House of Commons

European Scrutiny Committee

Thirty-eighth Report of Session 2013–14

Documents considered by the Committee on 5 March 2014, including the following recommendations for debate:

Relocation of the European Police College (CEPOL)
Procedural safeguards for children and vulnerable persons in criminal proceedings
The right to provisional legal aid and EU law

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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This week the Committee considered the following documents:

The EU and the Central African Republic

We are continuing our detailed scrutiny of these Council Decisions, and report in two separate Chapters this week on the latest updates we have received from the Foreign Office. We clear the two Council Decisions to launch the mission and on its status in the CAR (known as the Status of Forces Agreement), asking the Minister for Europe to deposit in due course the assessment by the Political and Security Committee of the Operation's progress, which is due three months after its launch.

The European Solidarity Fund

These two related documents (a Draft Regulation and a Commission Report) have been considered by the Committee in September 2013 and January 2014 respectively; in both cases we asked for further information, which has now been received. It seems that a general approach on the Draft Regulation appears to be under discussion with the European Parliament and Commission in trilogues; we keep the Regulation under scrutiny and ask the Minister whether this general approach meets its key objectives. When considering the Communication in February, we asked the Government whether it intended to apply to the Fund in connection with the recent severe flooding in the UK if the necessary criteria were met. The Minister has replied but is not yet fully able to answer the Committee's questions, particularly as to whether or not the Government intends to make an application for assistance from the Fund. Pending that fuller response the Commission Report, too, remains under scrutiny.

Voting rights of EU citizens

This Commission Communication and Recommendation recommend ways of ensuring that EU citizens living in another Member State retain the right to vote in national Parliamentary elections in their Member State of origin. The recommendations mainly concern five Member States — Cyprus, Denmark, Ireland, Malta and the UK — whose electoral laws remove the right to vote in national elections when resident abroad (although the length of absence triggering the removal of the right varies significantly, from as little as six months in Cyprus to 15 years in the UK). As the Minister observes, the Communication and Recommendation have no direct policy or legal implications, and the Recommendation has no binding force. Because of the interest in the House in these matters, we report them while clearing them from scrutiny.

1 Relocation of the European Police College (CEPOL)

(35619) 17043/13 + ADDs 1–2 —	Initiative of Belgium, Bulgaria, the Czech Republic, Germany. Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden for a Regulation of the European Parliament and of the Council amending Decision 2005/681/JHA establishing the European Police College (CEPOL)

Legal base	Article 87(2)(b) TFEU; co-decision; QMV
Department	Home Office
Basis of consideration	Minister's letter of 27 February 2014
Previous Committee Reports	HC 83–xxvi (2013–14), chapter 3 (8 January 2014); HC 83–xxxiv (2013–14), chapter 23 (26 February 2014) is also relevant
Discussion in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested; opt-in decision recommended for debate (decision reported 8 January 2014)

Background and previous scrutiny

1.1 The draft Regulation — a Member State initiative presented by 25 Member States (excluding Denmark, the UK and Ireland) — provides for the relocation of the European Police College (CEPOL) from Bramshill (Hampshire) to Budapest. It follows an announcement by the Government in December 2012 that it intended to sell the Bramshill site and a political agreement reached by the Justice and Home Affairs Council last October on "provisional arrangements" to host CEPOL in Budapest. Relocating CEPOL would require changes to a 2005 Decision establishing CEPOL as an EU Agency and providing for it to be based in Bramshill.[1] Our Twenty-ninth Report, agreed on 8 January 2014, sets out the background to the proposed move and the content of the draft Regulation, which is subject to the UK's Title V (justice and home affairs) opt-in. The Government told us that it had until 8 March to notify the Council Presidency of its opt-in decision.

1.2 The Commission opposes the draft Regulation, which is inconsistent with its own proposal to merge and co-locate CEPOL with Europol in The Hague.[2] There is little enthusiasm amongst Member States for the Commission's proposed merger. In her Written Ministerial Statement to the House on 27 February, the Home Secretary indicated that the Presidency would seek, at the Justice and Home Affairs Council on 3–4 March, to:

1 Article 4 of Council Decision 2005/681/JHA, OJ No. L 256, 01.10.2005.

2 See (35741) 5522/14: HC 83–xxxiv (2013–14), chapter 23 (26 February 2014).

> "secure formal agreement not to proceed with the Commission's proposed merger of the two agencies. The UK will support this position and there is expected to be a strong overall consensus in favour of opposing the merger."[3]

1.3 A provisional press release issued after the first day of the Justice and Home Affairs Council, on 3 March, confirmed that provisions in the draft Europol Regulation concerning the proposed merger of CEPOL and Europol would be removed, and continued:

> "The Council also held an orientation debate on the future of CEPOL. Member States agreed on the need to update the existing decision in the light of the Treaties post-Lisbon and invited the Commission to present a legislative proposal on the new legal basis for CEPOL as soon as possible."[4]

1.4 In his Explanatory Memorandum on the draft CEPOL Regulation, the Minister for Policing, Criminal Justice and Victims (Damian Green) told us that the relocation of CEPOL to Budapest offered "an obvious benefit" insofar as it would release the UK from its existing obligation to house CEPOL and facilitate the move from Bramshill, freeing the site for sale later this year.

1.5 We asked the Minister to clarify the Government's position on a number of issues, in particular:

- whether the Government agreed with the choice of Budapest, and why it would be a good base for CEPOL;
- whether the draft Regulation should cite a different legal base, in light of the Government's concern to avoid EP involvement in decisions on the location of EU agencies;
- whether a draft Regulation was the appropriate legal instrument to amend the 2005 Council Decision establishing Bramshill as CEPOL's base;
- the costs which the UK may be required to bear for the relocation of CEPOL; and
- the implications of the Government's opt-in decision for its 2014 block opt-out of pre-Lisbon EU police and criminal justice measures (in particular, confirmation that a decision to opt into the draft Regulation would remove the 2005 CEPOL Decision from the list of measures subject to the UK's block opt-out).

1.6 We recommended that the Government's opt-in decision should be debated in European Committee B and suggested that the opt-in debate should address the consequences for the UK of accepting the full jurisdiction of the Court of Justice, should the Government decide to opt into the draft Regulation.

3 *HC Deb*, 27 February 2014, col. 27WS.

4 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/141295.pdf.

The Minister's letter of 27 February 2014

1.7 The Minister (Damian Green) explains the Government's reasons for the sale of Bramshill and its support for the draft Regulation:

> "As you know, CEPOL currently shares the Bramshill site with the College of Policing. The need to seek greater efficiencies and improve the support that the College will be able to provide to policing in the future meant that the decision had to be taken to close the site and relocate the College of Policing. This was not an easy decision, but with running costs of some £5m per annum, the UK is no longer able to justify keeping this historic site in the public estate at the tax payer's expense.
>
> "As soon as Bramshill was placed on the market in the summer of 2013, we initiated discussions with the Lithuanian Presidency with a view to finding a new temporary host for CEPOL as soon as possible. Further to the common accord by Member States on the selection of Budapest as the temporary seat at the JHA Council in October 2013, the next step is for the Council and the European Parliament to reach agreement on [the] initiative.
>
> "The formal publication of the Regulation is an important step towards ensuring that CEPOL vacates the Bramshill site in good time for any sale. Buyers would expect vacant possession, so in the context of securing the sale it is very much in UK interests to support the proposal."

1.8 The Minister adds that the Government is considering its position on whether to opt into the draft Regulation and undertakes to:

> "write [...] again as soon as this position is established and respond to the points you raise in your Report."

Conclusion

1.9 **We understand that the deadline for notifying the Government's opt-in decision is 13 March, not 8 March as we were originally informed. To date, no opt-in debate has been scheduled, even though our debate recommendation was made nearly two months ago, at our meeting on 8 January. The Minister offers no explanation for the delay; nor does he provide a response to the questions we raised in our earlier Report, despite the fact that none pre-empts the Government's opt-in decision. The paucity of the information so far made available to the House would make it difficult for Members to come to an informed view at the conclusion of the opt-in debate. Given the short time now available, we ask the Minister to ensure that the information we have requested is provided before the debate takes place. We also expect to receive a full explanation of the reasons for the delay in scheduling the opt-in debate, and ask the Minister to clarify what was agreed at the Justice and Home Affairs Council on 3–4 March and to set out the next steps for determining the future of CEPOL. Meanwhile, the draft Regulation remains under scrutiny.**

2 Procedural safeguards for children and vulnerable persons in criminal proceedings

(a) (35646) 17633/13 +ADDs 1–3 COM(13) 822	Draft Directive on procedural safeguards for children suspected or accused in criminal proceedings
(b) (35656) 17642/13 C(13) 8178	Commission Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings

Legal base	(a) Article 82(2)(b) TFEU; QMV; co-decision (b) Article 292 TFEU
Department	Justice
Basis of consideration	Ministers' letters of 6 February and 26 February 2014
Previous Committee Report	HC 83–xxix (2013–14), chapter 2 (22 January 2014)
Discussion in Council	Early 2014
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; opt-in decision recommended for debate on the floor of the House (decision reported 22 January 2014); further information requested

Background and previous scrutiny

2.1 A detailed account of the background to the draft Directive and Recommendation, their provisions and the Government's view of them is provided in our Thirty-second Report.[5]

2.2 In that Report, we asked the Secretary of State for Justice (Chris Grayling) to:

- inform us of any "emerging subsidiarity concerns" given the generality of the Government's subsidiarity assessment, its acceptance that common procedural standards would be better achieved at EU than national level and the absence of any evidence in that assessment as to the soundness of the Commission's impact assessment; and
- provide us with the Government's preliminary view on the question of UK participation in the draft Directive and the factors that would inform that eventual decision, taking into account the following three considerations:

5 HC 83–xxix (2013–14), chapter 2 (22 January 2014).

— the definition of a "child" in the Directive as anyone below 18 years of age (as opposed to under 17 in England and Wales and under 16 in Scotland);

— heightened public interest in matters relating to the funding of legal representation, in the light of current domestic proposals to reform legal aid and relevance of mandatory funding of representation for "children" as so defined; and

— the extent to which the draft Directive is compatible with corresponding rights in the EU Charter of Fundamental Rights, particularly "the right to a fair trial".

The Minister's letter of 6 February 2014

2.3 The Secretary of State for Justice says that:

- he has nothing to add as regards subsidiarity concerns, except to note those previously expressed by the Committee; and
- no decision has yet been made on the opt-in and the Government's analysis of the proposal and its implications is ongoing.

2.4 On the three specific areas for consideration which we highlighted, the Minister says that:

- on the question of the definition of a "child" in the Directive as below 18 years of age, this would potentially give "an entire category of people (16 and 17 year-olds)" a "completely revised set of rights". It would also mean "a revision for the obligations for the Police" when dealing with suspects in the new category. The Government considers that a more proportionate solution would be to retain the current definition in each Member State;
- addressing the relevance of mandatory legal representation for children in criminal proceedings to domestic proposals on legal aid reform, the proposed reform will have no impact on the current regime for legal representation of children; and
- there is no evidence the draft Directive compromises the right to a fair trial (Article 47 of the EU Charter of Fundamental Rights and the corresponding right in the ECHR, Article 6) or reduces EU citizens' access to a fair trial but he adds that the Government remains to be convinced that it enhances that right substantially.

2.5 On the Recommendation, the Minister provides a more detailed view than previously (though still reminding us of the non-legislative nature of the document). On child defendants, he says that the document contains "fewer and less prescriptive" obligations than the draft Directive and that current UK practice already complies with many of its provisions. On other defendants "who might rightly be classified as vulnerable", the Government also supports the principle of "special treatment". The Minister thinks it likely that current UK practice complies with these provisions, but should the UK act on the Recommendation (which it does not plan to do), certain provisions might prove disproportionate (for example, recording all interviews audio-visually).

2.6 The Minister ends with a commitment to engaging with Parliament and keeping us informed on both the current documents and the overall procedural rights package.

Our letter of 12 February 2014

2.7 We said that we welcomed the Minister's commitment to keeping us up-to-date with developments both on these documents and the overall procedural rights package. We looked forward to hearing from the Minister with the Government's view on whether it was minded to opt into the draft Directive, in good time formally to consider (and report on) it before the debate took place.

2.8 In advance of that debate, we asked the Minister to provide a detailed assessment of the implications of the extension of procedural safeguards by the proposal to a wider age category of "child" suspects and defendants in criminal proceedings. We said that we believed that this should be a material factor for the Government to consider when deciding whether to opt into the proposal, either pre- or post-adoption.

The Minister's letter of 26 February 2014

2.9 The Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara) says that the Government:

- needs to reach its opt-in decision by 19 March and will endeavour to indicate its likely decision before the date of the opt-in debate, but would like to hear the Committee's own view before that;
- agrees that the wider age range is a very important issue which will be a material part of the Government's consideration of the opt-in or otherwise;
- considers that the changes required to English law to accommodate a wider age range mainly would need to address 17–18 year-olds within the Police and Criminal Evidence Act (PACE) and its associated codes;
- notes, however, that some domestic extension to 17 year-olds of the safeguard for 16 year-olds (and under) to have an appropriate adult present has already taken place by virtue of the High Court judgment last April in *R (on the application of HC) v Secretary of State for the Home Department (2013);*
- estimates costs of £2.1 million would be involved in transporting 17 year-olds, after charge, to local authority accommodation for overnight detention (as required by Article 3 of the Directive) before their transportation to court the next day. This would be instead of the current practice of detention in police stations (section 38 of PACE);
- offers a breakdown of this estimate by explaining that an additional 5,200 places in Local Authority accommodation would be required each year in England and Wales at a cost of approximately £395 per day per 17 year-old suspect;

- provides an indication of the further costs of providing secure accommodation for 17 year-olds in a minority of cases — the number of secure beds currently available is around 280 at an estimated daily cost of £580 per day;

- stresses the "strictly provisional and illustrative nature of these estimates" which will need to be reviewed to ensure that they are robust;

- highlights that the consent of parents or guardians, not independent consent (which currently suffices as "appropriate consent" under section 65 of PACE) would be needed for 17 year-olds for all police procedures in Part V of PACE. These include "searches to ascertain identity, intimate searches, x-rays and ultrasounds, fingerprinting, impressions of footwear, intimate samples, non-intimate samples and photographing of suspects";

- acknowledges that the Directive applies beyond the police procedures to the Court procedures but clarifies that the Directive would not affect criminal sentencing and "offender management" of juveniles as under 18s are already classified as "children" for these purposes. Although the Government does not anticipate any significant implications from the different definition of child alone in the Directive, following its adoption, it would need "to consider whether detailed adjustments might need to be made to legislation as part of the process of transposing the Directive into domestic law";

- indicates that the Directive, in requiring all those under 18 to be treated the same, could have an even greater impact in Scotland where:

— the current definition of child, in most cases (excepting those subject to a Compulsory Supervision Order) is someone under 16; and

— where the Criminal Justice (Scotland) Bill proposes to give greater discretion to 16 and 17 year-olds as to who, if anyone, should be informed of their arrest; and

- considers that Northern Ireland would seem to be less affected by the Directive, since the definition of "arrested juvenile" set out in PACE (NI) was amended in 2007 to mean anyone under 18 years of age and corresponding measures have already been taken to provide a pool of trained appropriate adults required by this change (the Northern Ireland Appropriate Adult Scheme).

2.10 The Minister concludes his letter by saying that:

> "There are a number of other areas where potential change has been identified but those seem relatively minor and concern legislation for which other Ministers are responsible and we are consulting them on what those implications might be. I do not expect those to be significant to the consideration in this context but I will advise separately if that turns out not to be the case."

Conclusion

2.11 **We note that, with the exception of Northern Ireland, the Government's assessment indicates that the proposed extension of criminal procedural safeguards in**

the draft Directive to all under the age of 18 would increase the costs of the criminal justice and policing systems in the UK by a minimum of £2.1 million. We also consider that legislation concerning the vulnerability and need for protection of a certain category of defendant is best left to national policy and discretion. Both of these considerations are relevant to the Government's opt in decision, but the latter on its own leads us to the view that UK participation in the proposal, in its current form, would be disadvantageous.

2.12 **We wrote to the Government on 12 February, recognising that on this occasion there were links between the three proposals in the procedural rights package which meant they usefully could be debated together. We requested the Minister to ensure that three hours, rather than one and a half hours, be allowed for such a joint opt-in debate. We still await confirmation of this.**

2.13 **We look forward to the Government clarifying its own view of participation in the current draft Directive in the motion for that debate, and remind the Minister that we should receive the draft motion setting out the Government's approach to the opt-in in time to consider it at our weekly meeting before the debate takes place. In the meantime we retain both current documents under scrutiny.**

3 The right to provisional legal aid and EU law

(a) (35652) 17635/13 + ADDs 1–3 COM(13) 824	Draft Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European Arrest Warrant Proceedings
(b) (35657) 17643/13 C(13) 8179	Commission Recommendation of 27.11.2013 on the right to legal aid for suspects or accused persons in criminal proceedings

Legal base	(a) Article 82(2) TFEU; QMV; co-decision (b) Article 288 TFEU;—
Department	Ministry of Justice
Basis of consideration	Ministers' letters of 6 February and 26 February 2014
Previous Committee Report	HC 83–xxix (2013–14), chapter 3 (22 January 2014)
Discussion in Council	Early 2014
Committee's assessment	Legally and politically important
Committee's decision	(a) Not cleared; opt-in decision recommended for a debate on the floor of the House (decision reported 22 January 2014); further information requested

(b) Not cleared

Background

3.1 The proposed Directive seeks to establish rules that aim to ensure that any persons suspected or accused of a crime, whose liberty is being deprived at the early stage of proceedings (including those subject to a European Arrest Warrant (EAW)) have access to legal aid pending any assessment and final decision as to their eligibility for such assistance.

Previous scrutiny

3.2 When we last reported on the draft Directive,[6] we did not think there were sufficient grounds for recommending that the House adopt a Reasoned Opinion for non-compliance with subsidiarity on this proposal.

3.3 The only provision of the draft Directive with which the UK did not appear to comply was Article 5(2), which requires that in European Arrest Warrant (EAW) proceedings legal aid should be available for the appointment of a lawyer in the Member State that issues the EAW to assist the lawyer in the Member State that executes the EAW. We asked the Government to confirm this, and to provide further details of the regulatory and financial consequences of complying with Article 5(2).

3.4 We recommended that the Government's opt-in decision be debated in Government time on the floor of the House, together with two related criminal justice proposals on the presumption of innocence and juvenile defendants.

Ministers' letters

The Minister's letter of 6 February 2014

3.5 In his letter of the above date, the Secretary of State for Justice (Chris Grayling) confirmed that Article 5(2) appears to be the only specific aspect of the proposal that was "unknown" in the legal aid regime in England and Wales, and so would require an extension of that regime to fund it. Legal aid is available for persons subject to an EAW issued to the UK. However, where the UK is the issuing State, legal aid is not currently provided for a requested person to appoint a lawyer in this country in order to assist their lawyer in the executing State.

3.6 The Minister further confirmed that there would be changes needed to the regulations governing the operation of the criminal legal aid scheme, for example the Criminal Legal Aid (General) Regulations 2013, which would need to be amended by way of the negative resolution process. Insofar as Article 5(2) would require funding for issues of non-England and Wales law, an order may also need to be brought forward under section 32(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to make exceptions from the general prohibition on the provision of legal aid in relation to matters of "foreign law". This would be achieved through secondary legislation by the negative resolution process.

6 See headnote.

3.7 That was not to say, however, that there were no other financial implications arising from the proposal. For example, it was not currently clear what would be the effective "trigger point" that signalled the engagement of the terms of the Directive, nor what was intended to be involved in the data collection process envisaged. The Government has had to make some assumptions in assessing the text (for example, that the proposals in respect of provisional legal aid are intended to be restricted to the early stages of proceedings, as set out in paragraph 25 of the Commission's explanatory memorandum and recital 9) and it will need to test those assumptions in any forthcoming negotiations.

3.8 With reference to the link between this draft Directive and the Access to Lawyer Directive,[7] the Minister said that the Government will be considering whether to participate in the latter Directive. Even if it did not, though, if it opted into this draft Directive on legal aid the Government would have to make sure that domestic law was compliant with aspects of the Access to a Lawyer Directive. For example, Article 3(3) of the Access to a Lawyer Directive provides that there should be a right to meet a lawyer in private and that Member States ensure that suspects have the right for their lawyer to be present and participate when questioned. The provisions in England and Wales appear to be broadly in line with that Article for those circumstances for which national law provides. However, it will be necessary, the Minister stated, to give careful consideration to whether this Article would adversely impact on the current scheme under Criminal Defense Direct which provides telephone advice to clients detained at police stations. This scheme is limited to low level offences such as drink driving offences, non-imprisonable offences and breach of bail warrants. It is an efficient and proportionate system and if it needed to be amended to comply with these Directives or if the Directives resulted in a decrease in the number of telephone advice cases there would be cost and practical implications to consider.

The Minister's letter of 26 February 2014

3.9 In a letter of the above date the Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara) wrote to us with the estimated costs of extending the legal aid regime to cover the extension foreseen in Article 5(2):

> "Following an examination of the available data, we have now been able to provide an initial estimate of potential costs related to Article 5(2) the detail of which is set out in the Impacts Assessment checklist which I attach with this response. In summary, the net monetised discounted cost impact of this Article over a ten year appraisal period if opting into the Directive, is estimated to be within the range of £1.5 million to £5 million, with a main estimate of around £2 million. This would therefore equate to an undiscounted cost of approximately £150,000 to £500,000 with a main estimate of around £200,000 per annum.
>
> "In respect of the other potential financial implications that were set out in the EM, it is not yet possible to make an accurate assessment until we have clarity on the ambiguity of the text in relation to the effective "trigger point" that signals the

7 2013/48/EU.

engagement of the terms of the Directive, and on the data collection process envisaged in the text, which we will need to test in any forthcoming negotiations.

"There may also be upward pressures on the legal aid budget as a result of the references in this proposal to other rights. This could require, for example, a right to meet a legally aided lawyer in private and to have the lawyer present when questioned (if it reads in entirety the provisions of the Access to a Lawyer Directive). Such a requirement could have cost implications on the Criminal Defence Direct Scheme that provides legal advice in certain circumstances to clients over the telephone. These are matters on which we would need clarification during negotiations."

Conclusion

3.10 **We thank the Ministers for their letters. We note that the extension of legal aid in Article 5(2) is, according to the Commission's explanatory memorandum, required "in order to ensure the effectiveness of the right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, according to Article 10 of the [Access to a Lawyer Directive]".[8] Given that the UK has not opted into the Access to a Lawyer Directive, and Article 5(2) of the proposed legal aid Directive is premised on it, and would impose both financial and regulatory burdens, we are of the opinion that the Government should not exercise its right to opt into the draft legal aid Directive at this stage.**

3.11 **We note some hesitancy in the language of the Minister's letter of 26 February about the Government being able to communicate its opt-in decision to Parliament before the opt-in debate takes place ("we will endeavour to indicate the way the Government is minded to apply the Protocol"). Let us be clear: we expect to receive the draft motion setting out the Government's approach to the opt-in in time to consider it at our weekly meeting before the debate takes place.**

3.12 **We also look forward to the Government's confirmation that the debate will take place over three hours, given that opt-in decisions for three significant legislative proposals in the criminal justice field are being considered.**

3.13 **In the meantime, both documents remain under scrutiny.**

8 See p.7, para 33.

4 European Union Solidarity Fund

(a) (35239) 12883/13 COM(13) 522	Draft Regulation amending Council Regulation (EC) No. 2012/2002 establishing the European Union Solidarity Fund
(b) (35654) 17741/13 + ADD 1 COM(13) 856	Commission Report: *European Union Solidarity Fund: Annual Report 2012*

Legal base	(a) Articles 175 and 212(2) TFEU; co-decision; QMV (b) —
Department	HM Treasury
Basis of consideration	Minister's letter of 27 February 2014
Previous Committee Reports	(a) HC 83–xiv (2013–14), chapter 15 (11 September 2013) (b) HC 83–xxviii (2013–14), chapter 6 (22 January 2014)
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

4.1 The EU Solidarity Fund (EUSF) was created in 2002 with the aim of enabling the EU to respond to major disasters inside the EU and in candidate countries (those involved in accession negotiations). The purpose is to grant affected countries financial aid, where necessary, to help them bear the financial burden inflicted on them by natural disasters.

4.2 A major disaster is defined as one where damage exceeds the lower of 0.6% of Gross National Income or €3 billion in 2002 prices. Applications for cases that do not meet this threshold may be accepted exceptionally from countries affected by the same disaster as in a qualifying country or for regions where a disaster affects a major part of the population with serious and lasting repercussions. Aid is normally limited to alleviating non-insurable damage and is repayable if assistance is received subsequently from third parties. Operations benefiting from the EUSF cannot benefit from other EU funds.

4.3 The EUSF Regulation requires the Commission to report annually on the Fund.

4.4 Negotiations to improve the functioning of the EUSF have been ongoing and in October 2011 the Commission presented a Communication on the future of the Fund,

which included an evaluation and proposals for improvement.[9] It said that this Communication formed the basis for discussions with Member States, the European Parliament and other stakeholders and that it was also the starting point for the current proposal, document (a), which it presented in July 2013.

4.5 The main objective of the Commission's proposal was to improve the functioning of the existing EUSF. Whilst the Commission said that the EUSF was generally meeting this objective, it was considered not to be sufficiently responsive and visible, as well as being too complicated in terms of setting clear criteria for activation. It recommended making the instrument quicker to respond to disasters, more visible to citizens and simpler to use, with clearer provisions in place. The Commission suggested this could be achieved by a number of technical adjustments to the scheme.

4.6 In September 2013, we said that, whilst the Commission's intention of improving the functioning of the EUSF was clearly welcome, we noted the Government's intention of ensuring the adequacy of the details of the draft Regulation, particularly with regard to budgetary matters. So, before considering the matter further, we asked to hear about progress in satisfying any Government concerns during Council discussion of the proposal. Meanwhile the document remained under scrutiny.

4.7 The Commission Report for 2012, presented in December 2013, document (b), considered EUSF applications received in 2012 as well as applications pending from 2011. The Commission noted its view of the management of the EUSF in 2012 supported discussions in its 2011 Communication on the future of the Fund and recalled that it had presented the draft Regulation to improve operation of the EUSF by, among other things, facilitating a swifter response to applications for aid. The Report was accompanied by three annexes which set out the 2012 thresholds for mobilisation of the Fund (for the five Member States, Germany, Spain, France, Italy and the UK, limited to €3 billion in 2002 prices, the threshold was €3.606 billion), EUSF applications pending from 2011 and those received in 2012 and all applications to the Fund since 2002.

4.8 When, in January 2014, we reported on this document we said that it gave useful support for the need to improve the EUSF. But we also said that, in our view, the Government should make an application for EUSF aid in connection with the recent severe flooding in the UK, if such an application complied with the relevant criteria. We asked whether this was the Government's intention, what information it was collecting in support of any such application to the fund and, if it was not intending to apply, why this was the case. In the meantime this document also remained under scrutiny.[10]

The Minister's letter of 27 February 2014

4.9 The Economic Secretary to the Treasury (Nicky Morgan) tells us, in relation to the draft Regulation, document (a), that:

- Council working group consideration of the proposal began in January;

9 (33223) 12794/11: see HC 428–xl (2010–12), chapter 13 (2 November 2011).

10 See headnote.

- the Presidency has conducted negotiations to a very compressed timetable with a number of working group meetings since 10 January;
- a Presidency text was discussed by COREPER on 12 February and is now in trilogue; and
- given the pace at which discussions are progressing, the timetable for negotiations going forward is not clear but the Government understands that the Presidency is aiming to secure an agreed text in time for the European Parliament's March or April plenary.

4.10 Reminding us that the Government had two key objectives in the negotiations, the Minister says that:

- the first was to ensure that budgetary restraint was considered;
- in discussions thus far the Government has worked with like-minded Member States to eliminate language that could result in budget size not being respected;
- this has included discussions of the proposed mechanism for advance payments funded by recoveries; and
- the Government will continue to carefully assess all proposals and intervene as appropriate to ensure that budgetary control is exercised.

4.11 As for the Government's second objective, to protect the existing scope of the Fund, the Minister says that the Government has achieved this by resisting proposed expansions and pressing for the insertion of clear eligibility requirements and removal of ambiguous language that exposes the Fund to interpretation and confusion.

4.12 Turning to our questions in relation to the recent flooding in the UK, which we posed in the context of the Commission Report, document (b), the Minister says that:

- the Government is doing everything it can to support those affected by flooding and has announced a package of measures to support affected homes and businesses;
- further detail of the package of measures can be found on the Treasury website, www.gov.uk/government/news/uk-floods-2014-government-response;
- the Government notes that there are a number of eligibility requirements for a Member State applying for EUSF assistance;
- these include a threshold of total direct damage greater than €3 billion in 2002 prices or 0.6% of the UK's GNI, apart from in exceptional circumstances relating to intense regional damage;
- as part of the wider response, these eligibility requirements are being considered; and
- the Government continues to consider all funding options, including EUSF, to ensure that it pursues the best course of action for UK taxpayers.

Conclusion

4.13 **We are grateful to the Minister for her account of where matters stand on the draft Regulation. However, we are concerned that a general approach appears to be under discussion with the European Parliament and Commission in trilogues. We ask the Minister whether:**

- **the Government thinks that the general approach meets its two objectives; and**
- **whether the adoption of the general approach by COREPER means the Government is irreversibly committed to texts of the main elements of the proposal and, if so, what this means for the scrutiny reserve.**

4.14 **Meanwhile this document remains under scrutiny.**

4.15 **As for the Commission Report on EUSF activity in 2012, we note the information the Minister gives us about the consideration the Government is giving to possible use of the Fund in relation to the recent flooding. However, clearly the Minister is not yet able to fully answer our questions, particularly as to whether or not the Government intends to make an application for assistance from the Fund. So pending that fuller response this document also remains under scrutiny.**

5 Financial services: securities financing transactions

(a) (35780) 6020/14 + ADD 1 COM(14) 40	Draft Regulation on reporting and transparency of securities financing transactions
(b) (35829) 6860/14 + ADDs 1–3 SWD(14) 30	Commission Staff Working Document: Impact Assessment accompanying the draft Regulation on structural measures improving the resilience of EU credit institutions and the draft Regulation on reporting and transparency of securities financing transactions

Legal base	(a) Article 114 TFEU; co-decision; QMV (b) —
Documents originated	29 January 2014
Deposited in Parliament	(a) 5 February 2014 (b) 3 March 2014
Department	HM Treasury
Basis of consideration	EM of 26 February 2014
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared, further information requested

Background

5.1 Shadow banking can be described as non-bank credit activity conducted by entities that are outside the regulated system, for example accepting funding with deposit-like characteristics, performing maturity and/or liquidity transformation, undergoing credit risk transfer and using direct or indirect financial leverage.

5.2 In March 2012 the Commission published a Green Paper to launch a consultation on shadow banking, in which it called for responses, particularly to 15 questions it posed, by the end of May 2012. We reported the Government's response in June 2012.[11] In September the Commission followed up its Green Paper with a Communication summarising work it had undertaken so far and setting out possible further actions in this area, including legislative proposals.[12]

11 (33781) 7988/12: see HC 428–lviii (2010–12), chapter 6 (25 April 2012) and HC 86–vi (2012–13), chapter 12 (27 June 2012).

12 (35298) 13449/13 + ADDs 1–2: see HC 83–xviii (2013–14), chapter 12 (23 October 2013).

The documents

5.3 The Commission presents this draft Regulation, document (a), aimed at increasing transparency of certain transactions outside the regulated banking sector. This proposal complements the Commission's draft Regulation to stop the biggest banks from engaging in proprietary trading and to give supervisors the power to require those banks to separate other risky trading activities from their deposit-taking business.[13] The purpose of this proposal is to prevent banks from attempting to circumvent the rules contained within the other draft Regulation by shifting parts of their activities to the less-regulated shadow banking sector.

5.4 The draft Regulation provides a set of measures aiming to enhance regulators' and investors' understanding of securities financing transactions (SFTs). These transactions have been a source of contagion, leverage and procyclicality during the financial crisis and were identified in the Commission's Communication on shadow banking as needing better monitoring. The key elements are as follows.

Scope of proposal (Chapter I)

5.5 The Regulation would apply to all counterparties in SFT markets, investment funds as defined by Directives 2009/65/EC and 2011/61/EU and any counterparty engaging in rehypothecation.[14] It would also cover all financial instruments provided as collateral as listed in Annex I Section C of Directive 2004/39/EC, the Markets in Financial Instruments Directive (MiFID).

Transparency provisions (Chapters II—V)

5.6 Chapters II — III would create an EU framework under which all counterparties of a SFT would report the details of the transaction to trade repositories. This information would be centrally stored and directly accessible to the relevant authorities, such as European Securities and Markets Authority (ESMA), the European Systemic Risk Board and the European System of Central Banks, for the purpose of identification and monitoring of financial stability risks entailed by shadow banking activities.

5.7 To ensure investors are aware of the risks associated with the use of SFTs and other financing structures, Chapter IV sets out that fund managers should include detailed information on any recourse they have to these techniques in regular reporting intervals. An Annex details the information to be provided in half-yearly and annual reports.

5.8 Chapter V would impose minimum information requirements on counterparties engaging in rehypothecation. Rehypothecation would take place only with the express knowledge of inherent risks and prior consent of the providing counterparty in a contractual agreement and would be appropriately reflected in the securities accounts. The counterparty receiving financial instruments as collateral would be allowed to

13 (35781) 6022/14: see chapter 5 in this Report.

14 Rehypothecation is when a counterparty who received financial instruments as collateral for a transaction, uses those financial instruments as collateral in a further transaction.

rehypothecate them only with the express consent of the providing counterparty and only after having them transferred to its own account.

Other provisions (Chapters VI—IX)

5.9 Chapter VI sets out the rules for designating competent authorities, for different purposes, including authorisation, registration, supervision and enforcement of the measures regarding reporting of SFTs to trade repositories and engaging in rehypothecation. Chapter VII would, in order to ensure mutual direct access to data by the relevant authorities, empower the Commission to conclude cooperation agreements with relevant third countries. Chapter VIII concerns administrative sanctions and measures. Chapter IX would provide that three years after the entry into force of the Regulation, the Commission should report on the suitability of the transparency measures and, if appropriate, submit a revised proposal.

5.10 The Staff Working Document, document (b), is the Commission's impact assessment together with 14 annexes and an executive summary, for this draft Regulation and that on structural measures improving the resilience of EU credit institutions.[15]

The Government's view

5.11 The Financial Secretary to the Treasury (Sajid Javid) introduces his comments by saying that:

- this SFT proposal is broadly based on a portion of the recommendations made by the Basel based Financial Stability Board (FSB);[16]
- in August 2013, the FSB adopted a policy framework for addressing shadow banking risks in securities lending and repos, which was subsequently endorsed in September 2013 by the G20 Leaders; and
- in particular, they welcomed the FSB's progress in developing policy recommendations for the oversight and regulation of the shadow banking system, as an important step in mitigating the potential systemic risks associated with this market, while recognising that nonbank financial intermediation can provide an alternative to banks in extending credit to support the economy.

5.12 The Minister then comments that:

- in order to ensure international convergence, it will be important that the proposed Regulation is consistent with the FSB recommendations;
- it will also be important to ensure that the reporting requirements are proportionate and workable;
- with respect to rehypothecation, and in particular the requirement for the consent of the providing counterparty, a too rigid approach could create unintended

15 *Op cit.*

16 For the FSB see https://www.financialstabilityboard.org/index.htm.

market disruptions and the Government will closely consider the drafting of that provision as it evolves in negotiations;

- any overlaps with existing provisions (for example through the European Market Infrastructure Regulation (EMIR)) should be duly taken into account;
- this also applies to the provisions for relationships with third countries, which will need to be compatible with the approach taken in other relevant legislation (for example the EMIR, the Alternative Investment Managers Directive and the MIFID II);
- the Government also thinks that the use of delegated and implementing acts and the role of the ESMA, the European Banking Authority and the European Insurance Occupational Pensions Authority will need to be carefully scrutinised; and
- there are no direct financial implications for the Exchequer from the proposal and the additional administrative costs generated for the ESMA would be covered by fees raised from the industry with no impact on the EU budget.

5.13 The Minister adds that the Government supports the objective of increasing transparency of the shadow banking sector and that as the proposal is taken forward, it will look for reassurance on these issues and seek to amend the draft Regulation if it deems it necessary.

5.14 The Minister draws attention to the Commission's impact assessment, noting that, broadly speaking, the direct impact on the UK is likely to consist of the benefits that result from increased transparency at a minimal compliance cost. He says that more information is included in the Government's own impact assessment that accompanies his Explanatory Memorandum. Amongst the points it makes are that:

> "The 2007–2009 financial crisis is estimated to have cost the UK economy as much as £140 billion. Therefore, even small improvements in financial stability, as expected from the combined impact of these provisions, can result in material benefits."

Conclusion

5.15 **It appears that, if this proposal is enacted in the way the Government wishes, it would be useful in making the securities financing transactions aspect of shadow banking more transparent. So we look forward to hearing from the Minister what progress the Government is making in Council working group discussion on the issues he has mentioned to us. Meanwhile the documents remain under scrutiny.**

6 Financial services: resilience of credit institutions

(a) (35781) 6022/14 COM(14) 43	Draft Regulation on structural measures improving the resilience of EU credit institutions
(b) (35829) 6860/14 + ADDs 1–3 SWD(14) 30	Commission Staff Working Document: Impact Assessment accompanying the draft Regulation on structural measures improving the resilience of EU credit institutions and the draft Regulation on reporting and transparency of securities financing transactions

Legal base	(a) Article 114 TFEU; co-decision; QMV (b) —
Documents originated	29 January 2014
Deposited in Parliament	(a) 5 February 2014 (b) 3 March 2014
Department	HM Treasury
Basis of consideration	EM of 26 February 2014
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

6.1 The Liikanen Report or "Report of the European Commission's High-level Expert Group on Bank Structural Reform" (the Liikanen Group) is a set of recommendations published in October 2012 by a group of experts led by Erkki Liikanen, governor of the Bank of Finland and European Central Bank (ECB) council member. The Group's mandate was to determine whether structural reforms of EU banks would strengthen financial stability, improve efficiency and consumer protection in addition to the regulatory reform of the EU bank sector. The Group recommended actions in five areas, including mandatory separation of proprietary trading and other high-risk trading and strengthening bank governance and control of banks.[17]

The documents

6.2 With the draft Regulation, document (a), the Commission proposes, in response to the Liikanen Report, structural measures to improve the resilience of EU credit institutions.

17 See http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/report_en.pdf.

The proposal is complemented by another draft Regulation, on securities financing transactions.[18]

6.3 There are two main elements to the present draft Regulation:

- a ban on proprietary trading by certain categories of credit institution; and
- a requirement for competent authorities to review credit institutions falling into certain categories and to determine whether to require them to separate their deposit taking activities from their trading activities.

6.4 For the UK, the competent authority would be the Prudential Regulation Authority. For the Banking Union Member States, the regulatory role would be shared between the European Central Bank for the largest firms and national competent authorities for relatively small banks which conduct a large amount of trading.

6.5 The Regulation would apply to credit institutions that are identified as being of global systemic importance under Article 131 of Directive 2013/3/6/EC (on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, 'CRDIV') and to credit institutions that meet both of the following criteria:

- total assets amounting at least to €30 billion (£24.6 billion); and
- trading activities amounting at least to €70 billion (£57.4 billion) or 10% of their total assets.

Proprietary trading ban

6.6 Article 6 of the draft Regulation would introduce a ban on proprietary trading, defined as taking positions in any type of transaction for the sole purpose of making a profit for one's own account, without any connection to client activity. In order to allow risk management, cash management and transactions related to client activity to continue, the ban would be limited to the use of specifically dedicated desks, units, divisions or individual traders. Credit institutions subject to the proprietary trading ban would also be prohibited from investing in or holding shares in alternative investment funds (as defined in the Alternative Investment Fund Managers Directives), which would cover investing or holding shares in hedge funds. The prohibition would not apply to trading sovereign bonds issued by Member States.

Structural separation

6.7 Under the proposal, competent authorities would have the power to decide that particular credit institutions must separate certain trading activities from their 'retail' activities. The competent authorities would be required to review certain credit institutions' trading activities and determine for each such institution whether certain trading activities should be separated and, if so, which activities. If the competent authorities determined that certain thresholds were exceeded, the bank would qualify as a

18 (35780) 6020/14 + ADD 1: see chapter 4 of this Report.

potential threat to financial stability and accordingly the competent authority would have to impose separation. If the competent authority determined those thresholds were not exceeded, it could still impose separation if it concluded that the trading activity posed a threat to the financial stability of the core credit institution or the EU financial system as a whole. A competent authority could decide not to impose separation of a core credit institution (defined as a credit institution which takes deposits that are eligible for deposit protection under Directive 94/19/EC on deposit-guarantee schemes) even if the thresholds were met, provided the credit institution could justify that its trading activities do not endanger its stability or the stability of the EU financial system as a whole.

6.8 Where the competent authority required separation, it would have to address a decision to the affected credit institution specifying those trading activities to be separated. 'Trading activities' is defined in Article 8 and would include any activities other than taking deposits which were eligible for deposit protection, lending, retail payment services and certain other activities. Consequently, although the competent authorities could specify a wide range of trading activities to be separated, a deposit taking bank would be able to continue taking eligible deposits, lending, and providing retail payment services (and certain other activities). A deposit taking bank would also be permitted to manage its own capital, liquidity and funding and to provide risk management services to clients (for example, through derivatives). The products it could sell to its clients are listed at Article 12.

6.9 The trading activities to be separated would have to be transferred to a separate legal entity, which would not be permitted to take deposits eligible for deposit protection under the deposit guarantee scheme or to provide retail payment services. Articles 14 to 17 set out limits to large exposures for deposit taking banks, both within a group and externally.

Derogation

6.10 Article 21 provides a derogation from the provisions about separation of trading activities, from which individual credit institutions could benefit provided they were subject to 'national primary legislation adopted before 29 January 2014' which imposed structural separation on certain types of credit institutions and complied with specific criteria set out in paragraph 1 of Article 21. The criteria are designed to ensure that the national regime is at least equivalent to the scheme envisaged by the proposal.

6.11 Although the derogation would apply to specific credit institutions, it would have to be applied for by a Member State on behalf of that credit institution. Application would be to the Commission and would have to include a positive opinion from the competent authority, together with information allowing the Commission to appraise the national legislation. This process would have to be completed on a firm by firm basis.

6.12 The criteria with which national legislation would have to comply are:

- having the aim of preventing financial stress, failure or systemic risk;
- preventing credit institutions that take deposits from individuals and SMEs from dealing in investments as principal and engaging in trading activities; and

- ensuring that if such a credit institution is within a group, it can make decisions independently of other group entities, has a management body independent of other group entities, and of the credit institution itself, is subject to separate capital requirements to other group entities and will not enter into contracts with other group entities other than on terms as favourable as it would enjoy if contracting with entities outside the same sub-group or outside the group at all.

Third-country equivalence

6.13 Article 4 provides that the Regulation would not apply to EU branches of credit institutions established in a third country or to subsidiaries established in third countries of EU parents, provided the third countries had a legal framework deemed by the Commission to be equivalent to the Regulation. To enable this exclusion to operate, under Article 27, Member States or a third country could apply to the Commission, or the Commission could choose, to issue an implementing act determining that 'the legal, supervisory and enforcement arrangements of a third country ensures that credit institutions and parent companies in that third country comply with binding requirements which are equivalent to the requirements laid down in Article 6, 10 to 16 and 20'. These articles concern the main prohibitions and prescriptions of the Regulation, including the prohibition on proprietary trading and other activities and exposures, the separation powers of the competent authority and technical exemptions for the purpose of risk management.

Remuneration

6.14 Under Article 7, the remuneration policy of firms within the scope of the Regulation could not be designed and implemented in a way that directly or indirectly incentivised individuals to carry out the activities prohibited by the Regulation.

Provisions on the role of Competent Authorities

6.15 Articles 10, 18, 19, 26 and 28–32 make provision about the role of the competent authority, including, the duty to exercise supervisory powers and its obligation to exchange information with the European Banking Authority (EBA) about its application of administrative sanctions and other measures responding to certain breaches of the Regulation.

Negative Scope

6.16 The proposed Regulation would not apply to:

- EU branches of third country credit institutions and third country subsidiaries of EU banks subject to equivalent third country regimes;

- central banks and some public entities (for example, in the UK the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, and the Scottish Agricultural Securities Corporation Ltd); and

- in relation only to Chapter III (separation of trading activities) of the proposal and at the discretion of the competent authorities, subsidiaries of EU parents established in third countries, provided the competent authority was satisfied there was a resolution strategy agreed between the group level resolution authority in the EU and the third country host authority and the resolution strategy for the subsidiary would have no adverse effect on the financial stability of the Member State or States where the EU Parent or any other group entities were established (the so-called multiple-point of entry resolutions).

6.17 In addition chapter III would not apply to those EU firms who gain a derogation under Article 21.

Reports and Review

6.18 Article 33 details the reports the EBA would be required to publish and submit to the Commission following implementation of the Regulation. These concern technical details, including whether other types of derivative instrument and financial instrument should be available to a core credit institution to manage its own risk and whether core credit institutions should be permitted to sell other types of financial instruments to customers for their risk-management. Article 34 would require the Commission to review the effects of the rules laid down in the Regulation. By 1 January 2020 the Commission would have to report to the European Parliament and to the Council and continue to report on a regular basis.

Final Provisions

6.19 Article 35 would confer powers on the Commission to adopt delegated acts in relation to the Regulation. The proposal foresees the use of delegated acts for the adoption of technical standards, adjusting thresholds and to supplement or adjust some of the provisions of the proposal. Article 36 provides that the Regulation would enter into force on the twentieth day following its publication in the Official Journal. The Regulation would apply from that date, except that:

- Article 6 (which imposes the ban on proprietary trading) would apply from 18 months after publication; and

- Articles 13–18 and 20, which govern the degree and manner of separation between core credit institutions and trading entities, where the competent authority has imposed a requirement to separate certain trading activities, would apply from 36 months after publication.

Impact assessment

6.20 The Staff Working Document, document (b), is the Commission's impact assessment together with 14 annexes and an executive summary, for this draft Regulation and that on securities financing transactions.[19]

19 *Ibid*.

The Government's view

6.21 The Financial Secretary to the Treasury (Sajid Javid) introduces his comments by saying that:

- the Government is implementing ambitious bank structural reforms through Part 1 of the Banking Reform Act 2013 and the secondary legislation to be made under it;
- these reforms, first recommended by the Independent Commission on Banking, chaired by Sir John Vickers, will safeguard the continuity of core banking services such as deposit taking and the provision of overdrafts and ensure that such services can be separated from investment activities and protected if a banking group encounters financial difficulty;
- overall, the Government is in favour of this draft Regulation as a means to reduce the implicit taxpayer guarantee which distorts the single market;
- it strongly supports the derogation provision within the proposal which would allow Member States which had already imposed a stronger framework before the 29 January 2014 to continue to implement it alongside this Regulation — this provision should allow the UK to continue to implement the reforms embodied in Part 1 of the Act;
- the proposal would provide for structural reform of credit institutions throughout the EU in a slightly different way to the Act 2013 and will impose a prohibition on proprietary trading, which the UK has not introduced; and
- the Government will be closely scrutinising these areas of difference.

6.22 The Minister then expands on these points as follows.

Prohibition on Proprietary Trading

6.23 The Minister says that:

- in its report on proprietary trading the Parliamentary Commission on Banking Standards found that there was little to indicate that the large banks were engaged in the practice;
- the regulatory and political pressures being placed on banks are reported to be impairing any appetite banks may have to pursue the activity;
- the Government will be scrutinizing this area of the proposed legislation to ensure that the ban is effective, while avoiding unintended consequences, such as preventing helpful market making activity; and
- additionally, the Banking Reform Act provides for an independent review of the case for a prohibition of proprietary trading in UK law to be undertaken in 2021; and — this will produce an updated evidence base on the extent of proprietary trading and the potential need and scope for a ban.

Scope

6.24 The Minister comments that:

- the derogation provisions should ensure that the draft Regulation would not disrupt the implementation of the ring-fencing reforms for firms that fall within the scope of the ring-fencing provisions contained in the Banking Reform Act;
- the Government will be seeking to ensure that Member States being able to request a derogation from the Commission in relation to firms that are covered by national legislation having an equivalent effect remains the case during the negotiation and that firms that are subject to ring-fencing under the Banking Reform Act would be exempted from the provisions of chapter III of the Regulation;
- the scope of this proposal is, however, wider than the measures in the Banking Reform Act;
- consequently certain credit institutions that would not be subject to ring-fencing and therefore would not fall within the derogation from chapter III would find themselves subject to the entirety of the Regulation; and
- the Government will be scrutinising where this would be the case and will work to ensure any additional requirements are proportionate and effective.

6.25 The Minister continues that:

- the third country impact of these proposals is different from the Banking Reform Act — Part 1 applies only to UK institutions and not to their subsidiaries in other EEA countries;
- secondary legislation to be made under the Act will prevent ring-fenced bodies from establishing a branch in a non-EEA country;
- further, the Act applies only to UK subsidiaries of credit institutions established in EEA or third countries;
- by contrast, the proposed Regulation would include within its scope all branches and subsidiaries of EU credit institutions, wherever those branches or subsidiaries are located;
- it would apply in principle also to EU branches of credit institutions established in third countries, not merely to their EU subsidiaries; and
- the Government will work to ensure that this area of the legislation does not place undue costs on non-EEA firms establishing branches within the EU, neither on third-country branches nor subsidiaries of EU banks.

Institutions

6.26 Noting that to gain derogations for credit institutions subject to Part 1 of the Banking Reform Act 2013, the UK would have to apply to the Commission, the Minister says that:

- the Government is committed to ensuring the draft Regulation maintains an appropriate balance between the role of the Member State and the role of the Commission; and
- it will also work to ensure that the process is transparent and timely enough to prevent uncertainty in the market and that provision is made for Member States to challenge an adverse decision by the Commission.

Legal issues

6.27 The Minister says that:

- it is important the legal basis for the proposed Regulation is sound — if not, it risks creating uncertainty for public authorities, institutions within its scope and creditors and investors;
- the Government continues to scrutinise whether Article 114 TFEU is an appropriate legal basis for the Regulation, in the light of the provisions made in relation to remuneration policies;
- these arguably contravene Article 114, paragraph 2, which provides that paragraph 1 does not apply in relation to provisions relating to the rights and interests of employed persons — the same point applies to certain provisions of Regulation (EU) No 575/2013 (on capital requirements) which are concerned with remuneration and on which the UK is challenging the legal basis;
- the Government will also scrutinise the role of the ECB under the proposal in supervising banking groups established both in the UK and in Member States in the Banking Union and will work to ensure any powers are consistent with the Treaties;
- in considering the role of the ECB the Government is conscious that the role proposed represents a departure from the "conventional" allocation of supervisory tasks to consolidating supervisors and competent authorities in relation to banking groups and group entities;
- under the CRDIV/Capital Requirements Regulation package the consolidating supervisor has, in general terms, one task — to apply group capital requirements at the level of the EU parent undertaking;
- the consolidating supervisor does not have any direct supervisory powers at the level of regulated subsidiaries in jurisdictions other than the Member State in which the parent undertaking is established;
- the result is that, in general terms, the Bank of England and the Financial Conduct Authority regulate financial services firms established in the UK — the Government will work to ensure that the role of the ECB under the Regulation would not undermine that independence; and

- there is extensive use of delegated acts in the proposal, which would give the EBA an important role and leaves much of the detail uncertain — the Government will scrutinise the role of the EBA in this process to drive certainty and ensure supervisors would be given sufficient flexibility to react to developments as rules made under delegated and implementing acts were to come into effect.

Financial implications

6.28 The Minister says that:

- this proposal would require the EBA to fund two temporary posts to develop four delegated acts and six technical standards over three years starting in 2016 and continuing until 2018; and
- the cost of this would be met jointly by Member States, with a contribution of 60% or €690,000 (£566,766), and the EU, with a contribution of the remaining 40%, or €460,000 (£377,844).

Impact assessments

6.29 The Minister draws our attention to the Commission's impact assessment. He also attaches to his Explanatory Memorandum the Government's own impact assessment. Amongst the points it makes are that:

> "Overall this proposal should provide the UK with a moderate economic benefit. This is primarily because of its impact in the wider EU, where it will improve financial stability and competition by extending the benefits of bank structural reform."

Conclusion

6.30 **Whilst this proposed Regulation, if adopted, might have some moderate benefit for the UK, we note the various issues for the UK, including some legal ones, which the Minister highlights. So before considering the proposal further we wish to hear about the Government's progress in addressing these issues in Council working group discussions. Meanwhile the documents remain under scrutiny.**

7 Voting rights of EU citizens

(a) (35777) 5866/14 COM(14) 33	Commission Communication: *Addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement*
(b) (35778) 5867/14 C(14) 391	Commission Recommendation of 29.01.2014: *Addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement*

Legal base	(a) — (b) Article 292 TFEU
Documents originated	(Both) 29 January 2014
Deposited in Parliament	5 February 2014
Department	Cabinet Office
Basis of consideration	EM of 18 February 2014
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

7.1 The Maastricht Treaty introduced the concept of EU citizenship in 1993, a status conferred on all nationals of EU Member States. Subsequent EU Treaties have made clear that EU citizenship is not intended to replace national citizenship but to confer additional rights. These include the right, if resident in another Member State, to vote and stand as a candidate in local and European elections under the same conditions as nationals of that State. The EU Treaties do not confer a similar right to vote in national elections. Entitlement to vote in such cases is determined solely by reference to the electoral laws of each Member State.

7.2 EU citizens resident in the UK are entitled to vote in European and local elections, including elections to the Welsh Assembly, Scottish Parliament and Northern Ireland Assembly, but may not vote in UK parliamentary (general) elections. Since 1985, British citizens resident abroad have been able to register as overseas electors and to vote in UK and European parliamentary elections (but not in local elections or elections to devolved bodies). The period in which they are entitled to vote, while resident abroad, has varied between five and 20 years. Existing electoral law limits their right to vote to a period of 15 years from the time they were last registered to vote at an address in the UK.

7.3 In its EU Citizenship Report 2010, the Commission noted that some EU citizens (including UK nationals) who move to another Member State are at risk of being disenfranchised if electoral law in the Member State of which they are nationals precludes

them from voting in national parliamentary elections during a period of residence abroad. It said it would:

> "launch a discussion to identify political options to prevent EU citizens from losing their political rights as a consequence of exercising their right to free movement."[20]

7.4 The Commission returned to the subject in its EU Citizenship Report 2013. It said it had entered into a political dialogue with Member States whose nationals are at risk of losing their right to vote in national elections if they move to another Member State, and that it would:

> "propose constructive ways to enable EU citizens living in another EU country to fully participate in the democratic life of the EU by maintaining their right to vote in national elections in their country of origin."[21]

7.5 The report alluded to increasing social and cultural interpenetration within the EU, and greater ease of communication, adding:

> "Residing in another EU country no longer requires a definitive severing of ties with the country of origin, as may have been the case in the past. EU citizens should now be able to decide for themselves if they want to continue to participate in the political life of their country of nationality or invest in the political life of their host society."[22]

7.6 The Commission suggested that empowering EU citizens to decide whether they wished to exercise their "key political rights" in their Member State of origin or residence "would give a new impetus to their inclusion and participation in the democratic life of the Union."[23]

The Commission Communication

7.7 The Communication and accompanying Commission Recommendation fulfil the commitment made in the EU Citizenship Report 2013 to propose constructive ways to enhance participation in the democratic life of the Union by "limiting the consequences of national disenfranchisement policies, measures and administrative practices".[24]

7.8 The Commission describes the right to vote as "one of the fundamental political rights of citizenship" and "part of the very fabric of democracy".[25] It notes that the Union is required by the EU Treaties to respect the national identities of Member States, as reflected in their political and constitutional structures,[26] and adds:

20 See (32139) 15936/10, reported in HC 428–xiii (2010–11), chapter 1 (19 January 2011).

21 See (34935) 9590/13, reported in HC 83–vi (2013–14), chapter 5 (19 June 2013).

22 *Ibid*.

23 *Ibid*.

24 See p.3 of the Communication.

25 See p.2 of the Communication.

26 Article 4(2) of the Treaty on European Union.

> "Hence, it is a matter for each Member State, while respecting the value of respect for democracy, common to all Member States, to decide solely on the composition of the electorate for its national elections."[27]

7.9 The Commission nevertheless reiterates its concern that losing the right to vote in national elections as a consequence of exercising free movement rights within the EU is:

> "at odds with the founding premise of EU citizenship, namely that it is additional to national citizenship and is designed to give additional rights to EU citizens, whereas in this case the exercise of the right of free movement may lead to losing a right of political participation."[28]

7.10 The Commission suggests that there is a global trend towards extending the franchise to non-resident nationals, and cites opinion surveys and an online public consultation on EU citizenship in 2012 which revealed a widespread belief that EU citizens should not lose the right to vote in national elections in their country of origin simply by virtue of moving to another Member State.

7.11 The Communication identifies five Member States — Cyprus, Denmark, Ireland, Malta and the UK — in which a period of residence in another Member State may deprive their citizens of a right to vote in national elections, although the length of absence varies significantly, from as little as six months in Cyprus to 15 years in the UK. In some other Member States, the right of non-resident citizens to vote in national elections is subject to the fulfilment of certain conditions. For example, German citizens living abroad lose the right to vote after 25 years unless they can demonstrate that they are familiar with, and affected by, domestic politics. Austrian citizens resident abroad are required to renew their registration on the electoral roll every 10 years.

7.12 The Communication notes that the Strasbourg-based European Court of Human Rights has determined that residence conditions do not, in principle, constitute an arbitrary restriction of the right to vote and may be justified on the grounds that:

- non-resident citizens are less directly concerned with day-to-day problems in their countries of origin, and have less influence in choosing candidates for election or in formulating electoral programmes;
- the right to vote in national parliamentary elections pre-supposes a close connection between the electorate and the acts of the political bodies elected; and
- the legislature has a legitimate concern in limiting the influence of citizens living abroad in national elections, as they are less likely to be affected by the outcome.

7.13 The Court has sought to weigh these factors against the presumption in favour of inclusion, stating that:

27 See p.2 of the Communication.

28 See p.2 of the Communication.

> "Any general, automatic and indiscriminate departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates."[29]

7.14 In its recent case law, the Strasbourg Court has alluded to the emergence of new technologies, and cheaper means of transport and communication, which have enabled migrants to maintain a high degree of contact with their country of nationality.[30] It has nevertheless concluded that the 15-year limit imposed by the UK on overseas voters strikes a fair balance in allowing non-resident British citizens to vote in national parliamentary elections whilst also ensuring that the franchise only extends to those with a sufficiently close connection to the UK.

7.15 Within the EU context, the Commission recognises that policies determining who can vote in national elections fall within Member State competence, but adds:

> "Member States must nonetheless exercise that competence in accordance with EU law, in particular the provisions of the Treaty concerning the right of every EU citizen to move and reside freely within the territory of the Member States, and therefore avoid any overt or covert discrimination on the basis of nationality."[31]

7.16 Although national laws determining the franchise for national elections are disparate, no Member State confers a general right on foreign EU nationals resident within its territory to vote in national elections. As a consequence, some EU citizens who have exercised their free movement rights may lose their right to vote in national elections in their Member State of origin without acquiring a right to do so in their Member State of residence. The EU Treaties include provision to strengthen or add to existing EU citizenship rights, but the procedural requirements are onerous, involving unanimity within the Council, the consent of the European Parliament and approval by Member States in accordance with their constitutional requirements.[32] In the UK, approval by an Act of Parliament would be required.[33]

7.17 Despite the procedural and political constraints on EU action, the Commission considers that there is a need to act for three reasons:

- *the loss of voting rights is out of keeping with the founding premise of EU citizenship:*

  > "The core rights attached to EU citizenship are to be conferred on EU citizens in addition to those derived from their national citizenship. One would not expect that the exercise of the rights attached to Union citizenship results in the loss of the right to vote in national elections, which is generally linked to national citizenship."[34]

- *national disenfranchisement policies may influence the way in which EU citizens exercise their free movement rights:* EU citizens may not declare that they have

29 See p.6 of the Communication.

30 See the case of *Shindler v. the United Kingdom*, judgment of the European Court of Human Rights of 7 May 2013.

31 See p.6 of the Communication.

32 Article 25 of the Treaty on the Functioning of the European Union.

33 Section 7(1) and (2) of the European Union Act 2011.

34 See p.7 of the Communication.

moved to another Member State in order to preserve their political rights in their Member State of origin.

- *disenfranchisement creates "a gap" in the political rights of EU citizens that is inconsistent with efforts to promote participation in the democratic life of the Union:* whilst able to elect Members of the European Parliament, migrant EU citizens may lose the right to influence the composition of the EU's other co-legislature, the Council, by virtue of their exclusion from national elections.

7.18 The Commission proposes four "short-term" solutions in its Recommendation accompanying the Communication (see below). In doing so, it rejects as inappropriate two options advocated by some as a means of addressing the loss of political rights. The first — naturalisation in the country of residence — would, it suggests, be inconsistent with the role of EU citizenship as "the primary vehicle for promoting respect for national identity and diversity, and ensuring equality of treatment irrespective of nationality".[35] It would also be impracticable, as individuals may choose to live in a a number of different Member States and cannot be expected to "acquire multiple or successive nationalities solely to maintain political rights".[36] The second option mooted would be based on some form of structured dialogue or open method of coordination between Member States to ensure mutual recognition of voting rights (particularly between close neighbours with strong ties). The Commission considers that such an approach would result in "fragmentation and asymmetrical voting rights for EU citizens across the EU".[37]

7.19 In its concluding comments, the Commission acknowledges that the mobility of EU citizens raises important questions about political participation and forms part of a broader debate on where voting rights should be exercised — in the Member State of nationality or the Member State of residence. It suggests that this issue should be examined "in the context of the up-coming broader reflections on the future of the EU".[38]

The Commission Recommendation

7.20 The Commission Recommendation is based on the premise that EU citizens exercising free movement rights:

> "should be empowered to determine for themselves whether they maintain a strong interest in the political life of their home country".[39]

7.21 It suggests that policies which have the effect of disenfranchising nationals of a Member State who exercise free movement rights under the EU Treaties should be re-assessed in light of "current socio-economic and technological realities" and makes four recommendations. The first is addressed to Member States (such as the UK) whose laws limit the right of non-resident nationals to vote in national elections. It recommends that nationals resident in another Member State, who would otherwise lose their right to vote in

35 See pp.7–8 of the Communication.

36 See p.8 of the Communication.

37 *Ibid*.

38 See p.9 of the Communication.

39 See p.10 of the Communication.

national elections, should retain their voting rights if they are able to demonstrate a continuing interest in the political life of their Member State of nationality — an application to remain on the electoral register would constitute proof of a continuing political interest.

7.22 The second and third recommendations concern Member States whose non-resident nationals retain their right to vote in national elections. In such cases, Member States may require their nationals to renew their application to be included on the electoral register, at appropriate intervals, as a means of demonstrating their continuing interest in, and connection with, their Member State of nationality. Non-resident nationals should be able to submit their applications to register or remain on the electoral roll by electronic means. The fourth and final recommendation seeks to ensure that Member States provide adequate information to their citizens on the conditions under which they may retain the right to vote in national elections, should they decide to move to another Member State.

The Government's view

7.23 The Minister for Cities and the Constitution (Greg Clark) notes that the current 15-year limit on the eligibility of overseas electors to vote in UK Parliamentary elections has been considered by successive Governments and Parliaments as a "necessary and justified" restriction. He continues:

> "There are a range of different approaches taken internationally regarding the issue of overseas voting rights. Some apply a time limit on their citizens' overseas voting rights, whilst others do not have any restrictions in place. Some countries do not allow overseas voting at all. What is appropriate in one country is not necessarily appropriate in all.
>
> "The issue of who votes in domestic elections is clearly a matter for national governments and not the European Commission. The European Commission partially acknowledges this important point in their documents. The Government will keep the 15 year time limit under consideration, but is not minded to change its position which has been debated in Parliament and backed by both the domestic courts and European Courts of Human Rights.
>
> "The UK Government encourages all those eligible to vote overseas to register, and has made changes as part of the move to Individual Electoral Registration to make it easier for them to do so. The general requirement for an initial application to register as an overseas elector to be witnessed by another British citizen resident abroad is being removed, and eligible electors will be able to register online. The Government is also extending the elections timetable to give overseas electors more time to cast their votes.
>
> "Regarding the voting rights of EU citizens resident in the UK, the Government believe that it is appropriate that they should be entitled to vote in European and local Government elections as provided for under EU law. The UK goes beyond the bare minimum required by EU law in terms of the 'local' elections it permits EU citizens to participate in. Citizenship of the country of residence is the normal

prerequisite for the right to vote at Parliamentary elections in most democracies, including other EU States."[40]

7.24 The Minister notes that the Commission has not put forward any legislative proposals and that the Recommendation has no binding force. He considers that neither document has any direct policy implications for the UK.

Conclusion

7.25 **The choice of legal instrument in this case — a Commission Recommendation — is telling. It suggests that there is little appetite within the Council for an initiative of this nature, and little prospect of securing the unanimous support of Member States that would be required under the relevant Treaty Articles.[41] Whilst, as the Commission observes, there may be a clear trend towards allowing voting by non-resident nationals in Council of Europe countries, we note that the Strasbourg Court concluded in the recent *Shindler* case that:**

> **"It [..] cannot be said that the laws and practices of member States have reached the stage where a common approach or consensus in favour of recognising an unlimited right to vote for non-residents can be identified. Although the matter may need to be kept under review in so far as attitudes in European democratic society evolve, the margin of appreciation enjoyed by the State in this area still remains a wide one."[42]**

7.26 **The Communication suggests that different factors are in play within the EU context because the exercise of EU citizenship rights is not intended to diminish the rights associated with national citizenship, in particular the right to vote in national elections. We do not agree with the Commission's analysis. The limitation on the right of overseas electors to vote in national parliamentary elections in the UK stems from a perceived loosening of their ties with the UK and should not, in our view, be attributed to the exercise of free movement rights, not least because the 15-year rule applies to all British overseas electors, regardless of their place of residence.**

7.27 **As the Minister makes clear, the Commission Recommendation has no binding force and is unlikely to have any bearing on UK electoral law on overseas voters. It is nevertheless indicative of attempts to push the boundaries of EU competence by reference to obstacles impeding the full enjoyment of EU citizenship rights. We question whether the loss of voting rights after 15 years' residence abroad can be considered a genuine, rather than hypothetical, impediment to the exercise of free movement rights within the European Union. We consider, moreover, that the factors determining who should be entitled to vote in national Parliamentary elections are complex, and agree with the Minister that it is primarily a matter for the Government — and, we would add, Parliament.**

40 See paras 19–22 of the Minister's Explanatory Memorandum.

41 Articles 25 and 292 of the Treaty on the Functioning of the European Union.

42 Para 115 of the judgment in *Shindler v. the United Kingdom*, 7 May 2013.

7.28 **We are drawing the Communication and Recommendation to the attention of the Political and Constitutional Reform Committee, but are content to clear both documents from scrutiny.**

8 Establishing a Quality Framework for Traineeships

(35628) 17367/13 + ADDs 1–2 COM(13) 857	Draft Recommendation on a Quality Framework for Traineeships

Legal base	Articles 153, 166 and 292 TFEU; QMV
Department	Business, Innovation and Skills
Basis of consideration	Minister's letter of 26 February 2014
Previous Committee Report	HC 83–xxx (2013–14), chapter 2 (29 January 2014)
Discussion in Council	Agreement expected at 10 March EPSCO Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background and previous scrutiny

8.1 The draft Recommendation is one of a raft of initiatives in recent months to tackle high levels of youth unemployment. Traineeships have become an important means of entering the labour market but can also be used as a form of unpaid or precarious employment. In December 2012, the European Council invited the Commission to finalise work on a quality framework for traineeships which would improve their learning content, open up the market for cross-border traineeships, help boost the employability of young people by developing relevant labour market skills, and ensure adequate working conditions.

8.2 The main elements of the proposed quality framework are summarised in our Thirty-third Report, agreed on 29 January 2014. The draft Recommendation establishes a set of principles to be applied by Member States to "open-market traineeships" — essentially, work experience offered by employers which is not part of academic or vocational study, or professional training. One of the core principles is a written traineeship agreement setting out clear learning objectives, working conditions (including working time, holiday entitlement, sick leave arrangements), pay (if any), the duration of the traineeship and notice requirements.

8.3 The Minister for Skills and Enterprise (Matthew Hancock) told us that the Government intended to oppose the adoption of the draft Recommendation and cited the following concerns:

- quality standards should be developed at national, not EU, level;

- the quality framework would be costly and burdensome for Government and employers;
- there would be few benefits for employers or young people;
- the scope of the proposal, and its implications for the status of trainees under UK employment law, were unclear; and
- the Prime Minister's Business Task Force on EU Regulation has made clear that any EU action in this area should "build on best practice and not resort to legislative proposals".

8.4 We asked the Minister to clarify the Government's position on a number of the concerns expressed in his Explanatory Memorandum, in particular:

- how the principles set out in the draft Recommendation differed from the outcome anticipated by the Government in agreeing, by consensus, the December 2012 European Council Conclusions on a quality framework for traineeships;
- whether, based on the UK's experience of introducing a quality assurance process for graduate internships, he considered the trade-off between the quantity and quality of traineeships to be beneficial or harmful for trainees, employers and the wider economy;
- whether his concerns regarding the scope of the draft Recommendation suggested that there should be different quality standards for graduate internships and other types of traineeships;
- whether, given uncertainty as to the status of written traineeship agreements under UK employment law, the Government had particular legal or policy objections to specifying the main elements of a traineeship in a written agreement;
- why he considered that the draft Recommendation would have "a disproportionate negative impact" on employers already offering 'quality' traineeships while providing few incentives for those offering 'sub-standard' traineeships, and to clarify his position on the expected compliance costs for employers set against the potential gains for trainees; and
- how, given the non-binding status of a Council Recommendation, he considered that the European Council's demand for a quality framework for traineeships could be accomplished by less intrusive EU action.

The Minister's letter of 26 February 2014

8.5 The Minister (Matthew Hancock) accepts that the December 2012 European Council Conclusions anticipated the establishment of a quality framework for traineeships but suggests this could have been achieved without the need for a Council Recommendation. He continues:

> "For example, it might have been possible for the Commission to have brought forward a much looser 'framework' which simply highlighted some of the different

> and successful national approaches to the design and implementation of traineeships, without seeking a normative approach. The new Erasmus Plus programme, which provides for partnerships and best practice exchange within the vocational training sector, might also have been another possible vehicle."

8.6 Turning to the quality elements of the proposed framework, and the impact of quality standards on the availability of traineeships, the Minister explains:

> "As a Government, we have consistently encouraged employers to offer quality internships and work experience opportunities, fairly and transparently, to young people and have insisted that employers must pay their interns in line with National Minimum Wage legislation. At the same time we don't want to restrict or even close down such valuable opportunities. I do believe that trying to achieve this through a prescriptive Framework will simply limit the number of opportunities. Any attempt to impose a one-size-fit-all approach risks putting off employers, some of whom would clearly decide that the extra regulation was too burdensome and become reluctant to offer opportunities. Likewise, individuals may be unable or unwilling to accept such opportunities as they are not flexible enough to be tailored to meet their needs.
>
> "Government does not consider that there should be different quality standards for graduate internships and other types of traineeships, but there are still concerns with the exact definition of 'traineeship'. Discussions are continuing in Working Group around the precise definition and Member States have different views about what should be included, with some wanting the definition broadened. Without knowing the exact scope of the Recommendation it is not easy to predict its potential impact. If, for example, more informal periods of work experience were to be brought within scope of the Recommendation, we would expect the numbers of employers withdrawing to be much higher. Some poor quality traineeship opportunities would be lost, without much cost to young people, but quality opportunities would be reduced as well. The overall effect of the Recommendation would be to reduce flexibility for employers and for young people within the UK labour market, at a time when we need that flexibility to help young people into work."

8.7 The Minister accepts that it could be helpful for trainees to have a written record of their rights and obligations under the traineeship, but adds:

> "However, there is a potential risk that giving trainees the right to have such a record could cause confusion about employment status. This is because there is no separate employment status for trainees under UK law at present. Anyone who is classified as a 'worker' under UK law benefits from certain statutory employment law rights. An employee has a higher level of employment law protection and this includes a right to a written statement of terms and conditions. This is not required for a worker who is not an employee, although some employers voluntarily provide these workers with written contracts.
>
> "The nature of the working relationship determines whether a person is a worker or an employee; some trainees will not fall into either of these categories. If trainees do qualify for employment rights, they are more likely to do so as workers because of the

> nature of the employment relationship. If the Recommendation were to be implemented the likely result is that trainees (regardless of their employment status) would have a right to written terms and conditions which is only conferred on employees under UK law. Secondly, there is a slight risk that the introduction of a written agreement formalises the traineeship relationship and depending on how it does so, it could impact on the employment status of the trainee. Government's analysis of the proposal as it currently stands is that this would not be the case, but if the requirements become more prescriptive it could become the case."

8.8 The Minister agrees that implementation of the draft Recommendation would "present little difficulty" for good employers whose practices already comply with the quality elements, but adds:

> "Were the UK to adopt the Recommendation, we would need to monitor its implementation and report back to the Commission. This would create an extra administrative burden both for Government and for employers, and some employers would clearly decide that the extra regulation was too burdensome and costly and would cease to offer traineeships. At this stage we do not know how many employers would be affected because we have no record of the number of internships and traineeships within scope of the proposal currently offered and no plans to collect such data."

8.9 The Minister notes that a Recommendation is not legally binding, but suggests that it "implies a political commitment to implementation at national level". He continues:

> "Both because we see no need for a Council Recommendation, and because there are significant parts of the text with which we disagree and have no intention of implementing, I am firmly of the view that the UK should make clear that we will not be making that political commitment. Other Member States are, of course, free to respond as they wish, and the Recommendation will be adopted if it can command a Qualified Majority in the Council."

8.10 He concludes:

> "I should add that my strong preference for cooperation at EU level on matters to do with tackling youth unemployment is for looser forms of policy competition and cooperation between Member States, rather than attempts to co-ordinate approaches via negotiated agreements in Brussels. In my experience, targeted bilateral benchmarking and study visits supplemented, where necessary, by conferences, seminars etc., are much more effective ways of learning from our European neighbours and raising standards for all. I can point to several examples of our own policy development in the area of vocational education and training which have been heavily influenced by our examination of policy in other EU Member States. We do not need an EU Council Recommendation, followed by reporting to the Commission, to achieve that. In my experience, winning that argument in the relevant Brussels Councils is an uphill battle. That should not, however, deter us from trying."

8.11 The Minister expects the draft Recommendation to be adopted at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 10 March and invites us to release the proposal from scrutiny.

Conclusion

8.12 **We thank the Minister for his detailed response, which helps to clarify the concerns expressed in his earlier Explanatory Memorandum. We understand that the Government intends to oppose the adoption of the draft Recommendation at the forthcoming EPSCO Council on 10 March and are content to clear the proposal from scrutiny. In so doing, we ask the Minister to report back to us on the outcome of the Council and on any changes made to the text.**

9 Internal market for industrial products

(35758) 5742/14 COM(14) 25	Commission Communication: *A vision for the internal market for industrial products*

Legal base	—
Documents originated	22 January 2014
Deposited in Parliament	29 January 2014
Department	Business, Innovation and Skills
Basis of consideration	EM of 12 February 2014
Previous Committee Report	None; but see footnotes
Discussion in Council	See para 9.15 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 The Commission notes that it is 20 years since the establishment of the single market, and that strengthening its effectiveness was identified as a priority in a Communication[43] it put forward in October 2012 updating the EU's Integrated Industrial Policy. It says that it has therefore carried out an evaluation of EU law in the area of industrial (ie. manufactured non-food) products to assess its overall coherence and to obtain evidence of its cumulative effects from an industry perspective. It has now set out in this document the results of that exercise, and of a public consultation with stakeholders.

43 (34341) 15168/12 + ADDs 1–8: see HC 86–xx (2012–13), chapter 15 (21 November 2012).

The current document

9.2 The Commission notes that the internal market for products has been a frontrunner in EU economic integration, with regulatory obstacles having been prevented by Directive 98/34/EC,[44] or eliminated through the principle of mutual recognition, or through Union harmonisation legislation (which has also guaranteed free movement by replacing national rules, as well as high levels of health, safety and environmental protection). It also points out that the *acquis* has gradually expanded, with there currently being more than 30 directives and regulations, covering both specific products and applying horizontally across different product groups.

Benefits of the internal market

9.3 The Commission says that, since the start of the single market, intra-EU trade in goods as a share of GDP has increased from 17% to 22%; that it represents a very high percentage of GDP in most Member States; that between 2000 and 2012 its rate of growth has exceeded that of total EU manufacturing value; and that, whilst there are significant differences between sectors, most have experienced an increase in the level of intra-EU trade, particularly between 2003 and 2008. The Commission goes on to suggest that better access to the internal market, combined with regulatory and product convergence at European level, has led to greater economies of scale and thus enhanced competitiveness, has reduced the cost of regulatory compliance, and has also enhanced innovation and the take-up of the results of research and development.

The evolution of EU law

9.4 The Commission notes that, since 1985, the EU has laid down essential safety, health and other public interest requirements with which businesses must comply, with the reduced divergence of national technical regulations having brought about a single, borderless market, with corresponding economic and employment benefits. It adds that the formulation of these requirements has relied heavily on inputs from manufacturers and other businesses in the supply chain, as well as from consumers, environmentalists and trade unions; that Member States are responsible for developing national implementing rules, and ensuring effective implementation, market surveillance and enforcement; and that the Commission itself has an important over-arching role in monitoring and evaluating implementation, assessing the scope for possible regulatory changes, and pursuing breaches of EU law. However, it also says that, although in principle the administrative requirements are clear, in practice anomalies and differences have emerged, and that there was therefore an urgent need to standardise and ensure greater consistency. As a result, there has since 2009 been a number of sweeping reforms, with a revision of directives applying to a wide range of products, as well as two horizontal legislative proposals on market surveillance and consumer product safety, and with an investigation having recently been launched into the principle of mutual recognition (which the Commission describes as one of the pillars of the single market).

44 This obliges Member States to notify the Commission and each other of draft technical regulations concerning products.

Review of EU legislation on industrial products

9.5 The Commission says that an independent assessment of the day-to-day functioning of Union legislation on industrial products concluded that it is relevant to meeting EU objectives, but that the following changes should be made:

Improved architecture

9.6 This involves the use of regulations rather than directives (so as to eliminate differences in the timing of implementation, as well as in transposition and implementation); the need for periodic reviews to ensure that legislation is still achieving its objectives; consideration of a horizontal regulation setting out definitions and other common elements applying across EU legislation; regular updating of non-binding guidance on compliance; and the need for the development of measures relating to product use (such as installation and maintenance), where national measures can also impose barriers.

Strengthening effectiveness

9.7 This would involve greater participation of small and medium sized enterprises (SMEs), consumer organisations and associations of professional users in the preparation of EU legislation and in standardisation processes; encouraging national standards organisations to make abstracts of harmonised standards available free of charge on their websites; a faster transition towards "e-market surveillance", with compliance information being made available online as far as possible; facilitating a transition towards paperless market surveillance; promoting a greater use of e-labelling; and integrating new product groups into existing pieces of Union harmonisation legislation for industrial products, rather than promoting new legislation.

Strengthening implementation

9.8 The Commission says that continued support should be given to mechanisms to facilitate cooperation and the exchange of information between it and market surveillance authorities; that the use of accreditation should be further strengthened; that synergies should be fully exploited between different elements in the implementation regime (such as SOLVIT, the Enterprise Europe Network and Product Contact Points); and that the role of Product Contact Points should be expanded.

Reducing administrative burdens

9.9 The Commission says that, although health and safety requirements limit the scope for SME exemptions, an analysis of the effect on them ("the SME test") should always be applied to ensure that administrative requirements do not impose disproportionate burdens; that firms should have available a single reference source on changes made to EU harmonisation legislation; that businesses should continue to be allowed to choose between producing a single declaration of conformity and a different declaration of conformity for each piece of applicable Union harmonisation legislation; and that industry is not over-burdened with too frequent legislative changes.

Extending the reach of EU product harmonisation legislation

9.10 The Commission proposes to promote international convergence in legislation and technical standards so as to lower compliance costs, and, in addition to the steps currently being negotiated with the United States under the Transatlantic Trade and Investment Partnership, it says that further cooperation with regulators and standards bodies in other key third country export markets should be explored.

A vision for the future

9.11 The Commission says that the importance of addressing regulatory barriers will only increase, and that, bearing in mind the over-riding need to minimise administrative burdens, especially for SMEs, it suggests that attention should be focused on stronger enforcement mechanisms, with added emphasis on market surveillance, perhaps accompanied by a streamlining or harmonisation of sanctions for non-compliance; giving consideration to a "horizontal" measure which would set out elements common to different product sectors; greater use of digital technologies, particularly in relation to compliance; the relationship between products and connected services, such as installation and maintenance; placing greater emphasis on the use of Regulations, rather than Directives; and adopting a business-friendly approach to product rules. It also comments that the EU needs to recognise that, whereas the size of the single market used to mean that it could be assured of the attractiveness of its regulatory model, the EU now needs to promote greater international convergence in legislation and technical standards.

9.12 The Commission concludes that the internal market for products needs to continue to evolve, but that this should be balanced by periods of regulatory stability. It says that it will therefore focus its efforts in the short term on the consolidation of legislation and the strengthening of enforcement mechanisms without further burdening the industry, but it adds that it will work on a proposal for harmonising economic sanctions and a common framework for the marketing of industrial products.

The Government's view

9.13 In his Explanatory Memorandum of 12 February 2014, the Minister of State for Business and Energy (Michael Fallon) says that, as the internal market for industrial products is an area of EU competence, the majority of the Communication does not raise subsidiarity concerns, but any subsequent legislative proposals will be looked at closely from that perspective, particularly if they sought to harmonise economic sanctions for non-compliance.

9.14 Subject to that proviso, the Minister welcomes the document and also supports the Commission's objective of achieving a simplified legislative framework for these products and the need to consider the impact of regulation on the competitiveness of EU business, which he says is consistent with the Government's wider objectives for both the EU single market and regulatory burdens on business. He also says that the Government:

- would need to understand more about what the Commission is proposing in relation to the harmonisation of economic sanctions before it can come to a firm position, but it would not want to see detailed and prescriptive rules on domestic

legal remedies, regarding this as a matter for Member States, and preferring to achieve a level playing field through improved co-operation between them rather than the harmonisation of sanctions;

- can see value in a greater level of horizontal (rather than sectoral) legislation, as this should bring some benefits in terms of greater simplicity for businesses, particularly those whose products need to comply with two or more different Directives, but it would like to see further evidence that any such proposal would add value, given the significant effort and costs that would be involved;
- agrees that, whilst it would reduce the flexibility to tailor legislation to UK circumstances, a move towards Regulations rather than Directives should deliver greater simplicity and consistency across Member States, and could also reduce the risk of the European Court of Justice interpreting and legislating in this area;
- supports moves towards the use of technology in this field as having the potential to reduce the compliance burden for businesses whilst making market surveillance more efficient and effective;
- strongly supports the conclusion on international standardization, as this could significantly reduce costs to UK businesses wishing to export beyond the EU.

9.15 The Government also says that a policy discussion on this document was on the agenda for the Competitiveness Council on 20 February 2014, and is due to be considered by the European Council on 14–15 March, with conclusions expected to be agreed at the Competitiveness Council in May.

Conclusion

9.16 **We have already drawn to the attention of the House (and recommended for debate in European Committee) a Commission Communication[45] on EU industrial policy, and this document will be considered alongside it at the European Council, and agreed at the Competitiveness Council in May 2014, as part of an overall package of measures. However, although the document is wide-ranging and deals with an important area, we do not think it gives rise to issues which require further consideration. Consequently, whilst we are drawing it to the attention of the House, we are content to clear it.**

45 (35749) 5489/14 + ADD 1: see HC 86–xxxiv (2013–14), chapter 1 (26 February 2014).

10 Space policy

(35794) 5978/14 COM(14) 56	Commission Report: Progress report on establishing appropriate relations between the European Union and the European Space Agency (ESA)

Legal base	—
Document originated	6 February 2014
Deposited in Parliament	10 February 2014
Department	Business, Innovation and Skills
Basis of consideration	EM of 20 February 2014
Previous Committee Report	None
Discussion in Council	21 February 2014
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 The European Space Agency (ESA) is an intergovernmental organisation dedicated to the exploration of space. Established in 1975 and headquartered in Paris, the ESA has 20 member countries — Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland and the United Kingdom. In addition Estonia, Hungary, Latvia and Slovenia are "European Cooperating States". Canada takes part in some projects under a cooperation agreement. Other countries have signed cooperation agreements with the ESA.

10.2 The ESA's space flight programme includes human spaceflight, mainly through participation in the International Space Station programme, the launch and operations of unmanned exploration missions to other planets and the Moon, Earth observation, science, telecommunication, maintaining a major spaceport, the Guiana Space Centre in French Guiana, and designing launch vehicles. There is close cooperation between the ESA and the EU on some projects, such as the EU's global navigation satellite systems, EGNOS and Galileo.[46]

10.3 The Lisbon Treaty made space policy a shared competence between the EU and Member States (Article 4(3) TFEU). Article 189 TFEU provides that the EU "shall establish any appropriate relations" with the ESA.

10.4 In April 2011 the Commission published a Communication: *Towards a space strategy for the European Union that benefits its citizens*, in which, amongst many other issues, it

46 For the ESA see http://www.esa.int/ESA.

made reference to the new provisions of the Lisbon Treaty and asserted the need for change in the role of the ESA and its relationship with the EU.[47]

10.5 In November 2012 the Commission presented a further Communication: *Establishing appropriate relations between the European Union and the European Space Agency*, which set out five 'structural obstacles' in the relationship between the EU and the ESA which in the Commission's view, needed to be addressed, particularly in light of the reference to the EU/ESA relationship in Article 189 TFEU. The Communication then set out four options for the evolution of the relationship to address these issues, whilst noting that the ultimate goal was 'rapprochement' of the ESA to the EU.[48]

10.6 It is clear now that the Commission takes rapprochement to mean disbanding the ESA and creating a new agency within the EU, operating in accordance with EU rules, with similar functions and roles.

The document

10.7 In this progress report the Commission sets out a preliminary assessment of the four options previously identified (costs, benefits, institutional and legal implications) and provides reflections on this assessment and possible next steps. It says that the process of an open and transparent analysis of the issues will continue and that discussions with Member States and the Director-General of the ESA should lead to coherent and shared conclusions between the EU, the ESA and Member States towards the end of 2014 or early 2015 — this is later than the timescale of the end of 2013 proposed in the 2012 Communication. The Commission notes that the Director-General of the ESA is considering the same options, which ensures the necessary level of coherence between the two organisations — the Council Conclusions on the 2012 Communication stressed the need for common proposals and analysis.[49]

10.8 The Commission summarises the four options under consideration, in some cases providing additional detail:

- Option 1 (No change) is not further elaborated;
- Option 2 (Improved cooperation under the *status quo*) is now focussed on the agreement of policy and mission objectives by the ESA and the EU based on a new EU/ESA Framework Agreement, which would replace the current 2004 Framework Agreement — new unspecified mechanisms would be established to coordinate the work between the two entities;
- Option 3 (Establishing a programmatic structure solely dedicated to the management of EU programmes — an "EU pillar") was previously known as the 'EU chamber' model but the concept is the same — the Commission does not

47 (32660) 8693/11 + ADDs 1–6: see HC 428–xxvi (2010–12), chapter 1 (11 May 2011) and *Gen Co Debs*, European Committee C, 23 May 2011, cols. 3–14.

48 (34417) 16374/12: see HC 86–xxvi (2012–13), chapter 1 (9 January 2013) and *Gen Co Debs*, European Committee C, 11 February 2013, cols 3–18.

49 For the conclusions see http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%206571%202013%20INIT.

provide much detail on what the EU pillar would comprise, it could be a co-located team of officials from the ESA and the Commission to manage EU projects such as Galileo and some discussions have suggested that Commission staff could form part of the ESA's management team (although this is not set out in the report); and

- Option 4 (the ESA becomes an EU agency while preserving some of its intergovernmental features) is not further elaborated.

10.9 The Commission very briefly summarises its view on the degree to which each of these four options addresses the structural obstacles it sees with the current EU/ESA relationship. It concludes that Option 4 is most effective in addressing the obstacles and that Options 3 and 2 address the obstacles to a lesser degree (Option 3 more so than Option 2). It does not set out any consideration of factors such as the impact on EU budget or on EU competence.

10.10 The Commission says that:

- in relation to technical aspects, Option 2 would require amendment to the 2004 ESA/EU Framework Agreement and Option 3 would require a new EU legislative act, but complex institutional and legal issues would need to be addressed first;
- Option 4 would require Member States to agree to disband the ESA and then establish a new EU Agency;
- Option 4 is the least feasible option as implementation is "heavy" and it requires a degree of political consensus "which may be difficult to reach in the foreseeable future";
- "there is no consensus amongst ESA Member States" on a long-term vision for the ESA beyond 2020;
- the elements presented are not sufficient to justify a "conclusive choice among the options";
- Option 3, however, is in the medium term the best compromise between the expected effectiveness in dealing with the Commission's obstacles and the ease of implementation — there is merit in this option but further analysis and discussion is needed;
- Option 2 should also be considered further;
- Options 2 and 3 need to be considered in light of improvements in the working relationship between the ESA and the EU that have been delivered to date, for example through the working arrangements in place for the EU's Galileo programme;
- the way forward selected should bring added value to the benefit of both the ESA and the EU and avoid a blurring of responsibilities;

- the solution needs to be pragmatic and avoid a 'big bang' approach but at the same time provide a solid and sustainable basis in the long-term and achieve full compliance with the EU's financial rules;
- the risk of disruption to programmes underway needs to be carefully considered;
- the final proposals it makes will be accompanied by a full impact assessment, which will detail and quantify the impacts of "at least options 2 and 3"; and
- the progress report does not prejudge any future proposals that the Commission may make.

The Government's view

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

- the Commission's progress report is provided as a basis for discussion at the Competitiveness Council on 21 February and does not contain much new information; and
- the key new elements are further detail on some of the four options under consideration and the indication that the Commission has recognised that there is no political will to disband the ESA and establish a new space agency with similar structure inside the EU.

10.12 The Minister tells us that the indication in the report that Option 2 relies on the amendment or renegotiation of the 2004 EU/ESA Framework Agreement is not understood and the Government will be requesting further explanation. He says that the Agreement was automatically renewed in 2012, after the entry into force of the Lisbon Treaty, for a further four years and it is not clear what needs to be changed to enable better coordination on policy matters or specific missions.

10.13 The Minister notes that:

- Option 3 is still the least well defined of the options and further work is needed to clarify what is proposed;
- The Commission says that this option would require a new EU legislative act, which would set out the tasks of the EU pillar as well as its structure and financial requirements; and
- comparable changes to the ESA's internal legal framework might also be necessary to create an 'EU-like' environment.

10.14 He then comments that:

- the Government considers that implementation of Option 3 has already begun with the ESA's navigation directorate successfully applying EU procurement rules and EU financial regulations for the work on the Galileo and EGNOS programmes;

- the new delegation agreements between the Commission and the ESA for the period 2014 onwards will further improve the working arrangements for these programmes and create an even more 'EU-like' environment within the ESA for the management of these programmes; and
- it is not the Government's view that an EU legislative act is needed, but more information is needed on what is proposed under this option.

10.15 The Minister says that:

- the Commission's acknowledgement that the political consensus needed to deliver Option 4 would be difficult to reach in the foreseeable future is welcome; and
- the Government has made clear throughout this process that the interests of Europe's space sector are best served by the ESA remaining an independent intergovernmental organisation.

10.16 Turning to the question of next steps, the Minister comments that:

- the Government considers that there are in fact two issues under discussion as part of this debate;
- the first relates to how the ESA can deliver EU funded programmes such as Galileo efficiently, to cost and on-time;
- the second issue is more strategic than operational and relates to who should do what in Europe in the field of space;
- improving delivery of EU-funded programmes is the objective of Option 3, although the Government does not yet see a need for any new EU legislation to deliver this;
- it would like to understand in the next stage of the analysis why administrative arrangements such as the delegation agreements for the Galileo programme and changes to the ESA's internal rules are considered by the Commission to be insufficient to deliver Option 3;
- resolving the respective roles and responsibilities of the ESA and the EU in the field of space, which is the objective of Option 2, could include establishing a road-map for research and development or leading the discussions to establish a European space policy which could be used by Member States, the ESA and the Commission to align space activities;
- at present, both the ESA (through its founding convention), the EU (through the Lisbon Treaty) and both organisations acting together (through the 2004 Framework Agreement) are all charged with the development of a European Space Policy; and
- the Government therefore supports the Commission's proposal to undertake further work on Options 2 and 3 in close collaboration with the ESA, but it does not agree with all aspects of these options as set out in the progress report.

10.17 Finally the Minister tells us that the Government supports the Commission's statement that the way forward selected should bring added value for both organisations and the recognition that high-level objectives such as the competitiveness of the European space industry need to be considered throughout.

Conclusion

10.18 **Whilst clearing this document, we draw it to the attention of the House as indication of the issues that may require close scrutiny if the Commission makes, as it suggests is possible, specific proposals in the future.**

11 Trade in products used for capital punishment, torture etc

(35795) 6083/14 COM(14) 1	Draft Regulation amending Council Regulation (EC) No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

Legal base	Article 207 TFEU; co-decision: QMV
Documents originated	14 January 2014
Deposited in Parliament	10 February 2014
Department	Business, Innovation and Skills
Basis of consideration	EM of 20 February 2014
Previous Committee Report	None
Discussion in Council	See para 11.8 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

11.1 Council Regulation (EC) No. 1236/2005 lays down EU rules governing trade with third countries in goods which could be used for capital punishment, or for torture and other cruel, degrading or inhuman treatment or punishment. More specifically, it prohibits the export of goods[50] (listed in Annex II of the Regulation) which have no practical use other than for these purposes, whilst, in the case of goods (listed in Annex III) which *could* be so used, but which have other legitimate purposes, it stipulates that an authorisation issued by a nominated competent authority in the Member State of export is required. However, it adds that the competent authority must consult any other such authority which has rejected an essentially identical application within the previous three years; that

50 Such as gallows, electric chairs, gas chambers and systems to administer lethal chemicals.

any such authorisation should not be granted if there are reasonable grounds for believing that the goods in question might be used for torture etc; and that any decision to dismiss (or annul) an application should be notified to the Commission and other Member States.

11.2 In 2011, a Commission Implementing Regulation extended the controls to certain drugs (essentially barbiturate anaesthetic agents), which were added to Annex III of Council Regulation (EC) No. 1236/2005, in order to prevent their use for capital punishment by means of lethal injection. However, after a number of manufacturers and Member State competent authorities had suggested that the system for controlling their export was unnecessarily cumbersome, having regard to their legitimate uses and the large number of transactions each year, the Commission undertook a more general review of Council Regulation (EC) No. 1236/2005.

The current proposal

11.3 As a result, it has now put forward this proposal, which would list these drugs in a new Annex (IIIA), and create a Union General Export Authorisation (UGEA) — equivalent to a UK Open General Export Licence — to provide a simplified procedure for their export to destinations which have prohibited capital punishment, and for repeat exports to specified end-users in countries which have retained execution by lethal injection, subject to the existence of contractual arrangements between the supplier and recipient to prevent their diversion.

11.4 In addition, the proposal would make the following amendments:

- the UGEA would also apply to all other items currently listed in Annex III of Council Regulation (EC) No. 1236/2005;
- the brokering[51] of goods listed in Annex II would be prohibited, whilst controls would be introduced on brokering and the provision of technical assistance related to items in Annex III, where the broker or provider of such assistance was aware, or "suspected" that the items might be used for capital punishment or torture in an overseas country;
- the Commission would be empowered to amend the Annexes to Council Regulation (EC) No. 1236/2005 by means of a delegated act, and there would be an "urgency procedure" allowing such an amendment to enter into force without delay (rather than after a two month silence, which is usual for such acts);
- there would be a new mechanism enabling Member States to request the Commission to amend the Annexes to the Regulation; and
- the definitions of "torture" and of "other cruel, inhuman or degrading treatment or punishment" would be amended to take account of recent case-law of the European Court of Human Rights, and a number of new definitions would be added to accommodate the other changes described above.

51 Defined as arranging the supply of goods between one non-EU country and another.

The Government's view

11.5 In his Explanatory Memorandum of 20 February 2014, the Minister of State for Business and Energy (Michael Fallon) says that the Government supports robust controls on equipment which might be used for internal repression, including capital punishment or torture, and recalls that Regulation (EC) No. 1236/2005 was adopted during the last UK Presidency of the EU. He adds that the UK maintains national controls on the brokering of equipment whose only use is for capital punishment and on some equipment used for torture; took the lead in applying national export controls to drugs used in execution by lethal injection; and was instrumental in the Regulation being amended to make these subject to export controls across the EU. He also observes that it has since 2000 been the policy of successive Governments to deny export licences for military or dual-use goods where it judges there to be a clear risk that these might be used for internal repression. In general, therefore, he says that the Government welcomes efforts to strengthen the Regulation, provided they do not impose unnecessary burdens on legitimate business.

11.6 More specifically, the Minister says that:

- the proposals to allow more flexible licensing of items currently listed in Annex III of Regulation (EC) No. 1236/2005 are to be welcomed, adding that, when the UK adopted a corresponding national control, it applied only to exports to the United States, as the destination judged to present the greatest risk of misuse, whereas the current application of these controls to all destinations has been disproportionate;

- equally, the proposal to allow national authorities to grant a General Authorisation for repeat exports to specified end-users in countries which have retained execution by lethal injection, subject to the existence of contractual arrangements to prevent diversion, is sensible, as is the possibility of applying such an Authorisation to all other items currently listed in Annex III;

- the UK Export Control Order 2008 currently defines certain capital punishment and torture goods as "Category A" goods for the purposes of the brokering controls, and prohibit (other than in very narrowly defined circumstances) any UK person to arrange the supply of such goods from one overseas country to another: whilst the Government welcomes efforts to bring EU controls into line with existing UK controls, the scope of the proposal is slightly narrower, in terms of the definition of brokering, the range of goods concerned, and the fact that it would apply to supply between non-EU countries rather than between all overseas countries;

- as Regulation 1236/2005 covers an area of exclusive EU competence, the UK will not be able to maintain national controls in addition to the EU controls, unless specifically authorised to do so under the amended Regulation (or if it is able to justify them on UK public policy or public security grounds);

- the Government will therefore have to decide whether to try and persuade the EU to adopt the same level of controls as the UK, to seek a derogation allowing the UK to maintain stricter controls, or to accept the slightly narrower scope of the EU proposal: he suggests that the first two options may not be negotiable, whilst the

last could lead to criticism that the UK's controls have somehow been "weakened", even though an EU-wide control would be more effective in preventing undesirable trade than a purely national control;

- there are currently no equivalent UK national controls to those proposed on brokering and on the provision of technical assistance related to items listed in Annex III and the new Annex IIIA, where the broker or provider is aware or "suspected" that the items might be used for capital punishment or torture in an overseas country: he points out that these provisions are modelled on the EU export control system for dual-use items in Council Regulation (EC) No. 428/2009, and appear in principle to strike a sensible balance, but the formulation of the legal text does not match the stated intent of the new controls, and the preamble to the new Regulation serves only to confuse matters further, so that it will be necessary to seek clarification from the Commission before the implications can be properly assessed;

- the UK accepts that there is an argument for introducing an urgency procedure, but considers that this should be deployed sparingly, and that there should be a high threshold for its use (for example, if there was clear and compelling evidence that a particular drug not currently listed in Annex III to the Regulation was being sought by a country which practices execution by lethal injection); and

- the proposal that Member States may ask the Commission to amend the Annexes to the Regulation arises because the Commission has no role in law enforcement or criminal matters, and therefore does not have the necessary expertise to decide whether or not equipment designed or marketed for law enforcement may be misused for torture or other cruel, inhuman or degrading treatment or punishment: he says that, whilst it is always possible for Member States to ask the Commission to act, the existence of a formal mechanism for such requests seems to be sensible.

11.7 The Minister says that an Impact Assessment has not been prepared, as in practice there are very few licence applications for items covered by the Regulation, and this proposal is not expected to have a significant impact on business or the Government. However, the Government will consider in due course whether such an Assessment is necessary.

11.8 He also says that there is currently no information on how long the legislative process will take, and that it is not clear at this stage whether the Commission will try and force this through before the European Parliament elections in May.

Conclusion

11.9 **The principle of EU controls over exports of the items covered by Council Regulation (EC) No. 1236/2005 is now well established, and the changes proposed by the Commission appear on the whole to be logical and sensible, and to respond to a number of practical concerns which have previously been expressed about the operation of the measures. In view of this, we do not consider that the proposal raises any major issues, particularly as the Government has said that there are very few**

applications for licences, and, although we think it right to draw it to the attention of the House, we are content to clear it.

12 Shipments of waste

(35220) 12633/13 + ADDs 1–2 COM(13) 516	Draft Regulation amending Regulation (EC) No. 1013/2006 on shipments of waste

Legal base	Article 192(1) TFEU; co-decision; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letter of 17 February 2014
Previous Committee Report	HC 83–xiv (2013–14), chapter 5 (11 September 2013)
Discussion in Council	See para 12.10 below
Committee's assessment	Politically important
Committee's decision	Cleared; further information awaited

Background

12.1 The Waste Shipment Regulation ((EC) No. 1013/2006) lays down requirements for shipments of waste both within the EU, and between the EU and third countries, in order to protect the environment. In particular, it bans exports of hazardous waste outside the OECD, but permits the export of non-hazardous waste, provided it is managed in an environmentally sound manner. The Regulation also requires Member States to inspect establishments in accordance with the requirements laid down in the Waste Framework Directive (2008/98/EC), but controls are otherwise left to their discretion, and there are no specific provisions on how inspections should be carried out. As a consequence, there are large discrepancies between Member States, which provide an incentive for exporters of illegal waste to route it through those with the least control, this being a particular problem with hazardous waste, in that it can have severe impacts on the environment and human health.

12.2 The Commission therefore put forward in July 2013 this proposal to amend Regulation (EC) No. 1013/2006 so as to ensure a more consistent approach, under which:

- Member States would be required to ensure their competent authorities prepare inspection plans (which will be made publicly available);
- competent authorities would be able to request exporters to submit evidence which confirms that a shipment described as non-waste is destined for re-use and is fully functional; and

- provision for the adoption of delegated acts by the Commission for the implementation of electronic data interchange for the submission of documents.

12.3 As we noted in our Report of 11 September 2013, the Government recognises that waste continues to be exported illegally to developing countries lacking the infrastructure needed to manage it satisfactorily, and that compliance with the Waste Shipment Regulation appears to be inconsistent. Consequently, whilst it believed the system in the UK to be relatively good, it welcomed in principle a proposal designed to ensure better compliance, subject to two caveats. First, enforcement is a matter which could be seen as a Member State issue, and any prescription would need to be justified as improving the regime. Secondly, although the Commission's impact assessment had suggested that any costs would be outweighed by the savings arising from the need to repatriate fewer consignments, the Government wished to consider the impacts further.

12.4 It also said that requiring competent authorities to develop inspection plans was acceptable in principle, but that the level of detail expected could raise concerns, and that making plans publicly available might be counterproductive, in encouraging those in sectors not targeted to become less fastidious, and in providing intelligence for those trying to evade controls. On the other hand, enabling competent authorities to ask exporters to prove that a shipment is destined for re-use and that it is fully functional has already been adopted for Waste Electrical and Electronic Equipment in Directive 2012/19/EU, and is potentially a useful tool for some other waste streams.

12.5 We commented that, whilst the proposal appeared to be relatively straightforward, and not to raise any major issues, there were nevertheless one or two areas which needed further consideration, including the degree of prescription involved and the balance between the likely costs and benefits. In view of this, we decided to draw the document to the attention of the House, but to hold it under scrutiny, pending further information on these issues.

Subsequent developments

12.6 We next received a letter of 24 September 2013, indicating that the Government's basic concerns remained, and that it would seek to achieve a Regulation which sets out the provisions which Member States would have to take into account, but which left the exact details to them. We were also told that the Government would provide a more detailed analysis of the costs and benefits in due course, but would seek to ensure that the burden on business was not unduly increased. It concluded by saying that, if were now able to clear the proposal before 14 October, that would enable the UK to engage fully in the debate then in the Environment Council. In reply, our Chairman commented that, although the Government had sought to construct a negotiating strategy to address the earlier concerns, it was at present no more than that, with no guarantee that these aims could be pursued. In view of this, he said that we considered that it would be premature to give scrutiny clearance.

12.7 We have now received from the Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs (Dan Rogerson) a further letter of 17 February 2014. He says that the negotiations are well advanced, with there now being a much clearer idea of their direction of travel. In particular, a preliminary exchange of views

at the Environment Council in October 2013 had recognised the need to address illegal shipments of waste, and for inspection planning, but had also underlined the need to consider the level of detail required in order to strike the right balance, with doubts also being expressed about the publication of inspection plans.

12.8 The Minister comments that the negotiations have generally been moving in a positive direction, although it would appear that a significant number of Member States prefer a requirement for inspection plans with a *minimal* list of mandatory requirements. He says that the Government can accept this, as long as it will not significantly impact on the way the UK operates already and, in order to address concerns that any such requirements might promote bureaucracy, it is seeking a review clause to assess the impact of the Regulation.

12.9 He also provides more information on the balance between costs and benefits, summarising the findings of an impact checklist as follows:

- whilst the UK has an effective system of enforcement, a requirement to prepare inspection plans will sharpen the focus, and, since the repatriation of illegal shipments to the UK can cost thousands of pounds (and must be funded by Government where the person responsible for the shipment cannot be traced), this has the potential to reduce enforcement costs;
- improved enforcement of the controls should provide a more level playing field, with consequent benefits for legitimate businesses;
- better enforcement will give rise to environmental and health benefits at global level, since illegal shipments can result in waste being managed in a way which is not environmentally sound (or even dumped in the receiving country), posing a risk to the local population and the environment; and
- whilst a long mandatory list of issues for inclusion in plans might have required competent authorities to divert resources away from more direct enforcement activity, a minimal list of mandatory requirements would be less burdensome, whilst a review clause, obliging the Commission to assess the impacts in due course, would address concerns that such an approach might promote bureaucracy.

12.10 The Minister concludes by saying that the negotiations appear to be going in the right direction, and that the UK has the scope to influence an outcome which will not be overly burdensome. He also says that the UK will need to give an indication of its voting intentions in early March, prior to final agreement in the Council, and he has therefore asked whether we can clear the proposal from scrutiny as a matter of urgency.

Conclusion

12.11 **We are grateful to the Minister for this update, in the light of which we are now willing to clear the document. However, we would be glad if he could inform us in due course of the eventual outcome of the negotiations.**

13 Wildlife trafficking

(35802) 6351/14 COM(14) 64	Commission Communication on the EU Approach against Wildlife Trafficking

Legal base	—
Documents originated	7 February 2014
Deposited in Parliament	13 February 2014
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 24 February 2014
Previous Committee Report	None
Discussion in Council	See para 13.8 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

13.1 The Commission comments that illegal cross-border trade (trafficking) of wildlife is not new, but has changed its scale, nature and impact considerably, with a significant global upsurge in recent years: as a result, it has become one of the most profitable criminal activities, involving the same groups responsible for trafficking human beings, drugs and firearms, and is a cause of instability in areas such as central Africa. It also notes that the increase in trafficking has been mainly driven by a high and growing demand for wildlife products (notably in parts of Asia), by poverty and poor enforcement, and by inadequate sanctions: and it adds that it poses a serious threat both to biodiversity, with significant declines in species such as the elephant and rhinoceros, and to the livelihoods of many indigenous communities, as well as reducing Government revenues.

13.2 The Commission notes that the EU remains a major destination for illegal wildlife products, whilst its ports and airports are important transit points for trafficking, particularly between Africa and Asia, and it points out that the role of organised criminal groups is increasing, due to the high profitability and low risk of detection involved. It says that this has resulted in more political attention, including initiatives by several Member States, and with the European Parliament having recently called for a dedicated EU Action Plan.

The current document

13.3 In view of this, the Commission has produced this Communication to draw attention to the urgent need to address the problem more effectively, to take stock of and assess existing EU measures, and to initiate a debate on the future approach of the EU to this issue.

Global action

13.4 The Commission says that the EU has supported a variety of initiatives to strengthen international efforts against wildlife trafficking, involving:

Regulating trade

The EU is a major supporter of the Convention on the International Trade in Endangered Species (CITES); has completed bilateral Voluntary Partnership Agreements in the area of timber trafficking to improve traceability systems and verify the legality of imported products; is a leading force in the fight against illegal, unreported and unregulated (IUU) fishing, having promoted the adoption of comprehensive control measures by regional fisheries management organisations and the FAO, and provided technical assistance to more than 50 third countries; has included in its Free Trade Agreements provisions to strengthen the implementation of multilateral environmental agreements; and has provided additional trade preferences under its Generalised Scheme of Preferences to developing countries which ratify and implement international conventions on sustainable development and good governance.

Enforcement

The Commission says that, in many countries, the resources and engagement of enforcement agencies to implement the existing rules is not sufficient, and it notes that the EU is the main donor to the International Consortium to Combat Wildlife Crime.

Support for international cooperation and action

The Commission points out that the EU and its Member States are parties to the UN Convention against Transnational Organised Crime, and to the UN Convention against Corruption, although it observes that concrete and dedicated action against wildlife trafficking under both Conventions so far remains limited. It also notes that the Financial Action Task Force, which sets standards and evaluates the implementation of anti-money laundering measures, now includes "environmental crime" in its list of relevant criminal offences. At a diplomatic level, it says that the EU has raised the problem of wildlife trafficking directly with key source and demand countries, but comments that, as the main focus so far has been on Africa, there should be more engagement with key demand countries and on partnerships at regional level, similar to those on illegal fishing.

Development cooperation

The Commission observes that EU development cooperation has sought to tackle threats to wildlife by efforts in conservation, capacity-building and enforcement support, but that longer-term measures are also required to provide sustainable sources of income to local communities for whom involvement in illegal wildlife trade may seem an easy option. It says that the EU has committed more than €500 million for biodiversity conservation in Africa over the last 30 years, but that the need for the proper management and conservation of biodiversity remains high. It

also suggests that the synergies between conservation, the livelihoods of local populations, enforcement and good governance have not always been sufficiently exploited, and that the long term sustainability of a number of projects remains fragile due to insufficient ownership and support by national and local authorities and high dependence on external funding. However, it points out that the programming of the EU development cooperation for the period 2014–20 represents an opportunity to address these shortcomings and to set out a comprehensive approach on wildlife trafficking.

EU action

13.5 The Commission notes the following areas:

Regulating wildlife trade

The Commission says that trade in wildlife is subject to a comprehensive set of rules, which include giving effect to CITES, action on the illegal timber trade and IUU fishing, and that it also has in place legislation prohibiting the illegal killing of endangered species. However, it comments that criminal networks have in some cases taken advantage of the complexity of the rules, including the fact that some species can be subject to different regimes.

Effective enforcement

The Commission says that the effective enforcement by Member States, including by the police and judiciary, is required, but suggests that limited resources, the lack of specialised police and prosecution units, and varying degrees of cooperation between wildlife and other enforcement agencies has impeded effective enforcement, and suggests that legislation on binding criteria for effective Member State inspections and surveillance, as called for by the Seventh EU Environmental Action Programme (2014–20), could help to improve the situation. Similarly, it says that, although Directive 2008/99/EC requires all Member States to provide for effective, proportionate and dissuasive criminal sanctions, an initial assessment of its transposition shows that there are still shortcomings in some Member States which need to be addressed: and it also observes that the level of criminal sanctions applicable to wildlife trafficking vary significantly within the EU, and in some Member States limit their deterrent effect.

Training and capacity building

The Commission points out that effective enforcement requires technical skills and awareness throughout the whole enforcement chain, and that some initiatives to address this are being taken, including use of the next funding period to fill existing gaps in the fight against wildlife trafficking. In addition, it notes that EU networks of environmental enforcement practitioners, customs authorities, prosecutors and judges play an important role, but says that their status and funding is secured only on a short term basis, and that cooperation between them so far has been limited.

Fighting organised crime

The Commission says that there are several EU horizontal instruments, which can in principle provide useful tools against organised wildlife trafficking, but that these apply only when a certain sanction threshold is met, which is not currently the case in all Member States. It adds that investigating the illegal financial flows associated with organised crime is important, with Directive 2005/60/EC providing for preventive measures, notably through due diligence obligations for financial institutions to detect suspicious financial transactions, and that the development of specific guidance on its application in the context of environmental crime could be helpful. It also notes that, although Europol issued a specific environmental crime assessment in October 2013 which focussed on trade in endangered species, it has at present no dedicated focal point working on this. The Commission says that both Europol and Eurojust could provide important assistance, and suggests that national enforcement authorities should provide them with the necessary data and submit requests for their assistance (which has not so far been the case). Finally, it says that agreed EU priorities for 2014–17 for the fight against organised crime do not include any area of environmental crime, but that a mid-term review will provide an opportunity to reconsider the priorities.

Engaging civil society

The Commission says that civil society is an important partner in ensuring that all relevant stakeholders are mobilised against wildlife trafficking, and that the input of some non-governmental organisations has been valuable in assisting public authorities.

13.6 The Commission concludes that, although comprehensive global and EU-wide rules exist to regulate wildlife trade, significant enforcement gaps remain, often linked to the low priority given to this issue, and a lack of coordination between the various authorities involved. It has therefore invited stakeholders to let it have by 10 April 2014, answers to a list of questions seeking to establish what improvements might best be made to the current arrangements.

The Government's view

13.7 In his Explanatory Memorandum of 24 February 2014, the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs (Lord de Mauley) notes that there are no specific policy proposals, but says that, subject to the caveat that, if any such proposals were made, it would be necessary to assess whether they were necessary, the Government supports the Commission's aim of fostering debate, and agrees that wildlife trafficking is a global problem, which needs to be tackled through enforcement, demand reduction, and sustainable livelihoods.

13.8 The Minister also notes that the Commission will consider the next steps, including whether to submit specific proposals, following the outcome of its public consultation.

Conclusion

13.9 **As this document is simply seeking views at this stage, it does not seem to us to require further consideration by the House. On the other hand, it provides a useful resumé of the issues arising on a subject, which are a matter of topical (and growing) concern, and, for that reason, we think it right to draw it to the attention of the House.**

14 Tripartite Social Summit for Growth and Employment

(35524) 16118/13 COM(13) 740	Draft Council Decision on a Tripartite Social Summit for Growth and Employment

Legal base	Article 352 TFEU; unanimity; EP consent
Department	Work and Pensions
Basis of consideration	Minister's letter of 20 February 2014
Previous Committee Report	HC 83–xxvii (2013–14), chapter 3 (15 January 2014)
Discussion in Council	No date set
Committee's assessment	Legally important
Committee's decision	Cleared

Background and previous scrutiny

14.1 The Tripartite Social Summit for Growth and Employment provides a forum for high level social dialogue involving the EU institutions, Heads of State and Government holding (or about to assume) the rotating Presidency of the Council, and EU social partners (representing employers and trade unions). Existing arrangements for the composition and meetings of the Summit are set out in a 2003 Council Decision.

14.2 In its recent Communication, *Strengthening the social dimension of the Economic and Monetary Union*, the Commission put forward a number of initiatives to strengthen social dialogue, and indicated that it would propose changes to the 2003 Decision to "align it with the new institutional framework established by the Lisbon Treaty and its integrated growth and employment strategy".[52]

14.3 The draft Decision would:

- incorporate the current practice of twice-yearly meetings of the Summit before the spring and autumn European Councils (the 2003 Decision only requires the Summit to meet "at least once a year" before the spring European Council);

52 See (35370) 14102/13: HC 83–xx (2013–14), chapter 2 (6 November 2013).

- include a reference to the Europe 2020 Strategy; and
- reflect the institutional changes introduced by the Lisbon Treaty, of which the most significant (for the purposes of the Tripartite Summit) is the creation of a permanent President of the European Council.

14.4 Our Thirtieth Report, agreed on 15 January 2014, provides further information on the changes proposed (which we have described as 'light touch') and on the Government's position.

14.5 The Minister for Employment (Esther McVey) acknowledged the value of high level dialogue with EU social partners on issues related to the Europe 2020 Strategy and noted that the draft Decision was "without prejudice to the organisation and operation of the national systems of industrial relations and social dialogue". She said that the Government would "ask the Commission more fully to substantiate its reasons" for proposing Article 352 of the Treaty on the Functioning of the European Union (TFEU) as the legal base for the draft Decision and, as Article 352 measures are subject to the requirements of section 8 of the European Union Act 2011, added that a further assessment would be required within Government to determine whether one or more of the exempt purposes set out in section 8(6) of the 2011 Act would apply.

14.6 We thought that the Minister appeared to have reservations about the Commission's choice of legal base and asked her to explain what they were and whether she considered there to be a more suitable legal base. We suggested that none of the statutory exemptions set out in section 8(6) of the European Union Act 2011 appeared to apply in this case, asked the Minister whether she agreed, and looked forward to receiving further information on the outcome of the Government's assessment.

The Minister's letter of 20 February 2014

14.7 The Minister (Esther McVey) first explains the Commission's rationale for proposing Article 352 TFEU as the legal base for the draft Decision:

> "The Commission has confirmed that it brought forward this proposal under Article 352 because it believed there was no other suitable legal base. In particular it did not consider Article 152 to be a suitable basis to act as this does no more than recognise the Tripartite Social Summit (TSS) as part of social dialogue at European level. The Government shares this analysis here, as there does seem to be no appropriate legal base for the updating of the TSS decision, whose previous legal base, Article 202 of the EU Treaty is now defunct."[53]

14.8 She continues:

> "The Government views the use of Article 352 as a legal base on a case-by-case basis and will support its use where we believe that this is justified. Given the potential use of this Article for a broad range of matters not provided for specifically under the

53 Article 202 of the EC Treaty conferred a general power on the Council to take decisions ensuring that the objectives of the Treaty were attained.

> Treaty, it is right that measures relying on this legal base are subject to greater Parliamentary scrutiny, and in each case as required under the European Union Act 2011 we will seek the approval of Parliament to support the adoption of the measure in the Council."

14.9 The Minister confirms that none of the statutory exemptions set out in section 8(6) of the European Union Act 2011 applies, adding:

> "In particular, the exemption for a renewal or consolidation of an instrument allowed for [in] sub-paragraph 8(6)(e) cannot be used as it only applies to renewal or consolidation of existing measures themselves adopted under Art 352 (or its predecessor, the old Article 308), whereas the previous TSS Decision was made under the then Article 202 EU Treaty, as explained above. As none of the exemptions applies, the Government will need to seek the approval by an Act of Parliament before a Minister can vote in favour of the adoption of the new TSS Decision by the Council."

Conclusion

14.10 **We note that the Minister is content with the use of Article 352 TFEU as the legal base for the draft Decision and agrees with us that an Act of Parliament will be required before the Government may vote in favour of its adoption. As the legal base and parliamentary procedures for approval of the draft Decision have been clarified, we are content to clear the proposal from scrutiny.**

15 The EU and the Gulf of Guinea

(35684) 18099/13 JOIN(13) 31	Joint Communication: *Elements for the EU's Strategic Response to the Challenges in the Gulf of Guinea*

Legal base	—
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 28 February 2014
Previous Committee Reports	HC 83–xxx (2013–14), chapter 7 (29 January 2014); also see (35595) — and (35696) 17859/13: HC 83–xxvi (2013–14), chapter 9 (8 January 2014)
Discussion in Council	17 March 2014 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

15.1 This Joint Communication, *Elements for the EU's Strategic Response to the Challenges in the Gulf of Guinea* (a 6,000 km coastline from Senegal to Angola, including the islands of Cape Verde and São Tomé & Príncipe, covering two geographical, political and economic regions) sets out an EEAS/Commission proposal for a "Comprehensive Approach" to the primary challenges faced in the region, especially in the maritime domain. It is designed to serve as the basis for a Strategic Framework.

15.2 The Commission/EEAS posit three distinct types of threat:

— those that take place uniquely at sea, including illegal fishing, illicit dumping of waste, and piracy and armed robbery at sea;[54]

— those that come from sea onto land, primarily trafficking of narcotics, arms, counterfeit goods and, often in the other direction, of human beings; and

— threats to sea-based economic activity from land, particularly to the offshore oil and gas industry, including hostage-taking, theft ("bunkering"), and criminal acts in ports.

15.3 It proposes general areas for action rather than specific programmes. It is based on three principles: partnership with the countries and organisations in the Gulf of Guinea region; a comprehensive approach integrating security, development and governance issues; and applying lessons learned from other strategies.

15.4 The Minister for Europe (Mr David Lidington) described both the EU Comprehensive Approach (which is now the keystone of CSDP, and the subject of a full-blown Commission Communication that the Committee recently considered)[55] and tackling maritime criminality in the Gulf of Guinea as UK priorities. The analysis, conclusions and broad actions proposed in the Joint Communication were in line with UK objectives and he was content with them as a basis for the Strategic Framework.

15.5 The Minister also outlined some, "albeit relatively minor", concerns, which related to some of the content of the analysis, rather than the proposed areas for action:

- "The paper separates the maritime threats into sections. We think this is somewhat arbitrary given the linked nature of the threats and is inconsistent with the holistic approach advocated in the paper;

- "The document suggests there is potential for kidnapping attacks to develop into a piracy business model similar to that seen in Somalia. There is no evidence to support this assertion. Indeed, there are significant differences with Somali-based piracy particularly the lack of governance and capability in East Africa. We will seek to address this factual inaccuracy in the paper. Other Member States share our analysis;

54 The Commission/EEAS note that International law differentiates between "piracy" — incidents which take place in international waters — and "armed robbery at sea" — incidents which take place in territorial waters.

55 See headnote: (35595) — and (35696) 17859/13: HC 83–xxvi (2013–14), chapter 9 (8 January 2014).

- "Greater emphasis should be given in the Strategic Framework to encouraging the implementation of the priorities outlined in the 'Code of Conduct Concerning the Prevention and Repression of Piracy, Armed Robbery against Ships and Illegal Maritime Activities in West and Central Africa' which was adopted by Gulf of Guinea Heads of State in Yaoundé on 24–25 June 2013.

- "The communication is not specific about linkages with the EU Horn of Africa[56] and EU Sahel[57] strategies, nor lessons learned in these regions. It is important to understand how the Gulf of Guinea strategy will affect maritime resources and policy making attention in the Horn of Africa. It would also be useful for the document to discuss whether proliferation and trafficking through the Sahel is fuelling extremism and violence in the Gulf of Guinea."

15.6 The Minister aimed to strengthen these areas through discussions at the COAFR Working Group on 22 January 2014 ahead of the Council Conclusions on 10 or 23 February and thereafter.

Our assessment

15.7 We were subsequently given to understand that the timescale for further discussion was in fact somewhat more elastic, and that the only actual deadline was agreement on the Strategy prior to the 2–3 April Africa-EU Summit.

15.8 We therefore asked the Minister to write to us once the document had been finalised, outlining the changes that had been made and his views thereon, and prior to its adoption as the new Strategy.

15.9 In the meantime, we retained the document under scrutiny.[58]

The Minister's letter of 28 February 2014

15.10 The Minister says that his officials have been "fully engaged throughout the process" and that the concerns highlighted in his Explanatory Memorandum have been addressed during the development of the strategy. The EU has, he says, "been receptive to our concerns and has reflected them in the changes to the document".

15.11 He says that the main points to note are as follows:

- "It is particularly positive that officials succeeded in softening the language regarding the possibility of a new CSDP mission. We considered that the language in the first draft of the strategy was too forward leaning on the prospect of a new mission before sufficient work had been done to establish the best way to support current programmes. The paper is now clear that there are a number of options to be explored before a mission is considered.

56 Set out at the Annex to the 14 November 2011 Council Conclusions on the Horn of Africa, which are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/126052.pdf.

57 Available at http://www.eeas.europa.eu/africa/docs/sahel_strategy_en.pdf.

58 See headnote: HC 83–xxx (2013–14), chapter 7 (29 January 2014).

- "The link made in the first draft between threats to maritime security in the Gulf of Guinea and Somali piracy was inaccurate. The most recent draft now references the lessons learned from the EU's Horn of Africa Strategy and the comparison with Somali-style piracy has been removed.
- "States in the Gulf of Guinea are showing increased political will to act and we consider that international assistance should be coordinated in support of African leadership. The strategy has now been altered to better emphasise that EU activity should be in support of African leadership and implementing 2013's groundbreaking Yaoundé Code of Conduct.
- "The initial analysis separated maritime criminality into three distinct threats, which we considered to be misleading. The text has been altered to reflect the inter-linkages between the crimes and promotes the holistic approach."

15.12 Overall, the Minister says:

> "We continue to believe that this strategy is a positive step for the EU as it seeks to address maritime insecurity in the Gulf of Guinea through greater international co-ordination and support to an African-led solution. This approach is consistent with the UK's own Strategy to Address Maritime Security off Africa's Western Seaboard, and will bring greater coherence to both the EU and individual Member States' engagement in the Gulf of Guinea."

Conclusion

15.13 **We note the reference to a proposed new CSDP mission (the first bullet point above), since there was no mention of one in the Minister's Explanatory Memorandum, and nor can we find one in the document itself. It would seem that the EEAS nonetheless sought to insert the idea in the Strategy paper itself. However, we are reassured, for the time being at least, in that it would seem that other (unspecified) options are to be considered before any such proposal is taken forward.**

15.14 **We are content to clear the Joint Communication. However, we should be grateful if, after the Foreign Affairs Council, the Minister would provide the Committee with a copy of the final Strategy Framework paper and of the Council Conclusions, and any further views he may have as to how well they meet UK objectives and concerns, and indicate the nature of the mission proposed by the EEAS and what the other options referred to above are.**

16 EU military operation in the Central African Republic (EUFOR RCA)

(35747) — —	Council Decision on a European Union military operation in the Central African Republic (EUFOR RCA)

Legal base	Articles 42(4) and Article 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 21 February 2014
Previous Committee Report	HC 83–xxxi (2013–14), chapter 14 (5 February 2014)
Discussion in Council	10 February 2014 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared (decision reported on 5 February); further information provided

Background

16.1 Via Operation Sangaris, some 1,600 French troops have been deployed in the CAR since early December on a mission to stem fighting between predominantly Muslim militants, known as the ex-Seléka, and bands of Christian vigilantes.

16.2 By the beginning of 2014, the humanitarian and security situation in CAR remained extremely concerning. Although the deployment of French and African Union (AU) forces appeared to have stabilised the security situation in Bangui, the capital city remained tense with sporadic fighting; in the rest of the country, fighting continued in the west and north-west, with most residents still too afraid to return to towns. The numbers of Internally Displaced Persons was estimated at over 935,000 (out of a population of 4 million) with 512,000 in Bangui alone (population 800,000). In sum, there was a considerable humanitarian challenge.

16.3 We most recently reported on the first draft Council Decision on 5 February 2014. We set out in that Report the relevant conclusions of the January Foreign Affairs Council and the background to UN Security Council resolution 2134.

Council Decision 2014/73/CFSP

16.4 The Council Decision (2014/73/CFSP) of 10 February 2014 established a European Union military operation in the Central African Republic (EUFOR RCA). As well as designating Major General Philippe Pontiès as Operation Commander and Larissa as the EU Head Quarters, it also agreed a draft reference amount for the budget of €39.6 million (through the ATHENA mechanism, the UK would expect to pay a 14.82% share of the common costs, which would equate to €5.8 million).

16.5 In our February Report we expressed our gratitude to the Minister for the way in which the scrutiny process had been handled thus far, given the pressures to press ahead as

rapidly as possible. No doubt he would be able to provide more detail as the operational planning process was taken forward, particularly with regard to any possible UK contribution and the final reference amount.

16.6 As the Minister knew from previous discussion with him, we have noted the extent to which, in many instances, it is the Status of Mission Agreement (SOMA) that is central to a mission's success — as evidenced by those in, e.g., Niger, Mali and the Horn of Africa, whose effectiveness after launch has been hampered by the time it has taken to complete the negotiations, or other issues that have compromised effectiveness due to the failure of the local authorities to respond appropriately. In this instance, the Minister did not comment about the capacity or inclination of the authorities in the CAR — with a fragile situation in the capital, fighting elsewhere in the country and a dire humanitarian situation — to be an appropriate counter-party. The Minister rightly referred to the importance of a sustainable political process.

16.7 We therefore asked the Minister, when he next submitted an Explanatory Memorandum on this mission, to outline the situation on the ground — who was now in power, with what sort of local support etc. — so that we could, we hoped, be assured that this was not likely to be an obstacle to this Mission's operational effectiveness, and that it could be fully operational from the outset.

16.8 At the same time, we asked the Minister also to deal with the comment attributed to the Permanent Representative of the Russian Federation at the UN on 28 January 2014, after the adoption of UN Security Council resolution 2134 — that he had urged the European Union to agree with the African Union peacekeeping operation on operational aspects, such as the division of labour, before its force began operating.

16.9 In the meantime, cleared the Council Decision.[59]

The Minister's letter of 21 February 2014

16.10 The Minister for Europe (Mr David Lidington) says that, as he was able to submit only an early draft of the Council Decision for scrutiny, he is writing to update the Committee on the final Council Decision following its agreement and address some of the concerns we and our House of Lords counterparts have raised.

16.11 The Minister continues as follows:

> "UK objectives on the Council Decision to establish EUFOR RCA were fully achieved at the RELEX negotiations; we pushed to ensure the final Decision reflected a tightly focused operation with a clear timeframe, mandate and scope. We successfully built the following additions into the Decision:
>
> — "That EUFOR RCA should deploy as rapidly as possible to Full Operating Capability (FOC) to contribute to the stabilisation of the situation;

59 See headnote: HC 83–xxxi (2013–14), chapter 14 (5 February 2014).

— "That EUFOR RCA should conduct mandated tasks with a view to a handover to AFISM-CAR within four to six months from achieving FOC;

— "A financial reference amount of €25.9 million for the common costs of EUFOR RCA. An additional €3.7 million of common funding has since been allocated for forces' accommodation; however the total figure is still a significant reduction from the draft Reference Amount of €39.6 million;

— "A PSC[60] assessment of progress three months after the Operation's launch."

16.12 More immediately, the Minister says:

Status of Forces Agreement (SOFA)

"The focus in Brussels has now turned to the formal planning process, which will include finalising the detailed Operational Plan and closing the negotiations with CAR authorities on the status of the operation (SOFA), which will necessitate another Council Decision. A draft version of the SOFA was shared with UK officials this week, in advance of discussions at RELEX on Thursday 20 February. I am attaching the current draft to give you an idea of direction of travel.

"We understand that agreeing the SOFA with CAR authorities should progress smoothly. MISCA was launched only two weeks after the UN Security Council Resolution mandating it. On 24 January, President Catherine Samba-Panza wrote to Baroness Ashton stating that the provisions of the EUFOR TCHAD/RCA SOFA from 16 April 2008 should serve as the basis of the new EUFOR RCA SOFA, so as to allow agreement with the shortest delay, and declared unilaterally that CAR would grant the privileges and immunities of EUFOR TCHAD SOFA to EUFOR RCA and its personnel.

Force generation

"The formal planning process also includes the start of force generation for EUFOR RCA. I am not in a position to provide much detail as force generation is ongoing, with a Force Generation Conference scheduled for 27 February. However I understand that France, Estonia and Poland have all expressed a firm interest, as has Georgia, and initial indications are that the EU will manage to generate the expected number of forces.

Coordination with the AU and UN

"UK support has been focused on ensuring the international community is co-ordinated and responding as effectively as possible. In parallel, we have worked closely with the AU and UN given that they are leading the international response.

60 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 High Representative.

We have also committed a substantial humanitarian aid package of £15 million to CAR to support the UN and others to deal with the humanitarian crisis.

"We continue to play our part in ensuring that EUFOR RCA and the African-led International Support Mission to CAR (MISCA) are equipped with the assets they need, and have already supplied £2 million of bilateral support to MISCA, which comes in addition to the EU funding provided through the African Peace Facility (APF). As you are aware, the African Peace Facility (APF), funded through the European Development Fund, was set up to support peace and security on the African continent in the framework of the EU-Africa Partnership. In November 2013, EU Member States endorsed the EU Commission's recommended allocation of €325 million to the APF in 2014. EU Member States agreed to the payment of €50 million on 5 December from the 2013 APF allocation to cover MISCA costs of troop stipends, fuel and provsions until 30 June 2014. The UK contribution to this is 14.92% through EU assessed costs. Because higher than expected force levels were agreed by the AU, the EU is expecting a second request for an additional €25 million of funding for CAR to ensure that the MISCA mission can operate until the end of June. The AU and UN also organised a donors' conference in the margins of the AU Summit in Addis on 1 February to try to ensure sustainable and predictable funding. The conference raised funding pledges totalling $314 million.

UK contribution to EUFOR RCA

"UK support now includes the provision of a military officer to assist with operational planning in the Headquarters in Larissa, based on a longstanding commitment to provide staff to the Operation Headquarters when a national headquarters is activated for a CSDP operation. The Prime Minister has also offered further bilateral logistical support to France at the UK-France Summit on 31 January, following on from the UK's previous provision of three RAF C-17 flights to help with the rapid deployment of equipment of French forces in support of MISCA in December 2013. The offer of support includes logistical lifts and air to air refuelling and the provision of subject matter expertise on remotely piloted air systems.

Political developments in the CAR

"Politically, the election of Catherine Samba-Panza as Head of State of the Transition Government on the 20 January was a positive first step along the path to political stability. Whilst the President's first priority is security, the EU are continually engaging with the transitional government in Bangui to work towards implementing the political process, including the holding of free and fair elections within the agreed timetable. However the main efforts driving political transition are channelled through BINUCA, the UN Peacebuilding Office in CAR. BINUCA has been mandated to focus on the implementation of the transition process, including expediting the re-establishment of constitutional order by identifying, facilitating and coordinating regular communication between stakeholders. BINUCA is also providing strategic advice, technical assistance, and support, to ready the political and security context in the lead up to the elections. We strongly supported efforts to renew BINUCA's mandate, and have recently strengthened BINUCA's political

mandate to prepare for elections by February 2015, to promote and protect human rights, and to support the stabilisation of the security situation.

Process issues

"As you are aware, we are still waiting on a Council Decision to launch EUFOR RCA (CD2). We anticipated submitting the first version of CD2 for Scrutiny this week, but have not yet received a draft copy. My officials will submit both CD2 and the Council Decision closing the negotiations on SOFA to you as soon as possible, and ensure the points each Committee raised are addressed in greater detail in the next EM.

"Finally, I would like to thank you and the European Scrutiny Committee for considering the Council Decision to establish EUFOR RCA with such urgency. We will be working to another tight timetable for CD2, on which I would be grateful for your continued understanding."

Conclusion

16.13 **We look forward to receiving the further draft Council Decisions in good time for any questions that may continue to arise to be dealt with prior to adoption.**

16.14 **In the meantime, we thank the Minister for this helpful and comprehensive update, which is reassuring as far as it is possible to be at this juncture. However, we note that, according to the *Wall Street Journal*, of 25 February:**

> **"The French Parliament voted Tuesday to indefinitely extend the country's military intervention in the Central African Republic despite concerns that France is becoming bogged down in the chaotic conflict between local vigilantes."**

16.15 **As the *Wall Street Journal* notes, under France's constitution, the President needs parliamentary backing to extend any military campaign beyond four months; thus, the paper says, he has a freer hand in conducting the military campaign and has already announced plans to boost French forces to 2,000 troops in the coming weeks. Prime Minister Jean-Marc Ayrault is quoted as telling lawmakers moments before the vote "Everyone here knows our work isn't done."**[61]

16.16 **The danger, of course, is that it never will be, or at least not anytime soon. We therefore look forward to a detailed assessment of the political and military situation in the Minister's next Explanatory Memorandum, and a clear exposition of how EUFOR RCA will then fit into the solution to whatever challenges, present and prospective, are then confronting the CAR authorities and the response thus far of France and the AU.**

16.17 **In the meantime, we are drawing this letter to the attention of the House because of the level of interest in the situation in the CAR and the EU, the international community and the Government's response to it.**[62]

61 See http://online.wsj.com/news/articles/SB10001424052702304834704579405261927493246?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304834704579405261927493246.html.

62 Now also see (35823) — at chapter 17, and (35829) — at chapter 4 of this Report.

17 Restrictive measures against the Democratic Republic of Congo

(a) (35814) — —	Council Decision amending Council Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of Congo
(b) (35823) 6932/14 JOIN(14) 6	Joint Draft Council Regulation amending Regulation (EC) No. 889/2005 imposing certain restrictive measures in respect of the Democratic Republic of Congo
(c) (35824) 6958/14 JOIN(14) 7	Joint Draft Council Regulation amending Regulation (EC) No. 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of Congo

Legal base	(a) Article 29 TEU; unanimity (b) and (c) Article 215 TFEU; QMV
Document originated	(b) and (c) 24 February 2014
Deposited in Parliament	(a) 20 February 2014, (b) and (c) 25 February 2014
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 27 February 2014
Previous Committee Report	None
Discussion in Council	17 March 2014
Committee's assessment	Politically important
Committee's decision	Cleared

Background

17.1 The UN Security Council first imposed an arms embargo on all foreign and Congolese armed groups operating in the Kivus and Ituri and groups not party to the Global and All-inclusive agreement in the Democratic Republic of Congo (DRC) in 2003. The sanctions regime has since been modified, extending the arms embargo to the whole of the DRC, imposing restrictive measures (a travel ban and an assets freeze) on designated persons, and broadening the criteria under which individuals and entities can be designated.

Council Decision 2010/788/CFSP

17.2 Most recently, the Minister for Europe (Mr David Lidington) explained to the Committee that UNSCR 1952 (2010), adopted on 29 November 2010, renewed the sanctions imposed on DRC for a period of 12 months and expressed the Security Council's

support for a Group of Experts' recommendations on guidelines for due diligence for those involved in the mineral industry in the DRC.

17.3 In addition, he noted that the UN Sanctions Committee had designated four more individuals as subject to restrictive measures, and explained that, for the UN Sanctions Committee to do so, they must meet one of the criteria set out in UNSCR 1857 (2008).

17.4 In other respects, the Minister said, the draft of what became Council Decision 2010/788/CFSP did not provide for any change to the effect of the existing EU measures implementing the UN sanctions in respect of DRC, but incorporated post-Lisbon Treaty language, and brought the instrument into line with recent best practice developments across EU sanctions regimes. In particular, it ensured that designated persons would be provided with the grounds for listing so as to give them an opportunity to make representations, and would be entitled to challenge their listing by the EU before the EU Courts and also the implementation or application of an asset freeze or travel ban in the domestic courts of a Member State. In addition, the draft Council Decision provided that Member States may grant exemptions from the asset freeze or travel ban for specified reasons.

17.5 With regard to the overall context, the Minister said that the Government was committed to bringing about a peaceful solution to the violence in the eastern part of the DRC, and that measures to cut funding and other support to the illegal armed groups responsible for the violence were key to this solution.

17.6 Other such amendments were cleared by the then Committee in 2005, 2007, 2009 and 2010 without a substantive Report to the House; we concluded that there was no need for one on that occasion either.[63]

The draft Council Decision and Council Regulations

17.7 In his Explanatory Memorandum of 27 February 2013, the Minister for Europe explains that UN Security Council Resolution 2136 (2014) concerning the Democratic Republic of Congo (DRC), which was adopted on 30 January 2014:

— renewed the sanctions regime on the DRC for a period of 12 months;

— provided an additional derogation to the arms embargo exempting the supply of arms for use by the African Union-Regional Task Force; and

— amended the designation criteria to include individuals or entities providing financial support, or goods or services to, a designated individual or entity; expanded the criteria on individuals or entities trading in natural resources to include gold and wildlife; and expanded the criteria on individuals or entities involved in the targeting of children or women to include attacks on schools and hospitals; and that

— Council Decision 2010/788/CFSP and Council Regulations (EC) No. 1183/2005 and (EC) No. 889/2005 should therefore be amended to reflect these changes.

63 See (32325) —: HC 428–xi (2010–12), chapter 22 (15 December 2010).

Legal and Procedural Issues

17.8 With regard to the legal and procedural aspects of the proposed amendments, the Minister says:

> "The procedures for designating individuals and entities are compliant with fundamental rights. Individuals subject to a travel ban would be entitled to challenge the implementation or application of such a ban in the General Court of the European Union. In addition, Council Decision 2010/788/CFSP provides that the Sanctions Committee established by UN Security Council Resolution 1533 (2004) may grant exemptions from the travel ban for specified reasons including, *inter alia,* where travel is justified on the grounds of humanitarian need. Similarly, a person or entity subject to the asset freeze will be able to challenge their listing before the General Court of the European Union. In addition, Council Decision 2010/788/CFSP provides that Member States may, having notified (and in some cases, having sought approval from) the Sanctions Committee, authorise the release of certain frozen funds or economic resources under specified conditions."

The Government's view

17.9 The Minister comments thus:

> "The UK strongly supports the sanctions regime in DRC. The UK Government is committed to bringing about a peaceful resolution to the violence which is ongoing in some parts of the DRC, and is working to support and encourage the implementation of the Peace, Security and Cooperation Framework agreement for the DRC and Great Lakes Region. The persistence of a complex mosaic of violent conflicts has caused widespread death and displacement, and the destruction of the livelihoods of hundreds of thousands of households, particularly in eastern DRC. Taking steps, such as imposing sanctions, to cut funding and other support to the illegal armed groups responsible for the violence is a key element of the strategy aimed at bringing stability to the region.
>
> "Of particular note is the lone additional exemption to the sanctions regime to enable the supply of arms to the African Union Regional Task Force (AURTF),[64] given their role in tackling the scourge of the Lord's Resistance Army.[65] For the last 24 years the LRA has targeted attacks on innocent civilians, and has been responsible for kidnapping children and forcing them to fight as part of its rebel force. The AURTF are making incremental gains against the LRA and these need to be maintained.
>
> "We strongly support amendments to the designation criteria to include individuals or entities providing financial support to designated individuals or entities. This is of particular importance in ensuring that sanctioned individuals and groups are starved of the support and finances they require to operate.

64 For background on the African Union Regional Task Force (AURTF), see http://www.enoughproject.org/blogs/african-union-launches-initiative-against-lra-key-questions-remain.

65 For background on the Lord's Resistance Army, see http://www.warchild.org.uk/issues/the-lords-resistance-army?_kk=lord's%20resistance%20army&_kt=a35dea99-cfb1–4fd9–8cb8–847c2ecd7db8&gclid=CP_L9Pj97LwCFWjpwgod0RYAPA.

"The expanded designation criteria, introducing direct mention to individuals or entities trading in natural resources, including gold and wildlife, will also assist in this, by addressing the link between the illegal exploitation of natural resources, including of minerals and the poaching and illegal trafficking of wildlife, and the financing of armed groups. The illicit trade in such resources is one of the major factors fuelling and exacerbating conflict in the region. The expansion of the criteria to include attacks on schools and hospitals will ensure that added weight is given to ensuring that the most vulnerable people affected by conflict are protected, and that the access of the civilian population to basic services is maintained."

Conclusion

17.10 **We did not consider the earlier amendments to a well-established regime, and then to incorporate post-Lisbon Treaty language and bring it into line with best practice developments across all EU sanctions regimes, were of sufficient importance to warrant a substantive Report.**

17.11 **However, given the (regrettably) enduring nature of this crisis, the exemption to allow the sale of arms to African Union Regional Task Force to help them in tackling what he Minister rightly describes as "the scourge of the Lord's Resistance Army", and the expansion of the designation criteria, we consider that on this occasion a Report to the House is appropriate.**

17.12 **We now clear the Council Decision and Council Regulations.**

18 Launching the EU military operation in the Central African Republic (EUFOR RCA) and its status in the CAR

(a) (35827) — —	Council Decision on the launch of a European Union military operation in the Central African Republic (EUFOR RCA)
(b) (35828) — —	Council Decision concerning the Exchange of Letters between the European Union and the Central African Republic on the status in the Central African Republic of the European Union military operation in the Central African Republic (EUFOR RCA)

Legal base	(a) Articles 42(4) and Article 43(2) TEU; unanimity; (b) Article 37 TEU in conjunction with Article 218(5) and (6) TFEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EMs of 28 February 2014
Previous Committee Report	None; but see (35747) —: HC 83–xxxi (2013–14), chapter 14 (5 February 2014); HC 83–xxxv (2013–14) chapter 16 (5 March 2014)
Discussion in Council	17 March 2014 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

18.1 The background to Council Decision 2014/73/CFSP of 10 February 2014, establishing EUFOR RCA, is set out in our Report under reference and in a separate Chapter of this Report.[66] In sum, that Council Decision designated Major General Philippe Pontiès as Operation Commander and Larissa as the EU Head Quarters, and agreed a draft reference amount for the budget of €39.6 million: EUFOR RCA (which stems from UN Security Council resolution 2134 of 28 January) will provide temporary support, for a period of up to six-months, to help achieve a secure environment in the Bangui area. It will consist of up to a Battalion size force to allow for adequate logistical support and force protection. Within its area of operations, EUFOR RCA would contribute to international and regional efforts, i.e., the AU peace-keeping force MISCA, to protect the populations most at risk and to enable the free movement of civilians, endeavouring to create the conditions required in order to provide humanitarian aid for those who need it and working alongside MISCA where possible to contribute to their capacity, and also provide some advisory support.

66 See headnote.

18.2 Issues raised in that Report are considered elsewhere in this Report. In brief, in clearing what became Council Decision 2014/73/CFSP, the Committee noted previous discussion with the Minister about instances that have illustrated that the centrality of the SOMA/SOFA (Status of Mission/Forces Agreement) to a mission's success, where effectiveness after launch has been hampered by the time taken to complete the negotiations, or where, after the event, the local authorities have failed to respond appropriately. At that stage, the Minister had nothing to say about the capacity of the authorities in the CAR — with a fragile situation in the capital, fighting elsewhere in the country and a dire humanitarian situation — to be an appropriate counter-party. The Committee therefore asked him, in his next Explanatory Memorandum (i.e., on the Council Decision to launch the mission), to outline the situation on the ground — who was now in power, with what sort of local support etc. — so that the Committee could, it hoped, be assured that this was not likely to be an obstacle to this Mission's operational effectiveness, and that it could be fully operational from the outset.

18.3 However, on 21 February the Minister sent an update on the negotiations and his response thus far to the concerns raised by the Committee and its Lords counterpart. It is helpful and comprehensive, and reassuring as far as it was possible to be at this juncture. However, we note, the French Parliament voted on 25 February to extend indefinitely the country's military intervention in the CAR (via Operation Sangaris, some 1,600 French troops have been deployed in the CAR since early December on a mission to stem fighting between predominantly Muslim militants, known as the ex-Seléka,[67] and bands of Christian vigilantes, the Anti-balaka)[68] and plans to increase it to 2,000 troops in the coming weeks. Prime Minister Jean-Marc Ayrault was quoted as telling lawmakers moments before the vote "Everyone here knows our work isn't done". The danger that we envisage, of course, is that it never will be, or at least not anytime soon. We therefore ask the Minister in a separate Chapter of this Report to provide a detailed assessment of the political and military situation in his next Explanatory Memorandum, and a clear exposition of how EUFOR RCA will then fit into the solution to whatever challenges, present and prospective, are then confronting the CAR authorities and the response thus far of France and the AU; this to include substantive information on the state of force generation (somewhat vague thus far) and an indication of progress in responding to the Russian permanent representative's observation at the time the UN authorised this mission, i.e., agreeing operational aspects, such as the division of labour, with the African Union peacekeeping operation before EUFOR RCA begins operating.[69]

The draft Council Decisions

18.4 The Minister has also now deposited both the Council Decision to launch EUFOR RCA and the Council Decision embodying the Exchange of Letters between the European Union and the Central African Republic on the status in the Central African Republic of EUFOR RCA.

67 Séléka was an alliance of rebel militia factions that overthrew the Central African Republic government on March 24, 2013. Nearly all the members of Séléka are Muslim.

68 the term used to refer to the Christian militias formed after the rise to power of the Seléka; Anti-balaka means "anti-machete" or "anti-sword" in the local Sango and Mandja languages.

69 See (35747) — at chapter 16 of this Report.

The Government's view

18.5 In his first Explanatory Memorandum of 28 February 2014, on the Council Decision launching the mission, the Minister for Europe (Mr David Lidington) says:

> "Given the rapidly deteriorating political, security and humanitarian crisis in CAR, and the risk of spill-over into the wider region through continued refugee flows, the quick launch of EUFOR RCA remains crucial to effectively delivering EU contribution to address the most pressing threats posed by the actions of armed groups to the population, and to support the return to a normal constitutional order and process, in coordination with other international actors. Unless checked and reversed, it could well lead to a situation where the disorder in CAR could threaten not just the population but also the stability of neighbouring countries. We are therefore committed to ensuring the Operation launches as quickly and effectively while respecting parliamentary scrutiny procedures.
>
> "We expect the Council Decision to launch EUFOR RCA to be adopted at the 17 March Foreign Affairs Council, in order to allow the Operation to deploy as soon as possible and then achieve Initial Operational Capability within 30 days of mission launch. Once again, the timeline is tight, and therefore we submit this Council Decision in draft although negotiations are ongoing in Brussels. We continue to emphasise that final Council Decisions must allow time for UK Parliamentary Scrutiny and we have persistently set out in detail the process of our Parliamentary Scrutiny timetable with EU partners. We will continue to update the Committees.

The security situation

> "The security situation in the Central African Republic is still dire. Although the Africa-led International Support Mission to CAR (MISCA) is making progress in disarming militia and in calming areas of Bangui where the situation remains tense, spikes of violence and incidents of reprisal attacks by local self-defence ("anti-Balaka") groups continue to flare up. This persistent insecurity deepens the humanitarian crisis, which is further complicated by the tens of thousands of refugees. The UN estimates that 838,000 people remain displaced in Bangui and around the country, in addition to the large number of refugees in neighbouring countries. There is a real fear that the window for planting crops will be missed by many communities which will result in worsening food shortages over the coming twelve months.
>
> "As the situation on the ground is still so fragile, improved security and humanitarian access in CAR remain key priorities for the UK and the rest of the international community. Member States agreed to EU military action to address the continued instability in CAR at the 20 January Foreign Affairs Council (FAC), approving the Crisis Management Concept for an operation. The UN Security Council Resolution 2134 on 28 January authorised EU military action, providing the basis for the Council Decision 2014/73/CFSP on the establishment of EUFOR RCA (CD1), which was adopted by the Council on 10 February 2014. The objective of EUFOR is to address the instability in the short-term by providing essential support to the country and to the AU.

Operational Planning

"Operational planning is now near completion and force preparations are underway: some forces are already in country to facilitate this. This Council Decision agrees the Operational Plan (OPLAN), the Rules of Engagement and the decision to launch the Operation. These operational documents are necessarily Confidential and set out more detail of how the Operation will be implemented. Our previous EM of 30 January sets out the outline of the Operation. Further to this EUFOR RCA will focus its activities on the airport and two neighbouring districts. This would then free up resource for MISCA and Op SANGARIS operations in the rest of Bangui, in particular to secure the main transport route to Cameroon and humanitarian lines of communication.

Key Tasks

"The key tasks of EUFOR RCA are: stabilisation through providing a safe and secure environment and safe areas for vulnerable parts of the population; provision of security at Bangui airport; supporting the provision of humanitarian assistance; setting the conditions for handover to MISCA, including capacity building and logistic support. The duration of the EUFOR mission is limited to 4–6 months from the establishment of Full Operating Capability Capability (FOC, which should be reached 30 days after Initial Operational Capability (IOC) is declared). This will provide enough time to improve security in the area of operations, improve the stability and freedom of movement for humanitarian actors within the area of operations, and enable enough time for a transfer of authority to MISCA before the end date, thus allowing for a transition period for monitoring and mentoring. The end state is the handover of EUFOR RCA's area of operations to MISCA within 6 months after the establishment of FOC. The exit strategy is measured by the OpCdr[70] against criteria of Security, Stability and MISCA's readiness to assume responsibility: these will define mission success, although mission termination is strictly bounded by the mandated end date (FOC+6 months).

Force Generation

"Force generation is ongoing. The first Force Generation Conference (FGC) was held on 25 February, at which offers were received for approximately two-thirds of the required personnel. France will provide the framework for the force, as well as one of the four infantry companies (these troops are already in CAR as part of the French Operation SANGARIS, but will be transferred into the EU force). Other significant contributors include Georgia (a further infantry company), Estonia, Romania, and Spain. The European Gendarmerie Force is providing a Gendarme company. While it is disappointing that this first Force Generation Conference was not more successful, the result compares favourably with previous operations. A further FGC takes place on 5 March. Key areas of concern are Force enablers and logistic elements, although some of these may be resolved by an ongoing Technical

70 Operations Commander.

Agreement between France and the EU which would see some assets transferred from, or made available by, Op SANGARIS.

Funding

"Funding to cover the UK's 14.82% share of common costs of EUFOR (an approximate £3.2 million) will be provided from the Peace-keeping budget, which on current planning has sufficient capacity to absorb this spend in the short term. In addition to the significant UK contribution to the EU funding to MISCA provided through the African Peace Facility (APF), the UK is providing £2 million of bilateral support to the African Union to cover some of MISCA's immediate shortfalls on basic costs including food, fuel and water. The Prime Minister has also offered further bilateral logistical support to France at the UK-France Summit on 31 January, following on from the UK's previous provision of three RAF C-17 flights to help with the rapid deployment of equipment of French forces in support of MISCA in December 2013. The French have indicated an interest in the additional C17 flights and air-to-air refuelling assistance offered: UK personnel are currently discussing with French counterparts to agree detailed arrangements. As set out in previous letters, the UK is contributing a military officer to assist with operational planning in the Headquarters in Larissa, based on a longstanding commitment to provide staff to the Operation Headquarters when a national headquarters is activated for a CSDP operation.

Timescale

"We are aware of the risks of the tight timescale, and the need for prudent planning against the time pressures. However, we believe the planned launch is broadly realistic from an operational perspective, as is achievement of IOC 30 days later. We are continuing to emphasise the importance of risk management against an ongoing assessment of the situation in CAR and encouraging Member States' force and logistics contributions, including where we can help to facilitate this. We are working to ensure the draft Council Decision includes a focus on reaching Full Operating Capacity as quickly as possible to ensure EUFOR can deliver impact as effectively and as quickly as possible on the ground. The earlier CD already mandates a written report 3 months after launch which will measure progress against the mandated tasks for the OpCdr.

Captured individuals

"Discussion is currently underway in RELEX on authorising the High Representative Ashton to open negotiations with CAR in order to conclude a transfer agreement. This agreement sets the framework to allow the Operation to transfer any captured individuals (as they are authorised to do under the UNSCR) to the CAR authorities. EEAS are hopeful this can be negotiated with the CAR authorities rapidly, as it will need to be in place before the IOC. We will write to you separately on this mandate and once the decision adopting the agreement is issued as a depositable document, we will subject to the usual scrutiny process.

Long term peace

"Long-term peace in CAR will require a strong and sustainable constitutional government. The Judicial System in Bangui has now been re-launched, the local police have recently made their first arrests since November, and the transitional government in Bangui is working with the EU towards implementing the political process, including the holding of free and fair elections within the agreed timetable. However there is still a very long way to go. To this end, we strongly supported efforts to renew the mandate of the UN Peacebuilding Office in CAR (BINUCA) through the UNSCR on CAR, adopted on 28 January 2014 and co-sponsored by the UK. We secured a strengthened political mandate for BINUCA to prepare for elections by February 2015, to promote and protect human rights, and to support the stabilisation of the security situation. We continue to work closely with partners to promote the building of a sustainable government."

18.6 In his second Explanatory Memorandum of 28 February 2014, the Minister says that the draft Council Decision concerning an exchange of letters between the EU and CAR on the status of EUFOR RCA effectively approves the completion of the status of Forces mandate with CAR authorities, thus enabling the start of deployment of EUFOR RCA troops. He adds, by way of explanation, that:

"The relevant EU working group (RELEX) began negotiations on 28 January on a Council Decision authorising the opening of negotiations with the CAR on the status of the operation (SOFA). Following the adoption of a Decision by the Council on 10 February authorising the opening of negotiations, Baroness Ashton negotiated an Agreement between the European Union and the Central African Republic on the status of the EUFOR RC, on the basis of the draft exchange of letters annexed in this Council Decision. This Decision approves the exchange of letters and authorises the President of the Council to designate the person empowered to sign the respective letter in order to bind the Union."

The Government's view

18.7 The Minister comments as follows:

"Politically, the election of Catherine Samba-Panza as Head of State of the Transition Government on the 20 January was a positive first step along the path to political stability. Elected as a unifying figure, President Samba-Panza has been chosen to guide the political process through to national elections, at which she would not be eligible to run. She is non-partisan and had a reputation of bringing consensus — this was the mandate that had seen her elected in a process that was accepted across the board as fair and transparent.

"On 24 January 2014, President Catherine Samba-Panza wrote to Baroness Ashton stating that the provisions of the EUFOR TCHAD/RCA SOFA from 16 April 2008 should serve as the basis of the new EUFOR RCA SOFA, so as to allow agreement with the shortest delay, and declared unilaterally that CAR would grant the privileges and immunities of EUFOR TCHAD SOFA to EUFOR RCA and its personnel. The draft letter from Baroness Ashton (annexed to the Council Decision) outlines this

proposal in detail and asks President Samba-Panza to agree the final terms. This letter will be approved and sent, following the adoption of the Council Decision.

"The draft letter states that that the provisions of the EUFOR TCHAD/RCA SOFA from 16 April 2008 will serve as the basis of the new EUFOR RCA SOFA with three changes: that mentions of EUFOR will be considered to refer to EUFOR RCA; that means of transport will be considered as pertaining to the means of transport owned by the EUFOR RCA force-supplying nations (in addition to those provided by EUFOR RCA); and that the reference to the UNSCR 1778 from 2007 will instead be understood as referring to the UNSCR 2134 from 28 January 2014.

"We recognise that the launch of EU military operations can be, and have previously been, hampered by the time taken to complete negotiations with local authorities, particularly if local authorities have limited capacity or effectiveness to respond appropriately. However engagement with the transitional government in CAR has, so far, proceeded smoothly. The French have good access and a record of engagement with the Transitional Government which had seen the French security mission signed off by the CAR authorities in December, only a matter of days after the initial request. We expect a similarly rapid response with regards to EUFOR RCA SOFA."

18.8 The Minister concludes by noting that that, given the fragile situation in the capital, the continued instability and the dire humanitarian situation, both Council Decisions are scheduled for adoption at the 17 March Foreign Affairs Council, in order to allow the Operation to start deploying by the end of March as a matter of urgency.

Conclusion

18.9 **We are grateful to the Minister for his helpful and comprehensive Explanatory Memoranda. We regard the information contained therein as a sufficient response at this stage to the points raised in connection with the first Council Decision.**[71] **We nonetheless remain concerned at the inevitable dangers, in the fragile situation that the Minister highlights — a "rapidly deteriorating political, security and humanitarian crisis" — of this Operation not being able to become genuinely operational from the outset, and then becoming mired therein.**

18.10 **However, three months from launch, as the Minister notes there will be an assessment by the Political and Security Committee (PSC)**[72] **of the Operation's progress. We presume that it will be caveated in such a way that will prevent its being deposited: in which case, we should be grateful if the Minister would provide us with an unclassified summary and his views on it, and especially on the capacity of the mission to fulfil its brief in the allotted six months (see in particular "Key Tasks" in paragraph 18.5 above).**

71 See (35747) — at chapter 16 of this Report.

72 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 High Representative.

18.11 **In the meantime, we clear these Council Decisions.**

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

Department for Business, Innovation and Skills

(35767) 5855/14 COM(14) 29	Commission Report: *Report on Progress in Quality Assurance in Higher Education*.
(35768) 5856/14 COM(14) 30	Commission Report on *the implementation of the Recommendation of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training*.
(35782) 6032/14 COM(14) 41	Draft Council Decision on the signing and provisional application of the Additional Protocol to the Free Trade Agreement between the European Union and its Member States, and the Republic of Korea, to take account of the accession of Croatia to the European Union.
(35783) 6033/14 COM(14) 42	Draft Council Decision on the conclusion of the Additional Protocol to the Free Trade Agreement between the European Union and its Member States, and the Republic of Korea, to take account of the accession of Croatia to the European Union.

Food Standards Agency

(35801) 6316/14 COM(14) 52	Commission Report on *Food ingredients treated with ionising radiation for the year 2012*.

HM Treasury

(35799) 6266/14 COM(14) 66	Draft Council Decision on the participation of the European Union in the capital increase of the European Investment Fund.
(35803) 6096/14 COM(14) 78	Draft Amending Budget No. 1 to the General Budget 2014: *Statement of revenue by section — Statement of expenditure by section — Section III — Commission*.

Formal minutes

Wednesday 5 March 2014

Members present:

Michael Connarty	Jacob Rees-Mogg
Kelvin Hopkins	Henry Smith
Chris Kelly	

In the temporary absence of the Chair, James Clappison was called to the Chair for the meeting.

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 19 read and agreed to.

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

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

****

[Adjourned till Wednesday 12 March at 2.00 p.m.

Standing Order and membership

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

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

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

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

The expression "European Union document" covers —

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

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

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

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

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

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

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

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

Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)
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*)
Stephen Gilbert MP (*Liberal Democrat, St Austell and Newquay*)
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*)
Mr Michael Thornton MP (*Liberal Democrat, Eastleigh*)

The following members were also members of the committee during the parliament:

Mr Joe Benton MP (*Labour, Bootle*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)

Penny Mordaunt MP (*Conservative, Portsmouth North*)
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Ian Swales MP (*Liberal Democrat, Redcar*)