House of Commons

European Scrutiny Committee

Seventeenth Report of Session 2013–14

Documents considered by the Committee on 9 October 2013, including the following recommendation for debate:

Financial management

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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Contents

Report

Meeting Summary

This week the Committee considered the following documents:

EU Support for policing in Afghanistan

This Joint Staff Working Document, prepared by the Commission and the European External Action Service, initiates the debate that the Council has said that it would hold in the second half of 2013 on the role of the EU in Afghanistan in the coming years. Negotiations in Brussels on renewing the EUPOL mandate for the period after 2014 are ongoing, with the UK pushing for a decision by the end of 2013. The Government continues to believe that EUPOL remains a strong and effective mechanism for delivering specialist leadership training and mentoring of the Afghan police and has a key role after 2014, but other Member States have argued that there remain too many unknowns for the EU to make a decision about post-2014 activity. The Committee retains the document under scrutiny and asks the Minister to clarify what the next stages of discussion at EU level will be, and the implications for parliamentary scrutiny.

Financial services: payment services

This draft Directive, draft Regulation and Commission Report present a package of proposals intended to enhance competition and transparency in the payments industry across the EU, and ensure that the level of consumer protection is sufficient and harmonised. The draft Directive would regulate interchange fees (fees set by the card network and paid by the merchant's bank to the customer's bank for the acceptance of card-based transactions) within the EU and would introduce a cap on the level of interchange fee. The Government is still considering the detail of the proposal; we ask to be updated as its thinking develops and keep the documents under scrutiny.

Financial management

The Commission is required to report annually on protection of the EU's financial interests and on the fight against fraud, a shared responsibility between the Commission and Member States. This Report covers 2012 and includes particular examination on new measures taken by Member States to implement their obligations in the area of agricultural policy. As is customary, we recommend this important document for debate in European Committee, given that fraud against the EU's financial interests remains a significant concern.

Invasive alien species

The Commission has put forward this draft Regulation to propose measures to address the introduction and spread of invasive alien species, and to limit the damage they cause. The species, which must not be native to any Member State, will be placed on a list of a maximum of 50 such species to be agreed after the Regulation comes into force. Member States will be required to establish Action Plans to identify and address pathways for the introduction of alien species, surveillance systems, border checks and early detection systems. They will also be required to undertake rapid eradication measures for species of Union concern which arrive within their territory; management measures for those species

which are not suitable for eradication; and proportionate measures to restore ecosystems which have been damaged. The Government supports the general principles of the proposal, but takes the view that a number of aspects of the proposal are unclear. The Committee asks for clarification and holds the document under scrutiny.

Package and assisted travel arrangements

With this Communication and draft Directive the Commission proposes revisions to EU legislation governing the protection available to buyers of package holidays. The existing Directive dates from 1990 and since then the structure of the travel market has been transformed. The new draft Directive aims to modernise and clarify the scope of the protection available to travellers by bringing within its scope different forms of on-line and assisted travel arrangements. The Government recognises the need for change, and intends to consult on whether the Commission has reached acceptable conclusions on where the Directive will apply, and the implications for the UK's ATOL scheme. Pending the outcome of these consultations the Committee is holding the documents under scrutiny.

EU-Indonesia Partnership and Cooperation Agreement

This Council Decision was originally cleared on 17 July, with further information requested. It authorises conclusion of the Partnership and Cooperation Agreement between the EU and Indonesia. When we last reported we welcomed the decision to split the Council Decision to conclude the Agreement into two Decisions – one covering JHA provisions (a readmission provision), to which the UK's opt-in applied; the other concerning non-JHA measures. We thought this approach provided for greater legal certainty about the UK's participation in JHA measures in international agreements, something we have called for since early in this Parliament. But we noted that the Government's Explanatory Memorandum was silent on the Government's approach to the opt-in, so we asked the Minister to explain both the reasons for this oversight and the policy considerations which led the Government to decide to opt out of the readmission provision. The Minister's reply is disappointing and does not contain the detail or explanation we would expect; we ask for a further reply.

1 Financial management

(35233) 12772/13 + ADDs 1–5 COM(13) 548	Commission Report: *Protection of the European Union's financial interests: Fight against fraud — 2012 Annual Report*

Legal base	—
Document originated	24 July 2013
Deposited in Parliament	29 July 2013
Department	HM Treasury
Basis of consideration	EM of 26 August 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	To be debated in European Committee B, together with the European Court of Auditors audit reports for 2012, once available

Background

1.1 The Commission is required to report annually on protection of the EU's financial interests and on the fight against fraud, a shared responsibility between the Commission and Member States imposed by Article 235 TFEU. These reports are to cover measures taken by Member States as well as by the Commission. Each year the Commission, in cooperation with Member States, reports latest statistics on, and recent measures to reduce, irregularities and fraud. Where concerns and risks are identified, recommendations are made to address them.

1.2 There is an important distinction between irregularities and fraud. An irregularity occurs when a beneficiary is not in compliance with the EU rules and requirements linked to the spending of EU funds and these are usually the result of genuine errors. Fraud is a deliberately committed irregularity, which constitutes a criminal offence.

The document

1.3 The Commission Report concerns activity in 2012 to protect the EU's financial interests. The Commission presents statistics on fraudulent and non-fraudulent irregularities reported by Member States across the entire EU budget (for revenue and expenditure). Focusing on one major expenditure theme, agricultural policy, the Commission also reports on new measures taken by Member States in 2012 to implement their obligations according to Article 325 TFEU. This information is based on Member States' replies to an annual questionnaire.

1.4 The report is accompanied by five staff working papers:

- Implementation of Article 325 TFEU by the Member States in 2012;
- Statistical evaluation of irregularities reported for 2012 own resources, natural resources, cohesion policy and pre-accession assistance;
- Recommendations to follow up the 2011 report on protection of the EU's financial interests;[1]
- Methodology regarding the statistical evaluation of reported irregularities for 2012; and
- Annual overview, with information on the results of the Hercule II Programme in 2012.

1.5 The Commission says that:

- in 2012, a total of 13,436 cases of irregularity (fraudulent and non-fraudulent) were reported to it, with an estimated financial impact of €3.4 billion (£3.0 billion), of which about €2.9 billion (£2.5 billion) concerns the expenditure sectors of the EU budget;
- the detected irregularities represent 2.3% of expenditure payments and 2.1% of gross Traditional Own Resources (TOR) collected; and
- the number of irregularities increased by 6% and the financial impact by 77% as compared with 2011.

Irregularities reported as fraudulent

1.6 In relation to fraud the Commission:

- reports that in 2012, for all sectors combined, 1,194 cases of irregularities were reported specifically as fraudulent, down by about 8% compared with 2011;
- their estimated financial impact increased, however, by about 8% from €295 million (£258 million) in 2011 to €315 million (£275 million) in 2012;
- comments that it considers the increase in irregularities reported as fraudulent in expenditure to be relatively small;
- notes that reported irregularities can also relate to transactions that took place in a financial year other than the year in which they were detected or reported, with an average time lapse of about 3.5 years;
- says that the most common fraudulent schemes involve the use of false or falsified documentation or declarations and the misappropriation of funds for a use other than that for which they were intended;

1 (34124) 12810/12 + ADDs 1–4: see HC 86–xxvi (2012–13), chapter 4 (9 January 2013) and *Gen Co Debs*, European Committee B, 3 September 2013, cols. 3–22.

- says that only a few of the irregularities reported as fraudulent concern cases of corruption (nine in total), although this number is increasing;
- reports that half of the irregularities reported as fraudulent in 2012 were detected by anti-fraud bodies, during criminal investigations and other external controls;
- says that the other half were detected by the administrative control systems provided for in sectoral regulations, which in its view underlines the importance of external controls in the fight against fraud and the need for strong coordination with managing and audit authorities;
- observes that the rate of fraud detection continues to vary between Member States — for example, the highest numbers of cases were detected and reported by Italy, Poland, Romania, Denmark and Germany and the greatest financial impact reported by Italy, Romania and the Czech Republic;
- notes that no fraudulent irregularities were detected and reported by Greece, Luxembourg, Malta and Finland and very few (less than three for all expenditure sectors) were reported by Belgium, France, Cyprus, the Netherlands and Austria; and
- comments that the differences in detection and reporting stem from several factors and reflect very diverse approaches, not only between Member States but in different administrations in the same country.

1.7 Broken down according to the main expenditure areas, irregularities reported as fraudulent were made up as follows:

- *Natural Resources (Agriculture and Rural Development and Fisheries)* — the cases of irregularities reported as fraudulent in this sector increased by nearly 50% compared with 2011, mostly due to the 56 cases reported by Denmark (concerning the European Agriculture Guarantee Fund). The estimated financial impact of these cases decreased by 7% to €69 million (£60 million), compared with 2011. Almost half of the irregularities reported as fraudulent were related to the exceeding of limits, quotas or thresholds and cases of over-declaration or fictitious declaration;
- *Cohesion policy* — the cases of irregularities reported as fraudulent remained stable with a slight increase of 1% to 276 compared with 2011. Their estimated financial impact slightly decreased by 2% to €199 million (£174 million) compared with 2011. The European Regional Development Fund (ERDF) accounted for the highest number of irregularities reported and the amounts involved. The Commission reports that its efforts in the last few years to raise awareness of fraud in this sector seem to have borne fruit among national authorities. It also considers the reduction in the time taken to report fraudulent cases after detection (8.5 months on average) as an encouraging development;
- *Pre-Accession Policy (Pre-Accession Assistance and Instrument for Pre-Accession)* — the cases of irregularities reported as fraudulent in this sector decreased from 101 cases in 2011 to 51 in 2012. The increase in their estimated financial impact, from

€12 million (£10 million) in 2011 to €45 million (£39 million) in 2012 was due to two exceptionally large cases reported by Romania with high financial impact of €38.5 million (£34 million);

- *Direct expenditure* — in 2012, according to the Accrual-Based Accounting system (ABAC), 26 recoveries were classified by the Commission services as suspected fraud and subsequently reported to the European Anti-Fraud Office (OLAF). Another 1,648 recoveries were classified as irregularities. The financial impact of these cases was about €2.7 million (£2.4 million); and

- *OLAF results* — in 2012, OLAF opened 431 investigations and 287 coordination cases and closed 465 cases (100 with recommendations). Of these recommendations 54 were for judicial action to be taken by national authorities and €284 million (£248 million) was recommended for recovery following its investigations.

1.8 For revenue the Commission says that:

- the cases of irregularities reported as fraudulent decreased by 20% from 851 cases in 2011 to 682 in 2012;

- their estimated financial impact decreased by 22% from €100 million (£87.5 million) in 2011 to €77.6 million (£68 million) in 2012;

- a significant amount of the fraud cases (32%) were detected during customs controls carried out at the time of the clearance of goods; and

- its analysis shows an overall decreasing trend in the number of fraud cases between 2008 and 2012.

Other irregularities (not reported as fraudulent)

1.9 The Commission says that in 2012, for all sectors combined:

- the number of irregularities not reported as fraudulent increased by 6% to 12,137 in 2012, compared with 2011;

- the highest number of increases within expenditure was recorded in the areas of Cohesion Policy and Direct Expenditure;

- for revenue, the number remained stable at 3,912, a decrease of 2% on 2011;

- the estimated financial impact for expenditure more than doubled the figure of 2011 to €2.59 billion (£2.26 billion);

- this increase is in part explained by two policy areas — in Direct Expenditure there was a single irregularity case of about €40 million (£35 million) and in Cohesion Policy a combination of increased implementation of the 2007–13 programming period, together with the irregularities identified by the Commission audit services in past years (and only reported by the competent national services in 2012) caused a surge in the numbers reported in 2012; and

- the estimated financial impact for revenue increased by 33% to €370 million (£323 million) compared with 2011.

Recovery and other preventive and corrective measures

1.10 The Commission reports that:

- in 2012, it took 187 decisions to interrupt payments, involving over €5 billion (£4 billion) in the Cohesion Policy area;
- these were not all related to fraud or irregularities, but also included cases of non-compliance with the regulations;
- of these 187 decisions, 70 were still open at the end of 2012, involving over €1.7 billion (£1.5 billion);
- a suspension decision taken for two ERDF/Cohesion Fund programmes in Germany and Italy was still effective at the end of 2012;
- two suspension decisions were adopted in 2012 relating to European Social Fund (ESF) payments to the Czech Republic and Slovakia and were still ongoing at the end of 2012;
- the corrective measures it adopted increased significantly, by 30% for 'confirmed /decided' cases and by 137% for 'implemented' cases, mainly in the Cohesion Policy area;
- nearly 58% of the total financial corrections decided in the year, €3.7 billion (£3.2 million) are due to those concerning Spain, with 90% linked to ERDF-financed programmes;
- the UK made 50 financial corrections, with 27 programmes related to the European Agricultural Guarantee Fund and with 12 related to the ESF;
- for 2012, in relation to Traditional Own Resources, the amount to be recovered is €444 million (£388 million), of which €208 million (£182 million) has already been recovered by Member States (yearly recovery rate is 47%); and
- in addition, Member States continued recovering activities regarding cases from previous years and recovered a combined total of approximately €83 million (£73 million) in relation to cases of fraud and irregularities detected between 1989 and 2011.

Anti-fraud policies at EU level

1.11 The Commission says that in 2012, it took, proposed or processed a number of measures to improve the legal and administrative framework for protecting the EU's financial interests, including:

- preparatory work for the establishment of a European Public Prosecutor's Office (EPPO), which it claims would significantly improve the fight against fraud,

resulted in a legislative proposal being put forward on 2013, accompanied by a proposal to reform EUROJUST;[2]

- final adoption of its reform proposal for OLAF, Regulation (EU, Euratom) No. 883/2013, which is in force from 1 October;
- adoption of a Protocol to Eliminate the Illicit Trade in Tobacco Products appended to the World Health Organisation Framework Convention on Tobacco Control;
- anti-fraud provisions in international agreements and administrative cooperation arrangements;
- an impact assessment of the Mutual Administrative Assistance, with a view to updating its legal framework to further improve detection and the fight against customs fraud in the EU — it expects to adopt a proposal in the course of 2013; and
- adoption of a Communication on tax fraud and tax evasion in December 2012, which presented an action plan to combat tax fraud and tax evasion including in relation to third countries.[3]

1.12 The Commission reports briefly the activities of the Advisory Committee for Coordination of Fraud Prevention (COCOLAF).

1.13 Noting the European Parliament Resolution of 10 May 2012 in relation to the 2010 annual report on the fight against fraud, the Commission says that:

- the Resolution contained specific requests, comments and proposals covering all sectors of the budget and covered a wide range of topics, such as losses in customs duties and VAT, irregularity reporting in all sectors by Member States and public procurement;
- it said that the Commission's report did not consider fraud in sufficient detail and dealt broadly with irregularities;
- it criticised the low number of irregularities reported by some Member States in particular sectors but welcomed the improved recovery rate in cohesion policy funds;
- the Commission has submitted a follow-up report outlining the measures it has taken to respond to the concerns raised by the European Parliament;
- in particular, it committed to providing more in-depth analysis of fraudulent irregularities in future reports, but stated that reporting on all irregularities (including non-fraudulent) is necessary to fulfil the report's mandate and to understand more fully the fraudulent irregularities;

2 (35214) 12551/13 (35215) 12554/13 (35216) 12566/13 (35217) 12558/13 + ADDs 1–2: see HC 83–xv (2013–14), chapters 1–3, 11 September 2013.

3 (34548) 17637/12 + ADDs 1–16: see HC 86–xxvii (2012–13), chapter 3 (16 January 2013) and HC 86–xxxi (2012–13), chapter 5 (6 February 2013).

- with regard to some Member States reporting little or no fraudulent cases for some funds, the Commission has made further contact with concerned Member States in order to address the problems of incomplete reporting; and
- it believes that fraud detection must be improved further in some Member States and has provided a range of measures to guide and support Member States in improving their fraud detection and reporting performance.

Measures taken by Member States to combat fraud and other irregularities affecting the financial interests of the EU in the area of agriculture

1.14 The particular focus in the 2012 report is on the area of agricultural policy. The Commission says that:

- many Member States reported new legislative and administrative measures that have substantially improved fraud prevention and risk management in agricultural funds;
- some Member States reported measures concerning the entire administration of agricultural aid;
- almost all Member States reported their use of general fraud indicators, such as categories of irregularity, operations, economic sectors or geographical areas affected;
- many Member States adopted guidelines on distinguishing between fraud and other irregularities and organised staff training to clarify the distinction;
- reporting practices show variance from one Member State to another, with nearly half of Member States providing limited information on the number of administrative anti-fraud checks and procedures initiated to establish cases of fraud;
- implementation of the recommendations it made to Member States concerning findings in the 2011 report, presented as part of the 2012 reporting exercise, was broadly adequate, but some concerns were not fully addressed;
- in the area of shared management, the majority of Member States reported that they target their fraud prevention and detection efforts on the basis of risk analysis;
- they also continue to attribute their low levels of detected fraud in either Agriculture or Cohesion Policy to the quality of their fraud prevention systems and to the low levels of actual fraud; and
- a number of Member States have improved their control systems by targeting high-risk areas as recommended.

Recommendations and Conclusions

1.15 The Commission makes nine recommendations, which Member States are obliged to respond to. They are that:

- every Member Sate identifies a national coordination point for the fight against fraud;
- Member States should quickly adopt and implement the draft Directive on the protection of the EU financial interests by means of criminal law;[4]
- the package on the reform of public procurement Directives should be approved by the legislator and rapidly implemented by Member States;[5]
- in view of low reporting of fraudulent irregularities in the area of Cohesion Policy for some Member States, Greece, France and Spain in particular should strengthen their efforts to detect fraud;
- competent authorities should take the results of the report's analysis and its accompanying staff working documents into account when planning their checks and controls;
- Member States should step up their efforts on rural development investment projects in relation to the elements of risk highlighted by similar findings in the previous programming period;
- when developing customs control strategies, Member States should ensure they have effective systems of risk assessment allowing them to also carry out checks targeted at high-risk imports at the time of clearance;
- all Member States should adopt and develop checks and controls, in particular structuring and improving cooperation between managing authorities and anti-fraud bodies, as well as improving risk analyses and IT tools; and
- the Multiannual Financial Framework provisions on fraud prevention should be adopted in their current formulation and be quickly and correctly implemented at the national level.

1.16 The Commission concludes overall that:

- the most significant risk in relation to fraudulent irregularities detected is the infringement of public procurement rules;
- significant problems still exist in the differences of approach between Member States in relation to fraud, as also highlighted by statistics gathered in response to the specific questionnaire that was part of this year's report; and
- in relation to the monitoring of results of judicial proceedings, the situation remains unsatisfactory despite the significant overall improvements achieved.

4 (34091) 12683/12 + ADDs 1–4 (34549) 17670/12: see HC 86–xii (2012–13), chapter 10 (12 September 2012), HC 86–xxxxvii (2012–13), chapter 9 (26 March 2013) and HC 83–xiii (2013–14), chapter 18 (4 September 2013).

5 (33585) 18964/11 + ADDs 1–2 (33586) 18966/11 + ADDs 1–2: see HC 428–lii (2010–12), chapters 2 and 3 (29 February 2012), HC 86–xx (2012–13), chapter 4 (21 November 2012), HC 86–xxi (2012–13), chapter 5 (28 November 2012) and HC 83–xii (2013–14), chapter 12 (17 July 2013).

The Government's view

1.17 The Financial Secretary to the Treasury (Greg Clark), noting that the Government welcomes the publication of this report, says that while the report shows that the level of irregularities reported as fraudulent has decreased in 2012, it believes that any amount of fraud against the EU budget cannot be tolerated and where found every effort must be made to fully recover it.

1.18 The Minister then comments that:

- the UK has a zero tolerance approach to all fraud, with robust management controls and payment systems in place that seek to prevent incidences of EU fraud;
- for EU funding programmes, all agencies which have responsibility in the UK for distributing EU funds have processes in place to monitor and report fraud in line with current regulations;
- the high standards of checks, which are carried out robustly, mean that levels of such fraud are low in the UK; and
- the UK also has in place robust criminal sanctions for those who commit fraud, including fraud against the EU budget.

1.19 Turning to the EU level, the Minister says that:

- the Government's policy is to support the Commission's plans to improve its internal controls, to report on implementation of anti-fraud measures and to improve data quality on recoveries of misused EU funds;
- it agrees that more should be done to recover funds unduly paid out and notes that the Commission continues to apply more payment interruption and suspension decisions where Member States' control systems are not up to standard — it now only lifts these when tangible improvements have been made;
- the Government believes the best way to reduce the level of irregularities and fraud is through a more preventative approach;
- in particular, it would like to see greater simplification of the systems and regulations; and
- to that extent the Government has been a strong advocate of simplifying the various Regulations which govern the budget sectors and will continue to support efforts to reduce irregularities in EU funds.

1.20 However, the Minister reminds us that:

- the Government has confirmed that the UK will not participate in the Commission's recently published proposal for a European Public Prosecutor's Office (EPPO);[6]

6 *Op cit.*

- in the Government's view, the EPPO would duplicate powers and bodies existing within Member States to protect the Member States' and EU's financial interests;
- it would take competence for offences set out in the draft Directive on the protection of the EU financial interests by means of criminal law[7] away from participating Member States;
- it would, therefore, draw emphasis away from making each Member State responsible for anti-fraud work at national level;
- it would move attention from prevention to reaction after crimes had already been committed;
- the draft Directive on the protection of the EU's financial interests by means of criminal law includes elements which cause concern to the Government;
- of particular concern is the inclusion of minimum terms of imprisonment, which could limit the discretion of UK courts to decide on sentencing taking account of all the circumstances of the case; and
- the proposed Directive is currently subject to trilogue negotiations between the Council, Commission and the European Parliament and the Government is considering its position on it.

Conclusion

1.21 **Fraud against the EU's financial resources remains a significant concern. So, as is customary, we recommend that this document be debated in European Committee B, together with the European Court of Auditors audit reports for 2012, once those documents are available. The debate will enable Members to consider what progress has been made in preventing fraud and other irregularities in relation to the EU's financial resources.**

7 *Op cit.*

2 Electronic procurement and invoicing in public administration

(a) (35175) 12131/13 COM(13) 453	Commission Communication: *"End-to-end e-procurement to modernise public administration"*
(b) (35174) 12104/13 COM(13) 449	Draft Directive on electronic invoicing in public procurement

Legal base	(a) — (b) Article 114 TFEU; co-decision: QMV
Documents originated	26 June 2013
Deposited in Parliament	11 July 2013
Department	Cabinet Office
Basis of consideration	EMs of 11 September 2013
Previous Committee Report	None, but see footnotes
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

2.1 Towards the end of 2011, the Commission put forward proposals[8] to modernise Directives 2004/17/EC and 2004/18/EC (which respectively coordinate EU public procurement procedures for certain entities, such as water, energy, transport and postal services, as well as more generally). These included provisions which would make electronic means of communication mandatory for the publication of notices announcing public procurement tenders, the publication of related documents, and the submission of tenders, and they were followed in April 2012 by a Communication[9] which sought to provide a wider view of the benefits of e-procurement and of the steps being taken to encourage its use within the EU.

8 (33585) 18964/11: see HC 428–lii (2010–12), chapter 2 (29 February 2012), HC 86–xxi (2012–13), chapter 5 (28 November 2012) and HC 83–xii (2013–14), chapter 12 (17 July 2013) and (33586) 18966/11: see HC 428–lii (2010–12), chapter 3 (29 February 2012), HC 86–xxi (2012–13), chapter 4 (28 November 2012) and HC 83–xii (2013–14), chapter 12 (17 July 2013).

9 (33867) 9299/12: see HC 86–vi (2012–13), chapter 6 (27 June 2012).

The current documents

Commission Communication

2.2 The Commission has now produced this further Communication (document (a)), which seeks to identify the current state of implementation in the public sector on what it describes as "end-to-end e-procurement" (covering not only the three steps referred to above, but payment as well). In doing so, it recalls that the management of public procurement is of prime importance in the current financial climate, in that expenditure in this area represents 19% of EU GDP, and was identified in the Commission's Annual Growth Surveys in 2012 and 2013 as a key element in the competitiveness of the EU economy, thereby contributing as well to the objectives of the 2020 Strategy.

2.3 It also says the end-to-end e-procurement can:

- improve overall administrative efficiency by cutting the duration of the purchase-to-pay cycle, improving auditability (and so reducing the opportunity for corruption and fraud), increasing the security of data, and reducing litigation;
- produce spill-over effects by triggering wider digitalisation of government services, making these more efficient and citizen and business friendly; and
- be beneficial to small and medium-sized enterprises (SMEs), most of which are now equipped to use it.

2.4 As regards the current state of play, the Commission says that, although the electronic notification of tenders and access to procurement documents is not used for all procedures and purchases, they are generally available across the EU, with 22 Member States having already made e-notification mandatory (and a number, including the UK, having made significant progress). However, it also says that the overall procurement landscape is highly fragmented and complex, involving a large number of different procedures, IT technologies and certification requirements, with this lack of interoperability having been the main reason for its earlier proposals that the public procurement and utilities Directives should be amended to make e-procurement mandatory.

2.5 At the same time, the Commission observes that the benefits of e-invoicing are becoming increasingly recognised, with several Member States having undertaken initiatives towards its introduction — though it adds that its adoption is nevertheless still limited, and that those Member States[10] mandating e-invoicing have adopted their own national standards, which are for the most part not interoperable. As a result, it says this has contributed to the fragmentation of the Single Market and increased the cost and complexity of cross-border public procurement.

2.6 Against this background, the Commission says that, although its proposals to make e-notification, e-access and e-submission mandatory will be important in reaping the benefits of e-procurement, a series of further steps are now needed. These include a legislative proposal (see below) to make e-invoicing the rule rather than the exception, in

10 The Commission has identified 15 separate national, regional and industry e-invoicing standards in the EU.

line with the call made by the Commission in a 2010 Communication[11] *("Reaping the benefits of e-invoicing for Europe"*) that this should become the predominant invoicing mode by 2020. There would also be a number of supporting non-legislative measures, including further work by the European Committee for Standardisation (CEN) to develop a new European e-invoicing standard, and the launching of the "Connecting Europe Facility" programme to support investments in the infrastructure needed to deliver cross-border public services.

2.7 Finally, the Commission highlights the need for national strategies in this area. In particular, it suggests that specific action plans should be drawn up in order to establish intermediate targets; to identify the most successful strategies for e-procurement and e-invoicing; to promote simplification, the reduction of administrative burdens, and the participation of SMEs and cross-border suppliers; to foster the development and use of e-certificates attesting a supplier's suitability to bid; to monitor procurement spend and key performance indicators; to set up training programmes, possibly financing these through the Structural Funds; and to address internal market objectives. In addition, the Commission says that it will continue the work of the European Multi-Stakeholder Forum on e-Invoicing, and launch a study which identifies best practice in areas such as e-auctions and e-catalogues.

Draft Directive

2.8 In order to give effect to one of the main elements in the Communication, the Commission has also put forward a draft Directive on e-invoicing (document (b)), which would require the European Committee for Standardisation, on the basis of a mandate from the Commission at a later stage, to draw up a new European standard, setting out minimum requirements for the content ("semantic data model") of the core electronic invoice. The Directive would apply to such invoices issued under contracts awarded in accordance with the measures which will replace Directives 2004/17/EC and 2004/18/EC, and authorities across the EU would have to accept e-invoices meeting those requirements (although suppliers would not be obliged to issue these, and e-invoices not compliant with that standard, and paper invoices, would still be permitted if both parties wish to use them).

The Government's view

2.9 These two documents are the subject of Explanatory Memoranda of 11 September 2013 from the then Minister for Political and Constitutional Reform at the Cabinet Office (Chloe Smith), together with an Impact Assessment checklist for the draft Directive.

2.10 She says that the UK agrees that e-procurement can have significant benefits by reducing costs and timescales; helping to improve the quality, accuracy, and transparency of data; reducing error and fraud; and increasing access and competition in public procurement, thus encouraging better value for money. It also agrees that the benefits are potentially greatest with full end-to-end electronic processes, especially where relevant data can be transferred in machine-readable form without manual re-keying. She notes that

11 COM(10) 712.

there are already various e-enablement and e-procurement activities in the UK covering both central government and the wider public sector, the Commission having estimated that the UK public sector already used between 30%-50% e-tendering in 2011, and she points out that a sample of *Official Journal* advertisements earlier this year suggested that around 75% of central government procurements (excluding the Ministry of Defence) used e-procurement.

2.11 The Minister says that the Government has recently announced that a new Crown Commercial Service will bring together in autumn 2013 its central commercial capability into a single organisation, building on the evolution over the last few years of the Government Procurement Service (which already uses e-procurement tools, including e-tendering), thereby enabling the new body to achieve and encourage further use of e-procurement and e-invoicing in Government. In view of this, she says that the UK is already relatively well-placed to achieve high levels of e-procurement and move towards the 100% target, although further work will be needed to increase the take up, and to provide information, assistance and advice to public bodies and suppliers, in order to ensure the target is successfully met. In addition, the Cabinet Office will consult with other interests, including economic operators, and providers of e-procurement solutions and services, as part of the transposition process of the new procurement Directives, and afterwards, and will consider what plans and assistance are appropriate and necessary to achieve the full e-procurement timescale, building on the progress so far.

2.12 On the proposed Directive, the Minister says that the Government has accepted that the coordination of rules governing procurement by public bodies and utilities is consistent with the principle of subsidiarity, and that this has long been enshrined in EU public procurement legislation supported by the UK. It also recognises that public sector e-invoicing saves time and money and should be encouraged. In particular, the "Information Economy Strategy" published in June 2013 states that the Government wants to encourage the use of electronic invoicing, and that its aim is to use this for all central Government transactions, based on systems which are easy to install and use, and priced sufficiently flexibly to suit the needs of diverse businesses.

2.13 The Minister observes that the UK's approach to interoperability — which expects authorities to accept e-invoices, whilst encouraging, but not obliging suppliers to submit these — is similar to the Commission's proposed approach. However, she points out that the Commission has noted a raft of existing data standards for e-invoicing across the EU, and she says that it is not axiomatic that the best means of achieving interoperability is to add another such standard, even if its acceptance by public authorities and utilities becomes mandatory in due course. In particular, the new standard could become just one among many, and contribute to (rather than address) the problem, and this may be an especial risk if it allows different interpretations, or has significant incompatibility with commonly-used existing e-invoicing standards and solutions. The Government will therefore wish to ensure that the proposal actually helps to achieve efficient e-invoicing and does not inadvertently create barriers or difficulties.

2.14 The Minister adds that, in line with the policy outlined above, it can be expected that UK public bodies will increasingly adopt e-invoicing over the next few years, before the current draft Directive has been adopted, and before the new CEN-developed standard has

been accepted. It is therefore important that this measure does not create difficulties or significant incompatibilities with the UK e-invoicing already in place. She also says that standards proposed and adopted by the EU should assist interoperability; should not create avoidable difficulties for authorities, suppliers or e-invoicing solution providers; and should not introduce incompatibilities or conflicts with existing e-procurement or e-invoicing practice. The requirement of the Directive should also be unambiguous, with UK e-invoicing interests being encouraged to contribute fully to the CEN's development of the new standard, and account also being taken of existing work elsewhere in the world.

2.15 The Minister also makes the following detailed comments on the proposed Directive:

- ideally, an e-invoice produced by any system or service should be machine-readable by other systems, requiring neither human intervention nor intermediate electronic translation, but full interoperability covers data content, format and transmission, and an agreed data format is not necessarily a sufficient condition for full interoperability: however, as the draft directive requires that authorities should accept an electronic invoice which complies with the content standard, this could create potential issues if it was not compatible with format and transmission standards and protocols used by authorities, and this issue may need to be addressed during the negotiations;

- the CEN standard and supporting material should provide sufficient formatting details and data-type definitions to facilitate genuine interoperability between systems which adhere to the standard;

- although pre-award procurement differs from invoicing, there will normally be common content elements through various parts of the end-to-end procurement process (for example, the identity and other information about the contracting authority and the economic operator), and the whole procurement "lifecycle" should be seen as stages in a coherent process, not as a series of independent activities: data standards throughout the procurement process should reflect that coherence, and this should also be reflected in the formal CEN standard;

- the draft directive requires that the new standard guarantees personal data protection in accordance with Directive 95/46/EC, but, whilst some invoices may contain information which can identify individuals, and therefore need to be handled in accordance with data protection requirements, it is not clear that a standard for a semantic data model can "guarantee personal data protection", as this depends largely on the behaviour and characteristics of persons and systems involved: the Government will therefore seek clarification of the Commission's intentions, and what this will mean in practice for users, its view being that any data protection requirements should be proportionate to the actual risks, as over-onerous obligations would add costs and be counter-productive to effective e-invoicing;

- although the directive would only apply to invoices in respect of contracts which are subject to the new (modernised) public procurement, utilities procurement, and the defence and security public contracts directives, some further clarification may be needed in respect of contracts which are not fully subject to the public

procurement and utilities directives, (for example service contracts falling under the "light touch" regime); and

- unlike the procurement rules, the e-invoicing proposal does not provide for specific remedies for economic operators if authorities and utilities breach the measure, and, when the Directive is transposed in the UK, consideration will need to be given to the extent to which provisions will be enforced in order to comply with the UK's obligation to ensure compliant e-invoices are accepted.

2.16 Finally, the Minister comments on the timing aspects. She notes that, if the modernised public procurement directives are (as expected) adopted this autumn, the deadline for full e-communication under them will be the first half of 2018, and that, if the current proposal is agreed and adopted within the next year or so, the deadline for acceptance of standards compliant by Member States might also fall within the first half of 2018. She says that aligning the dates of full e-communication and obligatory e-invoicing makes sense in principle, but may put pressure on procuring bodies to adopt both in a short timescale, and necessitate central information and assistance.

2.17 She also points out that, although the proposal requires Member States to transpose the directive within four years of adoption, it sets no specific timescales by which CEN is to develop, and the EU is to accept, the e-invoicing standard. Contracting authorities, economic operators and providers of e-invoicing solutions and services will need sufficient time to gear-up between EU adoption of an e-invoicing standard and the requirement to accept it. The Commission's request to CEN should therefore have detailed terms of reference, and a suitably firm date by which CEN is requested to produce a final draft standard. The directive should make provision if the CEN standard is delayed for any reason.

Conclusion

2.18 **In the light of the earlier proposals to make it mandatory for the transmission of documents relating to public procurement to be carried out electronically, it would seem sensible to extend that approach to invoicing by public authorities, and we note that the Government agrees that this can provide significant benefits. We also note that the UK's approach to interoperability is similar to that proposed by the Commission, and that the Government considers the UK is well placed in this area.**

2.19 **At the same time, the Government has also highlighted a number of issues which it will wish to explore further. These include whether another data standard for e-invoicing is necessary, and the need to avoid any incompatibility between a new measure and the e-invoicing already in place within the UK; issues surrounding the protection of personal data; and the question of remedies for economic operators if authorities and utilities breach the measure. Consequently, although we think it unlikely that these documents raise issues which will require further consideration by the House, we believe it would be prudent to hold them under scrutiny, pending further information on the various points of concern.**

2.20 **Having said that, we feel bound to express our disquiet at the timing of the Minister's Explanatory Memoranda, having regard in particular to the fact that the**

Subsidiarity Protocol applies to the draft Directive. In the event, the Government does not consider the proposal gives rise to any subsidiarity concerns, and, whilst we do not disagree with that assessment, it is the case that, despite the documents having been deposited on 11 July 2013, the Explanatory Memoranda were not signed until 11 September, immediately before the start of the three week Conference Recess. Had a Reasoned Opinion been required under the Subsidiarity Protocol, it would clearly have been impossible for the House to have provided this before the deadline of 26 September, and we find it disturbing that the Cabinet Office, of all departments, should apparently have been unaware of this. We would therefore like the Minister to explain why these Explanatory Memoranda could not have been submitted in good time to allow this aspect of Parliamentary scrutiny to be properly discharged.

3 The posting of workers

(33787) 8040/12 + ADDs 1–3 COM(12) 131	Draft Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

Legal base	Articles 53(1) and 62 TFEU; co-decision; QMV
Department	Business, Innovation and Skills
Basis of consideration	Minister's letter of 2 October 2013
Previous Committee Reports	HC 83–iii (2013–14), chapter 2 (21 May 2013); HC 86–xix (2012–13), chapter 7 (7 November 2012); HC 86–v (2012–13), chapter 4 (20 June 2012); HC 86–i (2012–13), chapter 1 (9 May 2012)
Discussion in Council	15 October 2013
Committee's assessment	Legally and politically important
Committee's decision	Not cleared, but waiver granted under paragraph (3)(b) of the Scrutiny Reserve Resolution

Background

3.1 In March 2012, the Commission proposed a draft Directive which seeks to improve the implementation and enforcement by Member States of a 1996 Directive establishing a legal framework for businesses to send ("post") workers from their home Member State to another (host) Member State in order to provide a service on a temporary basis. The draft Directive does not seek to amend the content of the 1996 Directive, but includes provisions which are intended to:

- prevent businesses using posting as a means of circumventing the application of employment or social security rules;

- improve access to information on the core terms and conditions of employment (including any minimum wage requirement) applicable to posted workers in the host State;
- strengthen administrative cooperation and mutual assistance between national authorities responsible for monitoring the application and enforcement of the 1996 Directive; and
- provide effective mechanisms for workers to lodge complaints and bring proceedings in their host or home Member State and, in the case of construction workers, to recover unpaid wages from their posting employer or the host State contractor by means of a system of joint and several liability.

3.2 Our First Report of the 2012–13 session, agreed on 9 May 2012, provides a detailed overview of the draft Directive and the Government's position.

3.3 We thought that improving the provision of information on the terms and conditions of employment applicable to posted workers would make it easier for businesses to compete within the internal market, help to expose abusive practices, and strengthen the protection of core employment rights. However, we shared the Government's concern that the evidence base for further regulatory intervention at EU level was weak, with many of the difficulties cited by the Commission as a justification for EU action being based largely on anecdotal reports. In particular, the Government questioned whether there was sufficient evidence to support the introduction of joint and several liability in the construction sector, which would require a change to UK law, and suggested that Member States should determine how to enforce the 1996 Directive in line with their own methods for enforcing labour laws.

3.4 The Government's consultation of stakeholders, summarised in our 19th Report of the 2012–13 session, revealed broad support for provisions in the draft Directive clarifying what constitutes a posting and requiring information on applicable working conditions to be made widely available, as well as sharp differences of opinion on provisions dealing with the enforcement of the rights of posted workers, including the introduction of joint and several liability within the construction sector (Articles 11 and 12), and national control measures which Member States may apply to ensure that service providers posting workers to their territory comply with the 1996 Directive (Article 9).

3.5 In May, the Government informed us that there was the prospect of a general approach at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 20 June and indicated that its negotiating priorities would be to resist the imposition of a mandatory system of joint and several liability for posted workers in the construction sector and to ensure that national control measures which Member States may apply to monitor compliance with the 1996 Directive were proportionate and would not create barriers within the Single Market. In the event, the Irish Presidency was unable to secure an agreement because of unresolved differences on the scope of national control measures and the need for a system of joint and several liability.[12]

12 See letter of 11 July 2013 from the Minister for Employment Relations and Consumer Affairs (Jo Swinson) to the Chairman of the European Scrutiny Committee.

The Minister's letter of 2 October 2013

3.6 The Minister for Employment Relations and Consumer Affairs (Jo Swinson) tells us that there has been further progress in negotiations and asks us to consider clearing the draft Directive from scrutiny or granting a waiver to enable the Government to support a general approach at the EPSCO Council on 15 October if it meets the Government's principal negotiating objectives.

3.7 The Minister first summarises what has been achieved so far in negotiations:

> "The UK has worked closely with other Member States to ensure that the Directive both protects posted workers' rights and does not impose unreasonable burdens on businesses looking to send workers abroad.
>
> "Significant and positive progress has been made on much of the Directive, and there is general agreement between Member States on many aspects of the text. These include elements which will improve awareness of rights and responsibilities of workers and businesses (Article 5), exchange of information between Member States (Article 6) and ensuring that the system to enforce these rights works across borders is effective (Chapter V). These provisions will ensure that workers posted across borders are aware of their rights in their own language. The Directive will also ensure that the enforcement of the rules surrounding posting workers is effective and proportionate, and will aid the cooperation across borders between Member States. Furthermore, it will set out to employers what their responsibilities are in the Member State they are posting workers to, without imposing disproportionate burdens on them to comply with."

3.8 The Minister notes that negotiations are continuing on Articles 9 and 12 of the draft Directive regarding the scope of national control measures and the need for a system of joint and several liability. Turning first to Article 12, she explains:

> "The Commission's original proposal included a system of joint and several liability in the construction sector (under which contractors would become liable if any of their subcontractors fail to pay wages). On this point, the Government will not agree to anything that would change UK law by mandating joint and several liability in subcontracting chains. I believe that this is an issue on which Member States should be able to decide for themselves the most appropriate way to ensure that workers in subcontracting chains have their rights upheld. A mandatory system of joint and several liability will also undermine the EU's aim to facilitate the posting of workers. In Member States which already use joint and several liability, these provisions apply to all workers in covered sectors. The Commission's proposal relates only to posted workers — these provisions would lead to different treatment when the main contractor uses a company with posted workers to when they contract with a company not using posted workers. This will create an uneven playing field."

3.9 As regards the scope of national control measures based on Article 9 of the draft Directive, the Minister observes:

> "The Government's view is that Member States should not be able to introduce any administrative requirement they desire. Instead, we believe there should be a

> transparent and limited list of control measures that can be imposed by Member States, which will ensure stability and certainty for businesses posting workers. The Government will seek to secure a proposal which prevents Member States being able to impose open-ended control measures on businesses. This is to ensure that businesses have clarity about the measures they will need to comply with when posting workers, and therefore helping encourage better operation of the single market."

3.10 The Minister is keen to secure an agreement at the EPSCO Council which is "in line with [these] parameters" and says she will report back to us immediately after the Council has taken place.

Conclusion

3.11 **We agree with the Government's negotiating objectives for Articles 9 and 12 and are willing to grant a scrutiny waiver to enable the UK to support a general approach on the terms outlined by the Minister in her letter. We look forward to receiving a further report on the outcome of the Council and the prospects for a First Reading agreement with the European Parliament. Meanwhile, the draft Directive remains under scrutiny.**

4 Package and assisted travel arrangements

(a) (35257) — COM(13) 513	Commission Communication: *"Bringing the EU package travel rules into the digital age"*
(b) (35192) 12257/13 COM(13) 512	Draft Directive on package travel and assisted travel arrangements, amending Regulation (EC) No. 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC

Legal base	(a) — (b) Articles 114 and 169 TFEU; co-decision; QMV
Documents originated	9 July 2013
Deposited in Parliament	(a) 23 August 2013 (b) 17 July 2013
Department	Business, Innovation and Skills
Basis of consideration	EM of 2 August 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

4.1 Tourism plays a central role in Europe's economy, with 1.8 million businesses (mostly small and medium sized enterprises (SMEs)), employing 5.2% of the workforce, and accounting in all for around 10% of EU GDP. Council Directive 90/314/EEC created important rights for those purchasing package holidays, typically comprising passenger transport and accommodation. In particular, it ensures that consumers receive essential information before and after signing a package travel contract; provides that organisers and/or retailers are responsible for the proper performance of the package, even if the services are provided by sub-contractors; and regulates what happens if there are changes to the package travel content. It also ensures that travellers receive a refund of pre-payments, and are repatriated in the event of the insolvency of an organiser and/or retailer.

The current documents

Commission Communication

4.2 Despite this, a recent Commission Communication (document (a)) says that, although the existing regime has served consumers and traditional package tour operators well, providing valuable reassurance on a complicated product often delivered abroad, the structure of the travel market in 1990 was much simpler that it is today. For example, the Internet (where travel products are now one of the most popular purchases) did not exist:

also, although a ruling[13] by the European Court of Justice in 2002 clarified that the term "pre-arranged combination" also covers travel services combined by a travel agent at the customer's express request just before the conclusion of a contract between the two, it remains unclear to what extent modern ways of combining travel services are covered by the Directive.

4.3 The Commission also points out that a report in 1999 on its implementation highlighted significant differences in the laws transposing it, due to the broad discretion given to Member States and ambiguities in the text. It says that this has in turn led to a number of problems, including an uneven regulatory environment where traditional package organisers are subject to a level of regulation which many of their competitors are not, and and an inhibition on cross-border trading due, in some cases, to a lack of mutual recognition of the systems in place to meet the Directive's requirements, and their varying conditions.

Draft Directive

4.4 Against this background, as well as requests from the co-legislators, the European Economic and Social Committee, the European Consumer Consultative Group, and a large part of the industry and consumer organisations, the Commission has now put forward this proposal in document (b) for a new Directive (which was also explicitly mentioned in the European Consumer Agenda and in the Single Market Act II).

4.5 The aim of the proposal is to clarify and modernise the scope of the protection available to travellers when purchasing combinations of travel services for the same trip or holiday by bringing within its scope different forms of on-line and assisted travel arrangements, and by ensuring that purchasers are better informed about the services, and the remedies available if something goes wrong. It also seeks to remove some outdated elements from the present Directive, whilst maintaining its essential characteristics (in terms of pre-contractual information, the liability of the organiser, the refunding of prepayments, and repatriation in the event of insolvency).

4.6 More specifically, the proposal would:

- extend the coverage of the regime by expanding the definition of package arrangements to include those facilitated by two or more entities within a single booking process, or where a single entity (such as a web-based operator) facilitates the creation of a "package" by providing consumers with a choice from a range of services from different providers under an inclusive price or by means of an exchange of data which enables the second provider to take payment: these arrangements would all be subject to the full range of protections in the Directive, including the provision of pre-contractual information, liability on the organiser for all of the services provided under the contract, and cover against the insolvency of the organiser;

13 Club-Tour Case C-400/00.

- make a distinction between the extended definition of a package and arrangements where commercial connections are looser (for example, where the opportunity to "click-through" from an airline site at the end of the booking process to an accommodation provider offering accommodation on the dates of travel under an entirely separate contract being charged under a separate price): these are characterised in the proposal as "Assisted Travel Arrangements", and it is proposed that they should provide protection only against the insolvency of any of the providers;

- propose information requirements which would make the level of protection attached to the different arrangements covered by the Directive clear to consumers, so as to better facilitate informed choice, and also allow businesses a degree of flexibility in choosing how to provide services (and hence the level of protection required of them), the Commission maintaining that this will provide for a much fairer regime in terms obligations on competing entities;

- seek to rationalise and clarify the information to be provided prior to contracts being agreed (or in some cases prior to the date of departure): this would not differ significantly from the information currently required for brochures, but would be extended to cover information provided, irrespective of the medium by which businesses choose to market their products and services; and

- seek, in respect of contractual obligations and rights, to set a limit of 10% on the extent to which a price can be increased (post agreement), and provide an explicit right for the consumer to withdraw from the contract: also, although the trader would — as is the position now in many package contracts — be entitled under normal circumstances to charge a proportion of the cost of the arrangements on a scale depending on how soon the arrangements were due to begin, the consumer would be entitled to a full refund in relation to force majeure situations, thereby reflecting in large part the approach in the current Directive in the event of changes to contracts and promised services.

4.7 On the other hand, the Commission does not propose to regulate all travel arrangements, and those separate arrangements which consumers choose to make themselves (and which do not involve any "coordinating" by a trader) will remain subject to general consumer protection regulation, as at present. It has also identified elements which should relieve burdens on businesses currently subject to the regime. Thus:

- it intends to remove brochure-specific information requirements which necessitate regular updating when prices change, and to require mutual recognition of the means of protection (particularly against insolvency) which Member States remain free to organise for themselves: this should remove an existing barrier to developing cross-border sales activities, as should the maximum harmonisation nature of the proposal, which would mean that consumers could expect the same levels of protection irrespective of the Member State in which the business is established, and that businesses could be clear about what is required of them if they choose to expand into another Member State's market;

- the proposal excludes business travel arrangements which have been made by a specialist travel arranger under contract to business employers (although those business travellers who choose to make their arrangements through the usual consumer-facing service providers will continue to benefit from the protections);

- the proposal also simplifies the organiser/retailer roles within the regime by making only the organiser responsible for the performance of the contract and for providing the financial protection elements, whilst applying the information provisions to both, and ensuring that, where a retailer is the point of purchase, they should also be a point through which the consumer could seek to have contractual issues addressed by the organiser;

- in the case of consumer protection against insolvency, the proposal would maintain the current position as regards Member States' freedom to put in place their own systems to enable businesses to meet their obligations, but it would seek to clarify that any such systems must take into account the actual financial risk represented by an individual trader's activities and must be capable of refunding or repatriating all consumers affected by an insolvency; and

- the proposal would apply requirements in the Consumer Rights Directive on cost only charges for methods of payment, explicit consumer agreement to "add-ons" not forming part of a main contract, and the provision of basic rate telephone lines to contractual matters, where the business chooses to communicate by telephone.

The Government's view

4.8 In her Explanatory Memorandum of 2 August 2013, the Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs (Jo Swinson) says that the UK is one of the main markets for leisure travel and holiday arrangements, and is the country of establishment for major package travel and other organisers. She believes that action at EU level is the only way of setting consistent rules to provide consumers with the confidence to shop across borders, and the legislative certainty to encourage cross-border trading by businesses in this sector. She suggests that the explicit requirement in the proposal for mutual recognition of each Member State's provision for the financial protection of consumers in the event of the insolvency of the seller is likely to be of particular importance, and should enable a business to rely on its compliance under the requirements of the Member State where it is established. She adds that the proposal is also one of maximum harmonisation in most respects, preventing Member States from regulating further in respect of matters within its scope, thus further underlining its internal market rationale.

4.9 In welcoming the publication of the proposal, the Minister observes that this is an area on which successive UK administrations have lobbied the Commission (which has been considering the matter for some six years, carrying out extensive research and consultation). She also comments that the length of time taken by the Commission to reach conclusions reflects the complex way in which the leisure travel market has developed since the 1990, and the consequent difficulty in deciding how, and to what extent, the Directive should be modified and expanded, consistently with maintaining and developing

consumer confidence, convenience and choice in a sector which has remained comparatively vibrant and resilient during the current economic down-turn.

4.10 The Minister says that the Government considers it desirable that requirements should be updated to reflect the modern market and methods of trading. This includes clarifying its coverage in relation to arrangements which now go to make (or which appear equivalent to) packages, bearing in mind that there are now as many package-like arrangements sold as there are traditional, protected packages, and that the Commission's evidence suggests that the first of these are a source of more consumer detriment than the second. She also notes evidence of considerable degrees of consumer and trader confusion over whether arrangements are covered by the Directive (with consumers often assuming that a non-package arrangement is protected when it is not): and she says that the Government is therefore generally supportive of the Commission's overall objectives of increasing clarity for consumers and business, providing the conditions for increasing consumer confidence, providing a more level playing field for competing businesses, not placing burdens where protection is not necessarily expected, removing unnecessary burdens, and better enabling cross border purchasing and trading.

4.11 As regards the increased scope proposed, the Government's initial view is that this represents a reasonable attempt at addressing these issues, but it will be seeking evidence from stakeholders to help decide whether the Commission has reached acceptable conclusions on where the Directive should apply, or whether the balance of application should be moved one way or the other. In addition, there is uncertainty as to the precise meanings of the relevant definitions in the proposal which makes it very difficult at present to provide an indication of how many of the new arrangements will be brought within the full coverage of the Directive: in particular, it is essential that the proposed differentiation between a Package and an Assisted Travel Arrangement is clear, and that there is no scope for business to circumvent these definitions (unless they are simply providing or acting as agents for single travel services).

4.12 The Minister also says that the possible effects of the financial protection provisions as drafted give cause for some concern, particularly in relation to the mutual recognition requirements and the UK arrangements which currently apply, essentially to packages sold or offered for sale in the UK and to making available flight accommodation in the UK. The new regime appears to require Member State arrangements to cover products sold in a Member State which is not that in which the businesses is established, and, whilst the Government supports the effort to make cross border commerce less burdensome, it has some concerns about the practicalities and potential costs both from the consumer's perspective, and from that of the UK taxpayer. Consequently, this is a matter on which clarification as to a Member State's liability in the event of their system not providing full coverage in all conceivable circumstances would be helpful, and a matter the Government is likely to explore further.

4.13 The Minister also highlights two issues of particular concern to the UK:

Air Travel Organisers Licensing Scheme (ATOL)

4.14 In order to provide an added degree of security for those who bought a product or booked via a method which looked like a package, the UK introduced this modification to

the regime which provides for financial protection against insolvency in respect of flight-inclusive packages, and had the effect of extending the financial protection elements to what are known as "flight-plus" arrangements.

4.15 The Minister says that the expansion of the application of the Directive appears to reflect in large part the scope of the current Directive and this additional "flight-plus" coverage. Consequently, the issue is not so much how many businesses will be subject to providing extra protection for consumers in this sector for the first time, but how many of those currently falling within the flight-plus coverage of ATOL will be subject to the additional requirements of the Directive (notably, responsibility for the delivery of all elements of the arrangements, and additional contractual constrictions). She adds that there may be a portion of the sector which will, for the first time, be subject to this additional regulation because their activities will fall into what the proposal terms "assisted travel arrangements", the definition of which probably covers some activities not currently caught by the flight-plus coverage of the ATOL Scheme. Again, until some further clarity on the relevant definitions is achieved it is not possible to say how many, if any, businesses this will include.

4.16 She comments that the Department for Transport is currently seeking evidence from stakeholders on the future shape of the ATOL Scheme, and that the final scope of the proposed Directive will have a direct impact (being likely, as drafted, to lead to changes). She adds that this exercise is exploring the possibility of changes to how this protection is organised and paid for, with a view to ensuring the least exposure for the UK tax payer, and to making the system clear and cost effective for consumers and business. She suggests that, when a new package travel Directive is implemented, this work will inform the Government's options for implementing the relevant provisions, which will in turn provide the opportunity to ensure that adequate, effective and cost proportionate solutions are pursued, and will, at the very least, ensure that the system can be simplified as far as possible.

Impact on the domestic package travel market

4.17 The Minister says that, as part of the Government's Red Tape Challenge, it has been committed to lobbying the Commission in relation to the possibility of limiting burdens on the domestic package travel market (holidays booked and taken within the UK), and that there are signs in the proposal that this has had a small effect. However, she suggests that there is scope for seeking a better outcome, particularly in relation to packages which comprise just accommodation and another tourist service, and that it remains the Government's view that packages of (for example) a stay in a hotel which includes access to local amenities, such as a golf course or a theme park or other attractions, probably do not expose consumers to the same level of risk as the other arrangements covered by the Directive (such as including transport and cross border travel).

4.18 She also says that the Government acknowledges the domestic tourism industry's concerns that the application of the current Directive has a restricting effect on providers' desire to promote growth in the domestic market by innovating in the way services and amenities are presented as a part of holiday or short break deals. It is minded, therefore, to continue to press in negotiations for clarity on the issue of when "other tourist services" are considered significant enough to form a part of a "package" which otherwise simply

incorporates accommodation, or possibly to seek a derogation in respect of these domestic arrangements when sold within a Member State. This is an issue on which it will seek views and evidence from stakeholders.

Conclusion

4.19 **It is evident from the time it has taken for the Commission to produce these proposals — not to mention the length of this Report — that this is a complex area, and that it is no easy matter to find solutions which are appropriate to all the many different types of package holiday now on offer. However, we note that the Government considers it desirable to update the existing requirements, and in particular to clarify their coverage, and that its initial view is that the scope now proposed represents a reasonable attempt to address the various issues which have been identified.**

4.20 **At the same time, we also note that the Government will be seeking views on whether the balance of application proposed needs to moved; that it sees a need to clarify certain of the definitions, in order to determine more precisely the impact of the proposals on UK travel providers; that it will wish to look further at the implications of the financial protection provisions; and that it has highlighted the need to consider both the relationship between the measures now proposed and the UK Air Travel Organisers Licensing Scheme and their possible impact on the domestic package travel market.**

4.21 **Consequently, although we are drawing these documents to the attention of the House, we think that, in view of these uncertainties, it would be right to hold the documents under scrutiny, pending further information from the Government on the extent to which the consultations it is carrying out help to clarify the position.**

5 Invasive alien species

(35299) 13457/13 COM(13) 620	Draft Regulation on the prevention and management of the introduction and spread of invasive alien species

Legal base	Article 192(1) TFEU; co-decision; QMV
Document originated	9 September 2013
Deposited in Parliament	11 September 2013
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 24 September 2013
Previous Committee Report	None
Discussion in Council	April 2014
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

5.1 The Commission describes invasive alien species[14] as those which are initially transported through human action outside their natural range across natural barriers, and which then survive, reproduce and spread, resulting in negative impacts on the ecology of their new location, as well as serious economic and social consequences. It also notes that the impact of these species on biodiversity is significant, and that they can also be vectors of diseases or health problems, as well as damaging infrastructure and causing losses to agriculture and forestry.

5.2 The Commission notes that, in line with the international commitments adopted by the parties to the Nagoya Convention (which seeks to address the problem of biodiversity at a global level), the EU's Strategy has undertaken to halt the loss of biodiversity by 2020, and in particular to identify and prioritise alien invasive species, to control or eradicate them, and to prevent their introduction and spread. At the same time, it observes that, although a number of other EU measures may touch upon invasive alien species, there is currently no framework for tackling them comprehensively, with most such species being left unaddressed. Also, although Member States are taking a number of measures, it says that their actions remain predominantly reactive, seeking to minimise damage already being caused, without paying sufficient attention to the detection and prevention of new threats, and that efforts are fragmented and often poorly coordinated, resulting in a danger of the steps taken by one Member State being undermined by a lack of action in neighbouring Member States.

14 The Commission says that it has been estimated that, of over 12,000 alien species found in the European environment, 10–15% have reproduced and spread.

The current proposal

5.3 As a result, the Commission has put forward this draft Regulation, which seeks to establish a framework to prevent, minimise and mitigate the adverse impacts of the introduction and spread of invasive alien species on biodiversity and ecosystem services, and to limit social and economic damage.

5.4 More specifically, it would involve:

- the adoption by the Commission (by means of implementing acts) of a list of up to 50 "species of Union concern" where it has been recognised that concerted action at EU level is needed: the inclusion of a species would require it to be alien to the territory of the EU (excluding the outermost regions)[15] and to be capable of establishing a viable population and spreading under current or foreseeable climate change conditions, and a risk assessment, demonstrating that action at Union level is needed to prevent its establishment and spread, would be required;

- enabling Member States to request the Commission to include particular species on the list, and, in carrying out the required risk assessment, both they and the Commission, as appropriate, would be required to identify its native and potential range, its reproduction and spread patterns, potential pathways of entry and spread, a thorough assessment of the risk of entry, establishment and spread, a description of its current distribution (including its presence in the EU or neighbouring countries), a description of its negative impacts, a quantitative forecast of the damage costs at EU level, and description of any possible uses and benefits;

- a ban on any such species being brought into or transited through EU territory, on its reproduction, on its transportation (except to facilities for eradication), on its placing on the market; on its use or exchange, on its keeping or growing (including in contained holding), and on its release into the environment (although Member States may allow derogations for research and in-situ conservation carried out in contained holdings);

- enabling a Member State to take emergency measures, where it has evidence of a threat from a species which is not on the list of those of Union concern;

- enabling a Member State to ban the release into the environment of an invasive alien species which is not on the list of those of Union concern, but which it considers would have an adverse impact within its territory;

- requiring Member States to analyse within 18 months the pathways through which invasive alien species might be unintentionally introduced and spread, and to establish and implement within three years an action plan to address these;

- requiring Member States to have in place within 18 months an official surveillance system recording the occurrence of invasive alien species in the environment;

15 For which a separate list will be drawn up.

- requiring Member States to have in place within 12 months structures to carry out official border controls on animals and plants brought into the EU in order to prevent the intentional introduction of alien species of Union concern;
- obliging Member States to use the surveillance system to support the early detection of invasive species of Union concern, and to apply rapid eradication measures; and
- requiring Member States to put in place management measures for those species on the list of those of European concern which are not susceptible to eradication, in order to minimise the impact of those found to be widely spread on their territory, and to take proportionate measures to restore damaged ecosystems.

The Government's view

5.5 In his Explanatory Memorandum of 24 September 2013, the then Parliamentary Under-Secretary for Natural Environment, Water and Rural Affairs at the Department for Environment, Food and Rural Affairs (Richard Benyon) says that the UK has long recognised the threat which invasive alien species pose both to biodiversity and economic prosperity, the economic impact in Europe having been estimated at over €12 billion per year, and that in the UK alone as a minimum of £1.8 billion. He also points out that, although many of the mechanisms contained in the proposal are already incorporated in the GB Invasive Non-Native Species Strategy 2008 (and an All-Ireland Strategy), similar mechanisms do not exist consistently across the EU.

5.6 The Minister says that the Government sees EU level action as necessary because the problems associated with invasive alien species problems are increasing and are cross-border by nature, and it supports the general principles of this proposal insofar as it seeks to introduce a consistent approach across the EU, similar to that which the UK already operates in this area. However, he says that a number of aspects of the proposal are unclear, and that it will be necessary to ensure that these and other elements of the regime are clear, proportionate and sensitive to national circumstances. In particular, the UK will be looking at how greater certainty can be achieved about the potential list of species that will be subject to the provisions, and how they will be selected; whether adopting a cap of 50 species is appropriate and justified; how species that are native to one Member State but nevertheless alien and invasive to another Member States can be subject to the proposed regime; how the proposed measures can take account of different national situations, so that a one-size fits all does not automatically apply; how existing national restrictions (for example the sales bans on five aquatic plant species in England and Wales), would be viewed under the proposed regime; how and when restoration measures will be expected; the extent to which the provisions of the Ballast Water Convention[16] can be used; and how consistency will be achieved between this proposed regime and the recently package of proposals relating to animal and plant health proposals and the official control mechanism.

5.7 The Ministers says that, until the list of species has been proposed and agreed following the adoption of this Framework Regulation, it is not possible to provide a realistic or

16 This seeks to manage the transit of ballast water in order to try and minimise the introduction of harmful aquatic organisms.

accurate impact assessment, but that, subject to this, there should be benefits for industry arising from controls over potentially harmful species, but also costs in terms of restrictions over previously permitted species, and certain activities which could lead to the introduction or spread of such species.

Conclusion

5.8 **Given the environmental and economic damage which can result from the presence of alien invasive species, it clearly makes sense for action to be taken to address this, and, given the cross-border dimension involved, it seems to us that the Commission has made a reasonable case for a measure of action to be taken at EU level. We also note that much of what is proposed appears to be consistent in principle with the approach currently adopted by the UK, the Government's main aim being to clarify a number of detailed points. Consequently, although we do not see the proposals as giving rise to any major points of concern, we think they are of sufficient importance to warrant a substantive Report to the House. We also believe it would be sensible to hold them under scrutiny, pending further information from the Government on the detailed points which it has said it will be pursuing in the forthcoming negotiations in Brussels.**

6 Emissions reductions from passenger cars and light commercial vehicles

(a) (34123) 12733/12 + ADDs 1–3 COM(12) 393	Draft Regulation amending Regulation (EC) No. 443/2009 to define the modalities for reaching the 2020 target to reduce carbon dioxide emissions from new passenger cars
(b) (34127) 12747/12 + ADDs 1–3 COM(12) 394	Draft Regulation amending Regulation (EU) No. 510/2011 to define the modalities for reaching the 2020 target to reduce carbon dioxide emissions from new light commercial vehicles

Legal base	Article 192(1) TFEU; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 8 October 2013
Previous Committee Report	HC 86–xii (2012–13), chapter 7 (12 September 2012)
Discussion in Council	14 October 2013
Committee's assessment	Politically important
Committee's decision	(a) Not cleared; further information awaited (b) Cleared

Background

6.1 Because of the large (and increasing) contribution which carbon dioxide from vehicles makes to overall emissions of greenhouse gases, the EU has taken a number of measures to address this issue. In particular, Regulation (EC) No. 443/2009 specifies that the average specific emissions for the EU fleet of new passenger cars[17] should comply fully with a target of 130g/km from 2015, and 95g/km as from 2020 (with certain additional measures producing a further reduction of 10g/km). Likewise, Regulation (EU) No. 510/2011 sets out corresponding provisions in relation to light commercial vehicles, requiring full compliance by 2016 with a mandatory target of 175g/km for vehicles of category N1,[18] and an overall longer-term target of 147g/km for 2020.

6.2 Each of these Regulations also:

- sets individual targets for manufacturers enabling them to apply these to the average of the emissions for all new cars they register in the EU in each calendar year;
- applies an "eco-innovation" credit up to 7g/km for new emission-saving technologies, and allows super-credits where vehicles emitting less than 50g/km may be counted as multiples of their actual sales;
- allows different manufacturers to form, for a period up to five years, a pool, which would be treated as if it was one manufacturer;
- requires a manufacturer which fails to meet its target to pay an excess emissions premium.

6.3 There are also certain derogations. Smaller, independent manufacturers registering fewer than 10,000 new passenger cars a year can to apply for a lower target, whilst niche manufacturers producing between 10,000 and 300,000 cars per year have a derogation, subject to their achieving by 2015 a 25% reduction in average carbon dioxide emissions from a 2007 baseline. Similarly, smaller, independent manufacturers registering fewer than 22,000 new light commercial vehicles a year may apply for a lower target.

6.4 Each Regulation also required the Commission to review the position by 1 January 2013, and it duly put forward in July 2012 the proposals at documents (a) and (b) relating to Regulation (EC) No. 443/2009 and Regulation (EU) No. 510/2011 respectively. These confirm that the long-term targets for 2020 of 95g/km and 147g/km are considered to be feasible and achievable at a lower cost to the industry than previously thought. In addition, the Commission proposes:

- to retain the current approach under which, instead of every new vehicle registered in EU being required to meet the CO2 target, manufacturers have their own specific fleet-based targets;
- to retain the current 7g/km credit for "eco-innovation";

17 Category M1, as defined in Annex II of Directive 2007/46/EC, with a mass not exceeding 2,610kg.

18 As defined in Annex II of Directive/2007/46/EC, with a reference mass not exceeding 2,610 kg

- to maintain the current excess emissions premiums for manufacturers exceeding their target;
- to retain the current derogations for independent small volume manufacturers; and
- to introduce a '*de minimis*' approach for very small manufacturers who register less than 500 vehicles in the EU per year, who would be excluded from the obligation to agree and then meet their own specific emissions targets.

6.5 In addition, two changes would be made to Regulation (EC) No. 443/2009. Manufacturers of between 10,000 and 300,000 cars a year would now be required to reduce carbon dioxide emissions in 2020 by 45% from a 2007 baseline, and, for vehicles with emissions below 35g/km, super-credits would apply for the period of 2020–23, with a multiplier of 1.3, subject to a cumulative limit of 20,000 vehicles per manufacturer over that period.

6.6 Finally, the two proposals include a further review clause for 31 December 2014 to consider an assessment of the necessary rate of reduction, the implications for the development of cost-effective carbon dioxide reducing technology for vans and if appropriate proposals for targets post 2020: and, following the entry into force of the Treaty of Lisbon, the Commission is provided with the power to adopt delegated acts.

6.7 As we noted in our Report of 12 September 2012, the Government agreed that EU level targets provide a greater likelihood of the industry meeting reduction requirements than would be achieved at a national level, although it believed that the current targets remain a significant challenge. It added that it would be examining carefully the Commission proposals, but, in the meantime, it said that the extension of the derogations for small volume and niche manufacturers met important principles of Better Regulation, and that these, together with the proposed '*de minimis*' exclusion, would reduce significantly the administrative burdens, without compromising the environmental benefits. It added that the proposed continuation of the 'eco-innovation' flexibility could be expected to provide an incentive for manufacturers to continue their development and deployment, and that, as industry benefits from early indications of any future regulatory regime, it seemed timely for a review to be completed before the end of 2014.

6.8 The Government also said that it planned a targeted consultation as part of its wider and ongoing engagement with stakeholders on reducing carbon dioxide emissions from road vehicles, and that consideration was being given to the impact of these amendments on an Impact Assessment produced in 2009 to support the original Regulations.

6.9 We commented that, although the proposals dealt with an area of some economic and environmental importance, they largely confirmed the general thrust of the measures contained in Regulations (EC) No. 443/2009 and (EU) No. 510/2011. Consequently, whilst we were drawing them to the attention of the House, we thought it unlikely, on the information currently available to us, that we would regard them as requiring further consideration. However, as the Government was carrying out a

consultation, and considering the extent to which these proposals might affect the Impact Assessment which had been produced in 2009, we decided to hold the documents under scrutiny, pending further information.

Subsequent developments

6.10 We subsequently received a letter confirming that the figures in the original impact assessment remained unaffected by these latest proposals, but, as the Government had said that the position of small volume and niche manufacturers needed to be protected, and that there had so far been little discussion of these, we felt that it would be prudent to retain the proposals under scrutiny.

6.11 We have now received a letter of 8 October 2013 from the Parliamentary Under-Secretary of State at the Department for Transport (Mr Robert Goodwill) providing a progress report on the two proposals. He says that, following three trilogue meetings, a proposed first reading deal was struck on cars, which is hugely positive for UK in delivering against each of its objectives, where the main priority had been to ensure the retention of the niche and small volume derogations, which are of strategic importance to key UK companies and help to ensure their competitiveness against their much larger European rivals. Thus, the proposed deal saw both derogations continue with a new *de minimis* threshold which would exclude the very smallest manufacturers from the burden of setting annual carbon dioxide reduction targets, and the negotiation saw the proposed ceiling threshold limit raised from 500 to 1000 vehicles per annum, which is likely to save up to seven UK SME's over £20,000 each in administrative burdens out to 2020.

6.12 However, the Minister adds that, when the trilogue package was presented to COREPER on 4 October, a Member State expressed some concerns, and gained sufficient support in the meeting to suggest there would be a blocking minority. It then tabled a counter proposal which would increase flexibility in terms of compliance with the 95g/km target in 2020, by phasing in the requirement. The Minister says that the Lithuanian Presidency intends to put the matter to the Environment Council on 14 October, and, as discussions are continuing, it is not clear whether formal agreement will be sought at the Council. He says it seems unlikely such an agreement will be possible, and indeed considers that it would not be appropriate for this to be sought until more work has been done to reconcile matters on the dossier.

6.13 On vans, the Minister says that a proposed first reading deal was also struck following trilogue meetings, which is positive for UK and delivers against each of its objectives, including the maintenance of the small volume derogation. He adds that some Member States had proposed lowering the existing target of 147g/km by 2020, considered by many to be overly generous to industry, and, whilst this received early support in the European Parliament, it did not appear in the final agreement, which confirmed the existing targets, balancing the potential environmental benefits against imposing additional costs on industry. The Minister adds that the proposal will be put to the Environment Council on 14 October with a view to agreement, which he expects the Council will support — though he points out that both proposals will still have to go through a formal agreement stage in the Council, following consideration of the

proposed deals by the European Parliament Plenary Session, currently scheduled for January 2014.

Conclusion

6.14 **We are grateful to the Minister for this update, and, in the light of the further information he has provided, we are content to clear the proposal at document (b) on vans. However, in view of the continuing discussion within the Council on document (a) on cars, we propose to continue to hold that under scrutiny, pending further developments.**

7 The EU and Ukraine

(a) (34969) 9706/13 + ADDs 1–35 COM(13) 289	Draft Council Decision on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part
(b) (35029) 9856/13 + ADDs 1–35 COM(13) 290	Draft Council Decision on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other part

Legal base	Articles 217 and 218 (5), (7) and (8) TFEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 2 September 2013
Previous Committee Report	HC 83–xii (2012–13), chapter 7 (17 July 2013)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested (decision reported on 17 July 2013); further information requested

Background

7.1 In his Explanatory Memorandum of 14 June 2013, the Minister for Europe (Mr David Lidington) explained that:

— relations between the EU and Ukraine are currently based on a Partnership and Cooperation Agreement that entered into force in 1998;

— in 2007, the EU and Ukraine began negotiations on an Association Agreement that would deepen and broaden the political and economic relationship;

— in 2008, following Ukraine's accession to the WTO, negotiations were widened to include a Deep and Comprehensive Free Trade Area;

— the Agreement process supports and encourages reform in Ukraine to bring it closer to EU norms, as well giving Ukraine gradual access to parts of the EU Internal Market;

— this Agreement, including a Deep and Comprehensive Free Trade Area, is the first of its kind; and

— similar Agreements are being negotiated with Moldova, Georgia, Armenia and Azerbaijan.

The draft Council Decision

7.2 The first proposal (document (a)) is the legal instrument for authorising the signature and provisional application of the Agreement; the second (document (b)), the legal instrument for authorising the conclusion of the Agreement.

7.3 The Minister said that:

— the section on Political Dialogue included dialogue and cooperation on domestic reform, and dialogue on foreign and security policy including Common Security and Defence Policy;

— the Justice, Freedom and Security section has a strong focus on rule of law and the reinforcement of judicial institutions and practices, and also covers migration, treatment and mobility of workers, and cooperation on crime;

— the Free Trade Area part of the Agreement covers a wide range of issues aimed at stimulating growth in Ukraine and creating business opportunities for all parties;

— the Economic and Sector Cooperation section of the Agreement focuses on supporting core reforms to aid economic recovery and growth in areas such as governance, energy, transport, environmental protection, social development, equal rights, consumer protection, education, training, youth and cultural cooperation; and

— the Agreement also includes sections on financial cooperation and institutional issues.

7.4 Negotiations with Ukraine were completed at the end of 2011 and the Agreement was initialled in 2012. In December 2012, the Foreign Affairs Council adopted Conclusions expressing the EU's commitment to signing the Association Agreement as soon as Ukraine demonstrated progress on:

— electoral reform;

— addressing selective justice; and

— implementing the reforms in the Association Agenda.

7.5 The Conclusions indicated that if the conditions were met, signature might be possible by the time of the Eastern Partnership Summit in Vilnius in late November 2013. The Council also said that signature might be accompanied by provisional application of parts of the Agreement (see the annex to our previous Report for the text of the Council Conclusions).[19]

7.6 The Minister referred to worrying democratic back-sliding, which led to the December Conclusions setting "strict conditionality for signature". Government policy had been to "support a closer relationship between the EU and Ukraine, while continuing to make clear to Ukraine that they need to deliver demonstrable improvements": the Foreign Secretary had made clear to the Ukrainian Foreign Minister that the decision on whether or not to sign the Association Agreement this year could go either way: though Ukraine's progress in 2012 was "disappointing... we believe that isolating Ukraine could slow progress further." Several Member States were concerned that if the EU did not sign the Association Agreement, Ukraine would move closer to Russia. For some, the release of former Prime Minister Tymoshenko might be a deciding factor. As for the Government:

> "We judge that if Ukraine were to integrate more closely with the EU and adapt to EU norms and principles, it could send a very strong signal to Russia; we continue to see Ukraine as the swing state in the region that could have an exemplary effect on governance related change we would like to see in Russia."

Legal and Procedural Issues

7.7 The Minister said:

> "The Commission's Proposal cites Article 217 of the Treaty on the Functioning of the European Union in conjunction with Article 218(5), the second subparagraph of Article 218(8) and Article 218(7). The Government is currently considering the appropriateness of these legal bases and whether Protocol 21 to the Treaties (the JHA Opt-in) will apply.
>
> "The preamble of the Association Agreement confirms that provisions of the Agreement that fall within the scope of Part III, Title V of the Treaty on the Functioning of the European Union bind the UK and Ireland as separate Contracting Parties. The proposed Council Decision on signature and provisional application provides for the provisional application, as between the EU and Ukraine, of a large part of the Agreement including matters relating to CFSP, JHA, Intellectual Property, Maritime Transport and Energy. The Government is now considering its position in relation to the division of competences; however the provisional application appears to go further than in other similar contexts such as the EU-Central America Association Agreement. These issues are of concern, and we are

19 See headnote. The Council Conclusions are also available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/134136.pdf.

lobbying within working groups in Brussels to ensure that the final scope of provisional application is consistent with HMG policy to avoid competence creep."

Timetable

7.8 The Minister said:

> "We expect the proposed Council Decision on signature and provisional application to be presented to the Foreign Affairs Council in October or November 2013. Negotiations, including on the legal base, will continue over the intervening months and the FCO will provide further updates to the Parliamentary scrutiny committees, via Ministerial letter, to reflect those negotiations. It is unclear whether the Council Decision on Conclusion will be presented at the same time. We will submit to the Parliamentary scrutiny committees on UK ratification at the appropriate time."

Our assessment

7.9 There was plainly much to be determined between now and the autumn. Whether it was possible to counteract other tendencies by incentives that did not include the prospect of closer association with the EU was a matter of judgement that might merit debate.

7.10 We therefore asked the Minister to ensure that the Committee was not presented by a *fait accompli*, on the eve of the Council that would decide what to do next. His officials were aware of the dates of our meetings in September and October: we looked to him accordingly to provide an assessment in time for this important, precedent-setting agreement to be debated, were we to so decide.

7.11 In the meantime, we retained the documents under scrutiny.[20]

The Minister's letter of 2 September 2013

7.12 The Minister divides his letter between the legal issues outlined above and the political situation.

7.13 On the legal issues, the Minister says:

> "My officials are continuing to press hard to ensure that UK interests are protected in the matter of the signature and provisional application of the Agreement. Departments across Whitehall have analysed carefully the articles proposed for provisional application after signature but before ratification by all Member States, and we are seeking exclusion of all articles that do not fall within EU competence; we will be mindful that occasionally this approach may not be in the UK's best interests. Because of our tough position, negotiations have not yet concluded and will resume in September with a view to reaching a solution before the end of the month.
>
> "I highlighted in my original Explanatory Memorandum of 14 June that this agreement contained JHA content, but that the Government had not at that time

20 See headnote: HC 83–xii (2012–13), chapter 7 (17 July 2013).

been able to reach a view on whether the UK opt-in was engaged. The timetable for consideration of this long and complex document has been driven by the Commission's desire to have the documents ready for signature at the Vilnius Eastern Partnership Summit on 28–29 November, should Ukraine meet the EU's conditions. I can now confirm to your Committee that we consider that the opt-in is engaged and give an indication of the Government's intentions as to whether to exercise its opt-in relation to the various JHA aspects of this agreement.

"Given that the UK's opt-in window closes on 3 September, and in the light of the timings of Parliamentary recess, I regret that the Parliamentary scrutiny committees will not have the opportunity to consider the UK opt-in before that date.

"We initiated the process for government clearance of our approach in mid-August and it will conclude shortly. We have proposed that the UK should opt-in to the provisions in the Agreement that relate to Mode 4 trade in services; Ministers are still considering other articles. The government's position is that the Mode 4 provisions on the temporary movement of skilled personnel (which concern the admission of third country nationals onto the territory of the United Kingdom) in the agreement fall within the scope of the United Kingdom's Title V opt-in.

Officials will be pressing in September for the relevant JHA legal bases to be cited and for the Council Decisions to be split between (i) non-JHA articles, (ii) JHA articles where we are opting-in, (iii) any JHA articles where we are not opting-in. Where we cannot secure our primary objectives, we will seek to make clear through explicit recitals the extent to which we recognise that the EU has competence to act, and the scope of our Opt-in. Officials are also pressing for all JHA issues, apart from Mode 4, to be excluded from provisional application following signature of the Agreement; we are arguing that they should only be applied following ratification by Member States and conclusion of the Agreement.

7.14 With regard to the political situation, the Minister says:

"The Government remains committed to ensuring that Ukraine demonstrates a sustainable momentum for reform and has taken genuine steps to address EU concerns. We are analysing closely Ukraine's progress in implementing the reforms necessary to meet the criteria set out in the December 2012 Foreign Affairs Council conclusions. The British Embassy in Kyiv sends frequent up-dates that will enable us to evaluate the reports by the High Representative and the Commission, and reach our own conclusions. We want to allow Ukraine the maximum time to reform and we do not anticipate reaching a formal decision until the 18 November Foreign Affairs Council. Our recommendation will take account of Ukraine's progress and also the wider implications both in terms of internal EU relations and the regional impact, particularly regarding Russia, as set out in my Explanatory Memorandum. We will continue to encourage other Member States and the Ukrainians themselves not to see the Association Agreement as a means to thwart Russian ambitions, but rather as a vehicle for reform that is intrinsically good for both Ukraine and the EU.

"The latest reporting from the British Embassy in Kyiv suggests that Ukraine's reform continues to be patchy. We have seen some encouraging progress with the

> introduction of the new Criminal Procedure Code and the Law on the Bar and Practice of the Law; the Ombudsman is active in promoting the National Prevention Mechanism against Torture. The signs have been less positive in several areas including electoral legislation and practice, and balanced media access. We repeatedly press the Ukrainians to address the lack of transparency in the judicial system and the business environment. The British Embassy in Kyiv will up-date their analysis when the Ukrainian parliament resumes business after the summer."

7.15 Looking ahead, the Minister concludes by saying:

> "The situation will continue to evolve and I will provide further information to your Committee as soon as it is available."

Conclusion

7.16 **Subsequent to the Minister's letter, political developments appear to have taken a further turn for the worse, with the news that Armenia is apparently wishing to follow Belarus and Kazakhstan in joining a customs union with Russia — a customs union that is widely seen as a direct challenge to the EU's "Eastern Partnership", with its association agreements that go beyond measures to ease trade and entail commitments to respect democratic standards and carry out institutional reforms that are not part of Russia's customs union.**

7.17 **Moreover, the BBC has reported that "Moldova and Ukraine are on course to sign association agreements with the EU in November. But both have come under Russian pressure to remain in Moscow's sphere of influence — and their heavy reliance on Russian gas puts them in a vulnerable position." That same BBC report also cites:**

— **a senior Russian envoy as having told Moldova that "energy supplies are important in the run-up to winter — I hope you won't freeze"; and**

— **EU Enlargement Commissioner Stefan Füle saying:**

- **"We take note of Armenia's apparent wish to join the customs union" and**
- **"We look forward to understanding better from Armenia what their intentions are and how they wish to ensure compatibility between these and the commitments undertaken through the Association Agreement and DCFTA [Deep and Comprehensive Free Trade Area]."**[21]

7.18 **A related BBC report also cites the Commissioner as describing the use of threats against ex-Soviet states which are seeking closer ties with the EU as "unacceptable", after Russia banned imports of Moldovan wine and spirits, citing quality concerns — adding that the EU had no such issues with Moldova's alcoholic drinks.**[22]

7.19 **We note that the Government considers that the opt-in Protocol applies; that it will opt into the Mode 4 provisions; that it has yet to reach a decision on the others; and**

21 See http://www.bbc.co.uk/news/world-europe-23975951.

22 See http://www.bbc.co.uk/news/world-europe-24061556.

that Government officials will be pressing in September for the relevant JHA legal bases to be cited and for the Council Decisions to be split between (i) non-JHA Articles, (ii) JHA Articles where the UK is opting-in, and (iii) any JHA Articles where the UK is not opting-in.

7.20 **As the Minister will know, whilst we support the Government's attempts to ensure that a Title V legal base is cited where necessary, we take the orthodox view that the UK's opt-in does not apply in the absence of such a legal base. We therefore look forward to hearing whether his officials are successful in adding Title V legal bases and splitting the Council Decisions. We expect the opt-in period of three months to run from the addition of those legal bases, should the Government be successful.**

7.21 **This is plainly a very important and controversial agreement: what the EU decides will have major ramifications *vis à vis* enlargement policy and EU-Russia relations. We therefore remind the Minister of the need to ensure that the Committee is not presented with a *fait accompli*, on the eve of the Council that will decide what to do next; and that we continue to look to him to provide the Committee with a further assessment in time for this precedent-setting agreement to be debated, if it should then so decide.**

7.22 **In the meantime, the documents remain under scrutiny.**

8 EU cooperation with Egypt in the field of Governance

(35106)	European Court of Auditors Special Report No. 4 2013 on EU Cooperation with Egypt in the Field of Governance
—	
—	

Legal base	Article 287(4) TFEU; —
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 2 September 2013
Previous Committee Report	None; but see (35105) 11482/13: HC 83–xiii (2013–14), chapter 2 (4 September 2013)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested; relevant to the debate that we have already recommended on the Joint Commission/HR Communication on an EU comprehensive approach to Syria

Background

8.1 Under Article 287(4) TFEU, the European Court of Auditors (ECA), via its Special Reports, carries out audits designed to assess how well EU funds have been managed so as to ensure economy, efficiency and effectiveness.[23]

European Court of Auditors Special Report No. 4 2013

8.2 Egypt is the largest country in the Arab world and has traditionally played a leading role in North Africa and the Middle East. It has also played a major part of the Arab Spring through the Uprising against the Mubarak regime in early 2011.

8.3 Both before and after the Uprising Egypt was one of the main beneficiaries of assistance from the European Neighbourhood and Partnership Instrument (ENPI), which the EU uses to support its European Neighbourhood Policy (ENP).

8.4 For the period 2007–13 Egypt received an allocation of approximately €1 billion. Approximately 60% is channelled through sector budget support (SBS) to the Egyptian government, the rest through projects agreed with the Egyptian authorities. The EU has also made much smaller amounts available directly to civil society organisations (CSOs), notably through the European Instrument for Democracy and Human Rights (EIDHR).

8.5 This European Court of Auditors (ECA) audit covered the period up to September 2012. It focused on two key areas of governance: human rights and democracy on the one hand and public finance management (PFM) and the fight against corruption on the other hand. The audit examined 25 projects and the three main SBS programmes. It also examined how the EU managed the wider ENP cooperation framework with Egypt to achieve progress in these areas.

8.6 The report aims to address the question of whether the European Commission and the European External Action Service (EEAS) managed effectively EU support to improve governance in Egypt before and after the 2011 uprising.

8.7 The audit found that, overall, the Commission and EEAS had not been able to manage EU support to improve governance in Egypt effectively — in part due to the difficult conditions they faced but also due to shortcomings in the way the EEAS and the Commission managed their cooperation with Egypt.

8.8 Before the uprising the Commission managed to include a large number of human rights and democracy issues in the ENP EU-Egypt Action Plan for reforms and also made this area one of its priorities for ENPI assistance. However, it was unable to achieve progress either in the framework of its ENP dialogue or through the main ENPI project. Notwithstanding these difficulties the Commission continued to provide significant financial assistance to the Egyptian government, notably through budget support.

8.9 Before the uprising, projects which directly funded CSOs tended to be relatively more successful but received very limited funding. Despite the considerable funding provided

23 See http://eca.europa.eu/portal/page/portal/eca_main_pages/home for full details of the ECA's work.

through budget support, only slow progress has been made in promoting PFM has not. The Commission funded anti-corruption project has also been slow to start and has not been sufficiently closely monitored.

8.10 The Report then notes that, after the Uprising, the ENP Review marked a significant effort by the newly created EEAS and Commission to improve the effectiveness of EU support. However, the Review has not yet been translated into a significant revision of EU support to Egypt. While the Review's focus on promoting "Deep Democracy" is deemed very relevant to Egypt, the ECA says that the key issues of women's and minorities' rights have not been strongly emphasised in the Review and subsequent new assistance. The ECA says that the added value of new mechanisms to support civil society remains to be demonstrated while additional funding allocated to CSOs in Egypt has been modest.

8.11 The related review of EU budget support identifies some important ways to strengthen Commission management but these changes will not be effective unless the Commission is stricter in applying its conditionality. The report makes recommendations on how to strengthen support to human rights and democracy and PFM and the fight against corruption and on the need to review the use of budget support to Egypt.

The Commission/EEAS' response

8.12 In essence, the Commission/EEAS say that, in the given circumstances, they have been able to effectively manage EU support and where possible improve governance in Egypt. Conditions under the authoritarian Mubarak regime were already very challenging and left little room for engaging in a meaningful and substantive dialogue and cooperation on all human rights issues. The analysis of the political situation in the period covered by this report clearly shows that since the January 2011 events, there has been a slow down if not a paralysis of the decision making process at government level and an increased aversion towards civil society and human rights more broadly. It is not only a matter of coping with "difficult conditions" but also with a completely new situation, different from that when the projects examined were designed and launched. The protracted political instability and lack of commitment by the government allow for only a partially successful review of the governance portfolio. Time is needed to see results, especially in a non-conducive and still unpredictable environment.

8.13 The Commission/EEAS do not share the Court's point of view as regards the treatment of human rights before the uprising. They describe the ENP Action Plan as an ambitious document and the strategic approach was to include a vast set of priority areas in order, later in the programming process, to define a more specific focus. They emphasise that the Action Plan is a joint EU-Egypt document: noting that the Egyptian authorities wanted to dilute human rights elements of the Action Plan, in particular with regard to civil and political rights, and negotiations were extremely difficult; whereas the Commission considers that it is appropriate to engage in a dialogue on all aspects and concerns — thus, the degree to which human rights issues are addressed in the Action Plan was, and remains a significant achievement, with the establishment of a Sub-committee that focuses on human rights having been invaluable in providing a forum for discussion of issues that, until the Action Plan was established, could not be properly addressed. The Action Plan also enabled bilateral co-operation programmes in human rights and

governance to be set up. The Commission/EEAS also underline that throughout the audited period high attention was paid to women's and minorities' rights; this was further emphasized politically and financially after the uprising.

8.14 The Commission strictly applied the budget support guidelines: in the particular political context of Egypt, even a slow pace of PFM reform implementation can be hailed as a progress: the Commission will seek in its future budget support operations to associate other donors and so to create necessary leverage for influencing reforms.

8.15 On anti-corruption, the Commission/EEAS say that they faced continuous resistance from the Egyptian side when increasingly addressing PFM and corruption within the ENP cooperation framework. The Commission/EEAS says that the fight against corruption is a key element of PFM, and the Action Plan, by addressing PFM, paved the way for policy dialogue on the issue, and corruption to be addressed in co-operation initiatives. After the uprising, fight against corruption has become a national top priority and the Commission/EEAS are planning initiatives in the new SSF (Single Support Framework) to support the Egyptian anticorruption programmes.

8.16 Contrary to the ECA view that few changes were made in response to the uprising, the Commission/EEAS consider that significant changes were introduced, such as the revision of the ENP policy, the appointment of two EUSRs (for the Southern Neighbourhood and for Human Rights), additional instruments to support civil society and the creation of a task force for Egypt.

The Government's view

8.17 In his Explanatory Memorandum of 2 September 2012, the Minister for Europe (Mr David Lidington) comments under two main headings, as follows:

Conditionality

> "We agree with elements of this report, and consider that the EU's development aid would be more effective if it adopted more rigorous use of conditionality. The UK has been consistently pushing this agenda within the EU in relation to Egypt for a number of years.
>
> "The EU's chief engagement with Egypt is through the European Neighbourhood Policy (ENP). The UK was one of the leading proponents of a review of the ENP in 2011, following which the policy was restructured to strengthen its conditionality. The review highlighted the limited results that had been achieved in securing political reform at the time, and proposed a new approach in its relationship with its neighbours, focused on building deep democracy, with the scale of EU support conditional on progress on building and consolidating democracy and respect for the rule of law. ENP became based upon an offer of money, markets and mobility, with the guiding principle of the engagement being one of conditionality, or 'more for more'. The principle is that those states making the most progress on reform will be rewarded, and that this would prove an incentive to further reform. We have argued strongly for this in Brussels.

"However since 2012 no new budget support programmes have been approved because they did not meet the necessary conditionality and the difficult political context. Some projects were still ongoing at this point which had been approved earlier. The report focused on projects that predominantly took place between 2007 and 2012, during which there was significant political turmoil in Egypt from 2011 onwards. This made it understandably difficult for the EU to engage with the authorities in Egypt on programme work. The report does not reflect these difficulties. Neither is it a current picture of EU assistance with Egypt.

Current policy

"The situation in Egypt has changed again since this report was compiled. On 3 July the previous government was removed from office by military intervention. Since then, there have been violent clashes between the opposing groups and the security forces.

"The UK was one of the countries calling for the EU to review its assistance to Egypt at the emergency Foreign Affairs Council held on 21 August 2013. The FAC agreed conclusions in line with our bilateral position: to continue providing financial assistance in the socio-economic sector and to civil society, but to monitor the situation and readjust its cooperation accordingly, and to review the issue of EU assistance to Egypt.

"The member states also agreed to suspend export licences to Egypt for any equipment which might be used for internal repression, to reassess export licences for equipment covered by Common Position 2008/944/CFSP, and to review their security assistance with Egypt.

"The EEAS assistance review will consider whether the EU should continue to have allocations for budget support for Egypt. The ECA report includes a recommendation to review the appropriateness of budget support to Egypt based on the guidelines approved in 2012. The UK would welcome any future budget support allocations to Egypt being reviewed under the new guidelines.

"We will update the Committees on developments as soon as the EU resumes activities after summer recess and will subject any future depositable documents issued to the usual scrutiny process.

8.18 With regard to the overall *Financial Implications* of the report, the Minister says that, though it has no direct financial implications:

"Indirect implications are possible to the extent that the report informs budgetary management practices and should lead to improvements in the effectiveness, efficiency and economy of EU spending."

8.19 Finally, with regard to its further consideration, the Minister says:

"The report was issued on 18 June 2013 and due to the developing crisis situation since its publication the relationship between the EU and Egypt has frequently been discussed at EU level. The report deals with the situation prior to the new

developments and we aim to write to the Committees about the current situation in the early autumn."

Conclusion

8.20 **As is all too clear, the ENP Action Plan is central to the EU-Egypt relationship. We find increasingly unconvincing the Minister's line that, because this is all about political commitments and not about legal instruments, this process should be handled by the FAC alone, and be promulgated via Council Conclusions, rather than via Council Decisions (as was the case prior to the Lisbon Treaty). As we have said on many previous occasions, anything else makes nonsense of the notion of proper prior parliamentary scrutiny of CFSP — which the Lisbon Treaty is supposed to have strengthened.**

8.21 **As to this report, it illustrates the classic difference between the perspective of the auditor — whose job is to find failings — and the practitioners, who bear the scars of wrestling with a "partner" whose world view is altogether different. What makes this report so important is that this problem is likely to get bigger, e.g., in post-crisis Syria, in almost any "failing state" that threatens regional security, and in many other parts of the EU's "near neighbourhood". The key question is: are EU, and UK, interests served better by engaging, doing the best possible — in this case, with €1 billion — and recognising that the other partner's world view is likely to be so dissonant that the "more for more" approach is likely to be more honoured in the breach than in the observance?**

8.22 **For now, we are drawing this report to the attention of the House because of its political significance.**

8.23 **We also consider that this chapter of our Report is relevant to the debate that we have already recommended on the Joint Commission/HR Communication on an EU comprehensive approach to Syria.**[24]

8.24 **We are also retaining the report under scrutiny, pending a further update from the Minister about the EEAS review and the EU's response to whatever further political developments ensue in the interim.**

8.25 **We are also drawing this chapter of our Report to the attention of the Foreign Affairs Committee.**

24 See headnote: (35105) 11482/13: HC 83–xiii (2013–14), chapter 2 (4 September 2013).

9 EU Action to support Afghan civilian policing and Rule of Law post-2014

(35190) 11109/13 SWD(13) 220	Commission Staff Working Document: *Comprehensive EU Action to support Afghan efforts in strengthening civilian policing and Rule of Law post-2014*

Legal base	Article 209 TFEU;
Document originated	14 June 2013
Deposited in Parliament	17 July 2013
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 23 August 2013
Previous Committee Report	None; but see (34057) —: HC 86–xx (2012–13), chapter 19 (21 November 2012) and HC 86–viii (2012–13), chapter 16 (11 July 2012); and (34908) —: HC 83–iii (2013–14), chapter 26 (21 May 2013)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

9.1 The present Common Security and Defence Policy (CSDP) mission, EUPOL Afghanistan, was established on 30 May 2007. Its three-year mandate was then extended in 2010 for another three years, until 31 May 2013. Its job is to:

— assist the Government of Afghanistan in implementing coherently its own strategy towards sustainable and effective civilian policing arrangements;

— work towards a joint international community police reform strategy by enhancing cooperation with key partners in police reform and training, including the US, the NATO-led mission ISAF and other contributors; and

— support linkages between the police and the wider rule of law.

9.2 In the first period, it suffered from poor leadership: but it was always backed by Member States as being an essential complement to the recruit-level training being led by the US. Last year, with the wider withdrawal of ISAF forces in 2014 in mind, Member States commissioned an EEAS review.

9.3 In November 2012, the Minister for Europe (Mr David Lidington) told the Committee that he had secured the key UK objectives of a continued focus on Afghan National Police (ANP) senior leadership, a tighter and more focused EUPOL presence in the provinces (by 2014, be located in Kabul and three to four other locations, down from 10 at present) and a further review in the autumn of 2013 to determine the shape of CSDP engagement after transition. Prompted by the UK, the new EUPOL Head of Mission was preparing to

establish a "pure benchmarking system" for the mission: the Minister looked forward to updating the Committee on this in due course.

9.4 Other Member States, like France, were also keen for evidence of EUPOL's impact. Effective benchmarking, monitoring and evaluation would become ever more important, since only then would Member States be able properly to determine whether EUPOL had achieved its objectives, assess the impact of what was now five years of costly training and answer his key question — could the Afghans continue this training beyond 2014 with a much reduced international presence? EUPOL needed to get better at measuring this. With 14 CSDP missions globally, and the potential need for more, Missions needed to provide Member States with more comprehensive evidence of their effectiveness and to show that stretched EU resources were being used to deliver maximum impact.

9.5 The Committee agreed with all this, reported it to the House and looked forward to hearing more in due course.[25]

The most recent Council Decision

9.6 This Council Decision (which the Committee considered on 21 May 2013) extended EUPOL Afghanistan's mandate and set a new €108 million budget covering the period from 1 June 2013 until 31 December.

Our assessment

9.7 We were happy to clear this Council Decision on the basis of the information provided at this juncture, and thanked the Minister for his detailed analysis of the budget. However, we were also even more interested in effectiveness and value for money.

9.8 There were to be two important milestones between now and the end of 2014 — the first being the autumn 2013 review. We presumed that it would focus on the Minister's key question of last November — would the Afghans be able to continue this training beyond 2014 with a much reduced international presence? We hoped that he would be able to deposit this for scrutiny in the normal way. If, however, its sensitivity were such as to prevent him from so doing, then we asked him to supply the sort of full summary that he had provided last November.

9.9 The second would be the detailed report that was to be issued at the 12 month mark. We hoped that, finally, it would provide some evidence of effectiveness, rather than activity analysis — especially as, by the end of 2014, the mission will have cost over €220 million.

9.10 We recalled our earlier discussion with the Minister about the audit by the Court of Auditors of another similar, lengthy and costly mission, EULEX Kosovo, which found that it had been effective only in a limited part of its mandate. Our discussion revolved essentially around the wider implications of this unprecedented audit, which we suggested should be applied to all CSDP missions. Though the Minister, rightly, pointed out that it is for the Court of Auditors to set its own priorities, we felt that the message was nonetheless

25 See headnote: see (34057) —: HC 86–xx (2012–13), chapter 19 (21 November 2012) and HC 86–viii (2012–13), chapter 16 (11 July 2012).

clear — notwithstanding the political considerations that tend towards the quickest possible establishment of each new mission, they need to be: given clear, measurable objectives and a time limit; be benchmarked; be rigorously assessed along the way; and be wound up if those objectives are, for whatever reason, not being met effectively and not providing value for money.

9.11 Thanks in no small measure to the stamina and persistence of UK Ministers and officials, EUPOL Afghanistan had finally been brought to the point where, at least in theory, it was to be subjected to at least some of these key elements. If not now, then certainly by mid 2014 we needed to see detailed evidence of its effectiveness, so that the lessons could be identified and then applied to other such CSDP missions in similarly challenging circumstances.[26]

The Joint Staff Working Document

9.12 The standpoint of the paper is:

- the likelihood that Afghanistan will not become a stable and full-fledged democracy in the next few years:
- but, though accepting the likelihood of continued violence post-2014, a complete reversal of the gains of the past decade appears unlikely;
- any positive change will continue to be gradual;
- overall stabilisation will depend as much on the political transition, the reconciliation and peace process as on Afghan military and para-military capabilities; but
- in the longer term, state-building, of which the Rule of Law will be a key element, will be equally determining.

9.13 The paper summarises the main options for the EU to discuss in the light of its commitments, taken at the Kabul, Bonn, and Tokyo ministerial conferences and at the Chicago NATO Summit and its objectives as stated in the FAC conclusions, which the authors say will also be reflected in the draft Cooperation Agreement on Partnership and Development (CAPD). The options for consideration cover a range of choices from a continuation of the current mix of instruments — development assistance and a CSDP operation, i.e. EUPOL Afghanistan — to a progressive or more rapid phasing out of CSDP activities. The need for a more coherent and comprehensive approach is highlighted.

9.14 The paper argues that a period of post-conflict consolidation, i.e. the period after transition ("the decade of transformation") might offer a better chance of success for a EUPOL-type operation than was the case in the last six years. To cease activities at the moment when transition is planned to end would not fit with the logic of the Bonn, Tokyo and Chicago conclusions. Due to the number of uncertainties with regard to the future, there is no guarantee that a continued EUPOL presence will be more successful than

26 See headnote: (34908) —: HC 83–iii (2013–14), chapter 26 (21 May 2013).

before. But ending the mission in 2014 or dramatically scaling back resources would risk losing the gains made to date.

9.15 The authors argue that cooperation must be tailored to the situation on the ground, with a wide degree of built-in flexibility:

> "It should respect our commitment to on-going support for the running of the Afghan civilian police; continue to target the justice sector through both assistance and political dialogue; and seek to preserve EUPOL's achievements. It has to take into account the fact that the sustainability of our work on the police and Rule of Law depends not only on training and funding, but on progress across a broad range of issues including the development of viable public finances, democratic oversight and functioning public administration at national and sub-national levels."

9.16 Given the uncertainties, a phased approach is advocated, with the EU "pursuing a more coherent programme of actions", which could "form the basis for a sustainable exit strategy, to be negotiated with the Afghan authorities... [and]... become part of Joint Programming by EU and Member States in Afghanistan."

9.17 The paper sees the date for a shift to such a scenario being in 2016 or 2017 — i.e. the end of the initial funding period foreseen at the Tokyo Conference. Further planning should ensure sufficient flexibility in the post-transition period. The planning process should build in contingency planning for a deteriorating security situation, while further pursuing the main planning assumptions in the perspective of a gradually stabilising security situation in Afghanistan. EU's efforts should be closely coordinated with NATO in order to avoid possible overlaps and build on related arrangements for security, force enablers and life support.[27]

9.18 In the Council Conclusions to which the paper refers, the EU states that it remains "firmly committed to supporting state-building and long-term development in Afghanistan", and in order to establish the appropriate framework for future cooperation, the Council calls on the Government of Afghanistan "to finalize negotiations rapidly on the Cooperation Agreement on Partnership and Development (CAPD)", and for the text to "fully reflect Afghanistan's international obligations".

9.19 The Council Conclusions also say that, with a view to defining the EU's strategic engagement with Afghanistan post 2014, the Council will hold a debate in the second half of 2013 on the role of the EU in Afghanistan in the coming years, in light of the evolving situation and the above objectives:

> "This should lead to the development of a new strategy in place of the 2009 Action Plan that is aligned with the strategic thinking of the Government of Afghanistan, identifies deliverable objectives and timelines, and sets out a clear division of labour. The strategy should be ready for endorsement by mid-2014."[28]

27 See SWD(13) 220, p.3.

28 The Foreign Affairs Council Conclusions of 23 June 2013 on Afghanistan are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137590.pdf.

The Government's view

9.20 In his Explanatory Memorandum of 23 August 2013, the Minister for Europe (Mr David Lidington) describes the paper as "broadly balanced, setting out the positive and negative implications for continued EU activity post-2014", and taking account of "the potential for changes in the security situation and the need to remain joined up with other actors".

9.21 He continues as follows:

> "However, there remains limited analysis of other Member States and wider activity, such as the role of the Law and Order Trust Fund Afghanistan (LOTFA) and the International Police Coordination Board (IPCB), which will need to be addressed. The UK will seek to ensure that these wider considerations are worked into this, or any subsequent paper during ongoing discussions at working-group level.
>
> "Progress on reaching any substantial conclusions on the paper has been slow; a number of Member States have argued that there remain too many unknowns for the EU to make a decision about its post-2014 activity and have therefore been reluctant to engage fully on the substance of the paper. On balance, this paper has been useful in pushing forward the wider policy debate in the EU on future engagement in Afghanistan. It has also allowed us to identify areas for development and lobbying which we will need to take forward when negotiating EUPOL's post-2014 mandate."

9.22 Looking ahead, the Minister says:

> "As yet, no decisions have been made at Council level on the options set out in the paper. Negotiations in Brussels on renewing the EUPOL mandate post-2014 are ongoing, with the UK pushing for a decision by end-2013. This will form the base of further EU engagement on policing post-2014.
>
> "The UK continues to believe that EUPOL remains a strong and effective mechanism for delivering specialist leadership training and mentoring of the Afghan police post-2014. Along with capacity building at the Ministry of Interior, these should be the key areas of focus for the mission and the areas where the EU can add most value. Corruption, gender and human rights issues should be mainstreamed into the mission's objectives. The UK wishes the EU to co-ordinate with NATO and other actors on post-2014 planning, to ensure best effect of international effort is achieved.
>
> "EUPOL is the only organisation working to develop and train senior Afghan police, doing for the police what the Afghan National Army Officer Academy will do for the army: that is, to help the generational shift in Afghanistan by training a cadre of professional and able senior leaders. By 2014 the majority of basic police training will have been completed and the principal gap will be on senior leadership, which is both EUPOL's area of focus and the area the UK considers key to a sustainable Afghan National Security Force. EUPOL is performing well in the delivery of key areas of police training in which it adds the most value — intelligence-led policing, Criminal Investigations Department (CID), and community policing — through

projects such as the Police Staff College, the City Police and Justice Programme and the Crime Stoppers hotline."

Conclusion

9.23 **It would seem that the role of this paper has been to initiate the debate called for in the Foreign Affairs Council (FAC) Conclusions. However, the Minister makes it clear that there is still a long way to go before a post-2014 strategy is in sight, and what needs to be addressed in the months to come.**

9.24 **It remains unclear whether this paper is to be filled out in such a way as to become that post 2014 strategy, or whether a new document is to be produced. If the latter, then we presume that the new document will be deposited, since we can see no reason why the fleshing out process should be such as to require it becoming in some way restricted. The FAC Conclusions refer to the strategy replacing the 2009 Action Plan. As the Minister is aware, there is an unresolved dispute between him and the EEAS as to the basis upon which such Action Plans should be adopted: he says, via Council Conclusions; it says, via a Council Decision — our view being that of the EEAS, because in our estimation any other way is inconsistent with the role of national parliaments in CSDP. We ask the Minister to update us on the situation as the picture becomes clearer, and no later than the end of November.**

9.25 **We would also ask him to write to us about the Co-operation Agreement on Partnership and Development. We do not recall having been notified about it, although it would appear to encompass the full scope of future EU-Afghanistan cooperation. We presume that it is akin to the agreement between the EU and Burma/Myanmar, about which we are in discussion with the Minister — it, too, having been adopted via Council Conclusions and thus prior to any sort of parliamentary scrutiny. As the Minister is aware, we take the same view, for the same reasons.[29] We would therefore like him to tell us what the CAPD will encompass, how it relates to the prospective post-2014 strategy, what stage the negotiations have reached and what his approach is with regard to parliamentary scrutiny.**

9.26 **In the meantime, we shall retain this Joint Staff Working Document under scrutiny.**

29 See (34870) 9288/12: HC 83–xiv (2013–14), chapter 21 (11 September 2013) for detail of the Committee's exchanges with the Minister on this subject.

10 Financial services: payment services

(a) (35250) 12990/13 + ADDs 1, 3–4 COM(13) 547	Draft Directive on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC
(b) (35251) 12991/1/13 + ADDs 1–3 COM(13) 550	Draft Regulation on interchange fees for car-based payment transactions
(c) (35276) 13245/13 COM(13) 549	Commission Report on the application of Directive 2007/64/EC on payment services in the internal market and on Regulation (EC) No. 924/2009 on cross-border payments in the Community

Legal base	(a)-(b) Article 114 TFEU; co-decision; QMV (c) —
Documents originated	24 July 2013
Deposited in Parliament	(a)–(b) 12 August 2013 (c) 29 August 2013
Department	HM Treasury
Basis of consideration	EM of 2 September 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

10.1 Cross-border electronic payments are becoming increasingly common for individuals and businesses alike. There have been EU efforts, in connection with the single market, to facilitate such payments, most notably through development of the Single Euro Payments Area (SEPA). SEPA is based on the premise that there should be no distinction between cross-border and domestic electronic retail payments in euros across the EU. The project covers key retail payment instruments — credit transfers, direct debits and payment cards.

10.2 There is also the Payments Services Directive, Directive 2007/64/EC, (PSD) aimed at enhancing competition and transparency in the payments industry across the EU and ensuring that the level of consumer protection is sufficient and harmonised. The PSD has two main sections. The first section established the licensing regime for payment institutions and applies to firms offering payments services, but which are not licensed as credit institutions or e-money issuers. It includes rules on administrative procedures and business plans and a right of access to payment schemes. The second section introduced

conduct of business rules for all payment service providers. These apply to new payment institutions, credit institutions and e-money issuers and include requirements on transparency, authorisation of payments, execution of payments and liability.

10.3 In January 2012 the Commission published a Green Paper *Towards an integrated European market for card, internet and mobile payments*, which looked at the rapidly changing market for card, internet and mobile payments in the EU, set out a number of barriers to development and launched a consultation on how to achieve a fully integrated EU market for card, internet and mobile payments. The Green Paper had two annexes, the first of which showed the use of different payment instruments in the EU and in individual Member States. The second gave additional background on multilateral interchange fees paid by payment service providers. The Commission invited responses to 32 questions in the Green Paper, said that it would announce its next steps by the second quarter of 2012, with a view to making any proposals by the end of 2012 or the first quarter of 2013.[30]

The documents

Payment Services Directive II

10.4 With this draft Directive, document (a), the PSD would be repealed and replaced by Payment Services Directive II or PSD II, which would contain the bulk of the PSD's substance with modifications.

10.5 With the draft Directive the Commission proposes modifications to the PSD to ensure consumer protection keeps up with innovations in the market and to streamline previous sections that the industry found cumbersome, unnecessary or unclear. The draft Directive deals with the following matters.

Increased scope

10.6 The Commission proposes extension of the scope of the PSD to cover payments being made where one provider is outside the EU and to cover any payments in the EU which are denominated in a currency outside the European Economic Area. The proposal would also bring new payment types into scope of the PSD, most notably digital payments such as mobile payments. The Commission's aim is further development of an EU-wide market for electronic payments, which would enable consumers, retailers and other market players to realise the full benefits of the single market.

10.7 The Commission also proposes that third party payment service providers, who make payments on a customer's behalf following provision of their banking details, usually online, be brought within the scope of the PSD. That these payment providers can access consumers' bank details but remain outside the existing legal framework has raised a number of concerns around privacy and security, which the Commission's proposal aims to address.

30 (33628) 5491/12: see HC 428–I (2010–12), chapter 5 (8 February 2012) and HC 86–ii (2012–13), chapter 24 (16 May 2012).

Small Payment Institutions

10.8 It is proposed that the threshold for businesses that qualify as small payment institutions, and are therefore largely exempt from the requirements of the PSD, be reduced from businesses transacting payments worth less than €3 million (£2.62 million) a month to those businesses transacting payments worth less than €1 million (£0.874 million) a month.

Surcharges

10.9 The Commission's proposals would ban surcharges, that is, additional fees applied by merchants to payment transactions on top of the cost of the item being purchased, which exceed the cost borne by the payment service provider for use of a specific instrument.

Security measures

10.10 The proposal would introduce a new chapter setting out security measures required by payment service providers when initiating a payment. These include procedures for identifying and authenticating customers, approving transactions and carrying out audit trails.

European Banking Authority

10.11 The draft Directive would have the European Banking Authority issue guidelines and draft regulatory technical standards in various fields, for example in order to clarify the rules on 'passporting' for payment institutions operating in several Member States.

Regulation of interchange fees for card-based payment transactions

10.12 Interchange fees are fees set by the card network and paid by the merchant's bank to the customer's bank for the acceptance of card-based transactions. They are passed on to the retailer in the form of a service charge and, in turn, passed onto consumers in the form of higher prices. Multilateral interchange fees are set by the card schemes (VISA and MasterCard) — these are fees standardised between card issuers and a host of card acquirers and are the most frequently used. Bilateral interchange fees, a rare phnomenon, are agreed directly between card issuers and card acquirers — so instead of being a cross industry standard, the merchant's bank and customer's bank would have their own deal arrangement.

10.13 The draft Regulation, document (b) would regulate interchange fees that are applied to debit and credit card transactions within the EU and would cap the level of interchange fee that could be applied to a card transaction. The measure would deal with the following matters.

Cap on interchange fees

10.14 The Commission proposes a cap on interchange fees of 0.20% of the transaction value on debit cards and 0.30% of the transaction value on credit cards. The caps on

interchange fees would apply to cross-border card transactions within two months of the draft Regulation's entry into force and within two years for domestic card transactions.

Separation between scheme and processing

10.15 The draft Regulation provides that there would be an organisational separation between the card scheme brand and the entities processing the transactions. This means the two would be totally independent in terms of legal form, organisation and decision making.

Co-badging

10.16 The draft Regulation would ban card schemes from preventing card issuers from co-badging two or more different brands on a payment device.

Honour all cards rule

10.17 The draft Regulation would prevent a payment scheme or payment service provider from applying rules obliging a merchant accepting one of its payment instruments to also accept other payment instruments of the same brand or category, except if the brand or category was subject to the same regulated interchange fee as the former. For example, merchants accepting consumer debit cards could not be forced to accept consumer credit cards but could be required to accept other consumer debit cards.

Steering

10.18 The draft Regulation provides that payment schemes and payment service providers would not be able to prevent merchants from steering consumers towards the use of specific payment instruments preferred by the retailer.

10.19 The Commission has also published a Report, document (c), on how the PSD has been applied by different Member States and which identifies the main issues that have arisen. The Report also touches on interchange fees. The Commission suggests that a number of changes could be envisaged to the PSD to enhance its effect and to clarify a number of its aspects. It also highlights the need to accommodate technological business development within the payments industry. Although the presentation of the draft Directive and the draft Regulation together with Commission's impact assessment for the proposed legislation do not refer directly to the Report they do cite the two external reviews on which the Report is based.

The Government's view

10.20 In relation to PSD II, document (a), the Economic Secretary to the Treasury (Sajid Javid) says that:

- the Government supports the Commission's aim of modifying the PSD in order to address gaps in consumer protection, promote growth through the development of the next generation of payment services and simplify the regulatory structure; and

- it plans to seek improvements to the Commission's proposal during negotiations to ensure that the Directive avoids imposing any unnecessary burdens on the UK financial services industry.

10.21 As for regulation of interchange fees the Minister says that:

- the Government supports the aims to improve transparency and competition in the card market;
- it is, however, still considering the detail of the proposal, for example, whether the proposed caps will achieve the aims of the Commission;
- it is also considering the implications of the organisational separation between the card scheme brand and the entities processing the transactions and whether the competition concerns of the Commission can be addressed in another way;
- during negotiations, the Government will look to ensure that the Regulation reflects the different sized card markets in the different Member States;
- the UK has one of the largest card markets in the European Economic Area, whereas the use of card payments is less developed in other Member States; and
- these differences need to be considered during negotiations.

10.22 The Minister says, in relation to both proposals, that the Government will work with UK industry (including small businesses), regulators and consumer groups to further understand the impact on the UK.

10.23 The Minister does not comment on the Commission Report, document (c).

Conclusion

10.24 **We note that at this stage the Minister has little to say about what precise improvements the Government will need to seek to both the draft Directive and the draft Regulation in order to make them wholly acceptable. So before we consider these matters again we should like to have, before Council working group negotiation has progressed very far, more information about the points at issue.**

10.25 **As for the Commission Report we should like to hear from the Minister as to what issues it raises that are not being, but should in the view of the Government be, addressed in the proposed legislation.**

10.26 **Meanwhile all three documents remain under scrutiny.**

11 Protecting people and critical infrastructure against terrorist attacks

(35286) 13173/13 COM(13) 580	Draft Council Decision on the repeal of Council Decision 2007/124/EC, Euratom

Legal base	Articles 352 TFEU and 203 Euratom; unanimity; EP consent
Document originated	9 August 2013
Deposited in Parliament	6 September 2013
Department	Home Office
Basis of consideration	EM of 19 September 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

Background

11.1 In 2007, the Council adopted Decision 2007/124/EC, Euratom ("the 2007 Decision") establishing a specific EU funding Programme for the period 2007–13 to protect people and critical infrastructure against terrorist attacks and other security-related incidents. For the next financial period, from 2014–20, the Commission has proposed an Internal Security Fund which includes a dedicated instrument to support police cooperation, action to prevent and combat crime, and crisis management. This instrument will continue many of the activities foreseen under the 2007 Decision, including the protection of people and critical infrastructure and the management of security-related risks and crises. Although the Government decided not to opt into the police component of the Internal Security Fund, it has continued to play an active part in negotiations with a view to considering opting in once the instrument has been formally adopted.[31]

The draft Council Decision

11.2 The purpose of the draft Council Decision is to repeal the 2007 Decision with effect from 1 January 2014, the date on which the new Internal Security Fund is expected to come into force. A separate Council Decision is necessary in this case because the 2007 Decision cites two legal bases, one in the Treaty establishing the European Communities (now superseded by the Treaty on the Functioning of the European Union, "the TFEU"), the other in the Treaty establishing the European Atomic Energy Community (Euratom). By contrast, the Regulation establishing the police component of the Internal Security Fund is

31 See Council documents 17287/11 and 17290/11 (33395) and (33397); HC 428–xliv (2010–12), chapter 12 (14 December 2011); HC 428–li (2010–12), chapter 8 (22 February 2012); HC 86–ii (2012–13), chapter 4 (16 May 2012) and HC 86–iv (2012–13), chapter 1 (14 June 2012).

based exclusively on provisions in Title V of Part Three of the TFEU dealing with judicial cooperation in criminal matters, crime prevention and police cooperation. It cannot, therefore, repeal an instrument which cites a legal base in a different (Euratom) Treaty.

11.3 The draft Council Decision cites two legal bases. The first — Article 352 TFEU — authorises the EU to act in circumstances where EU action is needed but the EU Treaties have not provided the necessary powers. As the scope of the EU's competence under this Treaty provision is ill-defined, the Council is required to act unanimously and to obtain the consent of the European Parliament. The second legal base —Article 203 of the Euratom Treaty — contains a similar provision but only requires consultation of the European Parliament.

The Government's view

11.4 The Minister for Security (James Brokenshire) says that there will be no policy implications resulting from the repeal of the 2007 Decision, adding that the police component of the Internal Security Fund will provide an alternative funding programme from 1 January 2014.

Conclusion

11.5 **All EU measures based on Article 352 TFEU are subject to a form of enhanced Parliamentary control under section 8 of the European Union Act 2011. It is surprising and disappointing that the Minister's Explanatory Memorandum makes no reference to the requirements set out in the Act or how the Government intends to fulfil them. We ask him to do so forthwith.**

11.6 **We note that the UK has not opted into the police component of the Internal Security Fund which is intended to provide an alternative source of EU funding from January 2014, but may seek to do so once the draft Regulation establishing the Fund has been formally adopted. As we assume negotiations are now drawing to a close, we would welcome a clearer indication of the Government's intentions regarding participation in the Fund. Pending the Minister's reply, the draft Council Decision remains under scrutiny.**

12 The Brussels I Regulation and the Unified Patent Court

(35249) 12974/13 COM(13) 554	Draft Regulation amending Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Legal base	Articles 67(4) and 81(2) TFEU; QMV; co-decision
Document originated	26 July 2013
Deposited in Parliament	12 August 2013
Department	Ministry of Justice
Basis of consideration	EM of 15 August 2013
Previous Committee Report	None; but see *The Unified Patent Court: help or hindrance?* (Sixty-fifth Report of Session 2010–12; HC 1799)
Discussion in Council	No date set
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

The document

12.1 The proposals intend to amend EU Regulation No. 1215/2012 — the Brussels I (recast) Regulation — by adding the Unified Patent Court (UPC) to the list of judicial bodies which fall under the jurisdiction of the Regulation; by clarifying the operation of the rules on jurisdiction in relation to the UPC; by clarifying the operation of the rules about parallel proceedings in relation to the UPC; and by clarifying the operation of the rules on recognition and enforcement in the context of the relationship between contracting and non-contracting Member States to the UPC.

12.2 The Brussels I Regulation sets out rules relating to the international jurisdiction of courts of the Member States of the EU in civil and commercial matters. It covers, among other things, litigation in the area of intellectual property, including patents. The recast of the Regulation comes into force in January 2015.

12.3 In December 2012, an agreement known as the "Patent package" was reached among Member States. The package consists of the Unitary Patent Regulations and an international Agreement, the UPC Agreement, on which the Committee conducted in-depth scrutiny.[32] Currently individuals or businesses seeking to protect their inventions across Europe can either apply separately to each national patent office for a national patent or they can apply to the European Patent Office (EPO) for a "bundle" of national patents; one for each country specified. The process is typically subject to costly translation provisions and, in some countries, additional validation charges apply before the EPO-granted patent can take effect.

32 See headnote.

12.4 Once the Unitary Patent Regulations apply, an individual or a business will have the option of obtaining a European Patent with "unitary effect" which will have uniform effect across 25 Member States of the EU. Instead of having to take or defend patent actions in individual countries, the new regime will offer what in effect will be a "one-stop shop", thus providing cost advantages and reducing administrative burdens significantly. The UPC will eventually have exclusive competence for infringement and validity of unitary patents and European "bundle" rights. This means that the UPC will eventually replace national courts' jurisdiction for European bundle patents after a transitional period of seven years (extendable up to 14 years). The UPC will not have jurisdiction over national rights patents by national patent offices.

12.5 One of the reasons for the present proposal is that the coming into effect of the UPC is linked to the recast Brussels I Regulation. The Agreement which sets up the UPC cannot come into effect before the amendments to the recast Brussels I Regulation, which regulates the relationship between the two instruments. The present proposal will ensure compliance between the UPC Agreement and the recast Brussels I Regulation, thus enabling the creation of the UPC.

12.6 An amendment to the Brussels I Regulation will also be necessary to reflect the recently agreed Protocol involving the Benelux Court of Justice. This Protocol allows for the jurisdictional competence of the court to include specific matters which come within the scope of the Brussels I Regulation, in this case, intellectual property litigation. The amendment will be needed to ensure that the Benelux Court can be considered as a court of the Member State under the terms of the Brussels I Regulation, ensuring that the Regulation applies fully to the Benelux Court.

12.7 Ratification by the UK is a pre-requisite for the UPC Agreement to come into force.

The Government's view

12.8 In an Explanatory Memorandum dated 15 August 2013 the Secretary of State for Justice (Chris Grayling) says that an effective patent litigation system is an important element in removing trade barriers between EU Member States and supporting growth for Europe. The Patent Package will establish a single patent covering participating countries, providing UK businesses with an alternative and cheaper option to protect their inventions across the EU. It could provide savings of up to £20,000 per patent in translation costs alone, while a single court system will save businesses the expense of having to enforce patents in more than one State.

12.9 Creating a business-friendly patents regime for Europe is also a part of the Government's growth strategy and it was a key recommendation from the 2011 Hargreaves review of Intellectual Property and Growth.

12.10 The UPC will be a court common to the participating Member States of the UPC Agreement and will comprise a Court of First Instance (CFI) and a Court of Appeal (CoA). The Court of First Instance will consist of a central division and a number of local and/or regional divisions, hosted by Member States or groups of Member States. The seat of the central division will be in Paris but with specialist technology sections set up in London

and Munich according to subject matter. The Court of Appeal will have its seat in Luxembourg.

12.11 The UPC Agreement also sets out the internal competence of each division of the UPC. For example, actions for infringement of a unitary patent may be brought before a local division in which the infringement is alleged to have occurs. An action where the validity of a unitary patent is challenged would be brought before the Central Division or one of its technical sections.

12.12 Thus a defendant in an action before the UPC may find themselves before a division which is not located in their country of domicile in the way that may be expected on the basis of Article 4(1) of the Brussels I Regulation.

12.13 Under the terms of the Agreement, the UK will pay for the facilities in its own territory, and contribute to the funding of the court until it becomes self-funding through the collection of court fees. The Government estimates that costs to the UK could be of the order of £10 million a year until the court becomes self-funding. The detail of the funding and financial arrangements will be discussed further between participating Member States before the UK completes ratification of the UPC Agreement.

12.14 The Minister says it is essential that the UPC sits within the legal framework of the EU because it will have competence over the unitary patent which is established by two EU Regulations. It is for this reason that Article 31 of the UPC Agreement makes an explicit reference to the Brussels I Regulation. The proposed amendment is intended to ensure the UPC is explicitly included as a court within the meaning of the Brussels I Regulation and that there is no conflict with the provisions setting out the internal competency of the UPC as provided for in the UPC Agreement.

12.15 The proposed amendment seeks to complete uniform jurisdiction rules in relation to third-State defendants (those domiciled in a country which is not a participating Member States of the UPC). In principle this may be a desirable outcome although it may not be strictly necessary for the operation of the Unified Patent Court. Further consideration of the details of this amendment will be given as discussions on the proposal's progress.

12.16 During a transitional period of seven years (extendable up to 14 years), actions for infringement and validity of European "bundle" patents may be brought before the UPC or national courts. Therefore the proposal also seeks to ensure the transitional regime of the UPC Agreement is accounted for within the Brussels I Regulation.

12.17 The UPC Agreement stipulates that enforcement of the Court's decisions will be a matter for national law. Thus it is necessary that the Brussels I Regulation recognises the judgement of the UPC as suggested in the current proposal.

Conclusion

12.18 **We thank the Minister for his Explanatory Memorandum. We scrutinised the Unified Patent Court in detail last year,[33] and so limit ourselves on these consequential**

33 See headnote.

amendments to the Brussels I Regulation to asking the Minister to write to us no later than a month before the conclusion of the first reading negotiations with a further update, when we shall consider clearing the document. Until then, it remains under scrutiny.

13 Statistics

(a) (35302) 13516/13 COM (13) 578	Draft Regulation amending Regulation (EC) No. 638/2004 on Community statistics relating to trading of goods between Member States as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures, the communication of information by the customs administration, the exchange of confidential data between Member States and the definition of statistical value
(b) (35303) 13517/13 COM (13) 579	Draft Regulation amending Regulation (EC) No. 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures

Legal base	Article 338 TFEU; co-decision; QMV
Documents originated	8 August 2013
Deposited in Parliament	12 September 2013
Department	Office for National Statistics
Basis of consideration	Two EMs of 23 September 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

13.1 Regulation (EC) 223/2009, commonly referred to as the "European Statistical Law", is the framework legislation for the European Statistical System (ESS), 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.

13.2 Regulation (EC) 638/2004 concerns statistics on the trading of goods between Member States. Regulation (EC) 471/2009 concerns statistics on external trade with non-Member States. Both Regulations contain pre-Lisbon Treaty provisions about the

comitology powers of the Commission. The Commission's comitology committee for statistics is the European Statistical System Committee (ESSC), which oversees the full range of EU statistics and of which the UK's National Statistician is a member.

The documents

13.3 These draft Regulations would replace the comitology provisions in Regulations (EC) 638/2004 and (EC) 471/2009 with powers allowing the Commission to adopt delegated and implementing acts. For statistics, a delegated act, on which the ESSC advises, can be used to amend the detail of requirements to ensure that data collected remained topical and relevant. Both of the proposed Regulations include a clause restricting the scope of the changes, as follows: "The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States or on the respondent units." A statistics implementing act is used to ensure a common approach among Member States to implementing aspects of the Regulations' requirements. An implementing act can only be adopted with the agreement of Member States through QMV in the ESSC.

13.4 The draft Regulation to amend Regulation (EC) 638/2004, document (a), would also make some additional changes in order to improve the production of intra-EU trade statistics in respect of quality and coverage, the exchange of confidential data for statistical purposes only and the comparability of intra-EU and extra-EU trade statistics.

The Government's view

13.5 The Minister for Civil Society, Cabinet Office (Mr Nick Hurd) says in relation to the comitology proposals that:

- intra-EU and extra-EU trade statistics are important for national and EU policy making;
- the draft Regulations would allow definitions to be updated quickly to reflect changing practices in the sectors and user needs; and
- they would streamline decision-making processes and allow for better prioritisation across all statistical activities and strategic oversight by those responsible for the coordination of all official statistics in Member States (that is the heads of National Statistical Institutions).

13.6 However the Minister adds that:

- there is a risk that the Commission will use delegated acts to force the UK and other Member States to collect additional data or in ways which the Government feels to be unnecessary or at disproportionate cost;
- the Government will, therefore, seek amendments to the proposals that ensure that any such risks are minimised; and
- to this end it will seek to ensure that the Commission's use of delegated acts are subject to regular review and that it has an obligation to justify the condition that

any proposed delegated acts 'impose no significant extra burdens on Member States' by presenting information on costs, based on information from Member States themselves, for review by the ESSC.

13.7 In relation to the additional changes to Regulation (EC) No. 638/2004 proposed in the draft Regulation, document (a), the Minister says that:

- the Government supports the additional changes proposed as facilitating improvements in the quality and comparability of intra-EU trade statistics;
- in particular, the proposed amendments would allow for the exchange of confidential data between Member States for statistical purposes;
- this would enable discrepancies between Member States figures to be reduced, as complex trading patterns could be scrutinised and understood, resulting in improvements being made to the quality of the statistics; and
- the clause is enabling, rather than a requirement, which means the UK would retain its right to withhold confidential data if it had concerns despite existing EU legal protections for such data.

Conclusion

13.8 **Whilst accepting the Government's case for its general support for these proposals, we note its intention to secure improvements in the texts, in order to properly circumscribe the Commission's use of delegated acts. So before considering the proposals further we wish to hear about the Government's progress in this regard. Meanwhile the documents remain under scrutiny.**

14 Building open ICT systems

(35176) 12141/13 COM(13) 455	Commission Communication: Against lock-in — Building open ICT systems by making better use of standards in public procurement

Legal base	—
Document originated	25 June 2013
Deposited in Parliament	11 July 2013
Department	Cabinet Office
Basis of consideration	EM of 11 September 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

14.1 According to the Commission, many organisations, including public sector bodies, are locked-in to their current ICT systems and services, as detailed knowledge of how these work is available only to the current provider. It is therefore often not feasible for other suppliers or service providers to offer additional or replacement software, hardware and services, and the Commission estimates that this lack of competition may cost EU public authorities some €1.1bn a year, in addition to which authorities find they have to express their requirements by reference to brand names and proprietary solutions, which is inconsistent with EU procurement rules requiring proprietary names to be used only exceptionally. The Commission also points out that lock-in was identified as a problem by the Digital Agenda for Europe,[34] which committed it to providing guidance to public authorities on this subject.

The current document

14.2 It has now put forward this Communication which identifies a number of benefits which may arise from increased use of formal standards in the procurement of ICT systems instead of proprietary technology. These include easier access and interaction for citizens with public sector systems; easier interaction between public authorities across the EU; improved access to public sector data, thereby encouraging the development of innovative services; and lower costs for ICT suppliers.

14.3 The Communication is accompanied by a Guide which is intended to provide practical recommendations at national, local, and individual procurement level to public authorities which are looking to procure standards-based ICT. The Commission suggests

that Member States should adopt a number of actions to promote and encourage effective open ICT procurement, including:

- the development of centralised expertise on standards and ICT technical specifications;
- the development of an ICT strategy, which should encourage the use of standards, allow citizens to provide their data only once, encourage access to public sector information, and plan to avoid or resolve lock-in;
- the engagement of authorities with the market to understand which standards and specifications are supported, consulting and working with the market to develop solutions, and undertaking periodic evaluation of ICT products;
- the development by public sector ICT leaders of practical advice, including lists of recommended standards and technical specifications, contract templates for standards, specification and intellectual property clauses, training in ICT procurement, and the central monitoring of ICT contract procurements;
- the consideration by authorities, when procuring individual ICT contracts, of interoperability, the interaction with legacy systems, the use of (and access to) data by citizens and businesses, and future re-competition and the need to change suppliers;
- the undertaking by contracting authorities, before procuring ICT, of a long term business appraisal, covering options, life-cycle costing, risk, price benchmarking etc;
- the undertaking by authorities of long term budgetary planning of ICT systems, accounting for all future costs and benefits;
- ensuring that, when writing procurement documents, authorities have sufficient knowledge of the legal framework, avoid unnecessary use of brand names, refer to relevant open standards, and seek to avoid lock-in by requesting open solutions; hand and
- encouraging authorities to write up case studies of procurements to share best practice, and learn from experience and adapt advice accordingly.

14.4 The Guide also includes appendices providing some illustrative example wording from existing procurement and contracts, and listing sources of information on standards and ICT strategies.

The Government's view

14.5 In her Explanatory Memorandum of 11 September 2013, the Minister for Political and Constitutional Reform at the Cabinet Office (Miss Chloe Smith) says that the Communication miss and Guide appear consistent with the principles of subsidiarity, and that the Government's existing policies, advice, and information related to open standards are consistent with the general approach and recommendations in the Guide. In particular,

its policy is to promote interoperability, open standards and data re-use, to avoid preventable lock-in, to ensure effective and consistent procurement processes, and to achieve best possible value for money in public procurement of ICT goods and services.

14.6 It has accordingly established an overarching ICT strategy, which is underpinned by a more detailed Strategic Implementation Plan. It has also adopted a "Digital" strategy to promote efficient and effective delivery of public services electronically; a set of "Open Standards Principles for software interoperability, data and document formats in government IT specifications", which are compulsory for government bodies unless a specific exemption has been agreed; and the "LEAN" procurement process as the standard approach for central government procurement (and strongly recommended in the wider public sector). In addition, the Cabinet Office is currently developing an updated version of an ICT "model agreement", which will be freely available for public authorities to use.

14.7 The Minister says that the Government will continue to review the position, and, where necessary, take further action to improve and encourage procurement of open ICT systems to improve the delivery of public procurement, the efficiency and effectiveness of public administration, and value for money. She adds that it has not ear-marked additional funds specifically related to the recommendations in this Communication and Guide.

Conclusion

14.8 **Insofar as this Communication addresses a problem identified in the Digital Agenda for Europe, we think it right to draw it to the attention of the House. However, as the Government has said that the approach advocated by the Commission is consistent with that adopted by the UK, and that it does not impose any additional obligations, we see no need to hold it under scrutiny, and we are therefore clearing it.**

15 Euratom funding for the ITER project (2014–20)

(a) (33594) 5058/12 COM(11) 931	Draft Council Decision on the adoption of a Supplementary Research Programme for the ITER project (2014–18)
(b) (35285) 13253/13 COM(13) 607	Draft Council Decision amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion energy and conferring advantages upon it

Legal base	(a)Article 7 Euratom; consultation; unanimity (b)Article 47 Euratom; QMV
Document originated	(b) 28 August 2013
Deposited in Parliament	(b) 4 September 2013
Department	Business, Innovation and Skills
Basis of consideration	EM of 25 September 2013
Previous Committee Report	(a) HC 428–l (2010–12), chapter 3 (8 February 2012) (b) None
Discussion in Council	December 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

15.1 The International Thermonuclear Experimental Reactor (ITER) is an experimental fusion facility, located in France, and involving Euratom, China, India, Japan, Korea, Russia and the United States, which aims to demonstrate the feasibility of nuclear fusion energy for peaceful purposes, and to establish whether this can become a major sustainable energy source. The relevant International Agreement came into force in 2007, and during the initial 10 year construction phase, the EU will contribute about 45% of the cost (80% of which will be met by Euratom and 20% by France), whilst each of the other six parties will contribute about 9%. The Euratom contribution is provided for in Council Decision 2007/198/Euratom, and is managed through the European Joint Undertaking for ITER — "Fusion for Energy (F4E).

15.2 Although the total estimated construction cost of ITER in 2001 implied an EU contribution of €2.7 billion, a Commission Communication[35] in 2010 noted that this had risen to €6.6 billion for the period 2007–20 (plus a further €650 million for F4E running costs and other activities), bringing it to €7.2 billion in all. It added that this would involve commitment appropriations of €2.1 billion for the two years 2012–13, as against programmed appropriations of €890 million.

35 (31601) 9424/10 + ADD 1: see HC 428–i (2010–11), chapter 27 (8 September 2010).

15.3 Our Report of 8 September 2010 noted that the UK recognised more money would be needed because the collapse of the project would be likely to cost considerably more, but was opposed to an increase in the EU budget, arguing that funds should be redeployed from projects and programmes of lesser importance. However, the Council subsequently agreed on 12 July 2011 that the additional resources of up to €1.4 billion needed for 2012–13 would come from the existing EU budget, but that the overall EU contribution to ITER for the period 2007–20 should be reduced from €7.2 billion to €6.6 billion.

15.4 In December 2012, the Commission put forward a draft Council Decision (document (a)) to establish a Supplementary Research Programme under the Euratom Treaty for the period 1 January 2014–31 December 2018 covering the Euratom contribution to ITER, as well as other ITER-related activities, with a budget of €2.573 billion. However, because of the disproportionate cost of the project in relation to the available EU budget, the Commission proposed that this sum should be assigned to the Programme outside the Multiannual Financial Framework.

15.5 As we noted in our Report of 8 February 2012, the Government observed that the legal basis for this Programme was Article 7 of the Euratom Treaty, but that the oral advice of the Council Legal Service was that it was not clear whether the Programme was legally permissible, and written advice had been sought. In the meantime, although the UK had long seen ITER as the route to practical fusion power stations, and therefore supported the proposed Programme, it was opposed to its financing for the period 2014–18 being outside the Multiannual Financial Framework.

15.6 We commented that the financing of the Euratom contribution to ITER raised difficult issues in relation to both the level of funding involved and its source, and we said that, in view of this, and the uncertainty over the advice given by the Council Legal Service on the use of Article 7 of the Euratom Treaty as the legal base, we thought it right to hold this document under scrutiny, pending further clarification of these points. In the meantime, we were drawing the document to the attention of the House.

The current proposal

15.7 Since that Report, the Council and European Parliament have agreed that the ITER project should be funded from within the Multiannual Financial Framework for 2014–2020, and the Commission has now put forward the further draft Council Decision at document (b) providing for a European contribution to ITER of €2.915 billion, funded from the EU budget. This replaces the earlier draft Decision, and differs from it in that it will be based, not on Article 7 of the Euratom Treaty (which provides for the funding of Community research programmes), but on Article 47 (which deals with the funding of Joint Undertakings). As a result, the transfer of funds will no longer be limited to five years, and the proposal will run for seven years, thus aligning its funding with the period covered by the Multiannual Financial Framework.

15.8 In his Explanatory Memorandum of 25 September 2013, the Minister for Universities and Science at the Department for Business, Innovation and Skills (Mr David Willetts) notes that the proposal will allow Euratom to make its contribution to ITER during 2014–2020, and that the Government continues to strongly support the project as a vital next step to practical fusion power stations.

Conclusion

15.9 **We note that the previous difficulties over whether this expenditure should be funded from within the Multiannual Financial Framework have now been satisfactorily resolved, and that a more appropriate legal base appears to have been chosen (thus also allowing a programme with a seven year duration, consistent with that of the Multiannual Financial Framework). In view of this, and the UK's strong support of the ITER project, we are now clearing both documents.**

16 Global navigation satellite systems

(34690) 6347/13 COM(13) 40	Draft Regulation amending Regulation (EU) No. 912/2010 setting up the European GNSS Agency

Legal base	Article 172 TFEU; co-decision; QMV
Department	Business, Innovation and Skills
Basis of consideration	Minister's letter of 2 August 2013
Previous Committee Reports	HC 86–xxxv (2012–13), chapter 7 (13 March 2013) and HC 83–xiii (2013–14), chapter 6 (4 September 2013)
Discussion in Council	10 October 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 The EU has a two-phase policy for developing a global navigation satellite system (GNSS). The first phase, GNSS 1, is the European Geostationary Navigation Overlay System (EGNOS) programme. The second phase, GNSS 2, is the programme, named Galileo, to establish a new satellite navigation constellation with appropriate ground infrastructure.

16.2 In 2010 Regulation (EU) No. 912/2010 established the European Global Navigation Satellite System (GNSS) Agency (GSA) to manage aspects of the GNSS programmes. The Regulation set out the governance arrangements and roles of the different components of GNSS programme management — the Administration Board, the GSA itself and the Security Accreditation Board (SAB).[36]

36 The SAB is the authority that will make formal declarations that GNSS systems are approved to operate at an acceptable level of risk, based on the implementation of an approved set of safeguards.

16.3 In 2012 a Common Approach on EU agencies, requiring adaptation of the founding acts of existing agencies, such as the GSA, following a case by case analysis, was adopted.

16.4 We considered in 2012 a draft Regulation to define the governance and financing framework for the EGNOS and Galileo programmes for the period 2014–20 (in this chapter "the main draft Regulation"). It would replace the current Regulation (EC) No. 683/2008, which sets out the governance and financing arrangements until 2014 and would enter into force on 1 January 2014.[37]

16.5 The intention of the main draft Regulation is that the GSA will take on a more substantive role in the operation and management of the programmes during the 2014–20 period. From 1 January 2014, the Commission would transfer responsibility to the Agency for the day-to-day operation and management of the EGNOS programme and, in 2016, similarly for the Galileo programme. This draft Regulation seeks to modify Regulation (EU) No. 912/2010, which established the GSA in order to both:

- make necessary consequential changes to the role and functioning of the GSA in light of those proposals; and
- align governance of the Agency with the agreed Common Approach for all EU agencies.

16.6 When we considered this draft Regulation last month we heard that there had been progress in negotiating improvements to the proposal and that the Presidency hoped to reach a General Approach by 10 October. However we noted that:

- the question of a balanced Member State representation across the Agency's different working groups remained outstanding;
- we had no information on the Government's consideration of amendments relating to changes to voting rules for decisions and their consistency with the programme objectives; and
- the matter of the Commission's votes in the GSA's Administrative Board might need to be re-opened.

So, we asked, before we would consider the draft Regulation again, to hear how these issues were being resolved in advance of the adoption of a General Approach. Meanwhile the document remained under scrutiny.[38]

The Minister's letter

16.7 The Minister for Universities and Science, Department for Business, Innovation and Skills (Mr David Willetts), says that:

37 (33511) 17844/11 + ADDs 1–2: see HC 428–xlviii (2010–12), chapter 5 (25 January 2012), HC 86–ii (2012–13), chapter 1 (16 May 2012), HC 86–vii (2012–13), chapter 1 (4 July 2012) and *Gen Co Debs*, European Committee C, 11 July 2012, cols. 3–14.

38 See headnote.

- the text now includes a general principle that efforts shall be made for all relevant parties with an interest in security issues to be consulted and this includes the relevant authorities of Member States;
- the Government is satisfied that the issue of seeking to ensure a balanced Member State representation across the Agency's different working groups has been satisfactorily addressed;
- the Government had considered the amendments relating to changes to voting rules for decisions taken by the Agency's Administrative Board such as the appointment of the Executive Director and the adoption of the Agency's work programme;
- it is satisfied that the changes are consistent with the programme objectives and appropriate — the Government does not consider that the changes will significantly affect the position of the Member States and so it will accept them;
- the Government has also assessed what the Commission's final voting weight should be as a member of the Agency's Administrative Board in light of the rest of the amendments to the proposed Regulation; and
- it is content that the Commission can retain confidence in the improved governance of the Agency with a reduction of the Commission's voting weight from five to two votes — this is in keeping with the Common Approach on EU Agencies which sets two votes as the standard Commission voting weight for Agency Administrative Boards and the text now reflects this.

16.8 The Minister tells us that, overall, the negotiated text should bring considerable improvements in how clearly the roles and responsibilities are defined for the different bodies established by the Regulation.

16.9 Finally, the Minister says that the Presidency has held working group meetings throughout September, with the target of reaching a General Approach by 10 October.

Conclusion

16.10 **We are grateful to the Minister for this additional information and now clear the document.**

17 The EU approach to resilience

(35181) 11554/13 SWD(13) 227	Commission Staff Working Document: *Action Plan for Resilience in Crisis Prone Countries 2013–2020*

Legal base	—
Department	International Development
Basis of consideration	EM of 27 August 2013
Previous Committee Report	None; but see (34303) 14616/12: HC 83–xiii (2013–14), chapter 38 (4 September 2013) and HC 86–xx (2012–13), chapter 30 (21 November 2012)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

17.1 The EU is one of the world's largest donors, providing life-saving assistance to people affected by various crises. Commission Communication 14616/12, which we cleared last November, outlines how the Commission proposes to help countries and communities to be better prepared to cope with and recover from natural disasters. The focus is on the experience gained in tackling food security resulting from drought in the Horn of Africa and the Sahel. The wider aim is to use this and other experience to make resilience an integral component of EU humanitarian and development assistance, addressing a broader set of risks, such as flooding and cyclones.

17.2 The Committee cleared the Commission Communication, but asked the Minister (Lynne Featherstone, Parliamentary Under-Secretary of State), to write either after the Action Plan emerged and before the Council Conclusions, with her views on the extent to which it met her *desiderata*; or, if Council Conclusions were adopted prior to the publication and consideration of the Action Plan, to provide her thoughts on how effectively they reflected the UK's approach in this field.[39]

17.3 The Minister's response is set out in our most recent Report under reference. She said that in broad terms she was "very happy" with the Conclusions. She described the process for negotiations as transparent and well-led by the Irish Presidency, who drew on UK expertise from headquarters and the field, which did "much to increase buy-in from Member States who were previously less signed-up to the resilience agenda, and had the corollary effect of providing the UK with an additional avenue through which to share some of our latest lessons learned and policy products". Her concerns with the Communication's narrow scope in both sectoral and geographic terms were reflected in the Conclusions, which now called for "a more complete approach".

39 See headnote: HC 86–xx (2012–13), chapter 30 (21 November 2012).

17.4 Finally, the Minister noted that:

— the UK had a resilience adviser Seconded National Expert working in DG-ECHO which she said had "greatly assisted our influencing of the Council conclusions and the Action Plan"; and

— publication of the Action Plan was moved to fall after adoption of the Council Conclusions "in order to allow for it to take on board the messages contained within them."

17.5 As well as thanking the Minister for this further information, the Committee again drew this to the attention of the International Development Committee, as well as it to the attention of the many other Members interested in development issues.[40]

The Commission Staff Working Document

17.6 The Commission Staff Working Document sets out an Action Plan on how the European Union will support vulnerable people and countries better in withstanding, coping with and quickly recovering from natural disasters and conflict. It has been developed by the European Commission (the EC's Humanitarian Office — ECHO — and Development Co-operation — Devco) and the European External Action Service (EEAS). If successful, the Plan will reduce humanitarian need and the safeguard development gains: these are seen as being of growing importance because of the rising costs of disasters as a result of more severe weather and the growing risks associated with population growth, urbanisation, resource competition, fragility and conflict.

17.7 The main features of the Action Plan are helpfully summarised by the Minister as follows:

> "The cornerstone of the Plan is much better integration between the EU's humanitarian, development and political engagement to help countries tackle more comprehensively those factors that lead to repeated crises — whether it's drought, conflict, epidemics, flooding or, as is often the case, a combination of these. In order to prevent the loss of life and livelihoods, programmes will in future focus much more on building people's long-term resilience to predictable shocks and stresses. Building resilience — particularly in advance of shocks — is more cost effective than a large scale humanitarian response in the midst of a crisis.
>
> "In practice, delivering this requires: strengthening the capacity of recipient governments to integrate resilience into their development plans; linking better humanitarian, development and political engagement through joint analysis and planning; improving early warning of shocks and earlier response; and integrating resilience into food security, climate change adaptation and disaster risk reduction investments."

17.8 The Minister notes that the Action Plan has three implementation priorities (the Minister's emphasis):

40 See headnote: HC 83–xiii (2013–14), chapter 38 (4 September 2013).

"The first is EU support to the development and implementation of national and regional approaches. This is split into a number of different elements. In the case of regional efforts, it includes building on their existing leadership role in promoting and investing in resilience in the Sahel through the Global Alliance for Resilience Initiative (AGIR).

"The other regional initiative is in the Horn of Africa, principally through the implementation of the EU Supporting the Horn of Africa's Resilience (SHARE) initiative.[41] This, like the engagement in the Sahel, will include substantial support from the 11th EDF. It will also be closely aligned with the regional and country strategies developed by the US-led coordination mechanism, the Global Alliance for Drought Resilience.

"There is also a new country 'flagship' initiative, which will pilot EU's engagement in up to four countries. This country and regional work be backed by efforts to better integrate resilience into investments more broadly, such as climate change adaptation, agriculture and nutrition.

"The second priority is innovation, learning and advocacy. This includes, scaling up social protection systems to help protect lives and livelihoods when disaster strikes; stimulating the uptake of risk financing and the private sector's support to building resilience, such as insurance; piloting initiatives that address increasing exposure and vulnerability to risk in urban environments; and promoting greater self-reliance amongst refugee populations, who have been displaced for some time. A final component is the use of EU Aid Volunteers to support building resilience.

"The third priority is methodologies and tools to support resilience. This focuses on developing guidance, such as for joint risk assessment so that the humanitarian, development and political offices in the EU can have a single, comprehensive assessment of risk to support joint planning."

The Government's view

17.9 The Minister goes on to note that, since 2000, disasters have killed 1.1 million people, affected 2.7 billion, caused economic loss of over US$1.3 trillion, increased poverty, slowed the achievement of the Millennium Development Goals and inflamed instability. With disasters expected to become more frequent and severe, the Minister says that helping countries manage risks should no longer be seen as a humanitarian endeavour, but first and foremost a development one.

17.10 She continues as follows:

41 In 2012 the European Commission developed what is describes as "a new approach for the Horn of Africa — Supporting Horn of Africa Resilience (SHARE) — that aims to break the vicious cycle of crises in the region. In the framework of SHARE, the European Commission is investing more than €270 million in supporting recovery from the last drought in the Horn of Africa through close cooperation between humanitarian aid and long-term development. It is also working to strengthen the countries' and population's resilience to future crises". See http://ec.europa.eu/echo/files/aid/countries/factsheets/hoa_en.pdf for full information. For the Committee's consideration of the SHARE initiative, see (34090) 8774/12: HC 86–xxxi (2012–13), chapter 11 (6 February 2013).

"This is starting to happen. There are now strong commitments to integrate disaster resilience in humanitarian assistance and development investments. The US launched its Resilience Strategy last November, the EU issued its Resilience Communication in October 2012, the World Bank issued its report 'Managing Disaster Risk for a Resilient Future' in Sendai the same month and the UK has committed to embed disaster resilience in all its country programmes by 2015.

"The challenge now is to implement these policies on the ground. This Action Plan is an important step forward in achieving this for the EU.

"The first part of the Action Plan, concerned with delivery on the ground in countries and regions, is the most important. The other two priority areas provide the means to achieve this delivery. Issues of joint analysis, closer links between humanitarian and development investments, more flexible finance and promotion of instruments like insurance closely marry with those used by DFID in delivering its own commitments.

"In the case of the EU's regional engagement, the UK is supportive of EU leadership in the Sahel through AGIR to tackle the recurrent humanitarian crises as a result of drought. A regional roadmap has been generated. The core requirement now is for national-level action plans to be finalised and implemented.

"The UK is also positive towards the EU's SHARE initiative in the Horn of Africa. This is the first time that the EU has joined its humanitarian, development and political engagement to tackle vulnerability from drought and conflict. The experience gained in the Horn has informed its work in the Sahel and the EU's approach to resilience.

"However, the UK feels it is important that the EU does not limit its focus to drought, but helps build resilience to the broader set of risks faced in developing countries. These include earthquakes, flooding, cyclones, epidemics and other shocks.

"The proposed flagship programmes offer an appropriate way to tackle these risks. Although the selections of the flagships have not been finalised, it is expected that they will closely dovetail with some of the UK priority countries, such as Haiti and Nepal, and also offers the opportunity for joint working with the UK.

"The above components closely tie with the work of the Political Champions for Disaster Resilience. This is an informal group co-chaired by the Secretary of State for International Development and the UNDP Administrator aimed at promoting greater focus and investment in building resilience. The EC [European Commission] is a member, along with other donors, UN agencies, developing countries, the World Bank and the private sector.

"The Political Champions' prime focus is building resilience in specific countries and regions. Its initial focus has been on Haiti, where there has been an effort to rally donor action around an agreed programme of action with the Government. Making Haiti a flagship for the EU will help reinforce this work.

"Another focus of the Political Champions is stimulating insurance penetration in lower income countries. The level of insurance penetration is lowest where vulnerability is increasing. In developing countries just 5.0% of direct losses are insured compared to 40% in developed countries.

"There are a range of factors preventing the penetration of insurance. They include lack of risk data, regulatory failures, insufficient scale of transactions, high start-up costs and lack of confidence in insurance products. Given the challenges in getting insurance market penetration in lower income countries, the Political Champions agreed that a fresh and energised conversation is needed between the public sector and the insurance sector to assess the opportunities and to agree on a joint package of investment to stimulate the market.

"The EC is engaged in this and it is helping inform their engagement in developing countries following their Green Paper on insurance and disaster prevention. It will be important to bring together these efforts, so that they generate a real opportunity to scale up insurance penetration and avoid the current practice of trialling small scale, ad hoc, pilot initiatives.

"The UK is also supportive of the emphasis placed in the Action Plan on innovation and learning. Building resilience is a new approach to tackling risk, so there is a need to have a strong focus on testing and building the evidence base of what works and delivers results and value for money.

"It is very important that these lessons are shared. One of the areas where particular attention needs to be given is how best to build resilience in fragile and conflict affected states. This is an issue that many donors are starting to grapple with.

"One issue that will be need to be closely followed as the implementation of the Plan is rolled out is how the EU institutionally adjusts to make sure this becomes an integral way of how it does it does business. Of particular note, will be how well the different parts of the EU system work together, how they generate and pool the political engagement and technical capacity to support delivery, and increase the flexibility of engagement, including finance, in order to adjust to changing risks on the ground.

"The Action Plan proposes that EU Aid Volunteers should be used to help build resilience. The establishment of this corps has not yet been approved. DFID will be providing advice on this to the Scrutiny Committee in the autumn.[42]"

17.11 The Minister continues her comments thus:

"The Government welcomes the EU's focus on building resilience in high risk, crisis prone countries. The Department for International Development (DFID) has worked closely with the responsible departments in the development of the Action Plan. EM 14616–12 "The EU Approach to Resilience: Learning from Food Crises", the Council Conclusions and the Action Plan reflect the UK Government's own

42 For the Committee's consideration of the Commission's proposals on the European Voluntary Humanitarian Aid Corps, see HC 83–iv (2013–14), chapter 6 (5 June 2013) and the Reports referred to therein.

policy and strategy on disaster resilience. Lord Ashdown's Humanitarian Emergency Response Review in March 2011 highlighted the importance of building the capacity of national government and civil society to cope with and respond to natural and man-made disasters. Embedding disaster resilience in all countries where we work and showing international leadership in the agenda are core UK policy commitments.

"The process in developing the Action Plan was transparent and the Member States were consulted at each stage of the Communication, Council Conclusions and Action Plan. The EU and Irish Presidency drew on UK expertise and technical inputs from headquarters and the country offices. The UK attended the Consultation Meeting on 25 April 2013 and reiterated the need to focus on fragile and conflict affected states, where the need is greatest, and to undertake joint planning at Brussels and country levels in implementing the Action Plan.

"Overall, the UK is content with the proposed Action Plan."

Conclusion

17.12 **The need for this sort of approach is evident, and the way in which the process has been taken forward by the Commission is exemplary — notably the involvement of the Department for International Development (DFID). However, as the Minister indicates, how the Action Plan is implemented is what will matter most — especially the sharing of lessons and making sure, as the Minister puts it:**

> **"this becomes an integral way of how it does business how well the different parts of the EU system work together, how they generate and pool the political engagement and technical capacity to support delivery, and increase the flexibility of engagement, including finance, in order to adjust to changing risks on the ground."**

17.13 **Curiously, the Minister makes no mention of Monitoring and Evaluation: whereas the Commission Staff Working Document says that:**

— **each priority action included in the Action Plan is linked to an overall objective and a specific output, so as regularly to monitor effective implementation of the Action Plan;**

— **a performance management framework, as well as related monitoring and evaluation frameworks, will be developed, allowing progress on the implementation of the Plan to be tracked;**

— **the Commission and the EEAS will engage with the Member States to review progress made on the resilience agenda at regular intervals, looking in particular at the policy, programming, mobilisation and use of funding, implementation modalities and results; and**

— **regular reviews of the Action Plan will be organised to assess progress and adapt the Action Plan where necessary, building on the lessons learnt throughout the**

implementation of the Action Plan, thus allowing for further elaboration of resilience building actions in the years to come.

17.14 **This is as it should be. Though no specific timeline is given, we would be grateful if the Minister would write to the Committee in a year's time with whatever information is then available about the reviewing of implementation and an indication of what the future review timeline is (an annual report, for example; or a review by the European Court of Auditors).**

17.15 **In the meantime, we clear this Commission Staff Working Document.**

17.16 **We also draw this chapter of our Report to the attention of the International Development Committee.**

18 EU development assistance in 2012

(35281) 13182/13 + ADD 1 COM(13) 594	Commission Report: *Annual Report 2013 on the European Union's Development and External Assistance Policies and their Implementation in 2012*

Legal base	—
Document originated	21 August 2013
Deposited in Parliament	2 September 2013
Department	International Development
Basis of consideration	EM of 12 September 2012
Previous Committee Report	None; but see (34173) 13107/12: HC 86–xiii (2012–13), chapter 30 (17 October 2012)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared

Background

18.1 Each year the Commission produces a report to the Council and the European Parliament on the EU's development and external assistance policies and their implementation.

The Commission Report

18.2 The report begins by highlighting that in 2012:

— the EU as a whole remained the world's largest donor of official development assistance, collectively providing €55.2 billion;

— 2012 was also the first year of implementing the Agenda for Change, increasing the impact of EU development policy in reducing poverty;

— preparations on a global post-2015-framework advanced, with the EU as a key player; and

— the EU also provided swift and decisive support in situations of crisis and fragility such as the drought in the Sahel and the conflicts in Syria and in Mali.

18.3 Endorsed by the Council on 14 May 2012, the Agenda for Change sets out a more strategic approach to poverty reduction aiming at further increasing the impact of EU development policy. To this end, it proposes a series of key changes in the way EU assistance is delivered. These include, inter alia, a differentiated approach so that grant aid is directed where it is most needed and can have the greatest impact in terms of poverty reduction; concentration on a maximum of three sectors per country; a clearer focus on good governance, democracy and human rights and inclusive and sustainable growth; greater use of innovative financing mechanisms; improved policy coherence and increased coordination and joint actions with Member States.

18.4 The report notes that in 2012, the Commission increased the use of blending, where grant and non-grant resources such as loans and equity are combined to create the right financing-mix for specific projects: three new blending mechanisms for Asia, the Caribbean and the Pacific were established. As a result, EU grants of more than €400 million made investment projects in beneficiary countries possible, with a total project volume of approximately €10 billion.

18.5 The Commission also began defining an overall framework for results reporting and on reforming monitoring and reporting systems relating to the implementation of projects and programmes.

18.6 In 2012, joint programming of the EU and Member States was taken forward in six countries; Ethiopia, Ghana, Guatemala, Laos, Mali and Rwanda. Joint programming in Haiti and South Sudan had already started as part of an earlier process, in order to improve results and the impact of aid. A process was also launched to expand joint programming by assessing its feasibility in more than 40 new countries.

18.7 The report also sets out a range of new instruments and aid modalities, including those proposed for the next Multiannual Financial Framework (2014–2020).

18.8 The report describes the EU's efforts to deliver on commitments, providing geographic and thematic overviews of the implementation of its programmes. It also sets out developments concerning the processes, tools and aid modalities used to manage programmes. A financial annex is also included.

18.9 In her Explanatory Memorandum of 12 September 2012, the Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone) says that the report seeks to respond to requests made by Member States in the Council

Conclusions on the 2012 Annual Report, including reporting on how the Agenda for Change[43] and the Communication on budget support[44] are being implemented.

18.10 The Minister goes on to highlight the various Communications that the Commission adopted in 2012 on specific aspects of the Agenda for Change, which include the Communications on *Social Protection in European Union Development Cooperation* (adopted in August 2012); *EU Support for Sustainable Change in Transition Societies* (adopted in October 2012); on *The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations* (adopted in September 2012); and on *The EU Approach to Resilience: Learning from Food Crises* (adopted in October 2012). The Minister notes that this latter built on the Supporting Horn of Africa Resilience (SHARE) and the Alliance *globale pour l'initiative Résilience* — Sahel (AGIR) initiatives also launched in 2012.[45]

18.11 With regard to how the Agenda for Change has been implemented through programming, the Minister notes that "the Commission and the EEAS has also undertaken to ensure that EU development cooperation at country level concentrates on a maximum of three sectors, drawn from the two overarching priorities of human rights, democracy and good governance and inclusive and sustainable growth."

18.12 The Minister also draws attention to what the report has to say on how the 2011 Communication on *The Future Approach to EU Budget Support to Third Countries* (endorsed by the Council on 14 May 2012) has been "translated into practice," with the gradual phasing-in of revised guidelines, the creation of Budget Support Steering Committee (BSSC) composed of senior management from responsible Commission services and the EEAS, and the approval of the first State Building Contracts and Good Governance and Development Contracts.

18.13 The Minister also notes that the report:

— describes the EU's role in cooperating with international partners and in representing Member States externally, citing its "key role in international negotiations on the environment and development," as well as the Commission's membership of the steering committee of the Global Partnership on Effective Development Cooperation formed after the Busan 4th High Level Forum on Aid Effectiveness in 2011;

— outlines the implementation of the EU's thematic programmes in 2012 and highlights the new commitments that the EU made to keep its "long-term promises" towards achieving the Millennium Development Goals;

— refers to a number of developments in Policy Coherence for Development, with Council Conclusions adopted in May 2012 and a European Parliament resolution adopted in October 2012 on the Commission's 2011 biennial report on PCD;

43 See (33244) 15560/11: HC 86–v (2012–13), chapter 12 (20 June 2012) for the Committee's consideration of this Communication.

44 See (33245) 15561/11: HC 86–v (2012–13), chapter 13 (20 June 2012) for the Committee's consideration of this Communication.

45 All of which, as the Minister notes, have been scrutinised by the Committee and reported to the House.

— in the geographical overview, notes that achieving the MDGs has remained a priority in EU development cooperation and cites a number of key developments, including: the Joint Communication on "Towards a renewed EU-Pacific Development Partnership," the Joint Caribbean-EU Partnership Strategy (adopted by Cariforum, the EU and its Member States in November 2012), the adoption of a Plan of Action for 2013–2017 with the Association of South-East Asian Nations (ASEAN), and the announcement of a €150 million development assistance package for Myanmar/Burma;

— notes that throughout 2012, the EU continued to implement its response to the Arab Spring, in accordance with the incentive-based "more for more" principle, through the Support for Partnership, Reform and Inclusive Growth (SPRING) umbrella programme launched in September 2011;

— also describes how the EU made efforts to facilitate reforms in countries undergoing transition and cut back relations with countries violating human rights, in line with the Agenda for Change and the 2011 Communication on "Human Rights and Democracy at the Heart of EU External Action: Towards a More Effective Approach": most notably, in the case of Syria the EU suspended its bilateral financial assistance and imposed a package of sanctions in response to the worsening humanitarian crisis and systematic human rights violations; and

— dedicates a chapter to setting out the range of project performance monitoring tools and aid delivery modalities used to manage programmes, including internal monitoring and evaluation processes as well as a synthesis of main lessons learned in 2012; including a brief description of the initial efforts made towards developing a common EU framework for measuring and communicating results.

The Government's view

18.14 The Minister goes on to describe the report "as a valuable opportunity for the Commission to report on its progress towards a results-orientated EU development policy", and to say that she regards it as important that future reports continue this trend.

18.15 She continues her comments thus:

> "In particular, we would welcome clearer reporting on how the Agenda for Change has been implemented, especially in terms of programming, and what results this has achieved.
>
> "The reporting of progress towards the implementation of a results framework for EU development cooperation in the annual report is welcome. However, more needs to be done to focus systematically on the results achieved by EU development programmes. We will continue to support the Commission in developing a results framework and will look for further progress, and more detailed reporting, in this area in the 2014 Annual Report.
>
> "Future reports should present evidence of delivery more clearly. In particular, they should report on how progress achieved compares with expected progress (in terms

of any commitments made or targets set) and report critically on areas where EU development work has encountered challenges. For example, the reporting on the implementation of the Gender Action Plan could indicate more clearly against which indicators there has been good progress and against which indicators there has been limited progress.

"We welcome the changes that the Commission has made in this year's report to give effect to the requests made in the Council Conclusions on last year's report. We encourage the Commission to continue developing and refining its reporting, taking into account any Council Conclusions adopted on this year's report."

18.16 That said, the Minister closes by noting that no date has yet been set for the report to be considered by the Council.

Conclusion

18.17 **Looking at the Minister's and her predecessor's views on the 2010, 2011 and 2012 reports, it is gratifying to see continuing progress in implementing the "Agenda for Change" and in working towards the implementation of a results framework. However, as the Minister notes, there continues to be room for improvement:**

- **clearer reporting on how the Agenda for Change has been implemented, especially in terms of programming, and what results this has achieved;**
- **a more systematic focus on the results achieved by EU development programmes and clearer presentation of evidence of delivery;**
- **reporting on how progress achieved compares with expected progress (in terms of any commitments made or targets set); and**
- **reporting critically on areas where EU development work has encountered challenges.**

18.18 **We hope that she will be able to report positive developments in all these areas in a year's time.**

18.19 **In the meantime, we now clear this report, which we are drawing to the attention of the International Development Committee.**

19 The EU/ACP Partnership Agreement

(35282) 13184/13 COM(13) 597	Draft Council Decision on the Position to be taken within the EU/ACP Council of Ministers regarding the revision of Annex IV to the EU/ACP Partnership Agreement

Legal base	Articles 209 and 218(9) TFEU; QMV
Document originated	22 August 2013
Deposited in Parliament	2 September 2013
Department	International Development
Basis of consideration	EM of 13 September 2013
Previous Committee Report	None
Discussion in Council	October 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

19.1 The EU/ACP Partnership Agreement (also known as the Cotonou Agreement) between the European Community and African, Caribbean and Pacific (ACP) states was signed in June 2000 for a period of 20 years and is a mixed agreement covering trade, development cooperation (through the European Development Fund EDF) and political relations.

The draft Council Decision

19.2 In her Explanatory Memorandum of 13 September 2013, the Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone) explains that, within the current Multiannual Financial Framework negotiations, the Commission is aiming for a coherent set of implementing rules for all external financial instruments under the Budget and EDF as of 1 January 2014; and that this requires further technical adjustments to bring Annex IV of the Cotonou Agreement in line with the Commission's legislative proposals for the budget instruments.

19.3 The Minister continues her explanation thus:

> "The Commission proposes that simplification of the provisions of Annex IV (the Economic Partnership Agreement (EPA) negotiations), will improve the efficiency of the implementation of the EDF. Changes are proposed to Article 19 on the awarding of contracts, Article 20 on eligibility for procurement contracts, Article 22 on the possible derogations from this standard eligibility criteria, and Article 26 on preferences.
>
> "The Commission proposes to amend Article 19c so that contracts and grants are performed in accordance with applicable environmental legislation, including

multilateral environmental agreements, as well as the current requirement of internationally recognised basic standards of labour law.

"In Article 20.1 the Commission proposes that participation in procurement contracts or grants is widened beyond ACP States, Member States of the EC, official EC candidate countries, Member States of the European Economic Area and countries for which reciprocal access to external assistance has been established by the Commission. The new proposal now includes developing countries and territories which are not members of the G-20 group, and Member States of the OECD in the case of contracts implemented in a Least Developed Country or a Highly Indebted Poor Country.[46]

"Following these changes, Article 20.3 now extends the originating country of supplies and materials purchased to all of the eligible countries in Article 20.1. An additional clause has been added that these may originate from *any* State when the amount of the supplies and materials purchased is below the threshold for use of the competitive negotiated procedure.

"A new paragraph 9 article in Article 20 allows for the possibility for this eligibility to be restricted, for example with regards to the nationality or localisation of tenderers, if this is necessary due to the particular nature or objectives of a project or other action.

"The Commission note that they aim to simplify Article 22 which deals with derogations, the possible exceptions to the standard eligibility criteria which should usually apply. Article 22.1 sets out that tenderers and supplies not generally eligible may be accepted at the justified request of the ACP States. This is particularly when countries have traditional economic, trade or geographical links with neighbouring countries or due to the urgency or unavailability of products and services in the markets of the countries concerned.

"The update to Article 26 on preferences has been rewritten for clarity, although the regime rules remain the same. One addition to Article 26.1 accords a 15% price preference for supply contracts less than EUR 300 000 submitted by ACP firms, which can be in a consortium with European partners. The UK will seek clarity on this wording to ensure that European companies do not end up being the main beneficiaries of a price preference."

19.4 The Minister says that the effect of this proposal should be to simplify Annex IV, whilst bringing it in line with the innovations proposed for the implementation of other external financial instruments under the EU Budget:

"In particular, proposed amendments will lead to widening participation in procurement contracts and grants, beyond ACP States and Member States of the EU to all developing countries and territories. The same is true for the country of origin of supplies and materials purchased under these contracts. This is a positive

46 Defined by the OECD-DAC (the Minister's footnote).

evolution which should improve the competitiveness of the procurement process and hence the value for money of EDF procurement."

The Government's view

19.5 The Minister says that, overall, the Government broadly supports the EU's aim of simplifying, clarifying and harmonising the EDF's procurement and management procedures with those governing contracts funded from the EU budget.

19.6 She continues her comments thus:

> "DFID's Multilateral Aid Review noted that a weakness of the Commission's procurement practice was the stringent eligibility criteria for procurement and grant procedures for nationals of certain countries, which constituted a tied aid clause and potentially reduced value for money. This amendment of Annex IV will go some way to correcting this, by extending the countries eligible to tender under the procurement exercise. However, it is also positive that there is the possibility to derogate from the standard eligibility in certain situations, for example in order to better further the aims of a project or in cases of urgency.
>
> "The UK also agrees that ACP contracts and grants should comply with any applicable environmental legislation including multilateral environmental agreements."

19.7 Looking ahead, the Minister says that the proposal will be discussed and reviewed for approval in the ACP Working Group in September and may be ready to go to Council for decision in October, thus establishing the European Union position; the EU-ACP Joint Council of Ministers will then agree its decision by subsequent written procedure.

Conclusion

19.8 **The Minister explains the proposal clearly. It would seem to be entirely beneficial. Her one concern appears to be minor; though yet to be resolved, we are confident that she will be able to do so satisfactorily. We are nonetheless drawing the proposal to the attention of the House because of the widespread interest in development issues.**

19.9 **We now clear the Council Decision**.

20 Single European Sky: air traffic management

(35207) 12392/13 + ADD 1 COM(13) 503	Draft Council Regulation amending Regulation (EC) No. 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as regards the extension of the Joint Undertaking until 2024

Legal base	Article 187 TFEU; consultation; QMV
Department	Transport
Basis of consideration	Minister's letter of 3 October 2013
Previous Committee Report	HC 83–xiii (2013–14), chapter 12
Discussion in Council	10 October 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

20.1 The Single European Sky (SES) initiative was launched in response to the growing problem in air traffic management (ATM) delays in the late 1990s. The principal objective of the SES is to deliver a seamless, safe, sustainable, efficient and interoperable European ATM system capable of meeting future capacity needs and not artificially constrained by national borders. The Single European Sky Air Traffic Management Research (SESAR) programme is the technology pillar of the SES. The SESAR Joint Undertaking (the SJU) is a public private partnership established in 2007 and is responsible for the SESAR programme development phase as the 'guardian' and executor of the European Air Traffic Management Master Plan.

20.2 The SESAR programme aims to modernise the European Air Traffic Management system. Industry-led, it has gained the buy-in of aviation stakeholders and the Commission. Eurocontrol (the European Organisation for the Safety of Air Navigation) and the Commission are founding members of the SJU and were subsequently joined by 15 private industry partners (including the UK's NATS (National Air Traffic Services) and an airports consortium involving the then BAA).

20.3 The SJU was established under Council Regulation (EC) 219/2007 (the SJU Regulation), under which it will cease to exist on 31 December 2016, as EU funding for the SJU development phase is limited to the period covered by the 2007–2013 Multiannual Financial Framework.

The document

20.4 The SJU Regulation also provides for the Council to review the scope, governance, funding and duration of the SJU following the development phase. The Commission suggests that it is necessary to continue research and innovation on air traffic management beyond 2016, particularly in the context of the SES and its associated Air Traffic Management Performance Scheme. So it has proposed this draft Regulation to amend the

SJU Regulation in order to extend the life of the SJU beyond 2016, that is, until the end of 2024. The extension aligns to and is compatible with the new Multiannual Financial Framework, with the multiannual funding for the new activities highlighted in the European Air Traffic Management Master Plan from 2014 to 2020 as part of Horizon 2020.

20.5 Other key elements of the draft Regulation are that:

- existing resources would be redeployed into exploratory research;
- there would be more focus on "Large scale demonstration activities focussed on performance benefits, on conducting integrated and coordinated advance validation and on demonstration activities showing readiness for deployment and for operation and/or technological transition"; and
- the SJU could award grants to help implementation of the Air Traffic Management Master Plan.

20.6 When we considered this proposal last month we heard that successive Governments have supported the SES project and its technological pillar SESAR and that the present Government intends to continue this support and is working to ensure that its objectives are met fully. As for the draft Regulation itself the Government is generally content with it but planned to address three points, related to the redeployment of resources to exploratory research, a greater focus on large scale demonstration activities and greater clarity on the awarding of grants by the SJU and governance, during Council working group negotiations.

20.7 We recognised the utility of this proposal, as an important element in the continued development of the Single European Sky. But we said that, before considering the matter again, we wanted to hear about developments in addressing the three points mentioned to us. Meanwhile the document remained under scrutiny.[47]

The Minister's letter

20.8 The then Minister of State, Department for Transport (Mr Simon Burns) first reminds us that the Government supports an extension to the SJU as the best mechanism to direct both public and private funds into air traffic management research and development, saying that:

- to date, it has been satisfied with the work of the SJU;
- UK industry has been actively involved through NATS and BAA (now Heathrow) as part of an airports group; and
- additionally, the Civil Aviation Authority (CAA) has an Memorandum of Understanding to provide some regulatory advice.

20.9 The Minister then reports that:

47 See headnote.

- overall, discussions in the working group have primarily focussed on big ticket items — the proposed extension of the SJU to 2024 (which is beyond the Horizon 2020 timeframe) and the level of EU funding;
- the Commission explained that most new projects could only start towards 2017, and if the SJU were to last only until 2020, it would be practically impossible to close these projects and use the funds by the end of 2020;
- this scenario could lead other financial stakeholders to reconsider their participation;
- the draft Regulation contains a clearly defined end date of 31 December 2024 and new texts have been added explaining that the activities of the SJU beyond 31 December 2020 would only concern the closing down of ongoing projects;
- the CAA view, as the UK independent regulator, is that this is a pragmatic approach and as such the Government believes that it should be supported;
- the EU contribution to the SJU from Horizon 2020 would be limited to a maximum of €600 million (£502 million);
- texts allowing further contributions to be paid from other relevant EU funding programmes have been deleted;
- the Government welcomes this because it would enable the Regulation to clearly define the level of EU funding for the SJU; and
- including expected contributions from SJU partners, the total cost of the SJU's activities are estimated to be €1.6 billion (£1.34 billion).

20.10 The Minister continues that the Government has also received some further clarity on the three points drawn to our attention earlier. He says that:

- the Commission has clarified that 6% (€100 million or £83.6 million) of the SJU's budget will be deployed on exploratory research and 19% (€300 million or £251 million) on large scale demonstration activities;
- there are extra texts in the Regulation which cross-refer activities back to the Air Traffic Management Master Plan, which the Government supports;
- on the question of grants, the Commission has clarified that any funds transferred from the SJU to its members or to any other third party must follow specific procedures approved by the Commission that ensure legality, transparency and non-discrimination and that there would be no derogations from these rules; and
- the SJU co-funds the activities of its members through financial contributions — although not formally defined as a grant under the current Regulations and SJU Financial Rules, the awarding of contributions follows the same rules of an EU grant.

20.11 The Minister comments that:

- overall, the Government believes that the UK should support the proposed extension of the SJU and the proposed Regulation as amended in negotiations; and
- the CAA, which had flagged the three points now clarified advised that it is content with the amended proposal, which represents a good compromise and solid foundation for progress for air traffic management out to 2024.

20.12 Finally the Minister tells us that the Presidency is hoping that a Council position on the text can be agreed at the Transport Council meeting on 10 October and the Government expects that this can be achieved.

Conclusion

20.13 **We are grateful to the Minister for this additional information and having no further questions to ask now clear the document.**

21 The EU and Indonesia

(34881) 8949/13 COM(13) 230	Draft Council Decision on the conclusion of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States and the Republic of Indonesia

Legal base	Articles 207, 209, and Article 218(6)(a) TFEU; QMV; consent
Document originated	24 April 2013
Deposited in Parliament	30 April 2013
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 2 August 2013
Previous Committee Report	HC 83–xii (2013–14), chapter 21 (17 July 2013)
Discussion in Council	22 July 2013
Committee's assessment	Legally and politically important
Committee's decision	Cleared (decision reported 17 July 2013)

Previous scrutiny

21.1 When we last reported on this proposal, we welcomed the decision to split the Council Decision to conclude the Agreement into two Council Decisions, one concerning JHA measures — a readmission provision — to which the UK's opt-in applied; the other concerning non-JHA measures, which included new legal bases in the field of environment and transport. We thought this approach provided for greater legal certainty about the UK's participation in JHA measures in international agreements, something for which we had called since early in this Parliament.

21.2 We saw that recital (2) of the draft JHA decision clarified that the UK would not be opting into the readmission obligations of the PCA Agreement. However, the Minister's Explanatory Memorandum of 9 July was, surprisingly, silent on the Government's approach to the opt-in. This we felt was a significant omission, particularly in view of the enhanced scrutiny procedures which apply to opt-in decisions. We asked the Minister to explain both the reasons for this oversight and the policy considerations which led the Government to decide to opt out of the readmission provision.

The Minister's letter

21.3 The Minister for Europe (Mr David Lidington) replies by saying that the Explanatory Memorandum did not mention the opt-in because:

> "at that time, the Government had not yet arrived at a view. Recital (2) to the draft JHA decision is correct in stating that under Articles 1 and 2 of Protocol 21, the UK shall not take part in the adoption of measures pursuant to Title V of Part Three of the TFEU. This recital does not purport to reflect any opt-in decision, and is without prejudice to any future decision of the UK to opt in under Article 3 of Protocol 21. Whilst I recognise that the wording of recital (2) may have led some to conclude that an opt-in decision had been taken, that was not in fact the case at the time. However, I am now happy to be able to inform the Committee that the Government has decided that the UK will not opt-in to the readmission obligations of the PCA, and will instead take these obligations in its own right.
>
> "Her Majesty's Government opts into readmission obligations on a case by case basis. We decided not to opt-in to the readmission provision for the Indonesia PCA, as it was not in our national interest to opt-in."

Conclusion

21.4 **There are two points to make. The first is that the Minister appears to be unaware of his Government's Code of Practice on Scrutiny of Opt-In and Schengen Opt-Out Decisions, adopted in May of this year and to be found in annex S of the Cabinet Office Scrutiny Guidance. At paragraph 4 the Code says that an Explanatory Memorandum "will provide an indication, to the extent possible, of the Government's views as to whether or not it would opt in and the factors likely to influence the Government's decision". We ask the Minister to consider whether saying "at the time the Government had not yet arrived at a view" is a satisfactory explanation of why there was no mention of factors likely to influence the Government's opt-in decision in the Explanatory Memorandum. On reflection he may realise that the Government's opt-in decisions are rarely agreed at the time an Explanatory Memorandum is drafted, that is why the relevant factors are so important.**

21.5 **Secondly, it is dismissive of the Committee's interest in the Government's reasons for not opting into a readmission agreement with Indonesia to reply by saying no more than it was not in the UK's interest to do so. Again, on reflection, he may realise that "not in the UK's interest" can cover a host of virtues or a multitude of sins: either way, it is not illuminating in any sense at all.**

21.6 **We think the letter displays a cavalier disregard for a Report of this Committee, which sits ill with the Minister's overall responsibility for relations with Parliament on EU affairs, and with his often repeated statements that he takes Parliamentary scrutiny very seriously indeed. We therefore ask the Minister to reconsider his answers, to write again, and to ensure that the relevant officials in his Department are made aware of our concerns.**

22 The EU Special Representative (EUSR) for the Horn of Africa

(35337) — —	Council Decision extending the mandate of the European Union Special Representative for the Horn of Africa

Legal base	Articles 28, 31 (2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 4 October 2013
Previous Committee Report	None; but see (35050) —: HC 83–viii (2013–14), chapter 19 (3 July 2013) and HC 83–vii (2013–14), chapter 4 (26 June 2013); also see (35054) —: HC 83–vii (2013–14), chapter 7 (26 June 2013)
Discussion in Council	21 October Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

22.1 For these purposes, the Horn of Africa is defined as the countries belonging to the Inter-Governmental Authority on Development (IGAD)[48] — Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan and Uganda.

22.2 Our previous Reports and those referred to therein provide full background on the rationale for the creation of this EUSR role, and of the creditable performance of the incumbent, Mr Alexander Rondos (a Greek diplomat with extensive experience in African matters, and who had worked in East Africa during his career).

48 The Intergovernmental Authority on Development (IGAD) in Eastern Africa was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD) which was founded in 1986. The IGAD mission is to assist and complement the efforts of the Member States to achieve, through increased cooperation: Food Security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs; and economic cooperation and integration. For full information on IGAD, see http://www.africa-union.org/root/au/recs/igad.htm.

The previous Council Decision

22.3 This Council Decision extended the EUSR mandate, which was due to expire on 30 June 2013, for four months, to 31 October 2013. The full details are set out in our Report of 26 June 2013.[49]

22.4 The Minister for Europe (Mr David Lidington) professed himself fully supportive of the EUSR. Since the EUSR's mandate was last considered in June 2012, the EUSR had led the EU response to several significant changes in the Horn of Africa, including, but not exclusively: the end of the political transition in Somalia with a new, more effective Government; the change in political leadership in Ethiopia following the death of Prime Minister Meles Zenawi on 20 August 2012; and the election of Uhuru Kenyatta as President of Kenya.

22.5 He said that this position continued to be politically important to the UK: Somalia was as high priority for the UK, and the EUSR helped achieve UK objectives for the Horn of Africa region through a mandate that reflected UK policy goals.

22.6 Most of our most recent Report was taken up with information provided by the Minister, after his initial Explanatory Memorandum, on the budget for this short extension.

22.7 Looking ahead, the Minister said:

> "There will be a discussion and review of the EUSR's mandate and budget in October which will take into account: recent developments in the region; the outcomes of the EU-Somalia Conference on Somalia in Brussels on 16 September, where a New Deal Compact between Somalia and the international community will be agreed; and the new responsibilities for Sudan and South Sudan as the mandate for the EUSR for Sudan and South Sudan expires."

Our assessment

22.8 We commended the Minister and his officials once again for ploughing the seemingly lonely furrow of insisting on budgetary discipline and transparency.

22.9 We also recalled our consideration in our Report of 26 June 2013 of the proposal for a similar short mandate extension for the EUSR to Sudan and South Sudan: the HR's proposal being to merge the two mandates. that, as the geographical remit of the EUSR for the Horn of Africa already covered Sudan and South Sudan, the merger of the two mandates made sense in that broader regional context. But, before agreeing to it, the Minister said that the High Representative and her staff would need to consider carefully how the enlarged responsibilities of the EUSR would be managed, so that the EU could maintain its engagement on both Somalia and the Sudans. He undertook to ensure that these questions would be fully addressed in a future Explanatory Memorandum on any Council Decision to merge the two mandates.[50]

49 See headnote: (35050) —: HC 83–vii (2013–14), chapter 4 (26 June 2013).

50 See headnote: (35054) —: HC 83–vii (2012–13), chapter 7 (26 June 2013).

22.10 In the meantime, having now received the relevant budgetary information on this short extension to the EUSR to the Horn of Africa's mandate, we cleared the Council Decision.[51]

The draft Council Decision

22.11 The draft Council Decision extends the mandate of the EUSR for the Horn of Africa, which expires on 31 October 2013, for twelve months to 31 October 2014.

22.12 It also proposes that the mandate should be expanded to include elements of Sudan and South Sudan, when the mandate for the EUSR for Sudan and South Sudan expires on 31 October 2013.

The Government's view

22.13 In his Explanatory Memorandum of 4 October 2013, the Minister says that he remains "fully supportive of the EUSR", and continues as follows:

> "Over the past 22 months the EUSR has added significant value to the EU's work in the region, by:
>
> — "Providing coherence and coordination to the EU's Brussels and regionally-based machinery, in order to maximise the EU's leverage on political, security and defence work in the region;
>
> — "Providing the EU with a regional perspective/approach to the Horn of Africa. This is particularly important, given the potential for any additional instability to have wider implications across the Horn;
>
> — "Adding impetus to the EU's Horn of Africa Strategic Framework, agreed November 2011, which sets out the EU's approach to improving political stability, security and economic growth in the region;
>
> — "Lobbying key international actors, including regional and Gulf partners, as well as countries that are active in the Horn of Africa; and
>
> — "Coordinating the EU response to regional crises.
>
> "In addition, the EUSR has led the EU response to several notable events in the Horn of Africa, including, albeit not exclusively: the end of the political transition in Somalia with the appointment of a new more effective Government; the change in political leadership in Ethiopia following the death of Prime Minister Meles Zenawi on 20 August 2012; the election of Uhuru Kenyatta as President of Kenya; and various terrorist attacks including the recent attack against the Westgate shopping centre in Nairobi. The EUSR also briefs Member States on a regular basis and has represented the EU at high-level events such as the Somalia Conference in London

51 See headnote: (35050) —: HC 83–viii (2013–14), chapter 19 (3 July 2013).

on 7 May, the Tokyo International Conference on Development on 31 May, the EU-Somalia Conference in Brussels on 16 September, and the UN General Assembly side-meeting on Somalia on 26 September."

22.14 Turning to the EUSR for Sudan and South Sudan, Dame Rosalind Marsden (EU Special Representative for Sudan), says that she has:

— "Promoted the EU's Comprehensive Approach to building two viable states, at peace internally and with their neighbours; focusing particularly on resolving the outstanding issues from South Sudan's secession in 2011, and the remaining internal conflicts in the two countries, in particular in Darfur, Southern Kordofan and Blue Nile states in Sudan, and in Jonglei state in South Sudan;

— "Participated in international mechanisms which have been established to address the above issues, in particular supporting the African Union High Level Panel's mediation between Sudan and South Sudan, and representing the EU in the Implementation Follow-Up Commission which provides international oversight to the Darfur peace process following the signature in 2011 of the Doha Document for Peace in Darfur; and

— "Played a valuable role in maintaining a high level of EU engagement within the broader international process, and kept EU Member States informed of developments in both countries, helping to ensure consistency of EU policy, which was in line with UK objectives."

22.15 The Minister continues thus:

"We consider the EUSR for the Horn of Africa to be a politically important position. Somalia and Sudan and South Sudan are both high priorities for the UK. It is in the interests of the region and the wider international community, including the UK, that efforts continue to improve regional stability, with a focus on Somalia and Sudan and South Sudan. The EUSR helps deliver UK objectives for the Horn of Africa region through a mandate that reflects our policy goals."

22.16 Concerning the proposal to merge the two mandates, the Minister says:

"We welcome the High Representative's wish to rationalise EUSR mandates in this region, providing more cost-effective coverage, while increasing strategic linkages in the region. The geographical remit of the EUSR for the Horn of Africa already covers Sudan and South Sudan, and the merger of the two mandates makes sense in that broader regional context."

22.17 The Minister then notes that there are four policy objectives in the proposed mandate:

— To support the continued stabilisation process in Somalia, in particular the regional dimension of the conflict;

— To support the process towards the peaceful coexistence of Sudan and South Sudan as two viable, stable and prosperous states with robust and accountable political structures;

— To resolve current conflicts and avoid potential conflicts between or within countries in the region; and

— To support political and economic regional cooperation.

22.18 He then comments as follows:

> "There are three key issues to consider for this Council Decision: whether the balance of priorities is appropriate; whether the EUSR has the capacity to fulfil the mandate; and how this relates to the October EU Political and Security Committee[52] discussion on horizontal issues.
>
> i) "The balance of priorities. Somalia remains the focus of the mandate which matches HMG objectives for the Horn of Africa. Sudan and South Sudan are also top priorities for the UK, and the mandate is clear that the EUSR should focus on the peaceful coexistence of the two states, adding value to existing conflict mediation processes. Progress towards peace and security in Somalia, Sudan and South Sudan will have wider benefits for strengthening regional peace and security. When considered alongside the following issue of EUSR capacity, we judge that the balance of the four policy objectives is appropriate.
>
> ii) "EUSR capacity. In June, the Parliamentary Scrutiny Committees were concerned that the EUSR might not have the capacity to cover Sudan and South Sudan, or that the merging of the mandates might lead to reduced focus on a UK priority issue. We share these concerns and raised the issue at the EU Political and Security Committee on 27 September. In summary, the proposal is for the EUSR to focus mainly on Somalia, spend roughly 30% of his time on Sudan and South Sudan, and the remainder of his time on regional issues (further detail is provided in Flags B and C). The EU's Envoy to Somalia/Head of Delegation in Nairobi, Michele Cervone d'Urso, will take on some of the internal political work previously undertaken by the EUSR. To ensure capacity on Sudan and South Sudan, the EUSR's staff will be augmented by expertise drawn from the EUSR for Sudan and South Sudan's office when that mandate expires, and will be supported by EU Heads of Delegation in Khartoum and Juba. We are content with these proposals.
>
> iii) "The October EU Political and Security Committee discussion on horizontal issues. Whilst we do not yet have complete financial information on the merger, we expect that this will result in significant budgetary savings. Whilst some staff from the existing EUSR Sudan and South Sudan office will be transferred to the EUSR Horn of Africa, the resulting operation will be smaller than the two previous operations. Our approach is in line with ongoing work to build alliances in advance of the October discussion on horizontal issues that will address issues including value for money, efficiency and transparency."

52 The committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative for Foreign Affairs and Security Policy (HR) and the Council, monitor the international situation in areas covered by the CFSP and exercise political control and strategic direction of crisis management operations, as set out in article 43 TEU. The chair is nominated by the HR. Walter Stevens was appointed as Chair of the Political and Security Committee on 21 June 2013. He was then working in the Headquarters of the EEAS, as Head of the Crisis Management and Planning Directorate; he previously served as Permanent Representative of Belgium to the Political and Security Committee and to the Western European Union.

22.19 In sum, the Minister says:

> "The UK supports the extension of this mandate by twelve months. We also support the merger of responsibilities, although we have lobbied the EEAS to review the mandate in April 2014 to consider whether the approach is working."

Conclusion

22.20 **Although the two supporting documents to which the Minister refers have in fact been withdrawn, because they are not yet in the public domain, we are satisfied on the basis of his Explanatory Memorandum alone that the concerns that the Minister expressed in June, and which we felt were justified, have been satisfied. We are also reassured by the proposal to review the mandate in April 2014 to consider whether the mandate is working: we should be grateful if the Minister would write to us then with information about the scope of the review, its findings and his views thereon.**

22.21 **Before then, however, there will be the "horizontal" review to which the Minister refers, this autumn, on value for money, efficiency and transparency. The Minister will no doubt recall our concern in the spring about the way in which the HR and EEAS mishandled the whole process of mandate review and renewal; we presume that the "transparency" component of the review will outline how that process is to be improved so that Member States and national parliaments are engaged much earlier in the process and not — as hitherto — at the last minute. We take this opportunity to remind the Minister that we look to him to ensure that this review is deposited for scrutiny before any decisions are taken by the Council on its findings.**

22.22 **In the meantime, we now clear this Council Decision.**

23 Restrictive measures against Zimbabwe

(a)	
(35344)	Council Implementing Decision 2013/469/CFSP of 23 September 2013
—	amending Decision 2011/101/CFSP concerning restrictive measures
—	against Zimbabwe
(b)	
(35345)	Council Implementing Regulation (EC) No. 915/2013 of 23 September
—	2013 amending Regulation (EC) No. 314/2004 concerning restrictive
—	measures against Zimbabwe

Legal base	(a) Article 31(2) TEU; unanimity (b) Article 215 TFEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 4 October and Minister's letters of 29 August and 4 October 2013
Previous Committee Report	None; but see (34846) — and 34847 —: HC 83–iii (2013–14), chapter 23 (21 May 2013) and HC 86–xxxix (2012–13), chapter 8 (24 April 2013); also see (35129) — : HC 86–xi (2012–13), chapter 21 (5 September 2013)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared

Background

23.1 In February 2012, the Committee cleared two Council Decisions incorporating the measures that the EU had taken in response to various "stolen" elections and subsequent internal repression:

- one related to the "appropriate measures" permitted under Article 96 of the Cotonou Agreement when an ACP country is guilty of egregious breaches of its Article 8 "good governance" provisions. It was introduced after the first "stolen" election in 2002, and had been renewed annually: suspension of budgetary support and financial support for all projects except those in direct support of the population, in particular in the social sectors and those in support of the reforms contained in the General Political Agreement (GPA); not to affect humanitarian support; and to be channelled exclusively through multilateral organisations such as the UN and civil society organisations and not through Government channels;

- the second — the customary EU "travel ban + asset freeze package" — was introduced in 2004, and has likewise been renewed annually.

23.2 The full background is set out in our Report of 22 February 2012.[53]

23.3 As noted there, a power-sharing Inclusive Government was formed in February 2009, underpinned by a GPA signed by President Mugabe, Prime Minister Morgan Tsvangirai (of the Movement for Democratic Change; MDC) and Deputy Prime Minister Arthur Mutambara.

23.4 Since then, the Government, and the EU collectively, has sought what the Minister for Europe (Mr David Lidington) has described as the right balance between responding to progress and maintaining pressure on the Government of Zimbabwe to continue with reforms.

23.5 Thus, the 23 July 2012 Foreign Affairs Council decided to resume full cooperation under the Cotonou Agreement — but with a Country Strategy agreed and funded only on condition of further reform. At that time, the Minister for Europe said his aim was clear: to support the process towards a credible constitutional referendum ahead of free and fair elections in 2013. The agreement on Article 96 was consistent with the EU's basic approach. Looking ahead, the Council had also agreed that, should there be a peaceful and credible Constitutional Referendum, the EU should respond accordingly with suspension of the assets freeze and travel ban on all but a small core of individuals around President Mugabe, particularly those who would most directly influence the potential of violence in the next election.[54]

23.6 The 18 February 2013 Foreign Affairs Council, *inter alia*, said:

> "As demonstrated in July 2012 and the agreement by the Council today the EU, consistent with its incremental approach, stands ready to further adjust its policy to recognise progress as it is made by the Zimbabwean parties along the SADC Roadmap. As stated in the Council Conclusions of July 2012, a peaceful and credible constitutional referendum would represent an important milestone justifying an immediate suspension of the majority of all remaining EU targeted restrictive measures against individuals and entities."[55]

23.7 Such a peaceful and credible Constitutional Referendum having been carried out on 16 March 2013, Council Decision 2013/160/CFSP and (the implementing) Council Regulation (EC) No. 298/2013 were adopted on 27 March 2013. The Committee's consideration thereof is set out in our most recent Reports under reference.[56]

23.8 In sum, in his Explanatory Memoranda and correspondence with the Committee, the Minister confirmed that:

— the ten individuals whose listings were not suspended were Robert Mugabe, Grace Mugabe, and a core group of senior Zanu-PF officials who play key roles in the operation of the security sector;

53 See (33645) 5820/12 and (33679) —: HC 428–li (2010–12), chapter 12 (22 February 2012).

54 See (34105) —: HC 86–xi (2012–13), chapter 21 (5 September 2012) for the full background.

55 The full Council Conclusions are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135531.pdf.

56 See (34105) — and (34745) —: HC 86–xxxvi (2012–13), chapter 11 (20 March 2013); and (34846) — and (34847) —: HC 83–iii (2013–14), chapter 23 (21 May 2013) and HC 86–xxxix (2012–13), chapter 8 (24 April 2013).

— the suspension did include a number of individuals with connections to the diamond mining industry, including the Minister of Mines, Obert Mpofu;

— inclusion of these individuals in the suspension was judged consistent with the broader objectives of using the Measures flexibly, to support the Southern African Development Community facilitation process and to incentivise reform in the run up to elections later this year;

— both the mining parastatal (ZMDC) and the defence parastatal (ZDI) remained subject to Restrictive Measures;

— the continued listing of these two entities was the result of concerted UK lobbying during the February negotiations;

— the active Restrictive Measures against ZMDC and ZDI meant that restrictions would exist on all diamond mining operations in the Marange fields until after elections had taken place; and

— ZMDC would be delisted after presidential and parliamentary elections unless the EU judged that it had been involved in undermining the free and fair conduct of those elections.

23.9 The Minister also noted that:

— the majority suspension introduced by Decision 2013/160/CFSP was valid in the first instance until 20 February 2014 (the date by which the restrictive measures themselves are due for renewal) but that — with the two further crucial milestones of presidential and parliamentary elections needing to be passed during the next six months — it would be subject to review every three months;

— since Decision 2013/160/CFSP did not expire at the three month mark, a Council Declaration annexed to the Decision, and the Conclusions of the Political and Security Committee57 of 22 March 2013, had been used to commit Member States to the adoption of a Decision revoking the suspension at the three-monthly review unless there was unanimous agreement that the suspension should continue;

— any Member State would therefore be able to collapse the suspension and re-activate targeted measures in a minority of one every three months; and

— this safeguard enabled UK officials to ensure an appropriate response should the situation on the ground deteriorate.

Our assessment

23.10 We presumed that the differences among Member States about the fine tuning of these measures implied in concerted UK lobbying to continue listing the entities, was why

57 The committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative for Foreign Affairs and Security Policy (HR) and the Council, monitor the international situation in areas covered by the CFSP and exercise political control and strategic direction of crisis management operations, as set out in article 43 TEU.

it was decided to draw a veil over them via the use of a Council Declaration rather than an overt commitment embodied in the Council Decision. While this might be understandable from other perspectives, having to rely upon a Ministerial assurance continued to run contrary to the proper Parliamentary scrutiny of such measures.

23.11 However, rather than pursue this further in this instance, we have done so via our present inquiry into the scrutiny of European business.

23.12 In the meantime, we cleared the Council Decision and Council Regulation.[58]

The most recent Council Decision

23.13 The draft Council Decision that we considered on 10 July extended, for six months, the validity of Decision 2012/96/EU (which suspended the application of the appropriate measures set out in Decision 2002/148/EC).

23.14 The Minister for Europe said that, with elections currently set for 31 July, the next six months would be critical for Zimbabwe; extending Decision 2012/96/EU to cover the potential electoral period was therefore consistent with the EU's overall approach. Although in broad terms there had been significant progress in a number of areas since the formation of the Inclusive Government in 2009, there had been insufficient progress since July 2012 to warrant the lifting of "appropriate measures" at this stage. By extending the validity of Decision 2012/96/EU the measures could be re-imposed at any time if necessary: equally, if the situation improved in the light of peaceful and credible elections, the Measures could be lifted before their envisaged expiry in February 2014. He would keep the Committee updated with any changes.

Our assessment

23.15 It was plain that much could happen during the summer recess. In any event, we asked the Minister for an update no later than the end of August, with his assessment of subsequent developments and his views on their implications for both sets of EU measures (these, and the targeted measures referred to above).

23.16 In the meantime, we cleared this draft Council Decision.[59]

23.17 On 7 August, the BBC reported:

> "Zimbabwe's President Robert Mugabe has been declared the winner of the 31 July elections, with 61% of the vote and his Zanu-PF party gaining a two-thirds majority in parliament, but the opposition Movement for Democratic Change (MDC) has claimed massive fraud and says it will go to court.
>
> "International opinion on the poll is sharply divided with Western countries generally condemning it, while most African leaders — except Botswana — have congratulated Mr Mugabe on his re-election.

58 See (34846) — and 34847 —: HC 83–iii (2013–14), chapter 23 (21 May 2013) and HC 86–xxxix (2012–13), chapter 8 (24 April 2013).

59 See (35129) — : HC 86–xi (2012–13), chapter 21 (5 September 2013).

"Western observers were barred from the election. Monitors from the African Union (AU) and the Southern African Development Community (Sadc) praised the poll for being peaceful but still noted several irregularities. Zanu-PF has denied allegations of fraud.

"AU mission head Olusegun Obasanjo said he had never seen a perfect election and that the discrepancies were not large enough to affect the result — Mr Mugabe gained 938,085 more votes than his rival Morgan Tsvangirai.

"The main bone of contention has been the voters' roll and what a local observer group, the Zimbabwe Election Support Network (Zesn) and its 7,000 observers, said was a 'systematic effort to disenfranchise an estimated one million voters'."[60]

The Minister's letter of 29 August 2013

23.18 The Minister wrote as follows:

"The Foreign Secretary made statements on 3 and 22 August, citing grave concerns about Zimbabwe's harmonised elections that took place on 31 July 2013. ZANU-PF won 160 out of 210 parliamentary seats and Mugabe was re-elected as President with 61% of the vote. The African Union (AU) and Southern African Development Community (SADC) both sent observer missions. Their preliminary assessments on 2 August welcomed the peaceful conduct of elections but identified numerous flaws — including the failure to produce the voters roll, the large number of voters who were turned away on Election Day and the very high numbers of extra ballot papers that were printed. Neither report said they were fair or credible.

"The leader of the MDC-T, Morgan Tsvangirai, called the harmonised elections 'null and void' due to a number of irregularities. MDC-T launched multiple legal challenges against the election results. However, on 14 August, the Court postponed 'indefinitely' a ruling on whether to give MDC-T access to the critical election materials they need to prove their case, and on 16 August, the MDC-T withdrew their Constitutional Court case to challenge the Presidential result. The Constitutional Court proceeded with the hearing and on 20 August declared Mugabe the winner of the July 31 elections and dismissed Morgan Tsvangirai's petition for a re-run. Cases against individual constituency results remain. Following the court's ruling, President Mugabe's inauguration was held on Thursday 22 August.

"On 17–18 August, SADC held its annual Summit of Heads of State and Government in Malawi, where SADC Member States commended the Government and people of Zimbabwe for holding free and peaceful elections, congratulated ZANU-PF and President Mugabe for winning the elections, and reiterated their call for the lifting of all sanctions on Zimbabwe. Although SADC have still not said that Zimbabwe's elections were credible or fair, President Mugabe was made Deputy Chairperson of the SADC Summit; next year's SADC Summit will be held in

60 The full report is available at http://www.bbc.co.uk/news/world-africa-23591941.

Zimbabwe in August. Zimbabwe's membership of the SADC Troika increases the influence they will have on SADC's agenda.

"Though we welcome the peaceful conduct of elections, the Foreign Secretary has expressed grave concerns at reports of election irregularities. We await the detailed final observer reports of the AU and SADC. Once received, like other EU members, we will need to review carefully UK policy regarding EU Appropriate and Restricted Measures. As you know I am committed to full and transparent scrutiny and I am grateful to the Committee for expressing its interest; I will write to update you in due course."

The Council Implementing Decision and Council Implementing Regulation

23.19 In his Explanatory Memorandum of 4 October 2013, the Minister for Europe (Mr David Lidington) says that:

— following the final ruling of the Zimbabwean Constitutional Court on the result of elections on 20 August 2013, Council Decision 2013/469/CFSP fulfils the commitment that Member Sates made in the unpublished Council Declaration of February 2013, and must be implemented in EU legislation;

— Council Implementing Regulation (EU) No.915/2013 therefore amends Annex III to Regulation (EC) No.314/2004 to remove ZMDC (Zimbabwe Mining Development Corporation) from the list of entities subject to restrictive measures;

— ten individuals and one entity remain subject to active restrictive measures, while 81 individuals and eight entities remain subject to suspended listings; and

— EU Member States will consider all such measures when they come up for renewal in February 2014.

The Government's view

23.20 The Minister then comments as follows:

"The commitment that Member States made in the Political and Security Committee to delist ZMDC within one month of elections, captured in the Council Declaration in February 2013, has now been fulfilled. It reflects the fact that credible evidence has not come to light of ZMDC's involvement in undermining the electoral process, and that the Council did not express a unanimous view that those elections were not peaceful, transparent and credible. In that respect, the criteria were met and Member States concurred that the delisting should go ahead on the agreed timetable.

"However the delisting of ZMDC should not be taken as indicative of the wider EU response towards the Zimbabwean elections, nor as a precursor to further easing of restrictive measures on those individuals and entities who remain listed, either actively or suspended. These measures remain in place until February 2014, with all suspended listings remaining subject to review on a three monthly basis, and to re-

activation should any Member State break the consensus that suspension should continue.

"The Foreign Secretary has made clear the UK's grave concerns over the conduct of the elections, and those flaws that were highlighted in reports by both the Southern African Development Corporation (SADC) and the African Union (AU). Whilst they were largely peaceful, we strongly believe that an independent investigation of any allegations of election irregularities would be required for the election result to be deemed credible. The decision to delist ZMDC was agreed because the UK believes it is important that all EU Member States work together to maintain a unified position.

"With respect to ZMDC, the relaxation of the Kimberley Process restrictions in November 2012 allowed Zimbabwe access to a large number of markets around the world, and has meant that restrictions on sales affecting the EU only have no longer represented an effective mechanism in managing or curtailing diamond revenue flows. The UK will continue to work with EU partners towards a transparent diamond trade in Zimbabwe that meets international standards and ensures the Zimbabwean people reap its benefits.

"The UK has been clear that those restrictive measures that remain in place are fully justified. We will continue working with partners to ensure that the EU maintains a robust approach towards Zimbabwe. The EU will need to review and respond to the final reports of the SADC and the AU, and assess the new Government's early performance, before taking decisions on the renewal or any changes to restrictive measures when they come up for review in February 2014."

The Minister's letter of 4 October 2013

23.21 Referring to the unpublished Council Declaration whereby Member States agreed to delist ZMDC one month after elections took place, unless the Council declared that the elections were not peaceful, transparent and credible, or that there were reasonable grounds to suspect that ZMDC had been involved in undermining the democratic process the Minister says that, following the Zimbabwean Constitutional Court's declaration of the final result on 20 August, "the process in Brussels to fulfil this commitment commenced."

23.22 The Minister then notes that Decision 2013/469/CFSP amending Decision 2011/101/CFSP, as well as Council Regulation (EU) No. 915/2013 implementing these amendments in EU law, were adopted on 23 September 2013 without scrutiny. The attached Explanatory Memorandum sets out the scope and policy implications of the Decision and Regulation in full. He refers to his earlier letter and the Foreign Secretary's public statements that "made very clear that we have strong concerns about the conduct of the Zimbabwean elections, and underlined that we believe an independent investigation of reported irregularities should take place."

23.23 On ZMDC, the Minister says, "we entered into agreement on the delisting earlier this year in good faith in order to maintain the measures across the electoral period, and it was important to honour it within or as close to the agreed timescale as the Brussels machinery allowed. The draft decision was distributed on 18 September and adopted by

written procedure on 23 September." The need to over-ride scrutiny on this occasion was, the Minister says, "regrettably unavoidable."

23.24 Looking ahead, the Minister says:

> "The UK will continue to work with partners to ensure a robust EU position on Zimbabwe, including when considering the renewal of restrictive measures when they come round for discussion in early 2014. I will keep your Committee informed of developments."

Conclusion

23.25 **Though neither SADC nor the AU has produced their reports, SADC appears to have made its basic position clear (see the Minister's letter of 29 August). The likelihood of any independent investigation of allegations of election irregularities would therefore seem to be remote, since the cooperation of the Zimbabwe authorities would be a prerequisite.**

23.26 **There is thus little prospect of any change before both these measures and those under Article 96 of the Cotonou Agreement are reviewed early next year. We look forward to hearing from the Minister then.**

23.27 **In the meantime, we now clear these documents.**

23.28 **On this occasion and in these circumstances, we do not object to the Minister having agreed to their adoption prior to scrutiny.**

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

Department for Business, Innovation and Skills

Anti-Dumping Measures

(35300) 12963/13 COM(13) 564	Draft Council implementing regulation extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No. 511/2010 on imports of molybdenum wire, containing by weight at least 99.95 % of molybdenum, of which the maximum cross- sectional dimension exceeds 1.35 mm but does not exceed 4.0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97% of molybdenum, of which the maximum cross-sectional dimension exceeds 1.35 mm but does not exceed 4.0 mm, originating in the People's Republic of China.
(35317) 12948/13 COM(13) 569	Draft Council implementing regulation imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No. 1225/2009.

Other

(35268) 13115/13 COM(13) 583	Draft Council Decision concerning the renewal of the Agreement on cooperation in science and technology between the European Community and the Government of the Russian Federation.
(35270) 13125/13 COM(13) 552	Draft Council Regulation temporarily opening and providing for the administration of autonomous tariff quotas of the Union on imports of certain fishery products into the Canary Islands from 2014 to 2020.
(35277) 13513/13 COM(13) 561	Commission Communication — *The annual Union work programme for European standardisation*.
(35278) 13300/13 COM(13) 562	Commission Report: *Implementation of the European Progress Microfinance Facility — 2012*.
(35289) 13326/13 COM(13) 612	Draft Council Decision on the position to be taken within the Joint Committee set up by Article 11 of the Agreement between the European Union and Moldova on protection of geographical indications of agricultural products and foodstuffs, as regards the adoption of the rules of procedure of the Joint Committee.

(35301) 12978/13 COM(13) 573	Draft Council implementing regulation imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India.
(35313) 13759/13 + ADD 1 COM(13) 624	Commission Communication — *Measuring innovation output in Europe: towards a new indicator*.

Department of Energy and Climate Change

(35284) 13220/13 COM(13) 605	Commission Recommendation to negotiate on amendments to the Energy Community Treaty.
(35308) 13642/13 + ADD 1 COM(13) 638	Commission Report: *Implementation of the Communication on Security of Energy Supply and International Cooperation and of the Energy Council Conclusions of November 2011*.

Department for Environment, Food and Rural Affairs

(35258) 12452/13 COM(13) 521	Draft Regulation amending Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).
(35307) 13635/13 COM(13) 617	Commission Report on decoupling progress.

Department for International Development

(35290) 13338/13 COM(13) 596	Draft Council Decision modifying the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of European Union aid under the multi-annual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of the financial assistance for the Overseas Countries and Territories to which part Four of the Treaty on the Functioning of the EU applies.

Department for Transport

(35296) 13423/13 COM(13) 611	Draft Regulation amending Regulation (EC) No. 91/2003 of 16 December 2002 on rail transport statistics, as regards the collection of data on goods, passengers and accidents.

Foreign and Commonwealth Office

(35288) 13313/13 COM(13) 577	Draft Council Directive amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular.
(35315) —	Council Decision 2013/xxx/CFSP of [xxx] on the signing and conclusion of the Agreement between the European Union and the Republic of Korea establishing a framework for the participation of the Republic of Korea in European Union crisis management operations.
(35316) —	Council Decision 2013/…/CFSP of amending Decision 2010/573/CFSP concerning restrictive measures against the leadership of the Transnistrian region of the Republic of Moldova.

HM Treasury

(35275) 13151/13 COM(13) 602	Draft Council implementing Decision on approving the macroeconomic adjustment programme for Cyprus and repealing Council Decision 2013/236/EU.
(35280) 13310/13 COM(13) 556	Draft Council Decision on the signature of the agreement between the European Union and the French Republic concerning the application to the collectivity of Saint-Barthélemy of Union legislation on the taxation of savings and administrative cooperation in the field of taxation.
(35293) 13308/13 COM(13) 555	Draft Council Decision on the conclusion of an agreement between the European Union and the French Republic concerning the application to the collectivity of Saint-Barthélemy of Union legislation on the taxation of savings and administrative cooperation in the field of taxation.
(35294) 13311/13 COM(13) 586	Recommendation for a Council Decision concerning the accession of Croatia to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

(35306) 13545/13 COM(13) 626	Commission Communication — *Assessment of action taken by Cyprus in response to the Council Recommendation of 16 May 2013 with a view to bringing an end to the situation of excessive government deficit*.
(35314) 13752/13 COM(13) 635	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management (application EGF/2013/004 ES/Comunidad Valenciana building materials from Spain).

Office for National Statistics

(35236) 13169/13 COM(13) 571	Commission Report on implementation of the Regulation (EC) No. 453/2008 on quarterly statistics on Community job vacancies.

Formal minutes

Wednesday 9 October 2013

Members present:

Mr William Cash, in the Chair

Andrew Bingham	Chris Kelly
James Clappison	Stephen Phillips
Michael Connarty	Jacob Rees-Mogg
Nia Griffith	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 24 read and agreed to.

Resolved, That the Report be the Seventeenth Report of the Committee to the House.

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

****

[Adjourned till Thursday 10 October at 10.00 a.m.

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)
Andrew Bingham MP (*Conservative, High Peak*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Geraint Davies MP (*Labour/Cooperative, Swansea West*)
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*)
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 members were also members of the committee during the parliament:
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Penny Mordaunt MP (*Conservative, Portsmouth North*)
Mr Joe Benton MP (*Bootle*)

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