would establish an EU Entry/Exit System, replacing the existing system of manual stamps at point of entry and exit with "an electronic registry" showing when and where a third country national entered and left the Schengen free movement area and automatically calculating the maximum authorised duration of his or her stay.

26 (33295); HC 428–xliii (2010–12), chapter 10 (7 December 2011).

The EES would include an automated mechanism to identify those who have overstayed and to inform the competent national authorities. The draft Regulation sets out the categories of personal data to be entered in the EES which include, for those third country nationals not required to obtain a visa, a set of fingerprint data.[27] It determines which national authorities may have access to the EES, the purposes for which the data contained within it may be used, the period for which the data may be retained (ranging from 181 days to a maximum of five years), and includes provisions on data security and data protection.

10.6 The development and operational management of the EES would be overseen by the recently-established EU Agency for large-scale justice and home affairs information systems.[28] The draft Regulation expressly requires the Commission to undertake an initial evaluation of the EES two years after it has become operational and to consider whether access to data should be extended to encompass broader law enforcement purposes.

10.7 The Commission believes that the EES will improve the current system of border checks at the external Schengen border by:

- replacing the manual stamping of travel documents with a quicker and more efficient automated system;
- ensuring that third country nationals, especially those who are frequent travellers, have reliable information on the number of days they are entitled to remain in the Schengen area;
- making it easier to identify (and for Member States to remove) overstaying third country nationals, including those found within the territory of a Member State without any identifying documentation;
- providing a more accurate picture of travel flows to and from the Schengen area (including a breakdown of overstayers by nationality and the most frequently used border crossing points);
- establishing a valuable evidence base against which to evaluate the impact of EU visa liberalisation measures and EU visa facilitation agreements with third countries; and
- providing a data source for examining applications to participate in the EU Registered Traveller Programme.[29]

Document (b) — draft Regulation establishing a Registered Traveller Programme (RTP)

10.8 The Commission estimates that around 700 million border crossings take place each year at the external Schengen land, sea and air borders. The Schengen Borders Code

27 Fingerprint data are already required for third country nationals who require a visa to enter the Schengen area, but these are entered in the Visa Information System (VIS).

28 See (31456) and (32064); HC 428–ix (2010–11), chapter 18 (24 November 2010).

29 See pp.3 and 4 of the Commission's explanatory memorandum accompanying the draft Regulation and pp.42 and 43 of ADD 1.

establishes uniform checks for all third country nationals at the external Schengen border, regardless of their risk profile or frequency of travel to and from the Schengen area. The Commission believes that the intensity of checks carried out at the border could be reduced by the introduction of a Registered Traveller Programme (RTP) which would enable pre-vetted and pre-screened third country nationals travelling frequently to the EU to cross the external Schengen border more quickly by making use of new technologies such as Automated Border Control systems.

10.9 Individuals participating in the RTP would be issued with a machine-readable card ("token") containing a unique identifier which they would swipe on arrival and departure at automated entry and exit gates, where available. The data contained in the card would be checked against data held in a Central Repository and in other relevant databases (such as the Visa Information System for travellers requiring a visa to enter the Schengen area). Where only manual entry and exit systems are available, the production of the token would obviate the need for the detailed questioning foreseen in the Schengen Borders Code.

10.10 The draft Regulation establishes the conditions and procedures for access to the RTP. It requires first-time applicants to complete an application form, produce a machine-readable travel document, provide fingerprints which will be stored in a Central Repository, and present supporting documentation indicating the purpose of their travel, their occupational status, and demonstrating that they have sufficient means to support themselves. Applicants would also be required to pay a €20 registration fee.[30] Applications may be made to the consular authorities of any participating EU Member State or at an external Schengen border crossing point.

10.11 The draft Regulation sets out the criteria to be applied by the competent national authorities in examining applications for access to the RTP, which include an individual assessment of the risk each applicant may present to the security of Member States or of illegal immigration (through overstaying). If granted, initial access to the RTP would be limited to one year, but may be extended for up to two further periods of two years. The draft Regulation also sets out the grounds on which access to the RTP must be refused or may be revoked, and includes provisions on the data to be stored in the Central Repository, the purposes for which it may be used, the data retention period (up to five years), and data protection and security.

10.12 The recently-established EU Agency for large-scale justice and home affairs information systems would oversee the overall development and operational management of the RTP, including coordination with national authorities who would be responsible for the development of their own National Systems and the connection to the Central Repository, as well as issuing tokens.[31]

10.13 The Commission anticipates that the RTP will:

- reduce the time taken to cross the external Schengen border for registered travellers (the Commission estimates that each crossing will take between 20–40 seconds);

30 The fee would be reduced to €10 if an RTP application and visa application are examined at the same time using the same supporting documents.

31 See (31456) and (32064); HC 428–ix (2010–11), chapter 18 (24 November 2010).

- help Member States to manage passenger flows in a more efficient and cost-effective way;
- encourage more economic and cultural exchanges; and
- allow border authorities to focus border checks on higher risk travellers.

Document (c) — draft Regulation amending the Schengen Borders Code

10.14 The purpose of the draft amending Regulation is to make changes to the Schengen Borders Code consequential to the establishment of the EES and RTP. The changes would only take effect once the EES and RTP are operational.

Financing the smart borders package

10.15 The Commission says that it has learned the lessons of cost overruns and delays on other large IT projects. As a result, no work on developing the EES and RTP would commence until the legal instruments setting out their purpose, scope, functions and technical details have been adopted. Moreover, as the development of an interoperable EES and RTP depends on all Member States moving ahead at a similar pace, the Commission has made explicit provision in its proposal for a new Internal Security Fund for the period 2014–20 for development costs incurred at national level to be funded by the EU. This is intended to ensure that difficult economic circumstances in some Member States do not jeopardise or delay the development and implementation of the smart borders package.

10.16 The Commission has proposed an overall budget of €4.6 billion for the EU Internal Security Fund for 2014–20. The Fund would have two components: one providing financial support for cross-border police cooperation, the other for management of the external Schengen border. The borders component of the Fund would attract the bulk of funding (€3.5 billion in the Commission's original proposal), of which just over €1 billion would be set aside for the smart borders package. The UK is not entitled to participate in the borders component of the Internal Security Fund and will not, as a result, be required to contribute to it.[32]

10.17 The Commission's proposal for the EU Multiannual Financial Framework for 2014–20 also includes a separate allocation of €822 million to support the EU Agency responsible for overseeing the development and operational management of the EES and RTP.

The Government's view

10.18 The Minister for Immigration (Mr Mark Harper) notes that the UK will not take part in the adoption of the draft Regulations or be bound by, or subject to, their application as they build on elements of the Schengen *acquis* in which the UK does not participate. However, he considers that they are broadly consistent with the UK's strategic approach on

32 See (33395) and (33397); HC 428–xliv (2010–12), chapter 12 (14 December 2011).

border security, in particular the UK's e-borders system, and that EU action is justified because national entry/exit systems are unable to capture and reconcile data of third country nationals entering the Schengen area through one Member State and leaving through another. Moreover, the type of facilitated entry foreseen for frequent travellers in the RTP needs to be applied consistently across all Schengen border crossing points to ensure comparable levels of security.

10.19 Turning first to the draft Regulation establishing the EES, the Minister observes:

> "We see the value of the successful introduction of an entry-exit system that would enable better measurement and control of illegal migration. We can support the principles around the introduction of a Schengen entry-exit system on the basis that the participating States believe that it will help to measure and control illegal migration within the Schengen area."[33]

10.20 However, he cautions that the data on travel flows generated by the EES should not automatically lead to the introduction of further visa liberalisation measures for third country nationals.

10.21 The Minister considers that fingerprint data for all non-visa third country nationals admitted into the Schengen area should be recorded in the EES from the outset, not after the three year transitional period envisaged in the draft Regulation. He continues:

> "a transitional period where the biometric element is only mandatory after three years will reduce the initial value of the EES. By not including biometrics from the start, it will be also more difficult to ascertain the identity of overstayers when apprehended in the Schengen area."[34]

10.22 The Minister also favours allowing law enforcement access to the data held in the EES from the outset, rather than waiting for an evaluation to be undertaken two years after the system becomes operational, adding:

> "In order fully to realise the benefits of the EES, the use of biometric data and the granting of access to law enforcement authorities are key."[35]

10.23 The Minister considers that the draft Regulation establishing the RTP is based on sound principles and highlights similarities with the UK's Iris Recognition Immigration System (IRIS) which allows registered passengers to enter the UK more quickly through automated barriers at certain airports.

10.24 As regards the third draft Regulation — document (c) — the Minister agrees that the amendments proposed to the Schengen Borders Code are necessary to support the functioning of the EES and RTP and adds:

> "There are no substantive policy implications for the UK through these proposed technical amendments. We support the use of technology to facilitate a quicker and

33 See para 18 of the Minister's Explanatory Memorandum, on document (a).

34 See para 22 of the Minister's Explanatory Memorandum, on document (a).

35 See para 38 of the Minister's Explanatory Memorandum, on document (a).

more convenient way of getting through passport control for legitimate travellers provided this happens without compromising border security."[36]

10.25 The Minister notes that none of the draft Regulations will have any direct financial implications for the UK as the UK is not required to contribute to the funding of EU justice and home affairs measures in which it does not participate. He provides more up-to-date figures on the budgetary costs of establishing the EES and RTP in light of the agreement reached at the February European Council on the Multiannual Financial Framework for 2014–20 (although this is still subject to the approval of the European Parliament). He expects a slightly smaller sum of €950 million to be set aside from the borders component of the EU Internal Security Fund to support the development and operation of the EES and RTP at EU level and to fund development costs at national level. Once established, continuing funding would be available to support Member States' on-going operational costs. In addition, a sum of €790 million would be set aside for the EU Agency responsible for overseeing the development and operational management of the EES, RTP and other large scale justice and home affairs IT systems. The Minister indicates that there are no systems of equivalent scale to enable the Government to make a comparative assessment of the adequacy of the budget allocated for the development and operation of the EES and RTP.

Conclusion

10.26 **Although the UK does not participate in the Schengen free movement area, the efficacy of border control systems applied by Schengen States is of interest because of their impact on the flow of migrants to the Schengen area and the ease with which "overstayers" (who exceed their legal permission to remain) may be detected and removed.**

10.27 **We note that the Government broadly welcomes the Commission's "smart borders" package, but considers that biometric (fingerprint) data and access to that data for law enforcement purposes should be an integral part of the EU Entry/Exit System from the outset. We have previously expressed concern at the trend, evident in relation to other EU databases such as the Visa Information System and EURODAC, to extend access beyond the purposes originally envisaged.[37] We also question whether there are sufficient compelling reasons to justify the collection of biometric data on the scale envisaged in the draft Regulations and how feasible it will be to establish the EES and RTP on time and on budget.**

10.28 **As the UK will not participate in the adoption of the draft Regulations or be bound by them, we are content to clear them from scrutiny. However, we consider the proposed EU Entry/Exit System and Registered Traveller Programme to be significant developments and ask the Minister to provide us with periodic updates on the progress of negotiations.**

36 See para 25 of the Minister's Explanatory Memorandum, on document (c).

37 See (33956) 10638/12: HC 86–xi (2012–13), chapter 12 (5 September 2012); HC 86–vii (2012–13), chapter 3 (4 July 2012); HC 86–xxv (2012–13), chapter 16 (19 December 2012).

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

Department for Business, Innovation and Skills

(34748) 7081/13 COM(13) 102	Commission Communication — Results of the mid-term verification of additionality 2007–13.
(34751) 5507/13 SWD(13) 7	Commission Staff Working Document — Strategic export controls: ensuring security and competitiveness in a changing world — A report on the public consultation launched under the Green paper COM(2011) 393.

Department for Environment, Food and Rural Affairs

(34761) 7367/13 COM(13) 123	Commission Green Paper on a European Strategy on Plastic Waste in the Environment.

Foreign and Commonwealth Office

(34776) — —	Draft Council Decision in Support of physical security and stockpile management activities to reduce the risk of illicit trade in SALW and their ammunition in Libya and its region.

HM Treasury

(34755) 7283/13 COM(13) 116	Draft Council Decision authorising the Czech Republic and Poland to apply special measures derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax.

Formal minutes

Tuesday 26 March 2013

Members present:

Mr William Cash, in the Chair

Michael Connarty	Linda Riordan
Julie Elliott	Jacob Rees-Mogg
Chris Heaton-Harris	Henry Smith
Kelvin Hopkins	

The Committee deliberated.

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.11 read and agreed to.

Paragraph 1.12 read, amended and agreed to.

Paragraphs 2.1 to 2.14 read and agreed to.

Paragraphs 2.15 to 2.17 read, amended and agreed to.

Paragraphs 3.1 to 9.7 read and agreed to.

Paragraph 9.8 read, amended and agreed to.

Paragraphs 9.9 to 11 read and agreed to.

Resolved, That the Report be the Thirty-eighth Report of the Committee to the House.

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

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[Adjourned till Wednesday 17 April at 2.00pm.

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*)
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
Jacob Rees-Mogg MP (*Conservative, North East Somerset)*
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (*Conservative, Crawley*)
Ian Swales MP (*Liberal Democrat, Redcar*)

The following member was also a member of the committee during the Parliament:
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)