



House of Commons

European Scrutiny Committee

Twenty-fourth Report of Session 2014–15

Documents considered by the Committee on 3 December 2014,
including the following recommendations for debate:

Financial management



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

EC	(in " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in " <i>Legal base</i> ") 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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Meeting Summary

The Committee considered the following documents:

The UK's 2014 block opt-out decision

This week we consider two draft Council Decisions relevant to the UK block opt-out decision, which we considered on 5 November. The first concerns the financial consequences of the block opt-out. It would require the UK to repay around €1.5 million should it decide not to rejoin the Prüm package by the end of 2015. The second concerns consequential and transitional arrangements. It seeks to avoid the risk of a legal or operational gap by extending the application of the 35 measures that the UK is seeking to rejoin until 7 December 2014. As we made clear to the Home and Justice Secretaries, we were not willing to be bounced into clearing these Decisions at our meeting last week, given their legal and political importance and the Government's delay in responding to questions we raised on 5 November. As both Decisions were adopted in Council on 27 November, we consider that retaining them under scrutiny would serve no useful purpose, but we ask the Government to explain whether it has overridden our scrutiny reserve.

We do not accept the Government's explanation for the delay in laying before Parliament the draft Criminal Justice and Data Protection (Protocol No. 36) Regulations, which transpose into UK law ten of the 35 measures the UK is rejoining, and for the haste with which Parliament was asked to consider these Regulations. We see no good reason why consideration by Parliament could not have commenced sooner, based on the outcome of technical level discussions with the Commission and the Council reached in June. Nor do we consider it credible for the Government to assert that it had to legislate in this way to mitigate the risk that the Commission might bring infraction proceedings against the UK on 1 December. In our view, this risk would be very small indeed.

We note the view of the Home and Justice Secretaries that a vote on the draft Regulations on 10 November constituted a vote on the entire package of 35 measures which the Government is rejoining. On this point, the Hansard record of the debate speaks for itself.

It appears that a scrutiny override in relation to a Council Decision on the Schengen measures the UK has rejoined — which has not yet been deposited for scrutiny — is inevitable, given the mis-handling of the scrutiny process by the Government. If this is indeed the case, we will expect the Home and Justice Secretaries to appear before us to explain why they have failed to meet their scrutiny obligations to Parliament.

Financial management

We also consider the European Court of Auditors' 2013 Audit Reports on the General Budget and the European Development Fund. These reports, which are the Court of Auditors' main Annual Reports, have revealed serious inadequacies in implementation of EU expenditure, and it has therefore become customary that we recommend these reports for debate. We do so again this year, as although the 2013 reports affirm the reliability of the accounts, the Statements of Assurance are qualified. We recommend that they are debated in European Committee B alongside the Commission's anti-fraud report, which

we have previously recommended for debate. We suggest that Members could focus in particular on Government efforts to improve EU financial management. We remind the Government that it is of the utmost importance that this debate should take place before the ECOFIN Council in February 2015, when it is probable the Council will be considering its recommendation to the European Parliament for the discharge of the 2013 financial budget.

1 Financial management

Committee's assessment	Politically important
<u>Committee's decision</u>	For debate in European Committee B, together with the 2013 <i>Fight against fraud</i> report, already recommended for debate
Document details	European Court of Auditors' 2013 audit reports on the general budget and the European Development Fund
Legal base	—
Department	HM Treasury and International Development
Document numbers	(36497), —

Summary and Committee's conclusions

1.1 The European Court of Auditors is responsible for the external audit of the EU's public finances. It publishes its main Annual Reports, on activity carried out under the General Budget and the European Development Funds, on a particular financial year about 12 months after the end of that year.

1.2 This document contains the Court's Reports, on activity carried out under both the General Budget and the European Development Funds in 2013. As is regrettably the continuing norm the Reports show why the Court has again issued qualified Statements of Assurance.

1.3 Because the European Court of Auditors' annual audit reports have for many years revealed serious inadequacies in implementation of EU expenditure it has become customary each year for these reports to be debated, together with the Commission's annual anti-fraud report, which we have already recommended for debate.¹ Although the present reports affirm the reliability of the accounts, the Statements of Assurance are qualified. So we have no hesitation in recommending that this document be debated in European Committee B along with the Commission's anti-fraud report. We suggest Members could focus in particular on the Government's efforts to improve EU financial management. They might also examine the Court's comments about the ineffectiveness of some of the UK's management of EU funds and the Government's response.

1.4 We remind the Government that it is of the utmost importance that the debate we recommend should take place before the ECOFIN Council in February 2015, when it is probable the Council will be considering its recommendation to the European Parliament for the discharge of the 2013 General Budget.

¹ See (36253), 12213/14 + ADDs 1–6: Thirteenth Report HC 219-xiii (2014–15), [chapter 5](#) (15 October 2014).

Full details of the documents: European Court of Auditors: 2013 Annual report on the implementation of the budget and 2013 Annual report on the activities funded by the 8th, 9th and 10th European Development Funds (EDFs): ([36497](#)); —.

Background

1.5 The European Court of Auditors (ECA) is responsible for the external audit of the EU's public finances. It examines the legality, regularity and soundness of the management of all the EU's revenue and expenditure, and the revenue and expenditure of the bodies (agencies etc) created by the EU. The ECA publishes its main Annual Reports, on activity carried out under the General Budget and the European Development Funds (EDFs), on a particular financial year about 12 months after the end of that year. In addition to these Annual Reports, the ECA also publishes annually Audit Reports on agencies etc and, throughout the year, Special Reports on its audits of particular areas of revenue or expenditure or on its management audits. We regularly, but not always, report on the Special Reports.

1.6 The main Annual Reports include the ECA's Statements of Assurance² for the financial year in question. They have assessments of the fairness and accuracy of the EU budget accounts and the legality regularity of the underlying transactions. They also contain the ECA's targeted recommendations to address identified errors and weaknesses and the Commission's responses to those recommendations.

1.7 The Annual Reports and Statements of Assurance allow the EU's Budgetary Authority (the Council and the European Parliament) to consider the quality of EU budget implementation and whether the budgetary processes for the year should be closed by the European Parliament granting, on the recommendation of the Council, a "discharge" to the Commission. The Commission is required to act on any comments made by the Council and the European Parliament in granting the discharge and, if requested, to report back on the actions it has taken in response.

1.8 There is an important distinction between irregularities and fraud, relevant to audit reports. An irregularity occurs when a beneficiary is not in compliance with the EU rules and requirements linked to the spending of EU funds and these are usually the result of genuine errors. Fraud is a deliberately committed irregularity, which constitutes a criminal offence. While the ECA's Annual Reports contain some material relating to fraud and irregularities, they are not primarily concerned with fraud against the EU's resources.

The document

The report on the 2013 General Budget

1.9 In its introduction to this section of the document the ECA describes its purpose and notes that its specific assessments are based on the results of its testing of the regularity of transactions and on its assessment of the effectiveness of the principal supervisory and control systems applicable to the revenue and expenditure involved. The report also contains the Commission's responses to the ECA's observations (or, where appropriate, the

² The Statement of Assurance is often referred to as the DAS, from the French *déclaration d'assurance*.

observations of other EU institutions and bodies). The substance of the report is in ten following chapters.

Chapter 1: the Statement of Assurance and supporting information

1.10 The Statement of Assurance is based on the ECA's assessment of the reliability of the financial accounts and the legality and regularity of the underlying transactions. The ECA concludes that the EU accounts are reliable and fairly represent the financial position of the EU, the results of its operations and its cash flows for the year. It also considers the revenue and commitments to be legal and regular in all material aspects. However, errors were identified in all categories of payment assessed, with regional policy, transport and energy being the most affected. Based on the transactions assessed, the estimated error rate for the 2013 budget is 4.7%. This is a marginal reduction on the 4.8% error rate for the 2012 Budget but remains above the ECA's 2% materiality threshold.

1.11 The ECA concludes that the supervisory and control systems examined were partially effective in ensuring the legality and regularity of payments. Accordingly, the ECA has signed off the accounts, but again only granted a qualified Statement of Assurance. Although the Statement is unqualified for the seventh consecutive year in relation to the reliability of the accounts, it is the 20th consecutive year for which the Statement is at least partially qualified.

Chapter 2: Revenue

1.12 The ECA concludes that the systems for Gross National Income (GNI) and VAT-based own resources it examined are effective. However, it notes that during 2013, the area of non-observed economy was discussed in the meetings of the GNI Committee, where it was acknowledged by the Commission that the level of harmonisation of the data does not meet the usual standards of EU statistics. The ECA adds that it has previously drawn attention to this matter in its Special Report No. 11/2013.³ In relation to Traditional Own Resources, the ECA identifies weaknesses in the three Member States visited but concluded that systems examined are overall effective.

1.13 The ECA's recommendations in this chapter include the Commission encouraging Member States to provide more clarification on the methodologies they use for the compilation of data in the area of non-observed economy and promoting harmonisation between Member States in this area.

Chapter 3: Agriculture: market and direct support

1.14 In this chapter the ECA reports its assessments of the European Agricultural Guarantee Fund (EAGF), one of main instruments of the Common Agricultural Policy. It conducted an audit of 17 Member States, including the UK, which focussed on cross-compliance on selected good agricultural and environmental condition obligations and selected statutory management requirements.

³ See (35640), —: Thirty-first Report HC 83-xxviii (2013–14), [chapter 20](#) (22 January 2014).

1.15 The control systems assessed involved an audit of the Integrated Administration and Control System (IACS), which is the main management and control system to ensure the regularity of direct aid payments and represents over 90% of EAGF expenditure. The estimated error rate for this area of expenditure is 3.6%, a reduction from 3.8% for the 2012 Budget. Errors were identified in four main categories, including payments to ineligible beneficiaries, for ineligible activities or expenditure and payments affected by administrative errors. Of the five control systems examined, one was assessed as effective, two as partially effective and two as not effective.

1.16 The ECA's recommendations include the Commission and Member States ensuring that the IACS is used to its full potential and the Commission taking steps to ensure that remedial action is undertaken in respect of identified issues within specific Member States.

Chapter 4: Rural development, environment, fisheries and health

1.17 The ECA audited a sample of transactions involving 16 Member States and one candidate country and the audit of control systems involved a total of nine Member States. The estimated error rate for this area of expenditure is 6.7%, a reduction from 7.9% for the 2012 Budget. Of the 13 control systems examined, seven were found to be partially effective and six as not effective.

1.18 The ECA sets out separate recommendations for rural development and the Common Agricultural Policy, which include Member States improving their administrative checks to better detect and correct errors and the Commission taking steps to further reduce the backlog of open audit files to enable all audits carried out prior to 2012 to be closed by the end of 2015.

Chapter 5: Regional policy, transport and energy

1.19 In this chapter the ECA covers regional policy, largely implemented through the European Regional Development Fund and the Cohesion Fund, which collectively account for 96% of expenditure in this area. It undertook an audit of transactions from 19 Member States and assessed the Commission's supervisory activities of national audit authorities as well as the Annual Activity Reports of relevant Directorates-General. The estimated error rate is 6.9%, an increase on 6.8% for the 2012 Budget. The ECA highlights that failures to comply with public procurement rules account for more than a third of the estimated error rate for this area of expenditure. The systems examined were found to be partially effective.

1.20 The ECA's recommendations include that the Commission should assess 'first level checks' conducted during 2007–13 and, taking account of weaknesses identified, analyse the costs and benefits of possible corrective measures and take appropriate action.

Chapter 6: Employment and social affairs

1.21 This chapter covers the European Social Fund which is the main tool for implementing employment and social policy and accounts for approximately 98% of expenditure in this area. For 15% of the transactions audited, the ECA identified the reimbursement of ineligible costs and incorrectly calculated costs. Breaches were identified

in 21% of the transactions involving the application of public procurement rules while several cases involved failures to observe procedural requirements.

1.22 The ECA audited transactions from 13 Member States, including the UK. Based on this assessment, the ECA estimates that the error rate for this area of expenditure stands at 3.1%, a slight reduction from 3.2% for the 2012 Budget. It concludes that the control systems examined were partially effective.

1.23 The ECA's recommendations include a call for the Commission to confirm in its Annual Activity Reports that it has conducted appropriate checks to ensure that the 'residual error rate' (that is, the extent to which transactions are affected by error after the operation of the supervisory and control systems) is based on accurate and complete and reliable information on financial corrections.

Chapter 7: External relations, aid and enlargement

1.24 This chapter concerns expenditure on enlargement and humanitarian policy. Errors were identified in compliance with procurement procedures and ineligible expenditure, including by the Directorate General for Humanitarian Aid and Civil Protection (ECHO). The ECA estimates the error rate for this area of expenditure as 2.6%, which is a reduction from 3.3% for the 2012 Budget. The systems examined at the Directorate-General for Development and Cooperation (EuropeAid) were assessed as partially effective.

1.25 The ECA's recommendations include one directed to the Commission to ensure that instructions to staff state that clearings should only be made on the basis of incurred expenditure and not estimates.

Chapter 8: Research and internal policies

1.26 This chapter covers a number of areas of expenditure, including justice, communication, internal market and trade. Of the 150 transactions assessed, 89 concerned the Seventh Framework Programme, which was also the focus of the assessment of control systems. The ECA concludes that the most likely error rate for this category of expenditure is 4.6%, which is an increase on 3.9% for the 2012 Budget. The system examined was found to be partially effective. The ECA highlights that the most common type of error relates to personnel costs and notes that in the area of research spending, the types of errors are similar to those seen in previous years. Further, it confirms that non-compliance with public procurement rules contributed significantly to the error rate in this area.

1.27 The ECA's recommendations include a suggestion that the Commission moves to make its control activities more risk-driven, focussing on high-risk beneficiaries and reducing the burden on the less risky and that the new 2014–20 programmes for research and other internal policies provide timely guidance to beneficiaries and managing authorities on the revised eligibility and control requirements.

Chapter 9: Administrative and related expenditure

1.28 This chapter covers the administrative expenditure of EU institutions and bodies. It does not include EU agencies and other bodies, European schools or the European Central

Bank. The audit covered expenditure on human resources (including salaries and pensions) as well as buildings, equipment and communications. The ECA's estimated error rate for this area of expenditure is 1.0%, an increase from nil for the 2012 Budget. The systems examined were assessed as effective.

1.29 The ECA summarises the results for each institution and provides clear recommendations, including for the Commission and EEAS to take further steps to confirm their staff's personal status regularly and for this information to be processed in a timely manner where it has an impact on family allowances.

Chapter 10: Getting results from the EU budget

1.30 In this chapter the ECA considers in detail the performance based on sound financial management and includes the results and impacts of EU expenditure. In addition to considering the EU budgetary rules and their intended focus on performance of EU budget funds, the ECA also focusses on compliance with expenditure rules. It confirms that the general focus during the 2007-2013 programming period on spending, at the expense of achieving results, was noted in a number of special reports published in 2013. The ECA says that the use of financial corrections and recoveries during this programming period also contributed to encouraging a primary focus on spending in line with rules. It comments that while these and other corrective actions are triggered by compliance issues, there is no such process for cases where projects or programmes have not delivered the results expected. The ECA concludes that the 2014–20 programming period would have an increased focus on performance and sets out five specific aspects of this approach, including a renewed approach to evaluation and a performance reserve.

1.31 In this chapter the ECA also considers aspects of the Commission's reporting on performance. Noting the Commission's assertion that EU added value is key to justifying EU budget expenditure, it concludes that none of the three main reports published in 2013 by the Commission (Report on Budgetary and Financial Management: Financial Year 2013,⁴ Commission Communication about its management achievements in 2013 and Commission 2013 Report of an evaluation of the EU's finances based on results⁵) offered a comprehensive assessment of the results in terms of EU added value. The ECA also found that the objectives of identified Directorates General were not fit for management purpose and that there was insufficient cooperation between Directorates General.

1.32 In this chapter the ECA also considers the main themes arising from its special reports on performance and its follow-up of how its recommendations have been implemented, noting that of the 19 ECA special reports adopted in 2013, seven addressed added value as a means of improving the performance of limited EU budget funds. Further, the ECA also considers 'deadweight', which refers to the extent to which a beneficiary of EU funds would have undertaken the project in the absence of EU support. It adds that the Commission followed up on 79% of the recommendations from the eight special reports adopted in 2007–10.

⁴ See http://ec.europa.eu/budget/library/biblio/publications/2013/2014.04.04_RBFM_Report_en.pdf.

⁵ See (36132), 10944/14 + ADD 1, and (36183), 11473/14 + ADDs 1–2: Ninth Report HC 219-ix (2014–15), [chapter 45](#) (3 September 2014).

1.33 The ECA recommends that the Commission rationalises its reporting framework for performance when the Financial Regulation is next reviewed and looks to further develop its performance managing and reporting system to allow it to take responsibility for sound financial management as well as the EU Budget's contribution to policy achievements.

The report on the European Development Funds

1.34 The ECA's Annual Report on EDF activities assesses the financial activities and expenditure of the EDF in 2013. The EDF is the EU's main development cooperation instrument, which underpins the Cotonou Agreement and provides funding to 78 African, Caribbean and Pacific states. EDF expenditure in 2013 includes the 10th EDF (running from 2008–2013) and also outstanding expenditure from the 8th and 9th EDFs. Total expenditure and financial activities for 2013 was €3.51 billion (£2.75 billion). The UK's share of the 10th EDF is 14.82%.

1.35 The Report is based on an assessment of EDF accounts, transactions and supervisory and control systems. The ECA audited a sample of 195 transactions, corresponding to 30 commitments and 165 transactions, designed to be representative of the entire range of payments within the EDF, an examination of all contributions from Member States and a sample of other types of revenue transactions. The ECA notes that the Commission achieved higher commitments than initially forecast (a 29% increase in commitments relating to finance decisions and 31% increase in those relating to individual contracts), and payments were 7% higher.

1.36 The ECA concludes that the EDF accounts for 2013 present fairly, in all material respects, the financial position of the EDF as at 31 December 2013 and are in accordance with the provisions of the Financial Regulation and internationally accepted accounting standards for the public sector. In addition, the revenue and commitments underlying the accounts are judged to be legal and regular. However, as for previous years, the ECA found errors in relation to payments which results in it giving an adverse opinion on the legality and regularity of the payments underlying the accounts. The ECA estimates that the most likely error rate was 3.4%. While it did not find any material errors in the reliability of the accounts, as in 2012 errors were found in transactions relating to programme estimates, grants and contribution agreements. The ECA also notes continuing shortcomings with Common RELEX Information System (CRIS) on the results and follow up of external audits, expenditure verifications and monitoring visits.

1.37 The ECA makes five recommendations:

- reiteration about recovery of interest on pre-financing payments from beneficiaries;
- completion of the development of the CRIS system by the end of 2014, to allow interest payments to be recognised as revenue;
- revision of the quantification of benefits of controls;
- reporting on the progress of the Action Plan to address weaknesses in the control system; and

- better disclosure of the scope of the residual error rates studies in the Annual Activity Report.

1.38 The Commission accepts all the ECA's recommendations, noting that:

- there have been delays to the CRIS developments necessary to allow interest on pre-financing of between €250,000 and €750,000 to be recognised as financial revenue;
- this will now be finalised in the last quarter of 2014;
- actions it has taken to ensure all authorising officers by sub-delegation recover interest generated by pre-financing have already produced good results;
- it will intensify these actions in 2014;
- it will continue to improve the quantification of benefits of controls implemented and accept the recommendation to report in the Annual Activity Report on progress with addressing weaknesses in the control system; and
- it agrees to disclose in the Annual Activity Report the scope of the residual error rate studies and the estimated lower and upper error limits, and will further discuss with the ECA how to implement this recommendation.

1.39 The ECA also reviewed progress on previous recommendations: three have been fully implemented, four in most respects, five in some respects and two yet to be implemented. The Commission notes that it continues to take action on the outstanding recommendations.

The Government's view

1.40 In his Explanatory Memorandum of 24 November 2014 on the report on the General Budget, the Financial Secretary to the Treasury (Mr David Gauke) says that:

- the Government remains committed to working with the Commission and other Member States to ensure that EU budget funds are properly controlled and spent;
- it has been clear that EU budget expenditure, which is funded by taxpayers, should represent value for money and offer added value;
- it therefore welcomes the report's focus on performance and the added value of EU budget expenditure, which remain key priorities for the Government;
- while noting the marginal reduction in this year's error rate, the Government remains of the view that the ECA's conclusions seriously undermine the credibility of EU expenditure;
- when governments across the EU are taking difficult decisions to tackle their deficits, taxpayers need to have confidence that every effort is being made to improve the way EU budget funds are managed;

- that is why for the past three years the Government has voted against discharge of the EU budget and pressed for improvements in the management of EU budget funds;
- focussing on performance and added value will also affect the approach to controls and audits; and
- the Government continues to assert that, while the use of EU budget funds should be subject to controls and audits, they must be targeted to reduce duplication of effort and take into account costs and benefits.

1.41 In her Explanatory Memorandum of 27 November 2014 the Parliamentary Under-Secretary of State, Department for International Development (Baroness Northover) says that:

- the Annual Report is important for monitoring the financial management of EDF activities;
- as the third largest contributor to the EDF, with a 14.82% share, the UK is keen to maintain oversight of EDF activities and ensure value for money and sound public financial management of Member State contributions — this report contributes to the material available to maintain oversight of the EDF finances;
- the most significant area for improvement remains the CRIS system, which continues to be the cornerstone of EU programming and financial management;
- it is critical that the Commission improves both the system’s functionality and staff’s use of it;
- CRIS was the subject of a Court of Auditors’ review in 2012⁶ and the Commission, two years into a three year plan to upgrade the system, is making progress; and
- the ECA particularly notes the continuing frequency of errors found through the ex-ante checks (that is, before payment is made).

1.42 Turning more specifically to the UK position the Minister first says that:

- the ECA recognises that the EDF operates in a high risk environment due to the wide range of delivery methods used across a large number of countries;
- against this background, the Government’s own assessment of the EDF’s financial resource management in the 2011 Multilateral Aid Review (MAR)⁷ found it to be “very good” when compared with other development organisations; and
- the Government’s 2013 update⁸ to the MAR corroborated these findings.

⁶ See (33887), 9935/12: Seventh Report HC 86-vii (2012–13), [chapter 6](#) (4 July 2012), Thirteenth Report HC 86-xiii (2012–13), [chapter 7](#) (17 October 2012) and Twentieth Report HC 86-xx (2012–13), [chapter 27](#) (21 November 2012).

⁷ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67583/multilateral_aid_review.pdf.

⁸ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297523/MAR-review-dec13.pdf.

1.43 The Minister continues that:

- the Government welcomes the ECA’s report and its Statement of Assurance on the EDF, as well as the steps taken by EuropeAid to address previous recommendations;
- whilst payments are still affected by material error, with a most likely error rate of 3.4%, this is an improvement on previous years (5.1% in 2011) while slightly higher than 2013 (3%); and lower than the Court’s estimated likely error rate for the overall EU Budget (4.7%);
- the Government’s assesses that changes introduced by EuropeAid are having a positive effect, though there is still clearly further work required;
- the Commission has piloted new software over the summer of 2014 and this will be rolled out across all delegations from the beginning of December;
- the new system will provide consolidated data on budgeting, forecasting and expenditure;
- it has been accompanied by extensive training of staff;
- data will also feed into the new Results Framework;
- the Government has maintained links with EuropeAid to press for improved financial management and Member State oversight of EDF finances;
- it notes that the improvement in forecasting has been maintained, as evidenced by the requests for payments;
- this has been the result of more active management by the Commission, with Member States providing challenge on their forecasts;
- negotiations have been concluded on the Financial Regulation for the 11th EDF;⁹
- as far as possible, the financial rules and procedures in place for the EU budget are being adopted for the EDF as well, the aim being to ensure coherent procedures between the EDF and the EC budget to make management and implementation of programmes more effective;
- overall the Government expects this to be a positive change and it will continue to monitor the impact; and
- the Government will continue to press for improvements in CRIS and will monitor progress especially against the ECA’s report recommendations.

⁹ See (35334), 14081/13: Twentieth Report HC 83-xix (2013–14), [chapter 2](#) (30 October 2013) and Thirty-third Report HC 83-xxx (2013–14), [chapter 17](#) (29 January 2014).

UK member of the European Court of Auditors

1.44 When, on 5 November 2014, these ECA reports were published, Mr Phil Wynn Owen, the UK Member of the Court, wrote to us drawing our attention to them and their structure and main points. He also enclosed an annex listing references in the General Budget report to the UK, some of which concern perceived failings in the UK. We annex that list.

Previous Committee Reports

None.

Annex

References to the United Kingdom in the Court's Annual Report 2013

Chapter 1 of the Annual Report presents the statement of assurance and supporting information. As part of the introduction, Graph 1.1 compares the total implemented EU budget of 2013 with the public spending of EU Member States, including the UK, in calendar year 2013;

Chapter 2 of the annual report deals with revenue in 2013. There are references to the UK in:

- Table 2.1, which shows an amount in respect of exchange rate differences relating to the UK correction;
- Paragraph 2.8, footnote 12, where the Court comments on specific reservations regarding GNI data set during the course of 2013, including one for the UK;
- Table 2.2, in which the Court sets out reservations in respect of Member States' GNI/GNP outstanding as at 31 December 2013;
- Box 2.2, where the UK is referred to in an example of the exchange of information relating to discrepancies detected at an importer in one Member State which also concerned other Member States;
- Table 2.3, where the Court sets out the Traditional Own Resources open points as at 31 December 2013;
- Table 2.4, where the Court sets out reservations in respect of VAT outstanding as at 31 December 2013.

Chapter 3 of the annual report deals with agriculture: market and direct support. There are references to the UK in:

- Paragraph 3.6(a), footnote 9, which identifies the UK as one of the 17 Member States in which transactions were sampled for testing;
- Box 3.1, footnote 20, which notes that the UK, in respect of Scotland and Northern Ireland, is one of the Member States for which the Commission, in its annual

activity report for 2013, reports about systematic weaknesses relating to permanent pastures;

- Box 3.3, which gives an example of a cross-compliance error concerning the respect by a farmer of deadlines for the notification of animal movements/births/deaths from the United Kingdom;
- Paragraph 3.10, footnote 21, which notes that in its annual report for 2012, the Court reported cases of incorrect assessment of the eligibility of land in LPIS databases in the UK, in respect of England and Northern Ireland.
- Chapter 5 deals with regional policy, transport and energy. There is a reference to the UK in:
 - Box 5.6, which provides examples of weaknesses in the European Commission's validation of error rates reported by audit authorities in respect of four Member States, including the UK.
- Chapter 6 deals with employment and social affairs. There are references to the UK in:
 - Paragraph 6.12 (a), footnote 9, which identifies the UK as one of the 13 Member States in which transactions were sampled for testing;
 - Box 6.1(b), which provides an example of a case of over-declaration of personnel costs in an ESF project in Portugal, and notes that similar findings were identified in five other Member States, including the UK. This example is also mentioned in the Employment and Social Affairs section of the Information Note;
 - Box 6.3 (b), which notes that three cases where contract award notices were sent late or not at all were detected in the UK;
 - Box 6.3 (c), which mentions a case in the UK of non-verification of compliance with state aid rules.

2 Public Procurement in the EU

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested
Document details	Commission Staff Working Document on <i>the Annual Public Procurement Implementation Review 2013</i>
Legal base	—
Department	Cabinet Office
Document number	(36292), 12642/14, SWD(14) 262

Summary and Committee’s conclusions

2.1 We are reporting this document because of poor scrutiny handling by the Government, an issue common to other documents relating to International Procurement covered in chapter 3 of this Report.¹⁰

2.2 New EU Directives governing the procurement process undertaken by government and other public bodies for the award of public and utilities contracts concession and contracts, were all agreed earlier this year and have cleared scrutiny. However, the Commission produces a Public Procurement Implementation Review in an effort to share information and best practice on the application of public procurement rules. This second review is based on 2011 data from Member States’ own annual statistical exercises under the procurement rules and questionnaires.

2.3 In summary, the Review concluded that public procurement data remains incomplete across Member States; the Commission will engage with Member States to improve consistency of data; and the reliability of future Review conclusions and reporting requirements under the new Directives should help identify problems in the application of the rules. The position outlined in the Review did not change greatly overall compared with the previous one, except for the increasing take-up in e-procurement and the significant development of defence procurement following the transposition of the Directive.

2.4 In an Explanatory Memorandum overdue by some eight weeks, in summary the Government’s view is that the Report mainly consists of statistical data and related commentary, but does not draw any firm conclusions or propose new legislative obligations for Member States. As the UK is a not a “significant outlier” in the Review, it considers that no substantive changes in policy are required.

2.5 We recognise that the position, including that of the UK, outlined in this factual Commission document does not represent a significant change to the previous Public

¹⁰ The chapter reports on the following documents: (a) (36316), 12859/14 (b) (36337), 13257/14 and (c) (36342), 13281/14.

Procurement Review. Nor does it raise significant policy, financial or legal issues. However, we are reporting the document to draw to the attention of the House the unacceptable delay of eight weeks in the submission of the Explanatory Memorandum.

2.6 We understand that in the case of this non-legislative document the delay could not lead to a scrutiny override, unlike the other documents addressed by chapter 3 of this Report, and that the Minister for the Cabinet Office and Paymaster General (Mr Francis Maude) has apologised. We also recognise that we have now been provided with a comprehensive and detailed Explanatory Memorandum.

2.7 However, it is important that the Minister understands that the displeasure we expressed in our conclusions to that chapter applies equally to this document. Accordingly, we request that the Minister, when he provides us with the update we have requested in those conclusions, ensures that he includes non-legislative documents, like the current document, within the scope of the update.

2.8 We retain the document under scrutiny pending the Minister's response.

Full details of the document: Commission Staff Working Document on the Annual Public Procurement Implementation Review 2013: (36292), 12642/14, SWD(14) 262.

Background

2.9 The document was deposited for scrutiny on 2 September 2014 and the Explanatory Memorandum, to be submitted within ten working days, was due on 16 September. It was not, however, submitted until 13 November, resulting in a delay of eight weeks.

The current document

2.10 The Review has four chapters: (A) on the economic significance of the European public procurement market; (B) on national mechanisms and bodies (administrative and judicial) for applying procurement rules, including the use of e-procurement; (C) on Commission and national review procedures for alleged infringement of the rules; and (D) on the implementation of the Defence Procurement Directive.

2.11 In (A), the UK led in estimated total value of OJEU advertised procurements (against a backdrop of the total value of advertised contracts falling in comparison with 2011), but was a little below the average in terms of the information published in Contract Notices and Contract Award Notices. Chapter (B) revealed the UK to be one of the top four Member States for e-tendering and close to the EU average for EU-invoicing (within the context of a significant increase in the use of e-procurement across the EU in 2011 compared with the first Review). As set out in chapter (C), the UK was subject to four out of a total 52 cases brought against Member States between 1 January 2010—31 December 2012, with only Greece (14) and Italy (five) having higher rates (but many of the Member States only facing one, two or no cases). The UK's high level (60%) of the use of "voluntary *ex ante* transparency notices"—where a contracting authority deems that a contract does not require prior publication of a contract notice in the OJEU—was noted in chapter (D).

The Government's view

2.12 In an Explanatory Memorandum dated 13 November 2014, the Minister provides the Government's main assessment of the Review :

“The Review does not propose new European laws beyond those already recently-adopted, or suggest new obligations on Member States requiring policy decisions. The data gathered in the Review does not indicate that the UK is a significant outlier which would require substantive changes in policy. And as most figures in the Review are around three years old they will not cover recent trends.

“The Review points out that the new directives will require Member States to monitor the application of the procurement rules, and report to the Commission every three years. The rules will also require authorities to keep records of their procurement decisions; these can act as the basis for the reports to the Commission. The Cabinet Office considers this does not add to authorities' burdens as relevant information will already be gathered in any well-run procurement process, and other statistical reporting obligations will be lifted.

“The proposed UK Regulations transposing the new public procurement directive also implement a number of other reforms to open up the public procurement market to SMEs, including a requirement to publish certain opportunities on “Contracts Finder”. This may also assist in gathering statistical data on contracts below the EU threshold.”

2.13 However, he also provides some explanations of assessments of the UK position included in the Review. In respect of the assessment in Chapter A of the Review that the UK led in estimated total value of OJEU-advertised procurements, the Minister comments:

“(Although not discussed in the Review, this might reflect higher average value of contracts in the UK and the award of public contracts in the UK for activities which were more often carried out in-house in other Member States).”

2.14 On another assessment in Chapter A, the Minister says:

“Across the EU, the “open procedure” (where all interested bidders are invited to tender) continued to be the most commonly-used. Under present UK Government policy the use of this procedure has increased in the UK, to reduce procurement timescales and widen supplier opportunities.”

2.15 On the question of the UK's record in respect of alleged infringements of procurement rules addressed in Chapter C, the Minister comments:

“The UK was not subject to an excessive number of infractions (4 of 52 total cases in the period 1 January 2010–31 December 2012). At national level in most Member States which reported figures, the percentage of total procurements subject to successful formal complaints was in low single figures.”

2.16 In connection with this, the Minister tells us about a UK initiative to identify possible procurement abuses:

“UK Informal complaint service

“Not covered in the Review but relevant in the context, and mentioned in the Explanatory Memorandum on the first Review, the UK Government has introduced a successful informal “Mystery Shopper” service, for suppliers to raise concerns about public procurement practice. This has handled over 700 cases to September 2014, 80% of which have had a positive outcome. The service has also carried out over 440 “spot-checks” of procurements across the public sector. In Scotland, the “Single Point of Enquiry” for suppliers dealt with a total of 277 cases to March 2014. Of these, 76% had a positive outcome.”

2.17 On Chapter D, the Minister comments:

“2011 was the first full year in which the 2009 Defence Procurement Directive should have been transposed in all Member State; the Commission therefore discussed this in the Review. However as not all Member States had completed transposition, 2011 was a year of transition. France and Germany were the main issuers of Official Journal notices. The UK was responsible for 60% of all “voluntary ex ante transparency notices”; the Commission suggests this could indicate a high use of the negotiated procedure without publication, or other procedures not covered in the Directive.”

2.18 Finally, the Minister confirms what the next steps for the document are likely to be:

“The Review does not contain specific timetables for actions. We expect the Review may be discussed at meetings of the Advisory Committee on Public Contracts during the coming year.”

The Minister’s letter of 24 November 2014

2.19 The Minister addresses delays in the scrutiny handling of this document in his letter of 24 November, which we have already cited in full in chapter 3 of this Report. In respect of the current document, the Minister says of the late submission of the Explanatory Memorandum:

“The final EM of the current tranche (11642/14) [sic] concerns a Commission staff working document, and is not subject to any specific Council Decision.”

Previous Committee Reports

None.

3 International Procurement

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested
Document details	Draft Council Decisions establishing the position to be taken by the European Union within the Committee on Government Procurement on: (a) the withdrawal of the Union objections to the delisting of three entities from Japan's Annex 3 to Appendix I to the Agreement on Government Procurement; (b) the accession to the Agreement on Government Procurement of Montenegro; (c) the accession to the Agreement on Government Procurement of New Zealand
Legal base	Article 207(4) and 218(9) TFEU;—; QMV
Department	Cabinet Office
Document numbers	(a) (36316), 12859/14, COM(14) 539 (b) (36337), 13257/14, COM(14) 573 (c) (36342), 13281/14, COM(14) 574

Summary and Committee’s conclusions

3.1 The Agreement on Government Procurement (GPA) is an international agreement under the WTO whose signatories agree to mutually open up their public and “utilities” procurement markets. The GPA covers the rules and procedures by which the parties will conduct their relevant procurements, plus the different market sectors which will be subject to the GPA, and the bodies and organisations within each country which will be subject to the GPA (the “coverage”). Whilst the main text of the GPA (covering the procedural rules) is common to all parties, the coverage (by market sector and procuring bodies) is unique for each signatory, and is agreed through a series of bilateral agreements between GPA parties. The current GPA agreement was negotiated in 1994, and came into force in 1996. After prolonged renegotiation, a revised and updated GPA was adopted in 2012 and entered into force in April 2014 after formal acceptance by a majority of the parties, including the EU.

3.2 There are currently 42 countries under the GPA, including the 28 EU Member States; other major signatories include Japan, Canada, South Korea, Taiwan, Hong Kong and the USA. The Commission negotiates on behalf of the EU as a whole; individual EU Member States are not separately represented. All the EU Member States have substantially the same coverage with respect to each of the other GPA parties. EU Member States meet their GPA obligations through compliance with the European procurement directives.

3.3 The last time we reported on the GPA was in relation to the agreement of a new Protocol.¹¹ However, these three current documents address different issues. The purpose of document (a) is to adopt an EU position on the intention of the Japanese Government to withdraw from its coverage under the GPA three railway companies formerly majority-owned by the Japanese Government. Documents (b) and (c) concern the adoption of an EU position on the accession to the GPA of Montenegro and New Zealand respectively.

3.4 Although there are no material legal, financial or policy implications arising from any of these documents, we wish to draw to the attention of the House our concerns over the handling of scrutiny on these documents by the Government. Delays ranging between five and seven weeks in the submission of Explanatory Memoranda by the Government has resulted in scrutiny overrides on all three documents (the delay on an associated document is dealt with in a separate chapter to this Report).¹² All were adopted prior to the deposit of the Explanatory Memoranda. We also report on the Government's subsequent apology for these overrides by letter of 25 November.

3.5 We note the Minister's full and frank apology for the poor scrutiny handling of these documents which has resulted in three scrutiny overrides. We welcome his commitment to ensuring that such lapses in scrutiny do not recur.

3.6 Regardless of the Minister's apology, we consider that the scrutiny lapses are aggravated by the fact that his department should set an example to other Government departments in adhering to its own guidance on Parliamentary scrutiny of EU documents.¹³ It should be a repository of best, and not bad, practice for the Government's handling of EU scrutiny.

3.7 We also object to his argument that even if the option of abstaining had been understood by his officials in relation to documents (b) and (c), it would have been inconsistent with UK policy on international public procurement. Overriding scrutiny on the grounds of incompatibility with Government policy is not an explicit exception to the Scrutiny Reserve Resolution of 17 November 1998 ("the scrutiny reserve"). The scrutiny system in the House of Commons is premised on the need to hold the Government to account for its decisions on EU proposals in the Council, whether based on established Government policy or not. Unless the Minister can convince us that agreement to the proposals was on the basis on explicit exceptions to the scrutiny reserve — that the proposals were confidential, trivial, routine or substantially the same as a proposal on which scrutiny has been completed (paragraph 3(a)) or for "special reasons" (paragraph 4), then we cannot see why incompatibility with UK policy should act to mitigate the Government's actions.

3.8 Given that the Minister has already sought to identify the reasons for the scrutiny lapses and taken steps to prevent recurrences in future, we think it would be premature to invite him to give evidence before us at this stage. However, we will consider issuing such an invitation if:

¹¹ Sixth Report HC 83-vi (2013–14), [chapter 7](#) (19 June 2013).

¹² See (36292), 12642/14, chapter 2 of this Report.

¹³ Parliamentary Scrutiny of European Union Documents Guidance for Departments August 2013 <http://europeanmemoranda.cabinetoffice.gov.uk/files/content/parliamentary-scrutiny-departments-1306.pdf>.

- i) we do not receive an update from the Minister by the end of January on whether any further issues concerning his department's handling of EU matters have been identified as part of his department's ongoing review of current, forthcoming and outstanding Cabinet Office scrutiny business; and/or
- ii) there is any further material scrutiny lapse, including an override, during the course of the remaining Parliamentary term.

3.9 The Minister will also be aware that in the case of documents (b) and (c) our officials, in good faith, gave the Government short extensions to the date by which Explanatory Memoranda should be submitted (1 and 2 October respectively) until 6 October. That these extensions were also not met means that future requests for extensions on EU documents falling within his department's remit will necessarily be subject to greater challenge.

3.10 Pending the Minister's response, we are retaining these documents under scrutiny.

Full details of the documents: (a) Draft Council Decision establishing the position to be taken by the European Union within the Committee on Government Procurement on the withdrawal of the Union objections to the delisting of three entities from Japan's Annex 3 to Appendix I to the Agreement on Government Procurement: (36316), 12859/14, COM(14) 539; (b) Draft Council Decision establishing the position to be taken by the European Union within the Committee on Government Procurement on the accession to the Agreement on Government Procurement of Montenegro: 36337, 13257/14 + ADD 1, COM(14) 573; (c) Draft Council Decision establishing the position to be taken by the European Union within the Committee on Government Procurement on the accession to the Agreement on Government Procurement of New Zealand: (36342), 13281/14 + ADD 1, COM(14) 574.

Previous scrutiny

3.11 Although we have not previously reported on these documents, their scrutiny history is of particular importance to the basis of our Report to the House in this chapter. Document (a) was deposited with us for scrutiny on 10 September and an Explanatory Memorandum was therefore due to be submitted by 23 September (within ten working days of the document's deposit). Document (b) was deposited with us on 18 September, with the Explanatory Memorandum due on 2 October and document (c) on 19 September with the Explanatory Memorandum also due on 2 October, with an extension being agreed by our officials for both documents (b) and (c) until 6 October. The Explanatory Memoranda on these three documents were not submitted until 11 November.

The current documents

Document (a) — Japan

3.12 In 2001 the Japanese Government stated its intention to withdraw from its coverage under the GPA, three railway companies which it had formerly owned on a majority basis as the companies were moving towards full privatisation. All other GPA parties except the

EU have now accepted this; however until the EU also agrees these bodies will not be formally delisted.

3.13 In the scoping exercise for the EU–Japan Free Trade Agreement (FTA) the EU agreed in principle to withdraw its objection to the GPA delisting. The Commission’s Explanatory Memorandum to the document (a) indicates that FTA negotiations on railway procurement have made good progress; Japan intends to revise the operation of a rail safety clause affecting the opening-up of its rail markets under the GPA, and to promote transparent and non-discriminatory procurement by the three railway companies. It is therefore proposed that the Council adopts a decision that the EU withdraws the objection to the delisting.

Document (b) — Montenegro

3.14 In 2013 Montenegro applied to join the GPA and since then the Commission, on behalf of the EU, and Montenegro, have negotiated market-opening commitments. It now proposes that the Council formally adopts a position as a result of those negotiations. The Commission’s Explanatory Memorandum to its proposal states that Montenegro submitted a final offer on 18 July 2014.

3.15 The Commission states that Montenegro’s markets access-commitments mirror those of the EU’s existing market access commitments under the GPA. These include central government, sub-central government entities, and utilities (in the drinking water, electricity, airport, port, urban transport, and railway sectors).

3.16 In terms of market sector, Montenegro provides a list of goods containing some exceptions which is the same as for the EU. The list of services is the same as the EU’s (i.e. those so-called “Part A” Services currently subject to the full EU public procurement rules). Construction coverage will be the same as for the EU (and most GPA parties).

3.17 The Commission states that as an EU candidate country Montenegro’s public procurement rules are broadly aligned with the EU acquis, and are non-discriminatory. The Commission welcomes Montenegro’s offer and proposes that the Council agrees to it.

Document (c) — New Zealand

3.18 In September 2012 New Zealand applied to join the GPA and since then, the Commission, on behalf of the EU, and New Zealand, have negotiated market-opening commitments. It now proposes that the Council formally adopts a position as a result of those negotiations. The Commission’s Explanatory Memorandum to its proposal states that New Zealand submitted a “final offer” on 21 July 2014.

3.19 The Commission states that New Zealand’s markets access commitments in its final offer include core central government ministries and departments. “Sub-central” entities in coverage will include most District Health Boards, the biggest city councils (Auckland, Wellington City and Christchurch City) and regional councils of over 250,000 inhabitants. Coverage of city councils and regional councils would apply (only) to projects wholly or partly funded by the New Zealand Transport Agency.

3.20 The Commission adds that 14 New Zealand “Crown entities” operating in fields such as tourism, aviation, and education will be covered, as will four State Owned Undertakings in the utilities sectors of airways, meteorological services, railways and electricity.

3.21 In terms of market sector the New Zealand offer covers the opening up of the market for goods, most services (not including Research and Development public health, education and welfare) and all construction services (for those entities which will be subject to full coverage).

3.22 The Commission Proposal welcomes New Zealand’s offer, but as New Zealand’s proposed market-opening is not complete, the Commission proposes that there should be some balancing “carve-outs” from the EU’s market-opening to New Zealand suppliers as follows:

- New Zealand suppliers would have access to fewer central-government-level contracting authorities than are some other GPA parties.
- The Commission proposes that NUTS level 3 bodies¹⁴ and smaller administrative units should be excluded from coverage (this would affect UK most district Councils and some county councils).
- Larger units (NUTS Levels 1 and 2) would only be covered for the sector of urban transport.
- Certain EU utility sectors (airports, ports, drinking water) would also not be covered.

The Government’s view on the current documents

3.23 The Minister for the Cabinet Office and Paymaster General (Mr Francis Maude) addresses the three documents in three separate Explanatory Memoranda of 11 November.

Document (a) — Japan

3.24 The Minister comments on the policy issues arising from the proposal as follows:

“The UK is committed to removal of unnecessary barriers to international trade and supports open and transparent public procurement markets. The UK supported the modernisation of the GPA, and the Government is on record as welcoming the negotiations to achieve a Free Trade Agreement between the UK and Japan. In principle it seems this delisting of the Japanese railway companies itself is unlikely have substantive effect on the access to the Japanese rail markets for EU and UK firms. It is only these three firms which are specifically affected, and as discussed in the Impact Assessment, as private sector bodies they should have a market incentive to procure effectively and efficiently, whether inside the GPA or outside. However, as also noted in the Impact Assessment, the concomitant changes to the operation of the Japanese rail safety clause and the positive contribution to the FTA negotiations as whole, appear helpful. In the longer term it may help encourage collaboration and

¹⁴ Regulation (EC 1059/2003) established several size levels (“NUTS” levels) for territorial units in Member States.

joint ventures between UK and Japanese rail infrastructure and rolling stock suppliers in bidding into third country markets (for example China, bearing in mind the latter is moving towards potential GPA membership)”.

Document (b) — Montenegro

The Minister addresses policy implications, by saying:

“The UK Government agrees with the aims of the GPA, supported and encouraged the Commission and the other GPA parties to achieve the recently-adopted updates, and supports accession of new GPA members, with as wide “coverage” as possible. This stems from our policy of supporting fair and open markets, value for money, probity and transparency in public procurement, support for growth in the global economy, and guarding against protectionism. According to the Commission, Montenegro’s offer is consistent with the existing EU market-opening under the GPA. Therefore the UK can support the Proposal that the Council accepts Montenegro’s offer.

“The direct impact on the UK of Montenegro’s accession to the GPA is likely to be small. The population of Montenegro is less than 1% of that of the UK; GDP is less than 0.2% of the UK’s GDP, and its public procurement market above the EU thresholds was only €25.2m (£20.0m) in 2011, compared with an estimated UK EU-advertised public procurement market of over £75 billion. Moreover the UK does not routinely, or as a matter of policy, exclude suppliers from non-GPA parties; so the UK public procurement market is not currently closed or significantly restricted for Montenegrin bidders.

“However, accession of Montenegro will help maintain the momentum of opening-up international public procurement markets and encourage other countries to accede to the GPA.”

Document (c) — New Zealand

3.25 The Minister comments on the policy implications as follows:

“Therefore the UK supports the conclusion of an agreement between the EU and New Zealand in the GPA accession process. We would prefer more complete coverage than that envisaged in the Proposal, including a wider opening up of the local authority sector. But, as it is probably unlikely that there would be substantial EU – New Zealand public contracts in local authorities in any case, this is not a crucial deficiency.

“Although New Zealand is not currently a party to the GPA, the UK does not routinely, or as a matter of policy, exclude suppliers from non-GPA parties; so the UK public procurement market is not currently closed or significantly restricted for New Zealand bidders. Therefore the accession of New Zealand should confirm access for UK business to New Zealand’s public procurement markets, whilst having little practical impact on public procurement in the UK. The attached Impact Assessment provides some analysis of the possible financial impact.”

Common points on the three documents

3.26 The Minister makes the following points that are common to all three documents:

- the principle of subsidiarity does not apply to them since they fall within the EU's exclusive competence under the Common Commercial Policy (and the EU is party to the GPA and not the Member States themselves);
- none of them triggers the UK's JHA Title V opt-in;
- they will require no addition or amendment to domestic legislation;
- they do not give rise to substantive fundamental rights implications;
- no timetable has been specified for them by the Commission;
- there are no specific financial implications identified, except in the case of document (a) the potential benefits in expected improvements to access to the Japanese rail markets for UK businesses and from the impetus to the FTA negotiation from the adoption of the proposal and in the cases of documents (b) and (c), improved access for UK firms to Montenegrin and New Zealand markets; and
- a detailed impact assessment is provided for each of them.

The Minister's letter of 24 November 2014

3.27 The Minister explains the delay in the production of the Explanatory Memoranda on these three documents, which have resulted in scrutiny overrides and a fourth, on which we report in the following chapter as follows:

"I would like to apologise for the very late submission of 4 Cabinet Office EMs on procurements issues (12642/14, 13257/14, 13281/14 and 12859/14). I appreciate that the delay falls well short of Committee expectations. Unfortunately three of the proposals were adopted before you could examine the EMs and will therefore be recorded as scrutiny overrides.

"Unfortunately, my office did not receive the EMs for clearance until after the deadline set by the Committee. When they were received, the advice accompanying them did not flag up that they were overdue, which resulted in a further avoidable delay. My office have spoken to the team involved, and understand that the delay on their side was in part due to a clutch of Commission proposals arriving at once, with the 10 day deadline attached. Due to that, and the fact that the team had not previously seen the details of the paper, it took them longer than usual to assess and summarise these in a way that would be useful to the Committee.

"Please accept my assurances that there will be no reoccurrence of this incident on any future EMs associated with my Department. The team concerned has instigated a lessons learned review to ensure that we better manage this process in future and prevent these sort of delays from happening again. My office has also reviewed the management of scrutiny business and my Parliamentary-business manager will act

as a focal point within my office to keep track of Cabinet Office scrutiny business. All Cabinet Office outstanding business recorded in Commons Remaining Business and Lords Progress of Scrutiny documents is being reviewed with heads of policy teams with a view to ensuring updates are provided where required. My officials will also be holding a workshop on procedure to ensure better handling in the future.

“On further examination since submitting the EMs, I am advised that the decisions in documents 13257/14 and 13281/14, regarding the accession of New Zealand and Montenegro to the Government Procurement Agreement were agreed in Council on 13 October. And the Decision in document 12589/14 was adopted on 21 October.

“Whilst the Commission proposals for New Zealand and Montenegro were released on 16 September 2014, while Parliament was in recess and the decisions were taken by the Council on the day that Parliament returned from its summer break my EMs failed to note this and nor was I asked to account for the Scrutiny overrides until now.

“Officials have advised me that there was little prospect of these decisions being postponed to a later Council, (and if it had been possible would have caused knock-on delay to the progress to GPA accession of New Zealand and Montenegro). But I am concerned that the option of recording a UK abstention at the Council was not fully understood and I have asked officials to ensure that this option is one that is fully explored where possible in the future.

“On the policy position the UK has consistently supported open public procurement, and the extension of the GPA. You may recall that the government submitted an Explanatory Memorandum on 7915/13 + ADD 1 and 7919/13 + ADD 1 in May 2013 concerning the proposed amendment to the Government Procurement Agreement, which both Committees cleared from scrutiny in June 2103[sic].

“That EM stated; ‘The UK Government agrees with the aims of the GPA in principle, [...] This stems from our policy of supporting fair and open markets, value for money, probity and transparency in public procurement, support for growth in the global economy, and in guarding against protectionism in the current economic climate. The new GPA protocol should provide a further opening of markets and new opportunities for UK firms, and is a positive step forward in the global trade agenda’.

“The accession of New Zealand and Montenegro is consistent with the policy position set out in that earlier EM, and the UK has encouraged the Commission to achieve a satisfactory negotiation with these states. It would therefore have appeared to be inconsistent with our wider GPA policy position, and not readily understood by other parties, if the UK had opposed or even abstained from the Council decisions on Montenegro and New Zealand.

“With respect to 12859/14, in support of the EU-Japanese Free Trade negotiations, the Council adopted a position on 21 October. Officials took the view that this fell within the parameters of previously-cleared matters and in particular EMs 7915/13 &

7919/13, from May 2013, and that no separate scrutiny clearance was necessary for this decision. However, this was clearly wrong.

“The final EM of the current tranche (11642/14) [*sic*] concerns a Commission staff working document, and is not subject to any specific Council decision.

“I hope this goes some way to addressing the concerns which your Committees will rightly have about the handling of these proposals. Of course if there are any further concerns or queries I will be very happy to address them.”

Previous Committee Reports

None; but see Sixth Report HC 83-vi (2013–14) [chapter 7](#) (19 June 2013).

4 Food and Agriculture Organisation

Committee’s assessment	Legally and politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested
Document details	Commission Communication on <i>the updated declaration of competences and new arrangements for the exercise of EU and Member States’ membership rights in the Food and Agriculture Organisation</i> (FAO)
Legal base	—
Department	International Development
Document numbers	(34975), 10368/13, COM (13)333

Summary and Committee’s conclusions

4.1 The FAO, established in 1945, is the oldest permanent specialised agency of the UN. It coordinates the efforts of governments and technical agencies in the development of agriculture, forestry, fisheries, and land and water resources. In 1991, the European Community became a member of the FAO. Arrangements then agreed between the Council of Ministers and the Commission set out the general division of competences in areas under the FAO’s mandate between the EU and its Member States as well as the process for coordinating joint positions and statements ahead of the meetings of FAO Governing Bodies.

4.2 The Commission says in the Communication that a new general Declaration of Competences and arrangements for the EU and Member States to exercise their membership rights in FAO meetings are required to take into account the division of competences between the EU and Member States pursuant to the Treaty of Lisbon. It also

wants to make preparation for and representation in FAO meetings more efficient, effective, unified and coherent.

4.3 The proposed Declaration of Competences (Annex 1) sets out “EU competences” and “EU and Member States competences” relevant to the FAO’s activities by way of subject area. The former lists not only matters of EU exclusive competence relevant to FAO activities in line with Article 3(1) TFEU but also relevant competences shared between the EU and Member States (see Article 4(2) TFEU) but without any indication of the extent to which those shared competences remain to be exercised by the Member States (applying the principle of pre-emptive exercise by the EU set out in Article 2(2) TFEU). The latter category of “EU and Member States competences” lists relevant “parallel” EU and Member State competences (Article 4(3) and (4) TFEU) but again does not mention that Member States can exercise these competences without any pre-emptive restriction. It also lists some relevant “supporting supplementary and co-ordinating” competences, but similarly omits to point out that EU action cannot supersede Member State competence.

4.4 The Commission considers that the new arrangements (Annex 2) should mean that “all EU positions can be expressed from behind the EU nameplate” by ensuring that Council preparatory bodies have sufficient time, in advance of FAO meetings to consider “lines to take” which reflect existing EU positions, to agree on new EU positions where necessary and to establish a common position between the EU and its Member States where agenda items are not all covered by EU competences alone.

4.5 The Government told us in July 2013 that it opposes the general nature of the Declaration of Competences, the discontinuation of specific declarations of Competences for the agenda items for each meeting, the preference for “lines to take” rather than fully agreed statements, enhancement of the co-ordinator and “spokesperson” role of EU delegation and/or Commission at the expense of the Presidency and Member States — with national “voices” supporting EU positions no longer being delivered from behind the “national nameplates”. It also strongly opposes the suggestion that for agenda items not covered by EU or common positions, Member States inform each other as well as the EU Delegation and the Commission about their draft positions and voting intentions.

4.6 It also told us that if the Communication (and its annexes) is endorsed by the Council in the form it was published (which was unlikely at the time given the level of opposition of Member States), it not only risked undermining Member State competence in the FAO, but could also set an unhelpful precedent for other international organisations.

4.7 In our Twelfth Report of 2013–14, we recognised the Government’s concerns, noting in particular the imprecise nature of the Declaration of Competences and potential inconsistency with established 2011 arrangements for EU/Member State participation in UN bodies. We therefore kept the document under scrutiny, requesting that we be kept informed of its progress and told why Council legal advice had been sought.

4.8 We now report on the response of the then Parliamentary Under-Secretary of State (Lynne Featherstone) in anticipation of another update from the Government shortly.

4.9 We thank the then Minister for her letter. We ask that the Government’s next update to us take into account our continuing and serious concerns that:

- i) **the new Declaration of Competences is flawed as we noted in the Conclusions to our last Report; and**
- ii) **no matter how benignly the Commission seeks to present this initiative — by using the informal process of the Council “taking note” of a non-legally binding Communication and by referring to wording in the Communication that the proposals “do not in any way affect the division of competences between the EU and its Member States as provided for under the Treaties”— the practical impact of the new arrangements could be legally significant. Unless the new Declaration of Competence reflects more accurately the division of competences set out in the Treaties, Member States may be deprived of the right to vote and act unilaterally on matters falling under their national competence.**

4.10 We therefore agree with the Government that given the significance of what is being proposed, it is important that Council consensus is achieved on the proposal.

Full details of the document: Commission Communication: *The role of the European Union in the Food and Agriculture Organisation (FAO) after the Treaty of Lisbon: Updated Declaration of Competences and new arrangements between the Council and the Commission for the exercise of membership rights of the EU and its Member States:* (34975), [10368/13](#), COM(13) 333.

Background and previous scrutiny

4.11 A full account of the document, together with the Government’s view are set out in our Twelfth Report of 2013–14.

The Minister’s letter of 19 December 2013

4.12 The Minister says that her letter is in response to our Report of 30 July 2013, in particular our requests to be kept informed of progress of the current document and the reasons why advice had been sought from the Council Legal Services.

4.13 She updates us on progress made first:

“After several preliminary exchanges between EU Member States and the Commission in Brussels – at which the UK and others voiced reservations over the approach and some of the content of the Communication — we are now moving towards the start of negotiations. The UK and 15 other Member States set out their main concerns in a common paper shared with the Commission on 10 December. The first discussion on this subject will take place on 5 February under the incoming Greek EU Presidency. The UK’s position will be fully informed by UK legal advice, and additional legal advice will be taken, as appropriate, from the EU Council’s Legal Service.”

4.14 She then explains the reason why Council Legal Service advice has been sought. She says:

“the Council Legal Service (CLS) gave informal views on procedural matters at an FAO Working Party meeting in Brussels in September. It is standard practice for

Member States to seek CLS’s views at such meetings and a number have noted the importance of considering possible legal implications. There has not yet been any substantive discussion of the Communication, but the CLS will respond to specific questions raised when member states formally submit detailed comments on the paper. CLS advice is given on a confidential basis to those present within a Working Party and not for further public disclosure.”

4.15 The Minister then addresses the question of how the Commission proposes to take the proposals forward:

“The Annexes propose a new Declaration of Competences by the EU in respect of matters covered by the FAO constitution and new Arrangements between the Council and the Commission regarding the exercise of membership rights of the EU and its Member States in FAO. Their intention is to seek to demarcate through non-legally binding instruments (i.e. the Declaration and Arrangements) the practical exercise of the membership rights as between the EU and its Member States in FAO. It should, however, be noted that both proposals contain a statement that they do not in any way affect the division of competences between the EU and its Member States as provided for under the Treaties. The Commission proposes that the Council ‘takes note’ of the Declaration and that the Council and Commission agree on the new Arrangements. Ultimately, the UK’s position is that it is inappropriate for the Commission to seek to take these proposals forward by way of a unilateral Communication that is simply ‘noted’ by the Council. That would not, in our view, provide sufficient authorisation by the Council, especially in view of its policy-making prerogative pursuant to Article 16 of the Treaty of the European Union. Our view is that Council should consider and agree, by consensus, the need for, and contents of any new Declaration and Arrangements.”

4.16 The Minister ends her letter by committing to keep us informed of developments.

Previous Committee Reports

Twelfth Report HC 83-xii (2013–14), [chapter 3](#) (17 July 2013).

5 The EU and the post-2015 development agenda

Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the International Development Committee
Document details	Commission Communication: <i>A decent Life for all: from vision to collective action</i>
Legal base	—
Department	International Development and Environment, Food and Rural Affairs
Document numbers	(36070), 10412/14 + ADD 1, COM(14) 335

Summary and Committee's conclusions

5.1 This Joint Communication is the latest stage in a process that began with Commission Communication 7075/13 — “A decent life for all: ending poverty and giving the world a sustainable future”. That earlier Commission brought together the debate about what international framework should succeed the MDGs¹⁵ and the process to establish new Sustainable Development Goals (SDGs) arising from the Rio+20 — where government leaders agreed that the new SDGs should be coherent and integrated with the post-2015 development agenda. This follow-up Joint Communication was taken forward in the 25 June 2013 Council Conclusions on the “Overarching Post 2015 Agenda”. The next stage was the UN Secretary General’s (UNSG) Open Working Group (OWG) report, which was adopted at the 69th UNGA in September.

5.2 The report of the OWG proposes 17 goals and 169 targets. The UNGA welcomed the report and decided that it should be the main basis for integrating sustainable development goals into the post-2015 development agenda, while recognising that other inputs should also be considered in the intergovernmental negotiation process.

5.3 The Ministers (Baroness Northover and Dan Rogerson) say that the UK secured the majority of its objectives in the OWG report: that poverty eradication is the greatest global challenge; dedicated goals on gender, economic growth and peaceful societies and good governance; and proposals relevant to addressing climate change and integration of environmental sustainability. But they regard a framework of 17 goals and 169 targets as too difficult to implement and “insufficiently compelling to drive action”; have therefore argued for a shorter and more manageable framework since the OWG’s publication; and are encouraging others to follow the UK’s lead.

5.4 In terms of next steps, in December the UNSG will provide a synthesis of the OWG report, which will feed into the intergovernmental negotiations due to commence early

¹⁵ The eight goals UN Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality; reduce child mortality; improve maternal health; combat HIV/Aids, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.

next year; which Kenya and Ireland will facilitate; and which will culminate in a Summit at the 70th UNGA in September 2015, when the post-2015 framework will be agreed. The co-facilitators will set out the process for the intergovernmental negotiations by December 2014.

5.5 In the meantime, Council Conclusions are due to be agreed at both Foreign Affairs (Development) and Environment Councils on 12 and 17 December respectively, shortly after the publication of the UNSG’s synthesis report. The Government’s aim is that these Conclusions should:

- “set the broad parameters of the EU’s negotiating position”;
- provide “a basis for a simple, prioritised, inspiring and balanced set of goals with a strong focus on eradicating extreme poverty with sustainable development at the core” and “a high level EU vision for the post-2015 development agenda”;
- elaborate the guiding principles for the EU including on universality, accountability, a people-centred and rights-based approach, built around an agenda that should aim to eradicate poverty in all its dimensions and achieve sustainable development;
- set out key areas of focus for the EU building on inputs to date including the report of the UN OWG on Sustainable Development Goals and the forthcoming UN SYG’s synthesis report; and
- set out initial views on a new global partnership to facilitate the implementation, review and monitoring of the SDGs which they expect to be further elaborated in early 2015.

5.6 The Ministers undertake to update the Committee as soon as details of the negotiating arrangements within the EU are resolved but “are clear that these need to reflect the proper division of competences under the Treaties” (this is likely to be in the New Year).

5.7 They also anticipate, early in the New Year, a further Commission Communication, focused on the means of implementation of the post-2015 agenda and monitoring and accountability.

5.8 In the meantime, in view of “the limited time available”, the Ministers are “keen for this matter to clear Parliamentary scrutiny at the earliest opportunity” and hope their letter provides the Committee “with sufficient information to do that and to support the negotiating position” outlined therein (see paragraph 5.23 below for full details).

5.9 As recalled in the “Background” section below, the precursor Commission Communication, “A decent life for all: ending poverty and giving the world a sustainable future”, was debated in European Committee a year ago, and it has always been our intention that, once the OWG report had appeared, this Commission Communication should likewise be debated (see paragraph 5.18 below). However, as the Ministers say, the time between now and the adoption of Council Conclusions is limited — though only because, for no apparent reason, it has taken them ten weeks to tell us about the OWG report. Be that as it may, we have no objection to the Ministers pursuing the adoption of Council Conclusions on the lines they describe at next month’s Foreign Affairs and Environment Councils.

5.10 We would like them to write to us with their evaluation of those Council Conclusions, at which point we envisage recommending that this Commission Communication be debated, so that the House will have the benefit of both documents when the debate takes place. We would like them to do so before the Christmas/New Year break, so that the Committee is able to consider their response at its meeting on 7 January 2015.

5.11 The Ministers allude to our interest in what they earlier described as “the EU will negotiate on behalf of Member States” (see paragraphs 5.19-5.20 below for full details). We therefore continue to look forward to hearing from them in the New Year about arrangements that, as they rightly put it, “reflect the proper division of competences under the Treaties”.

5.12 In the meantime, the Commission Communication remains under scrutiny.

5.13 We again draw these developments to the attention of the International Development Committee.

Full details of the documents: Commission Communication: *A decent Life for all: from vision to collective action*: (36070), [10412/14](#) + ADD 1, COM(14) 335.

Background

5.14 Commission Communication 7075/13 — “*A decent life for all: ending poverty and giving the world a sustainable future*”— set out the Commission’s view on the international post-2015 development agenda.¹⁶ Commission Communication 12434/13 on the Commission’s perspectives on financing the post-2015 development framework is also relevant.¹⁷ Both Communications were examined in a European Committee debate on 11 December 2013.¹⁸

5.15 On 25 June 2013, the Council adopted Conclusions on the “Overarching Post 2015 Agenda”. The Council said that the post-2015 process should reinforce the international community’s commitment to poverty eradication and sustainable development and set out a single comprehensive and coherent framework for effective delivery and results at all levels, with this framework to be defined around a single set of global goals in order to drive action in all countries. The Council underlined that:

- the Millennium Declaration and the Rio +20 outcome remained central reference documents when considering a post-2015 framework;
- the eradication of poverty in all its dimensions and the promotion of sustainable development are intrinsically linked, mutually reinforcing and should be integrated into a single overarching post 2015 framework as proposed by the Commission in its recent Communication;

¹⁶ See further details set out in our Thirty-ninth Report HC 86-xxxviii (2012–13), chapter 6 (17 April 2013).

¹⁷ See (35203), 12434/13: Fourteenth Report HC 83-xiv (2013-14), chapter 7 (11 September 2013) for our consideration of this Commission Communication.

¹⁸ The record of the European Committee is available at *Gen Co Deb*, European Committee B, 11 December 2013, cols 3-20.

- the need to fully integrate all relevant international processes, in particular the work on the Review of the MDGs and the work of the Open Working Group for the elaboration of Sustainable Development Goals (SDGs) into one coherent process; and
- the need also for a common and comprehensive approach to financing for development beyond 2015 that addressed, in a coherent and comprehensive manner, relevant international processes relating to finance, the role of ODA, innovative sources of financing, financial regulation and illicit financial flows, technology transfer, capacity building, trade and those processes undertaken in the context of climate change, biodiversity and desertification.

5.16 Looking ahead, the Council:

- committed the EU and its Member States to playing an active and constructive role in all ongoing processes and to support their convergence in order to achieve a single overarching post 2015 framework;
- welcomed the progress in the elaboration of an overarching post 2015 framework and the work of the UN system, that of the UNSG High Level Panel of Eminent Persons on the post-2015 Development Agenda, the Open Working Group on SDG's and the regional, national and thematic consultations led by the UN system, as important inputs to the development of the framework;
- undertook to continue to further develop priority areas, taking into account the proposals outlined in this further Commission Communication, *A decent Life for all: from vision to collective action*, and proposals by other partners; and
- undertook also to follow and engage in the international processes and define and adapt, as necessary, the position of the EU and its Member States towards an overarching post 2015 agenda.¹⁹

5.17 In their 17 June 2014 Explanatory Memorandum, the then Ministers (Lynne Featherstone and Dan Rogerson) described securing the best possible post-2015 framework as a priority for the UK — “a single, compelling and communicable set of goals that eradicate extreme poverty by 2030 and place sustainable development at the core”, which “finish the job started by the MDGs, include the critical missing issues of open and accountable institutions, properly integrate environmental sustainability and climate change and be relevant to the challenges and opportunities of the next 15 years”. These principles were reflected in the June 2013 Council Conclusions, which set out the formal EU position that continued to guide the EU's engagement on post-2015. Many were reiterated in the “Vision and Principles” set out in the Communication. Though publication of this further Commission Communication was, in their view, premature and risked prejudicing the outcome of the OWG (scheduled to conclude by September 2014), the then Ministers nonetheless hoped that it could “provide a contribution to the EU's internal debate and process on the post-2015 development agenda with a view to developing a more detailed EU position through Council Conclusions in the autumn”.

¹⁹ The full Council Conclusions are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137606.pdf.

The Council Conclusions would “guide the EU’s approach to the intergovernmental negotiations due to commence in 2015, which the EU will negotiate on behalf of Member States”. They would accordingly “work closely with the Presidency, the Commission and Member States to agree these by the end of the year”.

5.18 Given the importance of this process, we indicated that it was highly likely that we would find it appropriate for this Commission Communication, like its predecessors, to be debated in due course: after the outcome of the OWG and before the adoption of Council Conclusions. In the first instance, however, we asked the Ministers to explain the nature of the intergovernmental negotiations due to commence in 2015, and clarify what they meant in stating that “the EU will negotiate on behalf of Member States”. In the meantime, we retained the Commission Communication under scrutiny.²⁰

5.19 In our most recent Report, we noted that we were content thus far with the then Ministers’ clarification regarding both the negotiating timetable and in what ways “the EU will negotiate on behalf of Member States”; the latter being essentially because:

- of EU competence in development issues;²¹
- this is a tried and tested method, with previous such processes having demonstrated that negotiating as the EU is more likely to secure UK objectives than acting alone, given the tendency in UN negotiations to adopt a “bloc” approach;²² and
- because the Ministers envisage a “team EU approach”, with a burden sharing agreement enabling individual Member States, including the UK, to lead negotiations on certain issues or goal areas.

5.20 However, as the then Ministers noted, exact details of how this would work in practice need to be agreed with the Commission, Member States and legal advisers. Once this had been worked out, we asked the Ministers to write again with full information on these arrangements, explaining how they reflected the proper division of competences under the Treaties.

5.21 Before then, however, we asked for a further update once the OWG report had been produced and been considered by the UNGA, including a timetable beyond then and leading up to the next set of Council Conclusions.

²⁰ See Fifth Report HC 219-v (2014–15), [chapter 4](#) (2 July 2014).

²¹ The EU’s competence in development cooperation and humanitarian aid is a specific form of shared competence commonly referred to as a parallel competence. The treaties define the nature and scope of the EU’s competence as follows: “In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct common policy: however the exercise of that competence shall not result in Member States being prevented from exercising theirs”. (Article 4(4) TFEU). While the Maastricht Treaty (1993) provided the first explicit treaty basis for cooperation with developing countries, the Nice Treaty (2003) provided a legal basis for financial and technical cooperation with third countries, notably including non-developing countries in the Balkans, the Middle East and North Africa. Most recently, the Treaty of Lisbon (2009) added an explicit basis for humanitarian aid. More generally, the EU’s competence in development cooperation and humanitarian aid is defined in detail in Part V of the TFEU, which sets out the overall framework of the EU’s external action. For a full discussion of these issues, see “Review of the Balance of Competences between the United Kingdom and the European Union: Development Cooperation and Humanitarian Aid Report”, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227443/2901085_EU-Development_acc.pdf.

²² i.e. the G77, EU and JUSCANZ (Australia, Canada New Zealand, Japan, US).

5.22 We again drew these developments to the attention of the International Development Committee.²³

The Ministers' letter of 24 November 2014

5.23 The Parliamentary Under-Secretaries of State at the Departments for International Development and the Environment, Food and Rural Affairs (Baroness Lindsay Northover and Dan Rogerson) say:

“The report of the OWG was published on 19 July 2014, and was submitted to the United Nations general Assembly (UNGA) on 10 September. It proposed 17 goals and 169 targets.²⁴ UNGA welcomed the report and decided that it should be the main basis for integrating sustainable development goals into the post-2015 development agenda, while recognising that other inputs should also be considered in the intergovernmental negotiation process at its 69th session.

“The UK secured the majority of its objectives in the OWG report: the report recognised that poverty eradication is the greatest global challenge facing the world today, and dedicated goals on gender, economic growth and peaceful societies and good governance were among the recommendations. Further, proposals relevant to addressing climate change and integration of environmental sustainability were included throughout the report.

“We believe, nevertheless, that a framework of 17 goals and 169 targets will be too difficult to implement, and insufficiently compelling to drive action. We have therefore argued for a shorter and more manageable framework since the OWG’s publication: at UNGA the Prime Minister called for a “simple, inspiring, and relevant” post-2015 agenda. We have been encouraging others to follow the UK’s lead.

“In terms of next steps, the UN Secretary-General will shortly (in December) provide a synthesis of the inputs to the post-2015 process. This will act as an important input into the intergovernmental negotiations due to commence early next year. The President of the General Assembly has also recently appointed Kenya and Ireland to facilitate the final intergovernmental negotiations which will culminate in a Summit at the 70th session of UNGA in September 2015 when the post-2015 framework will be agreed. The co-facilitators will set out the process for the intergovernmental negotiations by December 2014.

“In the meantime, the UK will be negotiating Council Conclusions, which will update and set the broad parameters of the EU’s position for the negotiations. These Conclusions are due to be agreed at both Foreign Affairs (Development) and Environment Councils on 12 and 17 December respectively which we anticipate will be shortly after the publication of the UN Secretary-General’s synthesis report. Our aim is that these Conclusions should set the broad parameters of the EU’s negotiating position while providing a basis for a simple, prioritised, inspiring and

²³ See Ninth Report HC 219-ix (2014–15), [chapter 10](#) (3 September 2014).

²⁴ <http://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf>.

balanced set of goals with a strong focus on eradicating extreme poverty with sustainable development at the core.

“The Conclusions will build on the Conclusions of June 2013 and provide a high level EU vision for the post-2015 development agenda. They will seek to elaborate the guiding principles for the EU including on universality, accountability, a people-centred and rights-based approach, built around an agenda that should aim to eradicate poverty in all its dimensions and achieve sustainable development. The Conclusions seek to set out key areas of focus for the EU building on inputs to date including the report of the UN OWG on Sustainable Development Goals and the forthcoming UN Secretary General’s synthesis report. The Conclusions will also set out initial views on a new global partnership to facilitate the implementation, review and monitoring of the SDGs which we expect to further elaborate in spring early 2015.

“We do not expect these Conclusions to establish the exact details of the negotiating arrangements within the EU. We will update the Committee as soon as those details are resolved but are clear that these need to reflect the proper division of competences under the Treaties. This is likely to be in the New Year. We also anticipate a further Commission Communication, focused on the means of implementation of the post-2015 agenda and monitoring and accountability. The Commission intend to publish this early in the New Year. We propose to write to you about the Communication and EU Accountability Report at this juncture.

“The UK has been at the forefront of the post-2015 debates for over a year, and will remain strongly engaged to ensure that we achieve the ambitious and workable framework that the world needs to drive meaningful action over the next decade and a half.

“In view of the limited time available we are keen for this matter to clear Parliamentary scrutiny at the earliest opportunity and hope this letter provides your Committee with sufficient information to do that and to support the negotiating position we have outlined above.”

Previous Committee Reports

Ninth Report HC 219-ix (2014–15), [chapter 10](#) (3 September 2014) and Fifth Report HC 219-v (2014–15), [chapter 4](#) (2 July 2014); also see (34747) 7075/13: Fourteenth Report HC 83-xiv (2013–14), [chapter 1](#) (11 September 2013) and Thirty-ninth Report HC 86-xxxviii (2012–13), [chapter 6](#) (17 April 2013). Also see (35203) 12434/13: Fourteenth Report HC 83-xiv (2013–14), [chapter 7](#) (11 September 2013).

6 Economic Partnership Agreement with the West African region

Committee’s assessment	Legally and Politically important
<u>Committee’s decision</u>	Cleared from scrutiny
Document details	Council decision on the signature, provisional application and conclusion of Economic Partnership Agreement with sixteen West African states, the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU)
Legal base	(a) Articles 207(3), 207(4), 208 and 218(5) TFEU; QMV; (b) Articles 207(3), 207(4), 208, and 218(6)(a) TFEU; QMV
Department	International Development
Document numbers	(a) (36339), 13217/14 + ADDs 1–18, COM(14) 576 (b) (36341), 13263/14 + ADDs 1–18, COM(14) 578

Summary and Committee’s conclusions

6.1 The EU has negotiated an Economic Partnership Agreement (EPA) with 16 West African states,²⁵ the Economic Community of West African States (ECOWAS)²⁶ and the West African Economic and Monetary Union (more commonly known by its French acronym, UEMOA).²⁷

6.2 The Commission has proposed Council Decisions (a) authorising the EU to sign and provisionally apply the EPA, and (b) to conclude (ratify) the EPA.

6.3 The then Minister (Lynne Featherstone) strongly supported the Commission’s proposals, as well as the creation of a commitment of €6.5 billion, some of which can be drawn upon as part of the “Development Programme” included in the EPA. All EU Member States and at least two-thirds of West African countries would need to ratify the agreement before the EPA would enter into force, and this is likely to take over a year to complete.

6.4 Whilst this Agreement raises no issues of general policy, we are conscious that agreements such as this one can give rise to competence creep to the extent that the EU acts in areas where it does not have *exclusive* competence. Whilst it is possible for the EU to act in areas where it shares competence with Member States, the norm is for the Member

²⁵ Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Mali, Niger, Nigeria, Senegal, Sierra Leone and the Togolese Republic.

²⁶ These 16, minus Mauritania.

²⁷ Members of the West African Economic and Monetary Union (also known by its French acronym, UEMOA) are Benin, Burkina Faso, Cote d’Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

States to act. We therefore asked the Minister (now Baroness Northover) to identify any specific provisions where the EU is proposing to act in respect of which it does not have *exclusive* competence.

6.5 In response the Minister concludes by assuring the Committee that the Government remains vigilant to the risk of competence creep and that the steps undertaken lead her “firmly of the view that we have adequate protection on competence and are able to resist provisional application of articles which are not properly within the EU’s competence”.

6.6 This conclusion is based on cross Government consultation and consultation with like-minded Member States which has revealed that no Article of the Agreement presents an insurmountable reason for opposing provisional agreement. She highlights Articles 46 to 48 of the Agreement, concerning agricultural, fisheries and food security, as provisions of shared EU and Member State competence. In respect of these provisions she indicates that any obligations they impose are of a high level nature, vaguely worded and provide no actual remit or requirement for the Commission to act.

6.7 All other Member States have agreed the Commission’s proposal to sign the EPA at the Foreign Affairs Council (Development) in Brussels on 12 December. The Minister assesses that the UK would suffer “significant damage” to its reputation if it were to delay signature of an Agreement which the Government has consistently argued is good for the development of West Africa.

6.8 We note the careful consideration given to the question of competence by the Government and the risk of reputational damage if the UK does not agree to speedy signature of the Agreement.

6.9 We also recognise that, in this case, the risk of competence creep is low. First, this is not a question of the EU acting where it has no competence, but of acting where it shares competence, contrary to normal practice. Second the essence of the Agreement concerns trade and development cooperation. The former is a matter of exclusive EU competence,²⁸ and the latter is a matter of “parallel competence” where EU action does not prevent Member State action.²⁹ Third, the development cooperation provisions of the Agreement themselves minimise competence creep in many instances by, in many cases, clearly distinguishing between activity to be undertaken by the EU and that to be undertaken by the Member States.

6.10 Balancing the low risk of competence creep against the reputational risk identified by the Minister we are content to clear these documents.

Full details of the documents: (a) Draft Council Decision on the signing and provisional application of the Economic Partnership Agreement (EPA) between the West African States, ECOWAS and the UEMOA and the European Union and its Member States: (36339), [13217/14](#) + ADDs 1–18, COM(14) 576; (b) Draft Council Decision on the conclusion of the Economic Partnership Agreement (EPA) between the

²⁸ Article 3 TFEU.

²⁹ Article 4(4) TFEU.

West African States, ECOWAS and the UEMOA, of the one part, and the European Union and its Member States: (36341), [13263/14](#) + ADDs 1–18, COM(14) 578.

Background

6.11 On its website, the European Commission notes that Economic Partnership Agreements:

- date back to the signing of the Cotonou Agreement in 2000;
- are “tailor-made” to suit specific regional circumstances;
- go beyond conventional free-trade agreements, focusing on ACP (Africa, Caribbean and Pacific) development, taking account of their socio-economic circumstances and include co-operation and assistance to help ACP countries implement the Agreements;
- opened up EU markets fully and immediately (unilaterally by the EU since 1 January 2008), but allowed ACP countries 15 (and up to 25) years to open up to EU imports while providing protection for the sensitive 20% of imports;
- provide scope for wide-ranging trade co-operation on areas such as services and standards; and
- are also designed to be “drivers of change that will kick-start reform and help strengthen rule of law in the economic field, thereby attracting foreign direct investment, so helping to create a ‘virtuous circle’ of growth”.³⁰

6.12 This EPA is a mixed trade and development agreement between the EU and its Member States and the West African region which aims to promote trade and, through trade, support development, sustainable growth and poverty reduction in West Africa. It contains standard safeguards, e.g., infant industries, with 25% of products excluded from liberalisation altogether. For Member States, the financial impact would be negligible (the UK could expect to lose around €860,000 in revenue from tariffs each year). The EU has pledged to provide development assistance to implement the EPA, with €6.5 billion promised from 2015–19, with this spending split between the European Commission and the Member States (see our first Report for full details)³¹.

The Minister’s Letter of 1 December 2014

6.13 The Minister addresses the competence concerns by first informing the Committee that consultations with other Government Department, the Council Legal Service and like-minded Member States identified no article of the Agreement as providing insurmountable reason for opposing provisional application. She continues:

³⁰ See <http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>. Also see http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf for an overview of the EPA negotiations with Central Africa, Eastern and Southern Africa, the Eastern African Community, the South African Development Community, the Caribbean and the Pacific.

³¹ Thirteenth Report HC 219-xvii (2014–15), [chapter 13](#) (15 October 2014).

“In our previous communication to the Committee, we indicated that some small parts of the EPA may not fall within the exclusive competence of the EU. However, on examination, the text in the EPA relating to these issues is mostly of a high level nature, contains no requirements for the Commission to act, and therefore has no direct implications on UK competence. Therefore the relevant Departments are content to agree Provisional Application.

“For example, UK officials looked particularly at elements of the EPA’s Chapter 6 covering Agriculture, Fisheries, and Food Security – areas which fall within shared competence. Article 46 requires that “The Parties recognise” the areas in Chapter 6; that they “play a key role”; that these areas “are of great interest”, and that they “must be viewed in the context of sustainable development and the Millennium Development Goals.” Article 47 only refers to “appropriate measures” that have been negotiated appropriately elsewhere in the agreement. And Article 48 refers to the Cotonou Agreement already in place between the EU and the ACP while saying that “both parties shall examine all cooperation measures” but not going so far as committing the EU to action.

“Additional articles examined were similarly not found to impose legal obligations that will require implementation action by the EU or the making or amending of EU internal rules.”

6.14 She then outlines the risk of damage if the UK delays signature:

“The EPA now needs to be signed by all EU and West African states. All other Member States are ready to sign the agreement, and they have agreed with the Commission’s proposal for formal signature at the Foreign Affairs Council (Development) in Brussels on 12 December. The UK is now therefore being urgently asked also to approve that we move to signature. If we do not now quickly approve, this would cause significant damage to the UK’s reputation in Brussels, with other EU Member States and with West Africa. The UK’s credibility would also be questioned if we were to delay signature and provisional application of an EPA which we have consistently argued is good for the development of West Africa.

“I want to reassure you that the Government remains vigilant of the risk of competence creep. However, I am firmly of the view that we have adequate protection on competence and are able to resist provisional application of articles which are not properly within the EU’s competence. I hope for your quick approval so that we can agree to move with suitable speed towards signature and realise the trade and development benefits which this EPA will deliver.”

Previous Committee Reports

Twentieth Report HC 219-xix (2014–15), chapter 13 (19 November 2014), Thirteenth Report HC 219-xiii (2014–15), [chapter 13](#) (15 October 2014).

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

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny (decision reported on 5 November 2014); further information provided; drawn to the attention of the Foreign Affairs Committee
Document details	Commission Staff Working Document on <i>EU support in strengthening civilian policing and Rule of Law post-2014</i>
Legal base	—
Department	Foreign and Commonwealth Office
Document numbers	(35190), 11109/13, SWD(13) 220

Summary and Committee's conclusions

7.1 EUPOL Afghanistan was established on 30 May 2007. Its job is to:

- assist the Government of Afghanistan in implementing coherently its own strategy towards sustainable and effective civilian policing arrangements;
- work towards a joint international community police reform strategy by enhancing cooperation with key partners in police reform and training, including the US, the NATO-led mission ISAF and other contributors; and
- support linkages between the police and the wider rule of law.

7.2 In the first period, it suffered from poor leadership: but it was always backed by Member States as being an essential complement to the recruit-level training being led by the US.

7.3 The most recent Council Decision (which the Committee cleared on 21 May 2013) extended EUPOL Afghanistan's mandate and set a new €108 million budget covering the period from 1 June 2013 until 31 December 2014.

7.4 With the wider withdrawal of ISAF forces in 2014 in mind, Member States commissioned a European External Action Service (EEAS) strategic review (SR). We hoped that, finally, it would provide some evidence of effectiveness, rather than activity analysis — especially as, by the end of 2014, the mission would have cost over €220 million. Analysis of another similar, lengthy and costly mission, EULEX Kosovo, had found that it had been effective only in a limited part of its mandate: the message was clear — notwithstanding the political considerations that tended towards the quickest possible establishment of each new mission, they needed to be: given clear, measurable objectives and a time limit; benchmarked; rigorously assessed along the way; and wound up if those objectives were, for whatever reason, not being met effectively and the mission was not providing value for money.

7.5 Thanks in no small measure to the stamina and persistence of UK Ministers and officials, EUPOL Afghanistan had finally been brought to the point where, at least in theory, it was to be subjected to at least some of these key elements. If not now, then certainly by mid-2014, we needed to see detailed evidence of its effectiveness, so that the lessons could be identified and then applied to other such CSDP missions in similarly challenging circumstances (see our most recent Report for full details).³²

7.6 In our most recent Report, with the prospective extension of EUPOL Afghanistan's mandate until the end of 2016 in mind, we posed a number of questions concerning the outcome of the SR; what sustainable outcomes the SR and the CIVCOM³³ concluded the mission had achieved thus far; what sort of budget was in mind for the next two years; what clear, measurable and deliverable objectives and timelines would be set down; and whether and how the next mandate would be benchmarked and assessed along the way. And, with the overall EU Strategy on Afghanistan 2014–16 in mind, how the next EUPOL mandate would relate to other relevant work, bilateral or multi-lateral, in the area of “good governance” and human rights.

7.7 We are grateful to the Minister for his speedy response, which addresses our queries comprehensively (see paragraph 7.17 below for details). They play into the Council Decision on the final two years of this mission's mandate, which we consider elsewhere in this Report.

7.8 We are drawing both these developments and the chapter of our Report on that Council Decision to the attention of the Foreign Affairs Committee.³⁴

Full details of the document: Commission Staff Working Document: *Comprehensive EU Action to support Afghan efforts in strengthening civilian policing and Rule of Law post-2014*: (35190), [11109/13](#), SWD(13) 220.

Background

7.9 Discussion in January this year with the Minister for Europe (Mr David Lidington) revealed that this Commission Staff Working Document was likely to be replaced with the findings and recommendations that emerged from the Strategic Review of EUPOL Afghanistan. The Council would also be seeking to define the EU's wider strategic engagement with Afghanistan post-2014. In the meantime, little progress had been made in reaching agreement with the Government of Afghanistan on the proposed Co-operation Agreement on Partnership and Development (CAPD) between the EU and Afghanistan. The Committee therefore asked for a further update later in the year, and retained this Commission Staff Working Document under scrutiny.

³² Eighteenth Report HC 219-xvii (2014–15), [chapter 8](#) (5 November 2014).

³³ [The Political and Security Committee](#) (PSC) meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy (CFSP) including the CSDP. It prepares a coherent EU response to a crisis and exercises its political control and strategic direction. The PSC is chaired by a representative of the High Representative. In parallel with the [European Union Military Committee](#) (EUMC: the highest military body set up within the Council, which provides the PSC with advice and recommendations on all military matters within the EU), the PSC is advised by a Committee for Civilian Aspects of Crisis Management (CIVCOM). This committee provides information, drafts recommendations, and gives its opinion to the PSC on civilian aspects of crisis management.

³⁴ See (36514) — at chapter 10 of this Report.

7.10 In May, the Minister explained that, at the 20 January 2014 FAC discussion on Afghanistan, the Foreign Secretary took the opportunity to remind the Council about the importance of the EU continuing to engage in Afghanistan post 2014 and the need to have clear priorities and realistic deliverables for any future strategy. The Council invited the High Representative and the Commission to present a proposal for a strategy by the end of 2016, to encompass a comprehensive approach, the commitments identified in the Tokyo Mutual Accountability Framework,³⁵ and the CAPD (as currently drafted). The Council agreed that the strategy should be ready for endorsement later this year.

7.11 In relation to the CAPD, Afghanistan had recently held elections and a political transition was now underway; any final agreement on the CAPD would need to be finalised with a new Government, hopefully towards the end of year; he would deposit the draft Council Decisions to sign and conclude the CAPD for parliamentary scrutiny in the normal way, when drafts became available.

7.12 With regard to the Strategic Review into EUPOL Afghanistan, the Minister said that the draft was approved by the PSC in March. It concluded that progress had been made by Afghan authorities in those areas where EUPOL provides support, but recognised that the Mission's six strategic objectives will not have been fully achieved by the end of 2014; that it would be premature to assess that there would be sufficient local Afghan capacity to continue self-sustaining progress towards building and maintaining a civilian police service at the end of 2014; that the desired end state of the mission will not have been met; and therefore that EUPOL Afghanistan should continue to support Afghan authorities in the further development of effective civilian policing and rule of law arrangements beyond 2014, in order to ensure further progress and to safeguard progress already made. Operational planning in all three operational pillars — advancing institutional reform in the Ministry of Interior, professionalisation of Afghan National Police and connecting the police to the justice sector — should continue until the end of 2015. The Mission, in its final year, should also focus on supporting institutional reform of the Ministry of Interior and on professionalisation of the ANP.

7.13 The Minister also said that further work on transition was now underway, with a view to presenting to EU Member States which activity was working and should be continued, which could be transitioned and which should cease later in the year. UK officials would continue to evaluate the impact of EUPOL to ensure that the mandate remained flexible and appropriate for the operating environment, whilst maintaining value for money; they would also assess the spend of the budget allocated to the mission when each six-monthly report on mission performance is issued, as well as undertaking a more detailed examination specifically on the budget at the 12 month point.

³⁵ The 2011 Bonn Conference outlined a long-term partnership between Afghanistan and the International Community to help Afghanistan attain sustainable economic growth and development and fiscal self-reliance from Transition through the Transformation Decade. Afghanistan and the International Community accordingly established the Tokyo Mutual Accountability Framework (a.k.a. the 'Tokyo Framework'), which underpinned their partnership for the Transformation Decade. The Tokyo Mutual Accountability Framework (TMAF) agreed in May 2012, establishes the mutual commitments of the Government of Afghanistan and the international community to help Afghanistan achieve its development and governance goals.

7.14 We held back on considering the Minister’s May letter, pending the outcome of the Afghan presidential elections and further information on the wider EU strategy on Afghanistan 2014-16 (which we dealt with in a recent Report).³⁶

7.15 In welcoming the outcome of those elections and the formation of a Government of National Unity on 29 September, the October 2014 Foreign Affairs Council also restated “its commitment to the extension of the EU police mission in Afghanistan (EUPOL) until the end of 2016”. We were expecting a further Council Decision and Explanatory Memorandum before the end of the year.

7.16 But we first asked the Minister to clarify the situation around the outcome of the SR, what sustainable outcomes the mission had achieved thus far; what sort of budget was in mind for the next two years; what clear, measurable and deliverable objectives and timelines would be set down; whether and how the next mandate would be benchmarked and assessed along the way; and, with the overall EU Strategy on Afghanistan 2014-16 in mind, how the next EUPOL mandate would relate to other relevant work, bilateral or multi-lateral, in the area of “good governance” and human rights.

7.17 In the meantime, there no longer being any point in retaining the Commission Staff Working Document under scrutiny, since it had been overtaken by events, we cleared it from scrutiny.³⁷

The Minister’s letter of 21 November 2014

7.18 The Minister responds as follows:

The outcome of the SR into EUPOL Afghanistan

“The SR assessed that progress had been made in all areas of EUPOL Afghanistan’s mandate, but recognised that the Mission’s six strategic objectives would not be fully achieved by the end of 2014. In addition, it was acknowledged that Afghan capacity would not be sufficient to continue self-sustaining progress towards a capable and functioning police service by December 2014 and assessed non-EU actors, such as NATO and the UN, would not take on EUPOL Afghanistan activity. Member States agreed that EUPOL Afghanistan should therefore extend its mandate to support Afghan authorities in the further development of an effective civilian police force. We assess that EUPOL provides an effective means of delivering engagement on policing post-2014, augmenting our own efforts to build sustainable rule of law institutions that the Afghans can lead in the long term.

“Member States agreed that a two year mandate extension was a sufficient period to support Afghan authorities in areas where progress was lacking, allowing the mission to transition activity to the Afghans in a timely and practicable manner.

³⁶ See Joint Communication *Elements for an EU Strategy in Afghanistan 2014–16*: (35996), [9467/14](#) at Eighteenth Report HC 219-xvii (2014–15), [chapter 8](#) (5 November 2014).

³⁷ Eighteenth Report HC 219-xvii (2014–15), [chapter 8](#) (5 November 2014).

“Based on the evidence presented in the SR, Member States agreed that the mandate extension should continue EUPOL Afghanistan’s current structure of three broad lines of activity (advancing institutional reform in the Ministry of Interior, professionalisation of Afghan National Police (ANP) and connecting the police to the justice sector), within which support could be prioritised as necessary. Member States agreed on the continuation of all three strands of activity for the first year, with the third pillar (connecting the police to the justice sector) discontinued at the end of 2015. In its final year the mission will continue to support Ministry of Interior (MOI) reform and police professionalisation, with all activity transitioned to the Afghans or other multilateral actors by the mission end date of 31 December 2016.

“The focus of the new mandate will be narrowed in terms of size and scope. Mentoring will take place only at the highest strategic level, activity will be prioritised, and the geographical layout of the mission reduced, resulting in reductions in staffing and a reduced mission budget.

“The SR identified a number of sustainable outcomes in most areas of mission activity. Under the first operational pillar, advancing institutional reform in the Ministry of Interior, the SR highlights the improved institutional capacity of the MoI, largely due to the delivery of substantial leadership and management training, including in the Police Staff College. Specific reference is made to progress in professionalism, leadership and management skills, as well as embedding of command and control mechanisms. Improvements in the Ministries’ capacity to draft operational policies and strategies are acknowledged, as evidenced by the development of a number of Afghan operational policies, such as the ANP Code of Conduct and the 10 Year Vision for the ANP.

“Under the second operational pillar, professionalisation of ANP, sustainable outcomes focus on the construction and development of ANP training infrastructure and the Afghans increased capacity to deliver training. The Police Staff College (PSC) and the Crime Management College (CMC) were established by EUPOL Afghanistan, with Afghan officers trained to take over the running of both training facilities. The Colleges were successfully transferred to Afghan ownership in February and March 2014. In addition, the SR references the establishment of a number of EUPOL Afghanistan trained and mentored Community Policing Units in Kabul and seven provinces, demonstrating progress in the MOI’s commitment to community policing.

“Under the third operational pillar, connecting the police to the justice sector, the SR outlines the increased capacity of the Ministry of Justice (MoJ) and the Attorney General’s Office (AGO). MoJ and AGO are increasingly able to draft policies and strategies, as demonstrated by the drafting of the five year strategies for the MoJ and the AGO.

“The budget for the period 1 January 2015 to 31 December 2016 is still being negotiated in Brussels. Proposed expenditure is €58,000,000. This would represent a reduction of approximately 39% on the current budget covering the period 1 June 2013 to 31 December 2014. I will include a detailed analysis of the budget in my

forthcoming explanatory memorandum on the mandate renewal, which I hope to issue within the next two weeks.

Benchmarking and measuring progress

“EUPOL Afghanistan will apply a structured process to report and inform on the mission’s performance and progress in implementing the mandate. The next mandate will be benchmarked against the objectives, timeframes and measurable indicators identified within the OPLAN. This contains a clear outline of the phases and timescales for activities in the run-up to the end of 2016, assessing progress of the three lines of operation and the transition of the mission’s activity.

“Benchmarking will help measure progress and outcomes by comparing the situation (an initial baseline) for a range of activities, against their evolution at given points using pre-defined indicators and means of verification. Information on progress will then be used to facilitate tactical, operational and strategic policy adjustments, as required.

“The UK will continue to have the opportunity to evaluate the impact of EUPOL through the six-monthly reports issued by the Head of Mission which evaluate the mission against its specific objectives. These six month reports are discussed in Civilian Aspects of Crisis Management Committee and the Political & Security Committee and provide all Member States with the opportunity to critique the mission at regular intervals and inform budget and mandate discussions, ensuring that the mission is delivering value for money.”

How EUPOL’s work in the areas of “good governance” and human rights will relate to the overall EU strategy on Afghanistan 2014-2016

“The EU is pursuing a comprehensive approach in its support to Afghanistan, with the respective mandates of the EU instruments aligned to achieve this overarching EU Strategy. The extended mandate will deliver human rights and anti-corruption activity through a combination of both mainstreaming and specific measures. A dedicated human rights and gender advisory capacity at the level of the Head of Mission will provide strategic advice on mainstreaming gender throughout the mission’s activities. In addition, the mission will address anti-corruption, gender and human rights in each of its three lines of operations, with work at the operational and tactical level. It is intended that EUPOL Afghanistan’s niche activity in this area will be aligned and will reinforce the overall EU approach as outlined in the EU Strategy on Afghanistan 2014-2016; advancement of human rights, linking the components of the justice sector, tackling human rights abuses and strengthening freedom of expression.”

7.19 The Minister concludes by noting that he will:

- shortly deposit the Council Decision extending EUPOL Afghanistan’s mandate and budget, and provide further detail in the related Explanatory Memorandum; and

— write in due course to update the Committee following the London Conference and the National Security Council’s consideration of the UK’s specific post-2014 military commitment, as requested in the Committee’s latest report on the EU Strategy in Afghanistan 2014–16.³⁸

Previous Committee Reports

Eighteenth Report HC 219-xvii (2014–15), [chapter 8](#) (5 November 2014), Thirtieth Report HC 83-xxvii (2013–14), [chapter 4](#) (15 January 2014) and Seventeenth Report HC 83-xvi (2013–14), [chapter 9](#) (9 October 2013); also see (34908), —: Third Report HC 83-iii (2013–14), [chapter 26](#) (21 May 2013); and (34057), —: Twentieth Report HC 86-xx (2012–13), [chapter 19](#) (21 November 2012) and Eighth Report HC 86-viii (2012–13), [chapter 16](#) (11 July 2012).

8 Restrictive measures against Iran: nuclear issues

Committee’s assessment	Politically important
Committee’s decision	Cleared from scrutiny
Document details	(a) Council Decision amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran (b) Council Implementing Regulation implementing Regulation (EU) No. 267/2012 concerning restrictive measures against Iran
Legal base	(a) Article 29 TEU; unanimity (b) Article 215 TFEU; QMV
Department	Foreign and Commonwealth Office
Document numbers	(a) (35964), — (b) (35965), —

Summary, background and Committee’s conclusions

8.1 As the Committee’s previous Reports illustrate in detail, the EU has been engaged since December 2006 in a “dual track” strategy — with both engagement and restrictive measures — regarding Iran’s nuclear activities, not simply implementing in the EU, but also strengthening in that context, successive UN Security Council Resolutions (UNSCRs).

³⁸ See (35996), [9467/14](#) at Eighteenth Report HC 219-xvii (2014–15), [chapter 5](#) (5 November 2014).

This has been pursued in the framework of talks between Iran and the P5+1³⁹ facilitated by the EU which, last month, were extended for a further seven months.

8.2 When this matter was last reported the Minister (Mr David Lidington) was asked to explain what the evidence was that persuaded him to support delisting of the entity “Safu Nicu” in Council Decision 2014/222 and Council Implementing Regulation 397/2014. This entity had previously challenged its listing in case T -384/11.

8.3 In his letter of 14 May 2014 the Minister indicated that the Government had undertaken a thorough review of all the evidence that supported the original listing, and came to the view that it was insufficient to continue listing on the grounds that the entity supplied equipment to a nuclear facility (Fordrow) built without being declared to the International Atomic Energy Agency.

8.4 The judgment in case T-384/11 was given on 25 November 2014. The Court did indeed annul the listing on the grounds that the evidence on which the Council had acted was insufficient to support the listing, and awarded Safu Nicu damages of €50,000. From this judgment it appears that the only evidence on which the Council had acted was a listing proposal presented by a Member State containing only the information reproduced in the statement of reasons for listing contained in the contested legislation.

8.5 We are grateful for the further information provided by the Minister and now clear these documents from scrutiny.

Full details of the documents: (a) Council Decision amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran: (35964), —; (b) Council Implementing Regulation implementing Regulation (EU) No. 267/2012 concerning restrictive measures against Iran: (35965), —.

Previous Committee Reports

Forty-seventh Report HC 83-xlii, [chapter 11](#) (30 April 2014); and see (35712), 18163/13: Thirty-first Report (2013–14), HC 83-xxviii (2013–14), [chapter 15](#) (22 January 2014); also see (35042), — and (35043), —: Sixth Report HC 83-vi (2013–14), [chapter 19](#) (19 June 2013); (34093), 12453/12, (34484), 16624/12, (34606), — (34597), — and (34598), —: Twenty-seventh Report HC 86-xxvii (2012–13), [chapter 11](#) (16 January 2013); (34361), —, (34362), — and (34093), 12453/12: Eighteenth Report HC 86-xviii (2012–13), [chapter 14](#) (31 October 2012); also see (33818), —: Sixty-third Report HC 428-lvii (2010–12), [chapter 13](#) (18 April 2012); (33643), —, (33644), — and (33633), —: Fifty-fourth Report HC 428-xlix (2010–12), [chapter 19](#) (1 February 2012); also see (33388), — and (33389), —: Forty-eighth Report HC 428-xliii (2010–12), [chapter 23](#) (7 December 2011); (31779), —: First Report HC 428-i (2010–11), [chapter 61](#) (8 September 2010); (31905), 13082/10: Second Report HC 428-ii (2010–11), [chapter 24](#) (15 September 2010); and (31937), —: Third Report HC 428-iii (2010–11), [chapter 15](#) (13 October 2010).

³⁹ The five permanent members of the UN Security Council plus Germany and the EU.

9 EU civilian CSDP mission in Ukraine: launch and status of mission

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Cleared from scrutiny; further information provided and requested; relevant to the floor of the House debate already recommended on the EU-Ukraine Association Agreement ⁴⁰
Document details	Council Decisions on the status of and authorising the launch of European Union civilian CSDP mission in Ukraine (EUAM Ukraine)
Legal base	Articles 37 TEU 218(5) and 218(6) TFEU; unanimity; Articles 28, 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document numbers	(36430), —; (36435), —

Summary and Committee’s conclusions

9.1 On 16 July the Committee cleared a draft Council Decision to establish a civilian CSDP mission in Ukraine, for an initial duration of two years and with a strategic review conducted after 12 months. The Council Decision was adopted at the 22 July Foreign Affairs Council, when the mission was named the “EU Advisory Mission for civilian security sector reform” (EUAM Ukraine).

9.2 The mission is expected to:

“mentor and advise relevant Ukrainian bodies in the design and implementation of comprehensive and coherent civilian security sector reform strategies, in a manner which enhances legitimacy; increases public confidence; in full respect for human rights and consistency with the constitutional reform process.”⁴¹

9.3 In October:

- two further Council Decisions authorised the signing and conclusion of a Status of Mission Agreement (SOMA) and the launch of EUAM Ukraine, together with a budget from 1 December 2014 to 30 November 2015 of €13,350,000; and
- the Council approved the Operation Plan and decided that, following the recommendation of the Civilian Operation Commander and the achievement of Initial Operational Capability, the Mission should be launched on 1 December 2014 (see “Background” for more details).

⁴⁰ See Thirteenth Report HC 219-xiii (2014–15), [chapter 4](#) (15 October 2014).

⁴¹ See Eighth Report HC 219-viii (2014–15), [chapter 14](#) (16 July 2014).

9.4 When the Committee cleared these latter Council Decisions on 29 October, it noted the continuing volatility in eastern Ukraine and the political uncertainty revolving around then-upcoming parliamentary elections; and asked the Minister for Europe (Mr David Lidington) to update the Committee on the political situation then pertaining by no later than 27 November — particularly regarding the formation of a new government and his assessment of the nature of the new parliament and the capacity of the two institutions to work together — and to confirm that it was the view of the Operational Commander at that time that Initial Operational Capacity (IOC) had been reached and that the Mission could and should be effectively deployed on 1 December.

9.5 In his response, the Minister says that formation of a coalition government is “well underway” following the 26 October parliamentary elections and that he expects the first session of the new parliament — which includes a majority of pro-European and pro-reform parties — will be held on 27 November; as yet, there has been no public announcement on ministerial positions, as this responsibility will lie with the new Prime Minister; the new government must be formed within 30 days of the first parliamentary session, i.e. 27 December: “Given this timetable, we will have a better sense of the interaction between the new Ukrainian government and the Verkovna Rada in the New Year”. The Minister also confirms that he has been advised by the Mission that, by 1 December, the IOC will have been reached, and up to 55 Mission staff deployed. He also notes that €129,000 has been shaved off the original estimated budget (see paragraph 9.23 below for full details⁴²).

9.6 On 29 October, we recommended that our previous Report⁴³ be “tagged” to the debate that we had already recommended, on 15 October, on the floor of the House on the EU-Ukraine Association Agreement — a debate that, because of the very considerable importance of the crisis, we urged the Government, for a second time, to organise as soon as possible.⁴⁴

9.7 The overall situation continues to show no sign of improvement, as detailed in the extensive 14 November Foreign Affairs Council Conclusions that we append to this chapter of our Report (Annex 2). In those Council Conclusions, EUAM Ukraine has but a walk-on part; not because it lacks importance, but because it is overshadowed by the many other aspects of this crisis that continue to preoccupy the Council — not the least being its “calls in particular for a halt to the continuous violations of the ceasefire, a withdrawal of all illegal and foreign forces, mercenaries and military equipment, as well as for securing the Ukrainian-Russian border with permanent monitoring by the OSCE”. The Council calls on the EEAS and the Commission to present a proposal for decision by the end of November on additional listings targeting separatists.

9.8 The Council also welcomes “the launch of the provisional application of important parts of the EU-Ukraine Association Agreement as of 1 November 2014” and recalls that “a reinvigorated reform process, including the adequate preparation for the future implementation of Title IV of the Agreement, will be crucial in view of Ukraine's

⁴² Also see http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/145774.pdf.

⁴³ Sixteenth Report HC 219-xvi (2014–15), [chapter 10](#) (29 October 2014).

⁴⁴ See Thirteenth Report HC 219-xiii (2014–15), [chapter 4](#) (15 October 2014).

political association and economic integration with the EU”. The Council goes on to call on the Government of Ukraine “to accelerate the implementation of reforms” and “reiterates that the EU stands ready, in coordination with other donors and international financial institutions, to support implementation of the comprehensive reform package as well as rebuilding of Ukraine’s economy”.

9.9 This process is (in the words of the Minister) “clearly a politically important decision on which I would have liked to have given you the opportunity to scrutinise”.⁴⁵ The place of this Agreement in arguably the most serious crisis in Europe since the fall of the Berlin Wall is why we said, on 15 October, that it was “of very considerable importance that this Council Decision is debated on the floor of the House at the earliest opportunity”. We find it highly regrettable that, six weeks since our original recommendation, only now has the Government responded — by writing, on the day this Report was agreed, asking the Committee to rescind its recommendation because, “[with] time on the Floor of the House being quite limited”, a Backbench Business debate on Ukraine timetabled for 11 December would be adequate. We disagree.

9.10 Time on the Floor of the House is far from being so limited that a debate could not have been arranged by now, or before the Christmas recess. We accordingly maintain our recommendation.

9.11 We consider that this chapter of our Report is relevant to the debate we have recommended.

9.12 We also look forward to a further update when the comprehensive assessment is undertaken at the time of the strategic review, or earlier should there be (as he put it in October) “any significant developments”.

Full details of the documents: (a) Council Decision concerning the signing and conclusion of the Agreement between the European Union and Ukraine on the status of the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine): (36430), —; (b) Council Decision launching the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) and amending Decision 2014/486/CFSP: (36435), —.

Background

9.13 On 29 October, we considered two further Council Decisions that authorised:

- the signing and conclusion of a Status of Mission Agreement (SOMA) negotiated between the European Union, under the authority of the High Representative, and the Government of Ukraine on the status of EUAM Ukraine; and
- the launch of EUAM Ukraine, together with a budget from 1 December 2014 to 30 November 2015 of €13,350,000.

⁴⁵ Ditto.

9.14 The SOMA is designed to set out a clear and binding understanding between the Government of Ukraine and the EU on the status of the mission and its personnel. The agreement covers issues such as the security of personnel and the privileges and immunities of personnel. The Minister considered that this would ensure that EUAM Ukraine would be able to operate more effectively by reducing practical obstacles to its activities in country.

9.15 Having authorised the mission in Council Decision 2014/486/CFSP of 22 July 2014, on 20 October 2014 the Council approved the Operation Plan and decided that, following the recommendation of the Civilian Operation Commander and the achievement of Initial Operational Capability, the Mission should be launched on 1 December 2014.

9.16 The Minister said that EUAM Ukraine would:

- focus on two core themes during its two-year mandate: Advice on Strategic Security Sector Reform (SSR); and Coordination and Cooperation to further the EU's application of the Comprehensive Approach;
- apply a structured process to report and inform on the mission's performance and progress in implementing the mandate, with a comprehensive assessment at the time of the strategic review, would take place after the first year of the mandate.

9.17 The Minister went on to describe the desired end state of the mission as being when:

- a Ukraine-led strategic level civilian SSR Vision and Strategy for its implementation had been agreed, including a clear and agreed delineation of competencies and tasks;
- Ukrainian authorities had designed a vetting process for its security sector;
- Ukrainian authorities had started implementing the reforms according to an agreed Road Map and Implementation plan drawn from the planning; and the mission acted with other EU instruments in a comprehensive and targeted manner; delineations of competence between EU and international partners were agreed.

9.18 As the mission neared completion, and following a comprehensive assessment of progress, it would be in a position to scale down activities. Timelines for that process would depend on the ability of EU instruments, Member States and donors to support the needs of the security sector at that time. The Minister would ensure that the transition process was timely and managed effectively.

9.19 On the wider political context, the Minister said:

- Ukraine's future **was** important to UK and EU interests: Ukraine's resource base, pre-eminently in energy and agriculture, had the potential to contribute powerfully to the development of a European region resilient to 21st century threats to its stability, prosperity and competitiveness;
- the Government and the EU were committed to upholding Ukraine's territorial integrity and sovereignty following Russia's illegal annexation of Crimea and incursions and support for the separatists in the Donetsk and Luhansk oblasts (regions) of eastern Ukraine;

- the situation in eastern Ukraine remained fragile; the ceasefire, agreed on 5 September as part of the Minsk Protocol, **was** just about holding despite continued violations;
- a closer relationship with the EU was the best way to encourage an independent and successful Ukraine;
- ratification by the Government of Ukraine of the Association Agreement sent a strong signal of continued commitment despite Russian pressure;
- parliamentary elections would take place on 26 October 2014: an important milestone for Ukraine’s commitment to democracy;
- against this backdrop, “we must ensure EUAM Ukraine is able to deliver its mandate effectively, in support of the Government of Ukraine’s implementation of a comprehensive over-haul of the civilian security sector and rule of law institutions”.

Our assessment

9.20 We thanked the Minister for his and his officials’ endeavours to ensure the timely submission of these important draft Council Decisions, and hoped that they would be able to ensure that this was sustained across the board under the new High Representative.

9.21 We considered these developments relevant to the debate that we had already recommended on the floor of the House on the EU-Ukraine Association Agreement, and accordingly recommended that this chapter of our Report be “tagged” to that debate — a debate that, because of the very considerable importance of the crisis, we again urged the Government to organise as soon as possible.

9.22 As the Minister noted, the situation in eastern Ukraine remained fragile: with over 1,400 Ukrainian soldiers already dead or missing, not only was the ceasefire undergoing continued violations; the Russian-backed separatists in the Donetsk and Luhansk oblasts were boycotting the 26 October elections and endeavouring to organise their own on 2 November, and some three million people in these two eastern regions ravaged by conflict did not vote. As the BBC’s Kiev correspondent, David Stern, had put it on 27 October, as the preliminary election results emerged:

“Ukraine’s parliamentary elections potentially could completely transform the country’s political landscape. The question is, in what way.

“Already this is shaping up to be the most pro-Western legislature in the country’s post-independence history. Former heavy hitters, like former President Viktor Yanukovich’s Party of Regions and the Communist Party, have been sidelined.

“But even if the majority of the parties are pro-Western, it does not necessarily mean they’re unified. Ukraine’s political culture is notoriously fractious. And the issues facing the country, such as how to enact reform, battle corruption or fight the war in the east, will provide fertile ground for disagreement.

“Within the parties themselves there are a number of question marks — especially among the numerous war heroes and battalion commanders who populate the

candidate lists. Though their battlefield bravery is not in doubt, their political views are not entirely clear. Where they stand on the problems the country faces remains to be seen.”⁴⁶

9.23 We presumed that it was these uncertainties that the Minister had in mind when he said that, as well as providing the Committee with an update at that time when the comprehensive assessment was undertaken at the time of the strategic review, he might write earlier “should there be any significant developments”.

9.24 In any event, we asked the Minister to write to us no later than 27 November, in order to update the Committee on the political situation then pertaining — particularly regarding the formation of a new government and his assessment of the nature of the new parliament and the capacity of the two institutions to work together — and to confirm that it was the view of the Operational Commander at that time that Initial Operational Capacity had been reached and that the Mission could and should be effectively deployed on 1 December.

9.25 In the meantime, we cleared the draft Council Decisions.⁴⁷

The Minister's letter 26 November 2014

9.26 The Minister responds as follows:

“The Political Situation in Ukraine

“The formation of a coalition government is well underway following the 26 October parliamentary elections. On 14 November, President Poroshenko released the first draft of a coalition agreement. This draft agreement covers a wide range of reform measures, including: the establishment of the Anti-corruption Bureau and implementation of anti-corruption legislation passed before the elections; judicial reform, strengthening the independence and removing political influence; decentralisation; energy sector reform — decreasing energy dependence, phasing out state subsidies on gas/heating, privatisation of coal-mines and limiting state involvement across the board; electoral reform — changing to a 100% open party list system; cancellation of Ukraine’s ‘non-bloc’ status regarding NATO. Since then, the agreement has been expanded to include a key Maidan demand of lifting immunity for MPs.

“I expect the first session of the new parliament (Verkovna Rada) — which includes a majority of pro-European and pro-reform parties — will be held on 27 November. As yet, there has been no public announcement on ministerial positions, as this responsibility will lie with the new Prime Minister. By law, the new government must be formed within 30 days of the first Verkovna Rada session, i.e. 27 December. Given this timetable, we will have a better sense of the interaction between the new Ukrainian government and the Verkovna Rada in the New Year.

⁴⁶ See <http://www.bbc.co.uk/news/world-europe-29772078>.

⁴⁷ See Sixteenth Report HC 219-xvi (2014–15), [chapter 10](#) (29 October 2014).

“Mission Readiness to Launch

“In its Report of 29 October, the Committee also asked for the view of EUAM’s Operational Commander with respect to EUAM’s Initial Operational Capacity (IOC) and readiness to deploy on 1 December. My officials have contacted the Mission on this question and have been advised that, by 1 December, the IOC will have been reached, and up to 55 Mission staff deployed.

“Update on Mission Budget

“In my Explanatory Memorandum of 23 October, I informed the Committee that a proposed budget of €13,350,000 for the period of 1 December 2014 to 30 November 2015 was under negotiation. I can now advise that the final budget will be €13,100,000. My officials were successful in leading efforts to achieve a lower budget, principally in the form of a reduction of €129,000 to proposed expenditure on software. A revised overview of the final budget is contained within the table below.⁴⁸ Figures for the current four-month budget are also included, for ease of reference”.

Previous Committee Reports

Sixteenth Report HC 219-xvi (2014–15), [chapter 10](#) (29 October 2014); also see Twelfth Report HC 219-xii (2014–15), [chapter 13](#) (10 September 2014); Eighth Report HC 219-viii (2014–15), [chapter 14](#) (16 July 2014); Nineteenth Report HC 83-xviii (2013–14), [chapter 5](#) (23 October 2013).

Annex 1: Minister’s overview of revised final budget

Budget Line	Current Budget	Final Budget 1 December 2014–30 November 2015 (Euros)
Personnel	949,573	7,163,207.30
Missions	58,512	537,520.00
Running costs	800,710	2,769,465.00
Capital Costs	743,825	2,451,845.00
Representation	4,000	24,000.00
Contingencies	123,380	153,962.70
TOTAL	2,680,000	13,100,000.00

- **Personnel Costs (€7,163,207.30):**

“Personnel costs account for approximately 54% of total expenditure. Under the new OPLAN, the maximum authorised strength is 105 international staff.

- **Missions Expenditure (€537,520):**

⁴⁸ See the Annex to this chapter of our Report.

“This expenditure relates to the costs incurred in implementing the mandate and includes transportation, *per diems* and accommodation.

- **Running Costs (€2,769,465):**

“This covers a range of costs such as transport, IT, communications and goods & services:

- **“Transportation and generators (€350,800):** The mission will have a fleet of 35 vehicles, including four armoured cars. This budget line covers fuel, maintenance, insurance, registration and fleet monitoring;
- **“IT Services (€309,200);**
- **“Communications (€155,040):** This covers GSM and landline services, satellite communications and rental for a radio repeater;
- **“Office rent and services (€946,800):** This covers rent for the temporary office location, HQ (including VAT for first three months of rent, maintenance, and cleaning services), drinking water, buildings insurance, utilities, and temporary storage space;
- **“Office Supplies (€28,000);**
- **“PPIO & Visibility (€112,500):** This covers polls and public surveys; media campaigns, press visits, visibility items, and newspaper & TV subscriptions;
- **“Security (€417,000):** Expenditure covers security guards, consumables, maintenance and emergency rations;
- **“Welfare (€12,000);**
- **“Financial Costs (€39,600):** Covers external audit and bank fees;
- **“Consultation & Other Services (€100,000):** This covers external consultants, legal consultancy and medical evacuation;
- **“Training (€151,025):** Expenditure for training in field operations, administration, security, and internal seminars;
- **“Transport Costs (€147,500).**
- **Capital Expenditure (€2,451,845):**

“Expenditure covers necessary IT and communications equipment, building equipment, office furniture, office works, miscellaneous equipment and security and medical equipment:

- **“IT Equipment (€1,352,525):** The majority of expenditure is for software licenses, IT equipment and a data centre. The reduction of €129,500 to the proposed budget is due to efforts of UK officials to lower expenditure on software; “

- **“Communications Equipment (€443,920):** This budget line covers phones (including satellite and secure phones), radio equipment and software;
- **“Building Equipment and Furniture (€232,400):** This budget line allows the missions to furnish a new HQ and purchase a generator;
- **“Office Works (€270,000):** Expenditure is for the improvement of physical security measures at mission HQ;
- **“Miscellaneous Equipment (€10,000);**
- **“Security & Medical Equipment (€143,000):** This covers improvement of physical security at staff accommodation; security equipment related to access control; sweeping of premises and medical equipment.
- **“Representation (€24,000)**
- **“Contingencies (€153,962.70):** The contingency reserve is 1.19% of the budget”.

Annex 2: 17 November 2014 Foreign Affairs Council Conclusions on Ukraine

“1. Recalling the Conclusions of the European Council of 24 October 2014 and of the FAC of 20 October 2014, the Council reiterates the EU's support for the Minsk Protocol and Memorandum, as a step towards a sustainable political solution of the crisis, which needs to be based on the respect for Ukraine's independence, sovereignty and territorial integrity. Alarmed by the recent heavy shelling and by reports about convoys moving in the separatist held areas with substantial amounts of heavy weapons, tanks and troops without insignia from across the Russian border, it urges all parties to fully implement the Minsk Protocol and Memorandum swiftly and without further delay. It once again underlines the Russian Federation's responsibility in this context. The Council calls in particular for a halt to the continuous violations of the ceasefire, a withdrawal of all illegal and foreign forces, mercenaries and military equipment, as well as for securing the Ukrainian-Russian border with permanent monitoring by the OSCE.

“2. The Council welcomes the holding of national parliamentary elections in Ukraine on 26 October, which marked an important step in Ukraine's aspirations to consolidate its democratic development in line with its international commitments. The Council looks forward to the urgent formation of a new Government. On the basis of the outcome of the elections a broad national consensus should be sought in view of intensifying much needed political and economic reforms in Ukraine, including constitutional reform, decentralisation, reform of the judiciary, law enforcement, fight against corruption and ensuring the rights of persons belonging to national minorities. A renewed inclusive, country-wide national dialogue on reforms will be important to consolidate Ukraine's unity and internal cohesion.

“3. The European Union considers the holding of “presidential and parliamentary elections” in Donetsk and Luhansk “People's Republics” on 2 November as illegal and illegitimate and will not recognise them. These so-called “elections” are in breach of the letter and the spirit of the Minsk Protocol. It calls on Russia to assume its responsibility in

this regard. All sides should work towards early local elections in these parts of the Donetsk and Luhansk regions in accordance with Ukrainian law, as foreseen in the Minsk Protocol, as the only legal and legitimate means of renewing the democratic mandate of the local authorities.

“4. Having assessed the situation on the ground, the Council calls on the EEAS and the Commission to present a proposal for decision by the end of this month on additional listings targeting separatists. The Council will continue to closely follow the situation on the ground and will act accordingly.

“5. To ensure implementation of commitments undertaken by parties under the Minsk agreements, the Council underlines the need for intensification of talks in the framework of the Trilateral Contact Group, with the support of the representative of the OSCE Chairmanship in Office, and calls on all concerned participants to engage actively and constructively. The Council reiterates the important role of the OSCE Special Monitoring Mission in implementing the Minsk Protocol and the Minsk Memorandum and the need to provide the Mission with the resources needed to comply with the tasks. It reminds all parties concerned of their responsibility for a safe environment for the OSCE monitors and equipment, including Unmanned Aerial Vehicles. The EU and Member States stand ready to provide increased financial and in kind support to the OSCE SMM. The Council also reiterates its support for swift expansion and extension of the OSCE Observer Mission at the Russian checkpoints. Full and effective control by Ukraine of its borders is essential and the Council calls on Russia to respect it.

“6. The Council welcomes the recent OSCE-brokered access to the MH17 crash site which enabled the repatriation of victims’ remains and personal belongings as well as the recovery of wreckage. The Council reiterates its call on all States and actors involved to ensure full, safe and unrestricted access to the site, to enable the completion of the repatriation, recovery and investigation work, and to provide full co-operation with the ongoing independent international investigations into the cause of the crash and the identity of those responsible. It is essential to safeguard the integrity of these international investigations. The Council underlines that those directly and indirectly responsible for the downing of MH17 will be held accountable and brought to justice.

“7. The Council is following with great concern the humanitarian impact of the conflict in eastern Ukraine and the rising number of affected persons. The EU calls on all parties to the conflict to respect international humanitarian law and principles to protect civilian population and infrastructure from fighting and to facilitate the work of international humanitarian organisations. The humanitarian impact of the conflict on the civilian population should not be exploited for military or political ends. Assistance should be delivered through the appropriate channels in agreement with the Ukrainian authorities. The Council underlines the necessity to continue to mobilise EU and international assistance, including for short term humanitarian and recovery needs. It welcomes the Commission's and EEAS' role in facilitating and enhancing the coordination of EU's assistance. The Council welcomes the adoption of the law on Internally Displaced Persons by the Verkhovna Rada and expects the law to be signed and implemented as a matter of priority. The Council encourages the Ukrainian authorities to take decisive actions to adapt

the legal and administrative framework with a view to easing the delivery of international assistance.

“8. Welcoming the efforts by international missions to monitor the human rights situation, the Council reaffirms its great concern about the very worrying developments in eastern Ukraine and on the Crimean peninsula, particularly the continuing persecution and intimidation of the Crimean Tatar community. The Council reiterates its call on all parties to provide international human rights actors with full, free and unrestricted access to the whole territory of Ukraine, including Crimea and Sevastopol the illegal annexation of which the EU condemns and will not recognise. The Council reiterates its commitment to fully implement its policy of non-recognition of the illegal annexation of Crimea and Sevastopol, including through further action within the context of this policy.

“9. The Council welcomes the launch of the provisional application of important parts of the EU-Ukraine Association Agreement as of 1 November 2014 and recalls that a reinvigorated reform process, including the adequate preparation for the future implementation of Title IV of the Agreement, will be crucial in view of Ukraine's political association and economic integration with the EU. The Council calls on the Government of Ukraine to accelerate the implementation of reforms and reiterates that the EU stands ready, in coordination with other donors and international financial institutions, to support implementation of the comprehensive reform package as well as rebuilding of Ukraine's economy.

“10. Underlining the importance of unhindered commercial contract-based energy supplies from Russia to Europe, the Council welcomes the agreement reached on 30 October on a winter package for the delivery of gas from Russia to Ukraine until the end of March 2015, following several months of negotiations in trilateral format. The implementation of this agreement should increase the security of gas supply for Ukraine and its citizens as well as ensuring stable, sufficient and uninterrupted transit of gas to Europe this winter. In this context interconnections and gas reverse flows provided from Member States have considerably contributed to the energy security of Ukraine. Ukraine will still need to fully implement an energy sector reform, including energy efficiency and other measures identified to reduce energy demand in the short term. The Council also reiterates its encouragement to the Government of Ukraine to further advance on the restructuring of the natural gas sector.

“11. The Council welcomes the signature of the Agreement on the status of the European Union Advisory Mission as a sign of continued willingness of the Ukrainian Government to urgently and effectively address Civilian Security Sector Reform. Close collaboration with the respective Ukrainian authorities will be essential for taking full advantage of the EU support to Ukraine in implementing critical reforms. The Council reiterates the importance of coordination and coherence between all EU efforts, with the OSCE, and with other international actors.”⁴⁹

⁴⁹ Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145789.pdf.

10 Common Security and Defence Policy: Policing in Afghanistan

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny; further information requested; drawn to the attention of the Foreign Affairs Committee
Document details	Council decision on the mandate extension of the CSDP Policing Mission in Afghanistan (EUPOL)
Legal base	Articles 28, 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document numbers	(36514), —

Summary and Committee's conclusions

10.1 EUPOL Afghanistan was established on 30 May 2007 with a three-year mandate; this was extended in 2010 for another three years, until 31 May 2013. It was set up to:

- assist the Government of Afghanistan in implementing coherently its strategy towards sustainable and effective civilian policing arrangements, especially with regard to the Afghan Uniform (Civilian) Police and the Afghan Anti-Crime Police, as stipulated in the National Police Strategy;
- improve cohesion and coordination among international actors;
- work on strategy development, while placing an emphasis on work towards a joint overall strategy of the international community in police reform and enhanced cooperation with key partners in police reform and training, including with the NATO-led mission ISAF and the NATO Training Mission and other contributors; and
- support linkages between the police and the wider rule of law.

10.2 The draft Council Decision extends the mandate of the CSDP Policing Mission in Afghanistan (EUPOL) and sets out plans for a new budget of €57,750,000 covering the period from 1 January 2015 to 31 December 2015.

10.3 As the “Background” section relates, this mission has been consistently supported by the Government, as being in line with its own priorities in Afghanistan and as part of the international community’s wider efforts in supporting the Afghan Government. But over seven years of operation it has had a chequered performance. In the first period, it suffered from poor leadership: but it was always backed by Member States as being an essential complement to the recruit-level training of police officers being led by the US. Last year, with the wider withdrawal of ISAF forces in 2014 in mind, Member States commissioned an EEAS review.

10.4 Its mandate was last renewed on 1 June 2013, with a further €108 million budget covering the period from then until 31 December 2014. By the end of 2014, the mission

will have cost over €220 million. In November 2012, the Minister for Europe (Mr David Lidington) told the Committee that he had secured the key UK objectives of a continued focus on Afghan National Police (ANP) senior leadership, a tighter and more focused EUPOL presence in the provinces and a further review in the autumn of 2013 to determine the shape of CSDP engagement after transition. Effective benchmarking, monitoring and evaluation would become ever more important, since only then would Member States be able properly to determine whether EUPOL had achieved its objectives, assess the impact of what was now five years of costly training and answer his key question — could the Afghans continue this training beyond 2014 with a much reduced international presence? EUPOL needed to get better at measuring this. With 14 CSDP missions globally, and the potential need for more, Missions needed to provide Member States with more comprehensive evidence of their effectiveness and to show that stretched EU resources were being used to deliver maximum impact. The Committee agreed with all this, reported it to the House and looked forward to hearing more in due course.⁵⁰

10.5 That story concludes in a separate chapter of this Report, dealing with a subsequent EEAS Strategic Review of EU support for policing post-2014 (SR), which provides the backdrop to this Council Decision, and which should be read together with this one.

10.6 With this Council Decision in prospect, the Committee had asked the Minister a number of questions concerning the outcome of the SR: what sustainable outcomes the SR and the CIVCOM⁵¹ concluded the mission had achieved thus far; what sort of budget was in mind for the next two years; what clear, measurable and deliverable objectives and timelines would be set down; and whether and how the next mandate would be benchmarked and assessed along the way. And, with the overall EU Strategy on Afghanistan 2014-16 in mind, how the next EUPOL mandate would relate to other relevant work, bilateral or multi-lateral, in the area of “good governance” and human rights.

10.7 The Minister’s full response, which comprehensively answers our queries, is set out in our separate Report.⁵² In brief, the Minister said that:

— **the SR assessed that:**

- **progress had been made in all areas of EUPOL Afghanistan’s mandate, but recognised that the Mission's six strategic objectives would not be fully achieved by the end of 2014;**
- **Afghan capacity would not be sufficient to continue self-sustaining progress towards a capable and functioning police service by December 2014; and**

⁵⁰ See (34908), —: Third Report HC 83-iii (2013–14), [chapter 26](#) (21 May 2013).

⁵¹ [The Political and Security Committee](#) (PSC) meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy (CFSP) including the CSDP. It prepares a coherent EU response to a crisis and exercises its political control and strategic direction. The PSC is chaired by a representative of the High Representative. In parallel with the [European Union Military Committee](#) (EUMC: the highest military body set up within the Council, which provides the PSC with advice and recommendations on all military matters within the EU), the PSC is advised by a Committee for Civilian Aspects of Crisis Management (CIVCOM). This committee provides information, drafts recommendations, and gives its opinion to the PSC on civilian aspects of crisis management.

⁵² See (35190), 11109/13 at chapter ?? of this Report.

- non-EU actors, such as NATO and the UN, would not take on EUPOL Afghanistan activity; Member States agreed that EUPOL Afghanistan should therefore extend its mandate to support Afghan authorities in the further development of an effective civilian police force;
- his own assessment was that EUPOL provided an effective means of delivering engagement on policing post-2014, augmenting the UK’s own efforts to build sustainable rule of law institutions that the Afghans can lead in the long term;
- Member States agreed that a two year mandate extension was a sufficient period to support Afghan authorities in areas where progress was lacking, allowing the mission to transition activity to the Afghans in a timely and practicable manner; and
- based on the evidence presented in the SR, Member States agreed that the mandate extension should continue EUPOL Afghanistan’s current structure of three broad lines of activity (advancing institutional reform in the Ministry of Interior (MOI), professionalisation of Afghan National Police (ANP) and connecting the police to the justice sector), within which support could be prioritised as necessary. Member States agreed on the continuation of all three strands of activity for the first year, with the third pillar (connecting the police to the justice sector) discontinued at the end of 2015. In its final year the mission would continue to support MOI reform and police professionalisation, with all activity transitioned to the Afghans or other multilateral actors by the mission end date of 31 December 2016.

10.8 The Council Decision (which is described in detail, along with Minister’s view, below) is in line with the outcome of the SR, as described by the Minister. There, he noted that EUPOL Afghanistan will apply “a structured process to report and inform on the mission’s performance and progress in implementing the mandate”, which will be “benchmarked against the objectives, timeframes and measurable indicators identified within the OPLAN”, and that this contains “a clear outline of the phases and timescales for activities in the run-up to the end of 2016, assessing progress of the three lines of operation and the transition of the mission’s activity”. The “benchmarking” process will help measure progress and outcomes by comparing the situation (an initial baseline) for a range of activities, against their evolution at given points using pre-defined indicators and means of verification; information on progress will then be used to facilitate tactical, operational and strategic policy adjustments, as required; and six-monthly reports issued by the Head of Mission which evaluate the mission against its specific objectives will be discussed in CIVCOM and the PSC, and “provide all Member States with the opportunity to critique the mission at regular intervals and inform budget and mandate discussions, ensuring that the mission is delivering value for money”.

10.9 This is as it should be. But only time will tell if it works. We would therefore like the Minister, after the second of these six monthly reports, to write to us with: details of its contents and the PSC/CIVCOM conclusions thereon; of the prescription for the remainder of the mandate; and his views on the outcomes thus far.

10.10 In the meantime, we now clear this Council Decision.

10.11 We are also drawing these developments to the attention of the Foreign Affairs Committee.

Full details of the documents: Council Decision extending Decision 2010/279/CFSP on the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN): (36514), —.

Background

10.12 The full history of the Committee’s consideration of developments since the mission was established in 2007 are set out in our previous Reports.⁵³

10.13 The Government has consistently expressed full support for EUPOL Afghanistan: without it there would be no international operation focused exclusively on providing civilian policing expertise; it also brought in other Member States in support of a UK foreign policy priority, and had an important role to play in the international community’s effort in supporting the Afghan Government to develop its police force. However, while its performance had improved, it was still not fulfilling its full potential. The then Minister (Alistair Burt) was committed to supporting recent momentum so that the mission could achieve its objectives before the end of its current mandate in May 2013; but effective evaluation would be a top priority, to ensure that the new budget represented good value for money. The Committee commended the then Minister and looked forward to hearing about this when the next budget was presented.

10.14 The Council Decision that we considered on 11 July 2012 set EUPOL Afghanistan’s budget for 1 August 2012–31 May 2013 at €56.91 million. As it covered only ten months, it was effectively 11% higher than the 12 months budget up to 31 July 2012. The principal reason was the need for a greater level of security and more close protection teams, in response to recent attacks on international advisers, as well as a heightened threat environment, and was consistent with the increased security arrangements of others in the international community. The number of EUPOL international staff was also now at its highest: 353, up from 182 at the start of 2009. The Minister for Europe (Mr David Lidington) stressed that, without it, there would be no international mission focused on providing civilian policing expertise or the professionalization of the senior police leadership; he also noted that the UK was a major contributor.

10.15 That other Member States were now putting more of their shoulder to wheel was, we felt, welcome. However, the principal reason for the budget increase — a greater level of security and more close protection teams, in response to recent attacks on international advisers, as well as a heightened threat environment — was sobering, to say the least. What the Minister had to say was essentially a brief statement of mission activity, and in no way an evaluation of EUPOL’s impact and value for money over the previous 12 months. Given the cause of the budget increase, effective evaluation of EUPOL’s activity was all the more important — as, therefore, was the strategic review to which the Minister drew attention. We therefore asked the Minister to deposit it once he had received and studied

⁵³ See (34908) —: Third Report HC 83-iii (2013-14), [chapter 26](#) (21 May 2013) and the earlier Reports referred to therein.

it, with his views on its findings and on its implications for the right way forward, and explaining where matters stood on evaluating its impact and value for money.⁵⁴

10.16 The Minister's response is set out in detail in our 21 November 2012 Report. In brief, he said that he had achieved the key UK objectives of a continued focus on Afghan National Police senior leadership, a tighter and more focused EUPOL presence in the provinces and a further review in 2014 to determine the shape of CSDP engagement after transition. EUPOL's role was vital in developing a more capable, legitimate, accountable and sustainable Afghan National Police (ANP), and complementary to the work of the US and other international police reform programmes, which focussed on recruitment, equipping and providing basic training for new police recruits. By 2014, EUPOL would be in Kabul and three to four other locations, down from ten at present.

10.17 Looking ahead, the Minister said that a planning document would now be drawn up, looking at the role of the Mission until the end of 2014. Prompted by the UK, the new EUPOL Head of Mission was preparing to establish a "pure benchmarking system" for the mission: the Minister looked forward to updating the Committee on this in due course. Other Member States, like France, were also keen for evidence of EUPOL's impact. Effective benchmarking, monitoring and evaluation would become ever more important, since only then would Member States be able properly to determine whether EUPOL had achieved its objectives, assess the impact of what was now five years of costly training and answer his key question — could the Afghans continue this training beyond 2014 with a much reduced international presence? EUPOL needed to get better at measuring this. With 14 CSDP missions globally, and the potential need for more, Missions needed to provide Member States with more comprehensive evidence of their effectiveness and to show that stretched EU resources were being used to deliver maximum impact.

10.18 We presumed that that the planning document would pave the way to the next major review, determining the best post-2014 option, and looked forward to hearing more from the Minister when he submitted the next Council Decision for scrutiny.

10.19 In the meantime, we reported these developments to the House because of the widespread interest in the situation in Afghanistan; and for the same reason, also drew this chapter of our Report to the attention of the Foreign Affairs Committee.⁵⁵

The most recent Council Decision

10.20 This extended the EUPOL mandate and sets out a new €108 million budget from 1 June 2013 until 31 December 2014. In submitting it for scrutiny on 8 May 2013, the Minister described EUPOL as the only organisation "doing for the police what the Officer Academy will do for the army: help the generational shift in Afghanistan by training a cadre of professional and able senior leaders". By 2014, the Minister said, the majority of basic police training would have been completed: then, "the principal gap will be on senior leadership, which is both EUPOL's area of focus and the area the UK considers key to a sustainable Afghanistan National Security Force". In the meantime, EUPOL was

⁵⁴ See (34057) —: HC 86-viii (2012–13), [chapter 16](#) (11 July 2012).

⁵⁵ See (34057) —: Twentieth Report HC 86-xx (2012–13), [chapter 19](#) (21 November 2012).

“performing well in the delivery of key areas of police training in which it added the most value — intelligence-led policing, CID, and community policing — through projects such as the Police Staff College, the City Police and Justice Programme and the Crime Stoppers hotline”. The Minister again underlined EUPOL’s unique role in developing a more capable, legitimate, accountable and sustainable ANP and in complementing the US and other international police reform programmes (such as NATO’s Training Mission Afghanistan, NTM-A). The operating environment over this new mandate would see “a flux in security forces”, and it was therefore important that UK officials continued to scrutinise the mission, and allow for Mission flexibility to adapt to any change. A further review in the autumn of 2013 would determine the shape of CSDP engagement after transition.

10.21 With regard to costs, the Minister said that he was “mindful” of the Committee’s interest (and that of its House of Lords counterpart), as with other CSDP missions, and therefore provided a detailed analysis (which is set out in our 21 May 2013 Report).

Our assessment

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

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

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

10.25 We recalled the discussion that we had had with the Minister about the audit by the Court of Auditors of another similar, lengthy and costly mission, EULEX Kosovo, which found that it had been effective only in a limited part of its mandate. Our discussion revolved essentially around the wider implications of this unprecedented audit, which we suggested should be applied to all CSDP missions — notwithstanding the political considerations that tended towards the quickest possible establishment of each new mission, they needed to be: given clear, measurable objectives and a time limit; be benchmarked; be rigorously assessed along the way; and be wound up if those objectives were, for whatever reason, not being met effectively and not providing value for money. Thanks in no small measure to the stamina and persistence of UK Ministers and officials, EUPOL Afghanistan had finally been brought to the point where, at least in theory, it was to be subjected to at least some of these key elements. If not now, then certainly by mid-2014, we needed to see detailed evidence of its effectiveness, so that the lessons could be

identified and then applied to other such CSDP missions in similarly challenging circumstances.⁵⁶

The draft Council Decision

10.26 The draft Council Decision extends the mandate of the CSDP Policing Mission in Afghanistan (EUPOL) and sets out plans for a new budget of €57,750,000 covering the period from 1 January 2015 to 31 December 2015.

The Government's view

10.27 The Minister comments as follows:

“EUPOL AFGHANISTAN: Development of the Afghan National Police (ANP) is essential to long term Afghan-owned stability and security post 2014. EUPOL Afghanistan provides an effective means of delivering engagement on policing, augmenting our own efforts to build sustainable rule of law institutions that the Afghans can lead in the long term.

“It is the only organisation focused on providing civilian policing expertise, focused on the development of a sustainable and effective civilian police force, closely coordinated with the Afghan justice system.

“The Strategic Review of EUPOL Afghanistan assessed that progress had been made across all three lines of operation in the current mandate, including reform of the Ministry of Interior (MoI), professionalisation of the ANP and the development of links between the police and justice sector. However, it was assessed that Afghan capacity would not be sufficient to continue self-sustaining progress towards a capable and functioning police service by December 2014, and that further support would be required from EUPOL Afghanistan to prevent regression.

“PROPOSED NEW MANDATE: It is proposed that EUPOL Afghanistan’s current mandate be extended by two years until December 2016 to continue providing support to Afghan authorities in priority areas where progress was lacking. It would also allow full transition of authority to Afghan ownership to occur as smoothly as possible, whilst ensuring that the gains made to date are fully embedded and sustainable.

“Following the Strategic Review, the extended EUPOL Afghanistan will be a smaller and more focused mission: mentoring will take place only at the highest strategic level, activity will be prioritised, and the geographical layout of the mission reduced, resulting in reductions in staffing and a reduced mission budget.

“EUPOL Afghanistan will continue EUPOL Afghanistan’s three current lines of operation (institutional reform of the Ministry of Interior (MoI), professionalisation of the Afghan National Police (ANP) and developing justice-police linkages) for the first year. At the end of 2015, EUPOL Afghanistan’s justice work will be

⁵⁶ See (34908) —: Third Report HC 83-iii (2013–14), [chapter 26](#) (21 May 2013).

discontinued, with the following 12 months focused on the delivery of objectives under the two remaining lines of operation. All activity will be transitioned to the Afghans or other multilateral actors by the mission end date of 31 December 2016.”

10.28 With regard to the *Budget*, the Minister notes that the budget is a reduction of 39% on the previous budget, which had covered the period 1 June 2013 to 31 December 2014. He also provides a detailed overview (see the Annex to this chapter of our Report), which he says is currently being negotiated in Brussels; should the final budget differ from the figures in his overview, he undertakes to update the Committee accordingly.

10.29 Finally, on *evaluation*, the Minister says:

“UK officials will continue to evaluate closely the impact of EUPOL throughout the course of the mandate, which should remain flexible and appropriate for its operating environment, whilst maintaining value for money.

Annex: overview of the proposed budget, including a breakdown for the previous allocation.

Budget Line	1 June 2013–31 December 2014 (Euros)	1 January 2015–31 December 2015
Personnel	48,807,932	25,010,250
Missions	751,525	330,117
Running costs	53,310,376	30,854,045
Capital Costs	4,341,951	1,126,813
Representation	36,100	42,000
Contingencies	802,116	386,309
TOTAL	108,050,000	57,750,000

“Key Subheads

- **“Personnel Costs (€25,010,250):**
 - Personnel costs account for approximately 43% of total budget expenditure. The new figure represents a significant reduction on the previous subhead allocation of €48,807,932. Staffing levels will continue to be reduced throughout the year in order to reach the level of 150 international positions by 1 January 2016.
- **“Missions Expenditure (€330,117):**
 - This expenditure relates to the costs incurred in implementing the mandate and includes transportation, per diems and accommodation. In comparison to 2013/14, expenditure for the year from 1 January 2015 will be reduced by approximately €420,000.
- **“Running Costs (€30,854,045):**
 - This covers a range of costs such as transport, IT, communications and goods & services. Savings for the year from 1 January 2015 compared to the previous budget amount to around €22m. Key subheads below:
 - **Transport:** Proposed expenditure is €3,036,204. EUPOL has 150 vehicles and an air contract in place. The car fleet has reduced by eight vehicles since June 2013. Further reductions are not possible at this stage due to a security requirement to provide escort vehicles.

- **IT & Maintenance:** This covers internet for HQ, field offices and remote locations, domain registration and hosting, maintenance (including consumables), licenses, consultancy and IT services. Expenditure of €1,535,375 is a significant reduction on the previous allocation of €4,024,424.
- **Communications:** This covers mobile, landline and satellite communications; security of SMS service; running of force tracking system and electronic counter measures; maintenance and rental of antenna; and workshop services. Proposed expenditure of €629,650 represents a reduction of 59% on the previous allocation.
- **Office & Accommodation: Rent and Services:** This subhead includes rent for the Green Village private compound for 158 rooms, as well as office space and recreational area; drinking water; waste and sewage services; generator fuel and maintenance; and general maintenance. Proposed expenditure is €6,131,333 and represents a significant reduction on the previous allocation of €11,27,116.
- **Office Supplies:** The proposed allocation of €274,850 represents a reduction of nearly 50% on the allocation for 2013/14.
- **Security Services:** This covers services contracted directly by the Mission such as close protection, ops room, watchkeeping, residential security and quick reaction; maintenance and equipment for security (e.g. surveillance and cameras); and hostile environment training. Proposed expenditure of €18,077,157 is lower than the previous allocation of €26,747,150 but is a slight pro-rata increase. This is necessary to ensure the required level of security protection.
- **Programmes:** Proposed expenditure is €797,100. This is lower than the previous allocation of €900,000 but represents a pro-rata increase. This is necessary to achieve key milestones for transition. The budget will be divided between Programmes, instead of individual projects. The aim is to encourage EUPOL Afghanistan units under the components to plan their projects and project activities around monitoring, mentoring, advising and training activities. A programmatic approach will support the aim to re-focus Afghanistan activities along key strategic areas and agreed tasks in the OPLAN and ensure EUPOL Afghanistan projects have been delivered to the best benefit of Afghanistan.
- **“Capital Expenditure (€1,126,813)**
 - Proposed spend would be a significant reduction from the previous allocation of €4,341,951.”

Previous Committee Reports

None, but see (34908), —: Third Report HC 83-iii (2013–14), [chapter 26](#) (21 May 2013).

11 EU and Georgia: EU Monitoring Mission

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny; further information requested
Document details	Council decision on further mandate for the EU Monitoring Mission in Georgia
Legal base	Articles 28, 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document numbers	(36522), —

Summary and Committee's conclusions

11.1 The EU Monitoring Mission in Georgia (EUMM Georgia) was first established in 2008 in the immediate aftermath of the Russia-Georgia conflict, as part of the so-called Sarkozy-Medvedev Agreements of 12 August and 8 September 2008. Following that conflict, Russia recognised Abkhazia (ABK) and South Ossetia (SO) as independent, provoking the worst crisis between Moscow and the West since the ending of the Soviet Union.

11.2 The previous and present Committee's initial and further consideration of EUMM Georgia is fully summarised in our Report of 5 September 2012 and detailed in the others referred to therein.⁵⁷

11.3 The Mission's main tasks are Stabilisation, Confidence Building, Normalisation and advice regarding EU Policy. At least 200 monitors uphold the political commitment that the EU gave to provide a credible, visible and effective monitoring presence along the Administrative Boundary Lines (ABL). The EU has continued throughout this period to push for EUMM to have access to the breakaway regions, but the authorities in ABK and SO have yet to agree.

11.4 This draft Council Decision proposes the renewal of the EUMM mandate for two years from 16 December 2014 until 15 December 2016 as well as setting out just over €18 million of funding for this period (a reduction of c. €3,000,000). This Decision makes no significant changes to the mandate of the mission.

11.5 The Minister for Europe (Mr David Lidington) supports this further extension, which stems from a European External Action Service (EEAS) strategic review, the main conclusion of which was that EUMM Georgia's position as the only international actor on the ground is now all the more important, given the wider political context of Russia's actions in Ukraine/Crimea. He says that renewing the mandate would be an important signal of EU support to Georgia at a time when the country is concerned about the potential for punitive Russian actions against it. EUMM, he says, continues to play a vital role in stabilising and providing security to the region (e.g. successfully managing tensions

⁵⁷ See Eleventh Report HC 86-xi (2012–13), [chapter 22](#) (5 September 2012).

last autumn in the period around the Presidential elections, and earlier this year ahead of and during the Sochi Winter Olympics) and in facilitating activities near the Administrative Boundary Lines by informing all parties in a timely, credible and reliable manner (see paragraphs 11.19-11.25 below for full details).

11.6 The Minister also again underlines the region's significance for the UK's prosperity and energy security goals: BP has a 25.5% stake in the Shah Deniz Consortium (SDC) and is the current operator of the Shah Deniz I gas field in Azerbaijan, one of the world's largest gas condensate fields; the SDC are looking to invest substantially to extend the field to supply gas to the EU and to expand the South Caucasus Pipeline (Azerbaijan-Georgia-Turkey); Georgia thus remains a vital transit route for Azerbaijani oil and gas.

11.7 On 24 November, Russia's President Putin and Abkhazia's leader signed, in Sochi, a "strategic partnership" agreement which (according to press reports) includes a grant of 5 billion roubles (€90 million) and easing requirements for Abkhazia's 240,000 residents to obtain Russian citizenship; and envisages a "joint defence and security space", stipulates Russian "protection of the state border of the Republic of Abkhazia with Georgia", and obliges Russia to facilitate "in every possible way" Abkhazia's international ties and promote its global recognition. Those same reports cite NATO Secretary-General Jens Stoltenberg as saying that this "so-called treaty" did not contribute to a peaceful and lasting settlement of the situation in Georgia, and that the Western alliance would not recognise it; and EU High Representative Federica Mogherini saying that the agreement violated Georgia's sovereignty and territorial integrity and was "detrimental to ongoing efforts to stabilise the security situation in the region."⁵⁸ Georgia's Foreign Minister is said to have denounced the move as having infringed Georgia's territorial integrity, as "a step towards annexation of Abkhazia by the Russian Federation", and as having "a negative impact on the security situation in Georgia's occupied territories as well as in the broader context of European security". Georgia's President, Georgy Margvelashvili, is also said to have called the agreement "absurd and illogical".⁵⁹

11.8 Not surprisingly, there is now also speculation as to whether a similar move will be made with respect to South Ossetia.

11.9 The case for this further extension of EUMM's mandate would have been compelling without this latest development, which the Minister foresaw, but which had yet to be signed at the time of his Explanatory Memorandum. Nonetheless, the Minister is right also to emphasise the need to continue to evaluate closely the impact of EUMM throughout the course of the mandate, and in saying that it should "remain flexible and appropriate for its operating environment, whilst remaining value for money". We therefore ask him to inform us of the outcome of the mid-term review at the end of 2015, and provide details of its underlying rationale.

11.10 In the meantime, we now clear the Council Decision.

⁵⁸ See http://eeas.europa.eu/statements-eeas/2014/141124_01_en.htm for the High Representative's statement.

⁵⁹ See Euractiv of 25 November 2014 at: http://www.euractiv.com/sections/europes-east/georgia-cries-fouls-moscow-strengthens-ties-abkhazia-310293?utm_source=EurActiv+Newsletter&utm_campaign=39289c7865-newsletter_daily_update&utm_medium=email&utm_term=0_bab5f0ea4e-39289c7865-245605241.

Full details of the documents: Council Decision amending Joint Action 2010/452/CFSP on the European Union Monitoring Mission in Georgia (EUMM Georgia): (36522), —.

Background

11.11 The extant Council Decision extended its mandate until 14 December 2014, and allocated €26,650,000 of funding. No significant changes were made to the mandate of the mission: EUMM Georgia was therefore to continue to monitor the terms of the 12 August and 8 September 2008 ceasefire agreements and implementing measures, and contribute to the long term stability of Georgia and the South Caucasus as a whole.

11.12 At that time, the Minister for Europe noted various ways in which EUMM Georgia had continued to help to maintain stability. However, relations with the *de facto* authorities of ABK and SO continued to be difficult following the Abkhaz refusal to allow the EUMM Head of Mission (HoM) access to its IPRM (Incident Prevention and Reporting Mechanism) meetings, which had consequently been suspended since April 2012: but he had left post in June, and once a new HoM was in place, the Minister saw an opportunity for the ABK IPRM to be reinstated in the next few months.

11.13 Looking forward, Russia was taking “an activist approach on security issues” in the area in the run-up to the Winter Olympics (close to the border with ABK) and continuing to consolidate its military presence in the breakaway regions and to “borderise” the ABL. The new Georgian government was pursuing a policy of limited engagement with Russia. However, Georgia’s insistence on its territorial integrity and commitment to NATO membership remained red lines for Russia. Internally, there had been a tense and difficult political *cohabitation* between President Saakashvili and a new government. The months leading up to the Georgian Presidential elections in October 2013 were likely to remain tense. A continued EUMM presence would help to diffuse possible tensions during these periods of heightened sensitivity.

11.14 Following the Sochi Winter Games, a Strategic Review was to be presented to the EU’s Political and Security Committee⁶⁰ during Spring 2014: it would be “comprehensive in nature, providing a thorough assessment of the functions of the mission and potential changes taking into account post-Sochi political and security developments which may impact on the operational environment of the EUMM”.

11.15 All in all, notwithstanding the constraints within which it had had to operate, the Minister noted that EUMM Georgia remained the only international actor on the ground and would continue to contribute to Georgia’s security and stability; the proposed extension period of 15 months was a compromise successfully brokered by the UK (some Member States favoured 24 months), which the Minister judged would be sufficient time to cover a period of potentially difficult events, properly assess Russia’s approach to the

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 HR.

region post-Sochi and carry out a detailed analysis of the Strategic Review on the future of the mission.

11.16 Although it raised no questions in and of itself, we drew this further mandate extension to the attention of the House because the Minister’s thorough exposition of the Mission’s work and of the context in which it operates clearly demonstrated its value in a region of growing strategic significance to both the UK and the EU as a whole.⁶¹

The Minister’s letter of 7 July 2014

11.17 The Minister wrote to say that, in view of developments in the region, the strategic review of the EUMM recommended that:

- “the mandate be extended for two years (i.e. up to December 2016);
- “it continues to focus on the core tasks mentioned above;
- “it should maintain its current headcount for now (401 in total, 272 international and 129 local) given the wider political context of Russia’s actions in Ukraine/Crimea;
- “there should be further strengthening of its cooperation and coordination with all EU instruments and Member States as well as other actors engaged in Georgia and conflict resolution;
- “the structure of the Mission should be kept under review and the Head of Mission should make proposals to update it as appropriate; and
- “the next Strategic Review should be held mid-mandate (i.e. around the end of 2015).

“The Government is content with the outcome of discussions on the Strategic Review and is minded to agree to the mandate extension at the end of 2014 on the terms set out above. Renewing the mandate would be an important signal of EU support to Georgia at time when the country is concerned about the potential for punitive Russian actions against it.

“The EUMM continues to play a vital role in stabilising and providing security to the region, for example successfully managing tensions last autumn in the period around the Presidential elections, and earlier this year ahead of and during the Sochi Winter Olympics. It also continues to play a vital role in facilitating activities near the Administrative Boundary Lines by informing all parties in a timely, credible and reliable manner. This allows, for example, works on utilities to go ahead which directly benefits local populations.

“A new Head (Toivo Klaar, Estonia) and Deputy Head (Ryan Grist, UK) have had a positive impact on the work of the EUMM, although relations with the *de facto* authorities in the breakaway regions of Abkhazia and South Ossetia continue to be

⁶¹ See (35188), —: Thirteenth Report HC 83-xiii (2013–14), [chapter 46](#) (4 September 2013).

difficult. Ongoing lack of access to the breakaway regions continues to be a major constraint towards full implementation of the Mission's mandate. The EU continues to push for the EUMM to have access to the breakaway regions, although other parties involved have yet to agree.

“In addition we continue to support and argue for the EUMM Head of Mission and the EEAS to regularly review the structure and staffing numbers of the mission, in order to maximise the impact of existing resources and identify efficiency savings.”

The draft Council Decision

11.18 This draft Council Decision proposes the renewal of the mandate of the EUMM in Georgia for two years from 16 December 2014 until 15 December 2016 as well as setting out just over €18 million of funding for this period. It proposes no significant changes to the mandate of the mission.

The Government's view

11.19 In his Explanatory Memorandum of 25 November 2014, the Minister for Europe says that the EUMM has also continued to facilitate discussions and pragmatic solutions to issues affecting communities living in areas adjacent to ABK and SO, such as rehabilitating irrigation channels, granting a farmer access to his land or allowing for medical evacuations; and through the hotline,⁶² has “succeeded to accommodate the release of prisoners who have been unjustly detained over ABL border violations and has shared information exchanges about missing persons”.

11.20 However, the Minister says:

“relations with the *de facto* authorities of ABK and SO continue to be difficult following the Abkhaz refusal to allow the EUMM Head of Mission (HoM), Toivo Klaar access to its IPRM meetings which have been suspended since April 2012. While the EUMM continues to liaise with all parties through the hotline and the Geneva discussions, the absence of IPRM meetings with ABK and access to the breakaway regions is a major constraint towards full mandate implementation.”

11.21 The Minister supports an extension of EUMM “as the presence of the Mission reduces the risk of future conflict including through confidence building, objective reporting, fact-finding, and its contributions to the Geneva Talks and through local dialogue”. To demonstrate the continuing impact of the EUMM, the Minister summarises its actions in three circumstances:

- “The EUMM has facilitated the use of the hotline to help deal with serious medical cases. The breakaway regions mainly have poor medical facilities so the EUMM helped facilitate, with the de-facto authorities, the transfer of these cases to Zugdidi

⁶² The EUMM acts as a hotline between actors. On the one side, the Russian Federation Armed Forces, the Russian Federation Border Guards and the *de facto* authorities and on the other side the Georgian Government. Incidents can be reported to the EUMM who contacts the relevant hotline holders to inform them of, or verify the reports. Incidents or issues which cannot be resolved over the hotline are referred to the monthly Incident Prevention and Reporting Mechanism meetings where all parties meet in the relevant theatre to seek resolution.

to get urgent medical treatment. They have also helped put local organisations in touch with e.g. international donors to help secure funding to help develop better services;

- “The EUMM has signed MoUs with the Georgian MoD and Ministry of Interior to agree the scope of the Ministries’ activities, for example the areas they should and should not go to and, where possible, for police rather than army to be deployed. This helped facilitate a change in posture from Russia who changed their border guards from military to civilian officers. This has also allowed the EUMM to develop good relations with the Georgian police;
- “The reporting period, marked by the Sochi Olympic Winter Games, passed without significant incident in the theatre, which remained relatively stable. The EUMM dealt well with the increase in security actors along the Administrative boundary lines (ABL) and played a key role in passing information to avoid additional tensions. EUMM’s monitoring of the Memoranda of Understanding with the Georgian Ministry of Internal Affairs and Ministry of Defence enabled continuous transparency and directly contributed to regional stability.”

11.22 Looking ahead, the Minister says:

“Georgia is likely to face continued Russian pressure as Russia consolidates its military presence, takes further measures to demarcate the boundary between Georgia and the breakaway regions and potentially to shut down a large number of the crossing points. This situation has been heightened by the proposed new “Treaty” between Russia and Abkhazia which seeks to formalise their relationship in the political, economic, military and social spheres. It is likely a similar document with South Ossetia will follow. The Georgian Government is pursuing a policy of limited engagement with Russia, however this could be strained by recent developments. Tensions within the Georgian Government were also apparent in early November when the Defence Minister was sacked and two other Ministers, including the Foreign Minister resigned.”

11.23 Operationally, the Minister says:

“Following the most recent Strategic Review by the Crisis Management and Planning Directorate to the Political and Security Committee, there has been agreement that the mandate of the EUMM should be extended for two years given that it is unlikely that tensions in the region will reduce in the short/medium term and due to the deep-rooted nature of the conflict. However there is a general view that the Mission could reduce its level of monitoring whilst maintaining its effectiveness. This would be welcomed by much of the local population who have become frustrated by the frequency of monitoring, which does not result in any qualitative improvements. As well as continuing with its core tasks, the Mission will also look to:

- “strengthen its co-ordination mechanisms with the EU Special Representative and the EU Delegation in Georgia;
- “further develop mechanisms to coordinate approaches to conflict- related issues especially preparations of the Geneva Talks and IPRMs;

- “strengthen media and information operations, including regular, non-classified information on EUMM briefings from monitoring that should contribute to transparency and increased understanding in the conflict zones and across the ABLs.

“The EUMM is part of a comprehensive EU approach to Georgia and remains the only international actor on the ground in Georgia and will continue to contribute to Georgia’s security and stability. The exit strategy of EUMM is currently based on successful conflict resolution processes (linked, among other things, to the implementation of the Six Point Agreement in the long term) and in the context of a coherent and strategic EU approach to conflict resolution in Georgia.”

11.24 Finally, with regard to the significance of Georgia to UK interests, the Minister reiterates its importance to BP and in the transit route for Azerbaijani oil and gas, and says:

“The UK continues to support Georgia with its democratic transition, particularly through regular and intensive inward and outward Ministerial visits. The Rt Hon William Hague MP visited Georgia in May 2014 and agreed to hold a regular high level dialogue with the Georgians. On 19 November the Georgian Foreign Minister visited London for the first UK/Georgia Dialogue, covering foreign policy, security and international defence and prosperity issues. At the dialogue, the Georgians assured of their continued support for Euro-Atlantic integration. We welcomed Georgia’s signature of the EU Association Agreement and Deep and Comprehensive Free Trade Area and urged the government to ensure that corruption investigations against prominent members of the opposition were transparent and followed due process.”

11.25 Finally, with regard to the *Financial Implications*, the Minister says that the €18,300,000 budget for the period 16 December 2014–15 December 2015 reflects some restructuring of the Mission to reduce unnecessary staffing, and should come in at approximately €3,000,000 less than the previous year. The Minister provides a comprehensive breakdown of the budget proposal (which is set out in the table at the Annex to this chapter of our Report), and concludes by saying:

“UK officials will continue to evaluate closely the impact of EUMM throughout the course of the mandate, which should remain flexible and appropriate for its operating environment, whilst remaining value for money.”

Previous Committee Reports

None, but see (35188), —: Thirteenth Report HC 83-xiii (2013–14), [chapter 46](#) (4 September 2013) and (34144), —: Eleventh Report HC 86-xi (2012–13), [chapter 22](#) (5 September 2012).

Annex: breakdown of the budget proposal

	Heading	Budget 15.09.2013–14.12.2014 (15 months)	Pro rata for 12 months	Budget 15.12.2014–14.12.2015 (12 months)
1	Personnel	17,603,631	14,082,905	12,664,291
2	Missions	308,855	247,084	214,596
3	Running expenditure	6,387,252	5,109,802	4,302,686
4	Capital expenditure	2,134,150	1,707,320	673,125
5	Representation	15,000	12,000	14,400
6	Project cell			100,000
	Sub-total 1–6	26,448,888	21,159,110	17,989,098
7	Contingencies	201,112	160,890	310,902
	TOTAL	26,650,000	21,320,000	18,300,000

- a. “Personnel: €12,664,291
There is a proposed gradual reduction of international and seconded staff from 273 at the start of the new mandate period reducing to 200 by December 2015. However, a further 15 international staff are under discussion, 5 in the Contingency category. The staff reduction has long been foreseen, as the mission is overstaffed, but regional pressures made an earlier streamlining unwise. Under the new OPLAN the UK will contribute approximately 14 staff. There is an overall reduction in this budget line of 11.3% compared pro rata with the previous budget.
- b. “Missions: €214,596
This heading covers travel, accommodation and per diems. It includes regional travel, Geneva talks and Brussels meetings, IRPM and co-ordination meetings. It is 13.5% less than the last 12 months.
- c. “Running expenditure: €4,302,686
This heading covers vehicles, transport maintenance and communications, office costs (including provision for further developing its outreach projects under the Mission’s press and public information strategy - an EU Special Prize for Peace Journalism, EU Day, 16 Days of Activism etc), IT supplies and maintenance including some satellite costs (an extra €100,000 over the last budget), security, medical, financial and legal services, training and welfare. Overall, this heading has reduced by 15.8% compared to the previous year.
- d. “Capital expenditure: €673,125
Under IT equipment there are new headings covering cybersecurity and satellite equipment, and replacement of computer hardware. The number of armoured vehicles is being reduced by 15 to a total of 20 and 15 soft-skin vehicles are expected from EULEX Kosovo bringing the total to 92. Other vehicles (utility) will remain at 16. Partly due to the reduction of the number of vehicles purchased, this line has reduced by 60%, despite the heavy investment in cybersecurity.
- e. “Representation: €14,400
This has risen by €2,400 pro rata.
- f. “Project Cell: €100,000

This new item is intended to respond to short-term needs requiring a quick response where the need is not part of another EU instrument's remit. It is a confidence-building measure, supporting cross-Administrative Boundary Line interaction and small local engagement projects in specific fields e.g. human security, health care, environmental and education, including those raised during the IPRM meetings. There is also a line covering dialogue activities, study visits, training or events in Georgia and third countries.

g. "Contingencies: €310,902

This has been set by the Mission at 1.73% of the total budget with the inclusion of 5 more monitors. This reserve is used only with prior written approval of the Commission."

12 Taxation

Committee's assessment

Politically important

Committee's decision

Cleared from scrutiny: further information requested

Document details

Draft Council Directive concerning information exchange in the field of taxation

Legal base

Article 115 TFEU; consultation; unanimity

Department

HM Treasury

Document numbers

(35062), 10243/13, COM(13) 348

Summary and Committee's conclusions

12.1 The Directive on administrative cooperation in the field of taxation, Council Directive 2011/16/EU, provides for the automatic exchange of information between Member States. With this draft Directive the Commission has proposed amendment of the existing Directive on administrative cooperation.

12.2 When we first considered this proposal, in July 2013, we asked, before we would consider the draft Directive further, to know what problems, if any, the Government foresaw in negotiating the Commission proposal. Last month, very belatedly, the Government responded giving us an informative account of the need for this proposal but announcing its intention to override the scrutiny reserve.

12.3 We had no issue with the substance of this proposal, as now explained to us. But we were greatly concerned about the procedural failures revealed. We recognised that there may have been little time to actually secure scrutiny clearance. However, we said that, given the OECD agreement on a global standard in July, there was no reason we should not have been informed of this development and how it related to our original request for information. So we asked for a fuller explanation from the Government of this failure and

an indication of how such lapses would be avoided in the future. Meanwhile the document remained under scrutiny.

12.4 The Government now tells us that the Council reached political agreement on the proposal on 14 October and that it will be formally adopted on 9 November. It explains the rationale for the proposal, how it will be implemented and its consequences for the Savings Directive and third country agreements. But it does not explain the scrutiny breach, although it says that new Treasury procedures should avoid such lapses in the future.

12.5 We see no reason to continue to hold this document under scrutiny and accordingly clear it. However, we are disappointed that the Government did not see fit to properly explain the scrutiny lapse. We note and accept the statement that new Treasury procedures should avoid such lapses in the future, but we still require the Government to provide us with the fuller explanation we requested previously.

Full details of the documents: Draft Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation: (35062), [10243/13](#), COM(13) 348.

Background

12.6 The Directive on administrative cooperation in the field of taxation, Council Directive 2011/16/EU, provides for the automatic exchange of information between Member States. With this draft Directive the Commission has proposed amendment of the existing Directive on administrative cooperation. The purpose is to reflect recent international developments in automatic exchange of information. The main element in the draft Directive is the addition of new categories of information to be automatically exchanged, that is, dividends, capital gains, any income generated with respect to assets held in a financial account, including redemption payments, and account balances. The Commission has also proposed removal of the thresholds below which a Member State may not wish to receive information.

12.7 When we considered this proposal, in July 2013, we noted the Government's support for a single global standard in the automatic exchange of information. However, we were not told whether the Government perceived an actual threat of prejudicing this outcome in the Commission's proposal. So we asked, before we would consider the draft Directive further, to know what problems, if any, the Government foresaw in negotiating the Commission proposal.

12.8 In October we heard that the proposal was about to be adopted before we could further scrutinise it. We had no issue with the substance of the final proposal, as now explained to us. But we were greatly concerned about the procedural failures now revealed. So we asked for a fuller explanation from the Government of these failures and an indication of how such lapses will be avoided in the future. Meanwhile the document remained under scrutiny.

The Minister's letter of 26 November 2014

12.9 The Financial Secretary to the Treasury (Mr David Gauke), first recalls his previous letter explaining his intention to breach the scrutiny reserve, apologises for this again and reiterates the importance of the measure for the UK. He says that the amendments proposed by the draft Council Directive would bring the new single global standard on automatic exchange of taxpayer information into EU law, something which the UK has been leading on globally, and move closer to the implementation of the new standard on a global basis. He then reports that:

- political agreement by all Member States was reached at the ECOFIN Council of 14 October;
- Luxembourg agreed in the final negotiations to the implementation of the amending Directive to the same timetable as had already been agreed by 26 other Member States, removing any need for delayed implementation in its case; and
- this timetable will see the first exchange of information in 2017 in respect of accounts that are open at the end of 2015 and new accounts opened from 1 January 2016.

12.10 The Minister adds that:

- it was agreed, however, that Austria could have up to a further year for implementation;
- Austria argued that it needed additional time in order to create “links” between Austrian financial institutions and the Austrian Tax Authority, since they do not currently exchange information under the Savings Directive (but have withholding arrangements instead);
- this is not something that the Government has ever understood and UK officials have engaged with the Austrian Finance Ministry on this on a number of occasions;
- there is no need for new infrastructure — the information can pass in encrypted form through ordinary secure internet links as the Government would expect to be the case between Austrian financial institutions and the US tax authorities under FATCA (the US Foreign Account Tax Compliance Act);
- however, in order to reach agreement by the end of the year, as requested at the May European Council, a compromise was agreed which allows Austria the possibility of an additional year;
- the Austrian Finance Minister stated at the ECOFIN Council that he would make all efforts to try and meet the 2017 exchange timetable and the Government is hopeful that as Austria examines implementation issues further that it will be able to do so;
- as he told us previously, the Government's view is that a difference of one year in implementation will make little practical difference;

- the main risk that it has been concerned with, in its wider and highly successful diplomatic efforts to get all financial centres on a 2017 or 2018 first exchange timetable, is the possibility of evaders simply moving their assets between jurisdictions that have announced implementation plans and those that have not;
- the Government judges this risk to be minimal where the difference in timetable is just one year;
- in the meantime Austria will continue to withhold under the Savings Directive in respect of UK taxpayers; and
- he attaches a note, in relation to the Government's wider concern, which sets out the jurisdictions, including virtually all financial centres, which have made commitments to implement the global standard to a 2017 or 2018 timetable (and which we annex).

12.11 The Minister also tells us, in relation to the ECOFIN Council, that:

- Finance Ministers also agreed to give a mandate to the Commission to repeal the Savings Directive, subject to appropriate transitional arrangements to ensure there is no gap in coverage for Austria or the five third countries (Switzerland, Liechtenstein, Monaco, Andorra and San Marino);
- this will avoid any duplication which would result in increased and unnecessary burdens and costs for the financial services industry;
- Ministers also called for the existing Savings Agreements with the third countries to be brought into line with the new global standard; and
- the Commission expressed optimism that such agreements would be reached in a very short time frame.⁶³

12.12 The Minister then gives us more detailed information related to the draft Directive and its implementation, saying that:

- as regards estimates of the costs of the Directive, a draft impact assessment for domestic implementation will accompany draft legislation to give effect to the new Directive (which will be in line with the Government's planned implementation of the global standard on which HMRC has been consulting) — it is aiming to consult on draft legislation by the end of the year;
- the Government expects the costs of implementation to be a small proportion of the FATCA implementation costs, based on its experience with the bilateral agreements with the Crown Dependencies and Gibraltar;
- these agreement were based on FATCA, but with some changes to reflect the different circumstances, in particular taxation on the basis of residency;⁶⁴

⁶³ See http://europa.eu/rapid/press-release_MEMO-14-591_en.htm and http://europa.eu/rapid/press-release_SPEECH-14-693_en.htm.

- the estimate for costs on business were £50 million to £110 million — this contrasts with the estimated costs of FATCA implementation of between £1,100 million to £2,000 million;⁶⁵
- the Government would expect the implementation of the Directive to result in costs closer to the agreements with the Crown Dependencies and Gibraltar than the estimated FATCA costs;
- this is because industry will already have made many of the necessary IT and administrative changes in implementing FATCA and the Crown Dependencies and Gibraltar agreements and because of further simplifications to the due diligence process under the global standard;
- in addition, the switching off of the Savings Directive when the Directive comes into force will result in as yet unquantified savings — the Government will also continue working very closely with industry to minimise costs;
- as for discussion of the standard with representatives of the insurance industry, where there was difference in interpretation of the commentary to the new standard (a form of guidance) between the Member States and those representatives, the global standard does not require reporting of insurance or annuity contracts where this is “effectively prohibited by law”;
- the commentary states that “where the applicable law does not prohibit Reporting Financial Institutions from selling insurance or annuity contracts outright, but requires them to fulfil certain conditions prior to being able to sell such contracts to residents of the Reportable Jurisdiction (such as obtaining a license and registering the contracts), a Reporting Financial Institution that has not fulfilled the required conditions under the applicable law will be considered to be ‘effectively prevented by law’ from selling such contracts to residents of such Reportable Jurisdictions”;
- representatives of the insurance industry had taken this to mean that where an insurance company had not undertaken the administrative steps required under Directive 2002/83/EC then they were effectively prevented by law;
- this was not an interpretation shared by the Member States which negotiated the commentaries in the OECD and which would not have agreed the commentary on the interpretation given to it by industry representatives;
- a number of Member States have said that they experience significant numbers of sales to the residents of other Member States by insurance companies that have not undertaken the administrative steps and they wish this to be the subject of reporting (as it is in the Government’s agreements with the Crown Dependencies);

⁶⁴ The impact assessment that the Government published with the regulations for the intergovernmental agreements with the Crown Dependencies can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358566/gib-crown-dep.pdf.

⁶⁵ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357543/itc-regs-2013.pdf.

- the Commission and the Council Legal Service were also of the view in the negotiations that the administrative steps required by EU law did not amount to sales “effectively being prevented by law”; and
- HMRC is working closely with all industry representatives on UK guidance on the Directive which should clear up what seem to be a number of misunderstandings about the due diligence required for pre-existing accounts which will hopefully reduce industry concerns about the burdens.

12.13 Finally, the Minister apologises again for the delay in keeping us informed on this dossier and the override of the scrutiny reserve, saying that:

- while not excusing it in any way, in this particular instance a number of factors came together which contributed to the oversight;
- as he hopes we can acknowledge, this was an isolated incident in the Treasury’s recent record on scrutiny;
- he assures us, however, that the Treasury is putting in place further measures on top of its existing systems and guidance to help ensure that this is an incident that is not repeated;
- he hopes that on the basis of these explanations we will be able to clear this dossier from scrutiny; and
- the Government is currently expecting formal agreement to the proposal to be sought at the ECOFIN Council on 9 December.

Previous Committee Reports

Ninth Report HC 83-ix (2013–14), [chapter 9](#) (10 July 2013) and Thirteenth Report, HC 219-xiii (2014–15), [chapter 18](#) (15 October 2014).

Annex

COMMITMENTS TO ADOPT THE NEW GLOBAL STANDARD FOR AUTOMATIC EXCHANGE OF INFORMATION

2017 First Exchange (early adopters timetable): 58 Countries and Jurisdictions*

Argentina, Barbados, Belgium, Bulgaria, Chile, Colombia, Croatia, Curacao, Cyprus, the Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Greece, Greenland, Hungary, Iceland, India, Ireland, Italy, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, the Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, United Kingdom, Uruguay; the UK's Crown Dependencies of Isle of Man, Guernsey and Jersey; and the UK's Overseas Territories of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks & Caicos Islands.

* Those in bold signed the framework multilateral competent authority agreement at the Global Forum in Berlin on 29 October under which information will be exchanged. 51 signed in total and more are expected to do so in the near future.

2018 First Exchange: 34 Countries and Jurisdictions

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, **Austria**, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, China, Costa Rica, Grenada, Hong Kong, Indonesia, Israel, Japan, Marshall Islands, Macao, Malaysia, Monaco, New Zealand, Qatar, Russia, St Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates.

Only five countries with financial centres have not yet committed

Bahrain, Cook Islands, Nauru, Panama, Vanuatu.

The United States will be exchanging under FATCA from 2015

13 Financial services: payment services

Committee's assessment

Politically important

Committee's decision

Cleared from scrutiny

Document details

(a) Draft Directive on payment services
(b) Draft Regulation on interchange fees
(c) European Central Bank Opinion on the draft Regulation (d) European Central Bank Opinion on the draft Directive

Legal base

(a)–(b) Article 114 TFEU; co-decision; QMV
(c)–(d) —

Department

HM Treasury

Document numbers

(a) (35250), 12990/13 + ADDs 1, 3–4, COM(13) 547 (b) (35251), 12991/1/13 + ADDs 1–3, COM(13) 550 (c) (35968), 8587/14, — (d) (35969), 8759/14, —

Summary and Committee's conclusions

13.1 This draft Directive would repeal the Payment Services Directive and replace it with Payment Services Directive II. The new Directive would contain the bulk of the present Directive's substance with modifications to ensure consumer protection keeps up with innovations in the market and to streamline previous sections that the industry found cumbersome, unnecessary or unclear.

13.2 We have been holding this proposal under scrutiny pending information about resolution in Council working group discussion of four points the Government had drawn

to our attention. The Government tells us now that it is confident of securing satisfaction on these matters in a General Approach it expects to be reached soon.

13.3 This draft Regulation would regulate interchange fees that are applied to debit and credit card transactions within the EU and would cap the level of interchange fee that could be applied to a card transaction. We have considered this matter several times, including in the light of representations both for and against the proposals from interested parties. In October, given useful improvements to the text of the draft Regulation, which the Government had negotiated, and on the assumption that it would be able to secure those improvements in a General Approach, we granted it a waiver, in terms of the Scrutiny Reserve Resolution, to support such a Council agreement. Nevertheless the document remained under scrutiny pending an account of the outcome on a General Approach. We are told now that on 10 November the Council unanimously agreed a General Approach, which was in line with the terms of our waiver.

13.4 The two European Central Bank Opinions comment on the two legislative proposals. We have been holding them under scrutiny in parallel with those proposal.

13.5 In the light of this latest information from the Government we now clear all these documents from scrutiny.

Full details of the documents: (a) Draft Directive on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC: (35250), [12990/13](#) + ADDs 1, 3–4, COM(13) 547 (b) Draft Regulation on interchange fees for card-based payment transactions: (35251), [12991/1/13](#) + ADDs 1–3, COM(13) 550; (c) European Central Bank Opinion on the draft Regulation on interchange fees for card-based payment transactions: (35968), [8587/14](#), —; (d) European Central Bank Opinion on the draft Directive on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC: (35969), [8759/14](#), —.

Background

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

13.7 There is also the Payments Services Directive, Directive 2007/64/EC, (PSD) aimed at enhancing competition and transparency in the payments industry across the EU and ensuring that the level of consumer protection is sufficient and harmonised.

13.8 Interchange fees are set by the card network and paid by the merchant's bank to the customer's bank for the acceptance of card-based transactions. They are passed on to the retailer in the form of a service charge and, in turn, passed onto consumers in the form of higher prices. Multilateral interchange fees are set by the card schemes (VISA and MasterCard) — these are fees standardised between card issuers and a host of card

acquirers and are the most frequently used. Bilateral interchange fees, a rarer phenomenon, are agreed directly between card issuers and card acquirers — so instead of being a cross industry standard, the merchant’s bank and customer’s bank would have their own deal arranged.

13.9 In January 2012 the Commission published a Green Paper *Towards an integrated European market for card, internet and mobile payments*, which looked at the rapidly changing market for card, internet and mobile payments in the EU, set out a number of barriers to development and launched a consultation on how to achieve a fully integrated EU market for card, internet and mobile payments. The Commission invited responses to 32 questions in the Green Paper and foreshadowed the possibility of legislative proposals.⁶⁶

13.10 In July 2013 the Commission published a draft Directive, document (a), under which the PSD would be repealed and replaced by Payment Services Directive II or PSD II, which would contain the bulk of the PSD’s substance with modifications. The Commission proposed modifications to the PSD to ensure consumer protection keeps up with innovations in the market and to streamline previous sections that the industry found cumbersome, unnecessary or unclear. The draft Directive would deal with the following matters: increased scope, small payment institutions, surcharges, security measures and the European Banking Authority. A draft Regulation, document (b) published with the draft Directive, would regulate interchange fees that are applied to debit and credit card transactions within the EU and would cap the level of interchange fee that could be applied to a card transaction. The measure would deal with the following matters: a cap on interchange fees, separation between scheme and processing, co-badging, an honour all cards rule and steering of consumers.

13.11 The European Central Bank Opinions, documents (c) and (d), commented on the legislative proposals. In the first Opinion, on the draft Regulation, the Bank fully supported the proposal to impose EU-wide rules on interchange fees, noting that at present interchange fees are largely unregulated and divergent across Member States. It further noted that reducing this market fragmentation would have a strong impact on competition, as it would make it easier for existing players to compete and for new providers to enter the market for card payments. In its second Opinion, on the PSD II, the Bank strongly supported the objectives and the content of the proposed amendments to the present Directive, in particular those which update its coverage to take into account the rapidly developing retail payment market (the introduction of new payment solutions via smart phones, e-commerce, etc.).

13.12 When we last considered the PSD II proposal, in April, we heard that the Government was seeking the following precise improvements:

- ensuring that charitable donations are not negatively impacted;
- reinstating an independent ATM exemption;

⁶⁶ See (33628), 5491/12: Fifty-fifth Report HC 428-I (2010–12), [chapter 5](#) (8 February 2012) and Second Report HC 86-ii (2012–13), [chapter 24](#) (16 May 2012).

- ensuring that payment service providers are given fair and proportionate access to a payment account; and
- ensuring that consumers are adequately protected when using a third party provider to make an online payment.

13.13 We asked, as negotiations develop, to hear about the responses to the points that the Government wished to see addressed. However, we were told in October that progress on the draft Directive was relatively slow and so that document remained under scrutiny.

13.14 When we last considered the draft Regulation, in October, we learnt about useful progress in Council working groups. So given the improvements the Government had negotiated, and on the assumption that it would be able to secure those improvements in a General Approach, we granted it a waiver, in terms of the Scrutiny Reserve Resolution, to support such a Council agreement. Nevertheless the document remained under scrutiny pending an account of the outcome on a General Approach.

13.15 As for the European Central Bank Opinions, having heard that the Government was largely supportive of the comments, we have kept them under scrutiny together with the legislative proposals to which they relate.

The Minister's letter of 26 November 2014

13.16 The Economic Secretary to the Treasury (Andrea Leadsom) now tells us that since October progress on the draft PSD II has been rapid. She says that:

- expectations had been that negotiations would continue into the Latvian Presidency;
- however, at the latest working group on 24 November the Italian Presidency put forward a draft text that meets the UK's objectives and also has the support of the rest of Council; and
- the Presidency is not planning to hold any further meetings and has expressed an intention to reach a General Approach on the proposal within the next few weeks.

13.17 Reminding us that we had asked for an update on the four precise issues that the Government wished to see addressed during negotiations, the Minister says that the current compromise text addresses these key issues. She explains first, on charitable donations, that:

- following conversations with charities and payments industry participants, the Government was concerned that charitable donations made via text message would be negatively impacted as a result of the deletion of the exemption that applied to these services under the present PSD;
- it has been successful in having this specific exemption reinserted into PSDII for donations below €50;
- it was judged that donations above this threshold would benefit from the higher protection that PSD II offers, but that to regulate donations made below this

threshold would put too high a burden on the payment institutions that offer the text donation service to charities, thereby increasing the price they would charge to charities for it; and

- this position is supported by other Member States, charities and charity donation service providers.

13.18 On an ATM exemption, the Minister continues that:

- the Commission originally proposed to remove the exemption for ATM providers which is provided for under the PSD;
- the Government's view was that including independent ATMs in the scope of PSD II would not provide any benefit for consumers and in fact could have a negative impact on the UK;
- for example, independent ATMs are more likely to be found in areas with a low number of transactions such as rural and deprived areas;
- the additional costs which would be incurred with having to comply with PSD II could make it impossible for these providers to continue to operate and therefore limit rural and deprived communities' access to cash; and
- the majority of Member States have agreed with the Government's position and it is confident that the exemption for independent ATMs will be agreed.

13.19 Turning to the matter of fair and proportionate access to payment accounts the Minister tells us that:

- the current compromise text ensures that payment service providers are given fair and proportionate access to a payment account, in line with the Government's objective; and
- it states that Member States shall ensure that where a credit institution is requested access to payment accounts by authorised or registered payment service providers, it will decide upon the request in a non-discriminatory manner.

13.20 Finally, on consumer protection and third party payment service providers, the Minister says that:

- the current compromise text has brought third party payment service providers (TPPs) into the scope of PSD II, so that consumers will be protected when using these services;
- in future, the European Banking Authority will work with the payments industry to create a technical solution which allows customers to easily use the TPP service, without the need to share their private banking credentials; and
- in order to ensure that the Authority proposes a solution that achieves the right balance between security and allowing new technologies to flourish, the Government has secured text in PSD II which gives the EBA a formal objective to consider customer ease of use.

13.21 The Minister concludes that as a consequence of these points the Government expectation is that the General Approach will fully address its key concerns, and would therefore be one it would look to support. She asks that the information she provides now enables us to clear, or waive from, scrutiny the draft Directive.

13.22 The Minister also tells us that on 10 November, following our decision to grant a scrutiny waiver, the Council unanimously agreed a General Approach on the draft Regulation. She says that this agreed position was entirely in line with her previous update and represents a positive outcome for the UK.

Previous Committee Reports

Seventeenth Report HC 83-xvi (2013–14), [chapter 10](#) (9 October 2013); Thirty-third Report HC 83-xxx (2013–14), [chapter 8](#) (29 January 2014), Fiftieth Report HC 83-xlv (2013–14) [chapter 5](#) (14 May 2014) and Sixteenth Report HC 219-xvi (2014–15), [chapter 6](#) (29 October 2014).

14 The UK's 2014 block opt-out decision

Committee's assessment [Committee's decision](#)

Legally and politically important
(a) and (b) cleared from scrutiny; drawn to the attention of the Home Affairs and Justice Committees

Document details

(a) Draft Council Decision determining certain direct financial consequences incurred as a result of the cessation of the participation of the UK in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon
(b) Draft Council Decision determining certain consequential and transitional arrangements concerning the cessation of the participation of the UK in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon

Legal base

(a) Protocol No. 36 on Transitional Provisions, Article 10(4), third sub-paragraph; QMV
(b) Protocol No. 36 on Transitional Provisions, Article 10(4), second sub-paragraph; QMV (excluding the UK)

Department

(Both) Home Office

Document numbers

(a) (36368), 13680/14, COM(14) 595
(b) (36369), 13683/14 + ADD 1, COM(14) 596

Summary and Committee's conclusions

14.1 We first considered these draft Council Decisions at our meeting on 5 November. Their purpose is to address the legal, practical and financial consequences of the UK's decision to opt out of around 110 EU police and criminal justice measures, with effect from 1 December 2014, and to rejoin 35 of these measures.

14.2 The first draft Council Decision — document (a) — concerns the financial consequences of the UK's block opt-out. It would require the UK to repay up to around €1.5 million if, following the completion of a business and implementation case, the UK decides not to rejoin three additional measures (the so-called Prüm package) by the end of 2015.

14.3 The second draft Council Decision — document (b) — concerns consequential and transitional arrangements. It seeks to avoid the risk of a legal or operational gap between the UK's block opt-out taking effect, on 1 December 2014, and the UK's application to rejoin 35 measures also taking effect. It does so by extending the application of these 35 measures to the UK until 7 December 2014. The draft Decision also establishes a timetable for completion of the business and implementation case on the Prüm measures. Pending a decision to rejoin these measures, the draft Decision provides that the UK shall not have access to Eurodac fingerprint data for law enforcement purposes.

14.4 Both draft Council Decisions are binding on the UK and have to be agreed by a qualified majority, but the UK is excluded from taking part in the vote on document (b) on transitional arrangements.

14.5 The draft Decisions are clearly of legal and political importance in that they pave the way for the UK's formal application to rejoin 35 EU police and criminal justice measures (including the European Arrest Warrant) which would otherwise cease to apply to the UK on 1 December 2014. Given the imminence of this deadline, we have made clear that we considered the Government's delay of more than two weeks in providing Explanatory Memoranda to be unacceptable.

14.6 At our meeting on 5 November, we sought further information on the Prüm package and on the Government's intentions regarding a Framework Decision on probation. We noted that the draft *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014* were laid in Parliament on 3 November in order to complete transposition of 11 of the 35 measures and asked the Government to explain why it was seeking Parliamentary approval in this manner and at such short notice.⁶⁷ We also sought an assurance that the affirmative resolution procedure for approval of the draft Regulations was not intended to substitute for a full debate and vote on all 35 measures and reiterated our position that there should be a separate motion for each measure the Government proposes to seek to rejoin.

14.7 We noted that the Government's Explanatory Memorandum accompanying the draft Regulations indicated that the power to make them derived from a Commission Decision

⁶⁷ In fact, analysis by the Joint Committee on Statutory Instruments established that the draft Regulations would only complete transposition of ten of the 35 measures, the 11th having previously been removed from the scope of the UK's block opt-out.

and a Council Decision which had not so far been deposited for scrutiny. We asked the Government to tell us when the draft Decisions would be deposited in Parliament and to give an assurance that we would have sufficient opportunity to consider and report on them before 1 December 2014.

14.8 A debate in the House of Commons on an unamendable Government motion to approve the draft Regulations was held on 10 November. During the debate, the Home Secretary (Mrs Theresa May) and the Justice Secretary (Chris Grayling) made clear that the Government would regard the vote on the draft Regulations as a vote on the entire package of 35 measures.

14.9 In this Report chapter, we consider the information provided by the Home and Justice Secretaries in response to our Nineteenth Report, as well as the remaining processes that need to be completed to confirm UK participation in the 35 measures.

14.10 As we made clear to the Home and Justice Secretaries in a letter sent immediately after our meeting on 26 November, the Committee is not willing to be bounced into clearing from scrutiny the draft Council Decisions on consequential and transitional arrangements and on the financial consequences of the UK's block opt-out. The Government chose not to respond to the questions we raised in our Nineteenth Report agreed on 5 November until the morning of our meeting on 26 November. Having considered the information provided by the Home and Justice Secretaries, we can see no good reason why it could not have been provided sooner.

14.11 We note that both draft Council Decisions were adopted at the Transport, Telecommunications and Energy Council on 27 November and published in the Official Journal on 28 November. Retaining them under scrutiny would serve no useful purpose. We therefore clear the draft Decisions from scrutiny but ask the Home and Justice Secretaries to explain how the UK voted at the Council, whether the Government has overridden our scrutiny reserve, and why the information we requested on 5 November to inform our scrutiny was not provided sooner.

14.12 Turning to the substance of the reply from the Home and Justice Secretaries, we note the Government's equivocal position on the content of the Prüm package and the suggestion that the UK would be able to ask the Council to overturn the Commission's inclusion of Framework Decision 2009/905/JHA on the accreditation of forensic service providers within the package if the UK were to decide to seek to rejoin Prüm. We question whether this would be legally or politically feasible. The draft Council Decision on consequential and transitional arrangements clearly states that the Prüm package comprises three EU measures, and the obligation to undertake a full business and implementation case applies to all three measures. This Decision is binding for the UK.⁶⁸

14.13 We do not accept the explanation given by the Home and Justice Secretaries either for the delay in laying the draft *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014* before Parliament or for the haste with which Parliament was expected to consider and approve them. On the former, we can see no good reason why

⁶⁸ See recital (11) of the draft Decision.

consideration by Parliament could not have commenced sooner, based on the outcome of technical level discussions with the Commission and Council reached in June, and made subject to Spain lifting its technical reservation on the 35 measures at a later date. On the latter, it is simply not credible to assert that the Government had to legislate in this way to mitigate the risk that the Commission might bring infraction proceedings against the UK on 1 December. The risk of infraction would, in our view, be very small indeed, provided that the UK was able to demonstrate that it was taking active steps to complete the transposition of any of the 35 measures which had not already been fully transposed by 1 December 2014.

14.14 We note the Home and Justice Secretaries' view that the vote on the draft Regulations on 10 November constituted approval for the entire package of 35 measures. On this matter, we consider that the Hansard record of the debate speaks for itself.

14.15 The Home and Justice Secretaries express their regret that we were not able to consider a further draft Council Decision confirming UK participation in the six Schengen measures the Government intends to rejoin at our meeting on 26 November. We remind them that this draft Decision, as well as a Commission Decision confirming UK participation in the remaining 29 non-Schengen measures, has not yet been deposited in Parliament. Whilst we appreciate that the draft Council Decision has only just been published, and that the Commission Decision (which does not require Council approval) may not be published in draft form, it would have been perfectly possible for the Government to provide Parliament with Explanatory Memoranda setting out the likely content of both Decisions and the expected legal, policy and financial implications. This would have enabled us to consider them before the 1 December deadline.

14.16 As we have previously made clear⁶⁹, we expect the Government to deposit the draft Council Decision on Schengen measures and to provide an Explanatory Memorandum as a matter of urgency so that it can be Reported to the House. We also expect the Government to deposit the Commission Decision on non-Schengen measures and to provide an Explanatory Memorandum at the earliest opportunity.

14.17 The Government's mis-handling of the scrutiny process means that scrutiny overrides appear to be inevitable. Should this indeed be the case, we expect to hear in person from the Home and Justice Secretaries why they have failed to meet their scrutiny obligations to Parliament.

Full details of the documents: (a) Draft Council Decision determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon: (36368), [13680/14](#), COM(14) 595; (b) Draft Council Decision determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and

⁶⁹ See letters of 25 and 26 November 2014 from the Chair of the European Scrutiny Committee to the Home and Justice Secretaries.

Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon: (36369), [13683/14](#) + ADD 1, COM(14) 596.

Background

14.18 On 1 December 2014, the UK ceased to be bound by around 110 EU police and criminal justice measures which were subject to the UK's 2014 "block opt-out". The UK's right to opt out of these measures *en masse* is set out in Protocol No. 36 on Transitional Provisions annexed to the EU Treaties ("Protocol 36"). Protocol 36 allows the UK to opt out of EU police and criminal justice measures adopted before the Lisbon Treaty took effect, on 1 December 2009, with the exception of those that have been amended, or repealed and replaced, by a post-Lisbon measure in which the UK has chosen to participate. The procedures for opting out are set out in Article 10(4) of Protocol 36. Article 10(4) includes provision for the Council to adopt Decisions determining "the necessary consequential and transitional arrangements" and "the direct financial consequences, if any, necessarily and unavoidably incurred" as result of the UK's decision to exercise the block opt-out. On 24 July 2013, the Prime Minister formally notified the EU institutions that the UK had decided to exercise its block opt-out, following a debate and vote in both Houses of Parliament.⁷⁰

14.19 Protocol 36 also includes provision for the UK to seek to rejoin individual measures which cease to apply to it on 1 December 2014. The relevant procedures are set out in Article 10(5) of the Protocol.

14.20 Command Paper 8897, published on 3 July 2014, lists 35 EU police and criminal justice measures which the Government wishes to rejoin. The Government has given repeated undertakings to hold a debate and vote in both Houses of Parliament on these measures before making a formal application to rejoin them.

14.21 During a general debate on the UK's block opt-out on 10 July 2014, the Home Secretary indicated that there had been pressure for the UK to rejoin three additional measures: two so-called "Prüm" Decisions concerning cross-border cooperation on serious crime and terrorism, and a Framework Decision on probation. She explained that the UK would not rejoin the Prüm measures on 1 December 2014, but that the Government would "produce a business and implementation case and run a small-scale pilot with all the necessary safeguards in place". She added that "the decision on whether to rejoin Prüm would be one for Parliament".⁷¹

14.22 Command Paper 8671, published by the Government in July 2013, clearly indicated that the Prüm system comprised two measures.⁷² By contrast, the draft Decision on consequential and transitional arrangements includes a third measure, Framework Decision 2009/905/JHA on the accreditation of forensic service providers.

⁷⁰ The debate and vote in the House of Commons took place on 15 July 2013.

⁷¹ *HC Deb*, 10 July 2014, [col. 492](#).

⁷² Council Decisions 2008/615/JHA and 2008/616/JHA.

14.23 As regards the Framework Decision on probation⁷³, the Justice Secretary informed the House that the Government would “take another look at the measure when there is enough evidence of it working and of its impacts to see whether there would be benefits to the UK in taking part”, adding that the Government would “not agree to join this or any further JHA measure unless it is in our national interest to do so”.⁷⁴

14.24 Further detailed information and analysis on the UK’s block opt-out decision, and the measures the Government wishes to rejoin, is contained in the Reports listed at the end of this chapter which we, and our colleagues on the Home Affairs and Justice Committees in the Commons and the European Union Committee in the Lords, have published over the last eighteen months. Our Nineteenth Report, agreed on 5 November 2014, deals specifically with the draft Council Decisions on transitional arrangements and on the financial consequences of the UK’s block opt-out.

The letter from the Home and Justice Secretaries of 26 November 2014

14.25 The Home and Justice Secretaries inform us that, by a letter dated 20 November 2014, the Prime Minister has notified the Council Presidency of the UK’s wish to rejoin the 35 measures contained in Command Paper 8897. This notification will take effect on 1 December 2014.

14.26 They apologise for the delay in providing Explanatory Memoranda on the draft Council Decisions on transitional arrangements and on financial consequences and express regret that we will be unable to consider a further draft Council Decision (which has not yet been deposited in Parliament) concerning the six Schengen measures the Government proposes to rejoin at our meeting on 26 November, adding:

“This Decision simply gives effect to the decision by the Government to rejoin the Schengen elements of the package and the Government has been fully transparent about its intentions in this regard.”

14.27 The Home and Justice Secretaries inform us that the draft Council Decisions on consequential and transitional arrangements and on the financial consequences of the UK’s block opt-out will be put forward for adoption at the Transport and Telecommunications Council on 27 November — the last Council of Ministers meeting before the end of the five-year transitional period on 1 December 2014. They continue:

“We would be grateful therefore if your Committee would consider the Financial Consequences Decision at your meeting on 26 November and clear it from scrutiny. You will of course be aware that the UK has no vote on the Consequential and Transitional Council Decision. However, we will be required to vote on the Financial Consequences Decision which is subject to QMV. Having secured the change to the inaccuracy on the funding issue in the Financial Consequences Decision [see below], it is something I would wish to support.”

⁷³ Framework Decision 2008/947/JHA.

⁷⁴ *HC Deb*, 10 July 2014, [col. 549](#).

14.28 Turning to the questions raised in our Nineteenth Report, we first asked the Government whether it accepted that Framework Decision 2009/905/JHA on the accreditation of forensic service providers formed an integral and inseparable part of the Prüm package and to explain why this should be the case. The Home and Justice Secretaries respond:

“The Government is clear that in the event of the UK deciding to join Prüm — and we have committed to a vote in Parliament before seeking to do so — the Commission’s view on whether the Decision forms part of the Prüm package will be an important factor. However, as you will also be aware, under the procedures in Article 331(1) TFEU which are applied, the Government, if it does not accept the Commission’s view, could refer this matter to the Council for a final decision.”

14.29 We also asked the Government to explain what it meant by “inaccuracies in relation to certain references to Framework Decision 2009/905/JHA [on the accreditation of forensic service providers] in relation to funding received”.⁷⁵ The Home and Justice Secretaries explain:

“The inaccuracy to which the Government’s EM referred was the Commission’s contention that funding had been provided for this measure as well as the other two forming part of the Prüm decision. This inaccuracy has now been corrected in recital (7) of the financial consequences Decision. That now reads:

“Funds from the Programme ‘Prevention of and Fight against Crime’, established by Council Decision 2007/125/JHA, have been allocated to the United Kingdom for two projects related to Decisions 2008/615/JHA and 2008/616/JHA, first concerning the implementation by the United Kingdom of the Prüm DNA Exchange, with a maximum co-funding of EUR 961 019 granted to the Home Office, and second concerning the Prüm Fingerprint Evaluation project by the United Kingdom, with a maximum co-funding of EUR 547 836 granted to the Home Office. This amounts to a total of EUR 1 508 855’.”

14.30 We noted that the Government’s proposed review of the Framework Decision on probation was not mentioned in the draft Council Decision on consequential and transitional arrangements and asked whether it still intended to review UK participation and publish an impact assessment. The Home and Justice Secretaries respond:

“We have been clear that the UK will not be rejoining this measure as there is insufficient evidence to assess its utility. The Commission and the other Member States accept this position. The Government has indicated to the Council that the UK will reconsider in due course the merits of notifying our wish to participate in that measure. As you might expect, the Government will also publish an assessment of the potential impacts of that measure for the purposes of its reconsideration.”

14.31 With regard to the draft *Criminal Justice and Data Protection (Protocol 36) Regulations 2014*, we asked whether the Government’s haste to secure Parliamentary approval was intended to avoid or mitigate the risk that the Commission would bring

⁷⁵ See para 21 of the Minister’s Explanatory Memorandum on document (a).

infringement proceedings against the UK shortly after 1 December 2014, or whether full and timely transposition of the measures by that date was one of the conditions imposed by the Commission as a pre-requisite for UK participation in the 35 measures.⁷⁶ The Home and Justice Secretaries respond:

“The Government has had to legislate in this way to mitigate the risk of the Commission’s beginning infraction proceedings against the UK on 1 December. The Government had hoped to lay the draft Regulations earlier, but it was not possible to do so until political agreement with all other Member States had been reached.”

14.32 They explain that, contrary to our expectations and wishes, during the debate on 10 November, the Government took the view that “the package of measures would stand or fall depending on whether Parliament voted for the Regulations”. They add:

“The House of Commons endorsed the package when it voted in favour of the Regulations on 10 November and the House of Lords finalised that process on 17 November.”

14.33 The Home and Justice Secretaries describe the remaining processes to be completed in order to confirm the UK’s participation in the 35 measures listed in Command Paper 8897.

“The Council Decision confirming our application to re-join elements of the Schengen *acquis* has been provided in draft in anticipation of a notification letter from the UK. This Decision has not yet been published, which means that it has not triggered deposit under the usual scrutiny process. Nevertheless, given the importance of this matter we have attached a copy. We expect formal publication to follow shortly; however deadlines mean that publication is likely to occur at the end of November, almost immediately before the point of its adoption. As you will note the Decision simply gives effect to the decision by the Government to re-join the Schengen elements of the package, all of which has been the subject of extensive consideration by Parliament.

“There will also be a Commission Decision formally allowing the UK to rejoin the non-Schengen measures. A draft of this decision is not yet available and we understand that it will be published by the Commission in the Official Journal after its adoption on 1 December.

“The main Schengen Decision will be adopted by written procedure which was launched yesterday (25 November 2014), expiring by 1 December 2014. This Decision requires unanimity. Clearly, the UK will be voting in favour of the main Schengen Decision.”

14.34 Finally, the Home and Justice Secretaries indicate that they will be content to appear before us in person to provide evidence on scrutiny of the block opt-out process.

⁷⁶ Under Article 331(1) TFEU, the Commission may stipulate the conditions that have to be fulfilled in order to participate in the 35 measures the UK wishes to rejoin.

Previous Committee Reports

Nineteenth Report HC 219-xviii (2014–15), [chapter 2](#) (5 November 2014). The following Reports of the European Scrutiny, Home Affairs and Justice Committees are also relevant: Thirty-seventh Report [HC 798](#) (2012–13), 22 March 2013; Eighth Report [HC 605](#) (2013–14), 31 October 2013; Ninth Report [HC 615](#) (2013–14), 31 October 2013; Twenty-first Report [HC 683](#) (2013–14), 7 November 2013; First Joint Report from the European Scrutiny, Home Affairs and Justice Committees [HC 1177](#) (2013–14), 26 March 2014; Seventeenth Report [HC 762](#) (2014–15), 4 November 2014. See also the following Reports of the European Union Committee in the House of Lords: Thirteenth Report [HL Paper 159](#) (2012–13), 23 April 2013; Fifth Report [HL Paper 69](#) (2013–14), 31 October 2013.

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

Department for Environment, Food and Rural Affairs

- (36465)
14958/14
+ ADD 1
COM(14) 682
- Draft Council Decision on the signature, and provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Madagascar.
- (36483)
14959/14
ADDs 1–2
COM(14) 683
- Draft Council Decision on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Madagascar.
- (36484)
14960/14
COM(14) 684
- Draft Council Regulation concerning the allocation of the fishing opportunities under the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Community and the Republic of Madagascar.

Foreign and Commonwealth Office

- (36515)
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—
- Draft Council Decision in support of physical security and stockpile management activities to reduce the risk of illicit trade in small arms and light weapons (SALW) and their ammunition in the Sahel region.
- (36531)
—
—
- Draft Council Decision in support of the Hague Code of Conduct (HCoC) and ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.

HM Treasury

- (36503)
15331/14
COM(14) 699
- Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 on budgetary discipline and sound financial management (application EGF/2013/006 PL/Fiat Auto Poland S.A. from Poland).
- (36507)
15409/14
COM(14) 702
- Draft Decision on the mobilisation of the European Globalisation Adjustment Fund, in accordance with Point 13 of the Interinstitutional Agreement of 2 December 2013 on budgetary discipline, on cooperation in budgetary matters and on sound financial management (application EGF/2014/013 EL/Odysefs Fokas).

(36508)
15426/14
COM(14) 701

Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 on budgetary discipline and sound financial management (application EGF/2013/014 FR/Air France from France).

Home Office

(36505)
14987/14
+ ADD 1
COM(14) 679

Draft Council Decision determining the Union position for a Decision of the Joint Committee set up under the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas, with regard to the adoption of Common Guidelines for the implementation of the Agreement.

Formal minutes

Wednesday 3 December 2014

Members present:

Mr James Clappison, in the Chair

Michael Connarty

Geraint Davies

Nia Griffith

Kelvin Hopkins

Chris Kelly

Jacob Rees-Mogg

Henry Smith

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 9.8 read and agreed to.

Paragraphs 9.9 to 9.10 read, amended and agreed to.

Paragraphs 9.11 to 15 read and agreed to.

Resolved, That the Report be the Twenty-fourth Report of the Committee to the House.

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

[Adjourned till Wednesday 10 December at 2.00pm.]

Standing Order and membership

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

Sir 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*)