House of Commons
European Scrutiny Committee

Thirty-sixth Report of Session 2014–15

Documents considered by the Committee on 11 March 2015, including the following recommendations for debate:

Rule of Law in the EU

European Semester 2015

Strategic guidelines for EU Justice and Home Affairs and the renewal of the EU Internal Security Strategy
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Report, together with formal minutes

Ordered by the House of Commons
to be printed 11 March 2015
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

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<tr>
<th>Abbreviation</th>
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<tr>
<td>EC</td>
<td>(in “Legal base”) Treaty establishing the European Community</td>
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<tr>
<td>EM</td>
<td>Explanatory Memorandum (submitted by the Government to the Committee)*</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EU</td>
<td>(in “Legal base”) Treaty on European Union</td>
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<td>GAERC</td>
<td>General Affairs and External Relations Council</td>
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<td>JHA</td>
<td>Justice and Home Affairs</td>
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<td>OJ</td>
<td>Official Journal of the European Communities</td>
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<td>QMV</td>
<td>Qualified majority voting</td>
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<td>RIA</td>
<td>Regulatory Impact Assessment</td>
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<td>SEM</td>
<td>Supplementary Explanatory Memorandum</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>TFEU</td>
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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).

Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harbome (Clerk Adviser), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Joanna Welham (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss and Beatrice Woods (Committee Assistants), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

Contacts

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Meeting Summary

The Committee considered the following documents:

**European Semester 2015**

The European Semester is an EU-level framework for coordinating and assessing annually Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. We recommended the first stage of the European Semester for debate in European Committee B, and this debate took place last week. As the second stage of the Semester the Commission has published its Communication on an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews of Member States’ economic situations. It is accompanied by Commission Staff Working Documents giving Country Reports for all Member States, apart from Greece. The reports contain an in-depth review of macroeconomic imbalances (where applicable), and an assessment of Member States' progress in addressing their 2014 Country-Specific Recommendations. The Government broadly welcomes the Commission Communication and, with some reservations, the UK Country Report. We recommend that these two documents be debated in European Committee B, together with the Commission's draft 2015 Country-Specific Recommendations, once available.

**Strategic guidelines for EU justice and Home Affairs and the renewal of the EU Internal Security Strategy**

In June 2014, the European Council agreed the latest set of guidelines for the development of EU justice and home affairs policies and legislation. Two Commission Communications — one covering EU justice policy, the other home affairs policy — were the only publically accessible available documents available in advance of the European Council adopting the conclusions. We recommended these documents for debate in April 2014, and this debate remains unscheduled. The Minister now informs us that the EU Internal Security Strategy agreed in 2010 has now expired and sets out the steps for agreeing a new strategy; the Commission Communication on the successor to strategy is expected to be published in April, when Parliament will be dissolved, and the new strategy will be formally agreed at the June 2015 Justice and Home Affairs Council. This timing means that, due to the election, neither this Committee, nor its successor, will have the opportunity to scrutinise the Strategy before discussions on its content have concluded. We accept that the Government cannot be held responsible for the timing of decision-making in Brussels. However it was clear that the new Strategy would be agreed in mid-June, and this makes the Government’s decision not to schedule the debate we recommended on the strategic guidelines all the more deplorable and indefensible. We consider that if the Government wishes to breathe life into its commitment to “reduce the democratic deficit over EU matters”, it should now schedule this debate.

**Rule of Law in the EU**

The Government has written to us to update us on the proposed Rule of Law Framework, which is intended to better protect the rule of law in all Member States by addressing and
resolving situations where there is such a threat to the rule of law. We recommended the Commission Communication proposing this Framework for debate on the floor of the House last May. This debate has still not been arranged, which is particularly disappointing given that, as the Government acknowledges, the issue of rule of law monitoring and compliance remains a live one; there is the prospect of further dialogue in the Council in 2015 and we agree that it would be “complacent to imagine that the Commission will not try to take further action in relation to the rule of law in future”. We urge the Government to schedule the debate we recommended 10 months ago before dissolution. We also ask it to provide us with its view on the opinion of the Council Legal Service of 27 May which concludes that the Commission is not competent to bring forward the proposed framework.
1 Rule of Law in the EU

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; recommended for debate on the floor of the House (decision reported on 7 May 2014); further information requested; drawn to the attention of the Foreign Affairs Committee, the Justice Committee and the Joint Committee on Human Rights

Document details
Commission Communication: A new EU Framework to strengthen the Rule of Law

Legal base
—

Departments
Foreign and Commonwealth Office and Ministry of Justice

Document numbers
(35878), 7632/14 + ADD 1, COM(14) 158

Summary and Committee’s conclusions

1.1 Article 7 TEU contains mechanisms to protect the values on which the EU is founded, as set out in Article 2 TEU. These values include, but are not limited to, respect of “the rule of law”. There are two thresholds for activating the procedures under Article 7: the lower threshold for Article 7(1) procedure (the Council acting by four fifths majority to determine “a clear risk of a serious breach” of those values) and the higher for Article 7(2) (the Council acting by unanimity to determine “a serious and persistent breach” and by QMV to decide to suspend certain EU membership rights). In both procedures, the consent of the European Parliament (EP) must be obtained before a relevant determination is made. They are also both initiated on a reasoned proposal by one third of the Member States, the Commission or, only in relation to the lower threshold, the EP. To date, neither Article 7 mechanism has been used.

1.2 There are also other existing mechanisms to tackle rule of law problems in Member States. The Cooperation and Verification Mechanisms (CVM) can be used to address the rule of law in Bulgaria and Romania (set up as part of the accession process). There are also the Council of Europe’s own systems for monitoring respect for the rule of law in its Member States, including the work of the Venice Commission.1

1.3 The Commission Communication, published in March 2014 states, that experience has shown that “systemic threats” to the rule of law in Member States cannot, in all circumstances, be effectively addressed through Article 258 TFEU as it is limited to specific breaches of EU law; nor through Article 7 TEU procedures, given the high “last resort”

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1 Formally the European Commission for Democracy through Law which acts as the advisory body to the Council of Europe on constitutional matters. It draws on a wider membership than the Council of Europe and can respond to requests for opinions from the participating states to help bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

2 There are a few relevant examples of “rule of law” related judgments of the Court: Commission v Hungary (Case C-286/12) concerning the compulsory retirement of judges and public prosecutors and Commission v Germany (Case C-518-07) and Commission v Austria (Case C-614/10) which both concerned the independence of data protection.
thresholds for action. The Commission therefore sets out a framework to better protect the rule of law in all EU Member States by addressing and resolving situations where there is such a threat to the rule of law. The Commission says that as the guardian of the Treaties, including the Article 2 TEU values, it “must play an active role in this respect”.

1.4 The Communication responds to specific calls from particular Member States (Germany, Denmark, Finland and the Netherlands) for a new and more effective mechanism to safeguard fundamental values in Member States and to address problems at an early stage. More widely, June 2013 JHA Conclusions asked the Commission to take forward an inclusive EU-wide debate in line with the Treaties on the need for a collaborative and systemic method to tackle rule of law issues. In July 2013 the European Parliament called for Member States to be regularly assessed on their compliance with the rule of law.

1.5 The Communication explains that the framework seeks to resolve future threats to the rule of law in Member States before conditions are met for activating the procedures in Article 7 TEU. The framework is intended to precede and complement Article 7 TEU, and is without prejudice to the Commission’s power to initiate infringement procedures. It is to be initiated in situations where the authorities of a Member State are “taking measures or are tolerating situations which are likely to systematically and adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard mechanisms established at national level to secure the rule of law”. It is only intended to be used whether those national mechanisms are no longer capable of addressing the difficulties. It gives some indication of the threshold for action under the mechanism: “the political, institutional and/or legal order of a Member State as such, its constitutional structure, separation of powers, the independence or impartiality of the judiciary or its system of judicial review including constitutional justice where it exists, must be threatened — for example, as a result of the adoption of new measures or of widespread administrative practices of public authorities and lack of domestic redress”.

1.6 The framework consists of a three stage process: based on information collected from the Council of Europe, the Fundamental Rights Agency and the UN, the Commission would send a confidential reasoned opinion to the Member State concerned; if the matter remained unresolved, the Commission would set out a timetable for recommended action; if this was not complied with, the Commission would consider activating one of the Article 7 procedures.

1.7 The Government told us in March 2014 that it had concerns about the proposed framework, in particular the scope for duplication of existing monitoring and compliance mechanisms and for undermining the role of the Member States within the Council. It was also concerned about uncertainty about the threshold for activating the framework, believing that it is principally for Member States to secure the rule of law domestically. It questioned whether considering the proposed framework fell within the Commission’s competences within the Treaties and was concerned about a possible widening of the remit of the Fundamental Rights Agency.

**authorities. However, such actions cannot be brought for “rule of law” concerns which fall outside of the scope of specific EU law.**
1.8 In our Report of 7 May, we noted these concerns and outlined some additional concerns of our own: the potentially wide scope of the concept of the rule of law as set out in the Communication, the partial displacement of the Council and European Council from their established roles, the lack of oversight of the Commission in operating the framework, the possibility of the framework’s extension in future to wider Article 2 TEU values and the transparency of the initial stage of the process. We thought that if the threshold in Article 7 was set too high, it was a matter for Treaty change depending on the collective political will of the Member States. We also recommended the document for debate on the floor of the House, for the document to be drawn to the attention of the Foreign Affairs and Justice Committees and the Joint Committee on Human Rights and for the Government to comment on our additional concerns before the debate.

1.9 The Government now responds to the concerns we raised in our Report and to provide an update on discussions in the Council on the Rule of law, but is still not able to commit to organising the debate.

1.10 We thank the Ministers (Chris Grayling and Mr David Lidington) for their letter. We note the developments on the issue of rule of law monitoring and compliance within the EU.

1.11 We remain extremely disappointed that, after a period of some ten months, it has still not been possible for the Government to schedule the debate we have recommended. As the Government acknowledges, the issue of rule of law monitoring and compliance within the EU remains a live one: not only is there the prospect of further dialogue in the Council in 2015 but we agree that it would be “complacent to imagine that the Commission will not try to take further action in relation to the rule of law in future”. In the light of these continuing ambitions to enhance the existing mechanisms for addressing rule of law issues within the EU, we urge the Government to schedule this debate before dissolution.

1.12 In doing so, we also ask that the Government respond, in time for consideration by the Committee before dissolution, with its view of the opinion of the Council Legal Service of 27 May on the proposed framework. As the document is now publicly available on the Council’s own website (its original limited classification having been removed since at least early January), we are at a loss to know why the Government now fails to mention this important document which concludes:

“The Council Legal Service is of the opinion that the new EU Framework for the Rule of Law as set out in the Commission’s Communication is not compatible with the principle of conferral which governs the competences of the institutions of the Union. The possibility exists, however, for Member States to agree among them on a review system of the functioning of the rule of law in the Member States and on the possible consequences to draw from that review.”

1.13 As this document has been recommended for debate, but that debate has yet to be held and a House resolution therefore yet to be agreed, it remains under scrutiny.


Background

1.14 A full background to and account of the current document, together with the Government’s view are set out in our Report of 7 May 2014.4

The Ministers’ letter of 2 March 2015

1.15 The Minister for Europe (Mr David Lidington) and the Secretary of State for Justice (Chris Grayling) first provide a recap of the Government’s initial view of the document.

“The Government’s view was that the scheme set out in the Communication was problematic in various respects. Not least was the intention expressed by the Commission that, in certain circumstances, it might make a recommendation to a Member State in relation to the rule of law. Under Article 7, the power to make recommendations in relation to the rule of law and other founding values of the Union is for the Council, not the Commission.”

1.16 The Ministers update us on discussions which have taken place in Council on the rule of law as follows:

“As a Commission Communication, the document is not amendable by Member States or the Council. It might have been expected that the Council would, nonetheless, take a stance in relation to the communication. It was not until December that significant discussions in the Council took place on the rule of law.

“The General Affairs Council of 16 December adopted Conclusions on the rule of law, which we enclose. These were mixed conclusions under which the Council and the Member States committed themselves to an annual dialogue on the subject of the rule of law. Among other things, the Conclusions note that this dialogue will be developed in a way which is complementary with other EU Institutions and International Organisations, avoiding duplication and taking into account existing instruments and expertise in this area. The Conclusions also emphasise the principle of conferred competences and respect for Member States’ national identities.

“We expect, therefore, that at some stage in 2015 there will be a dialogue among Member States within the Council on the rule of law.

“The Government considers that this is a good result for the UK. While it would be complacent to imagine that the Commission will not try to take further action in relation to the rule of law in future, the Conclusions draw the current phase of discussions to a close without endorsing the mechanism set out in the Communication.”

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1.17 The Ministers then comment on the failure of the Government to schedule a debate on the document, which the Ministers acknowledge, we have raised with them during evidence sessions (the Justice Secretary on 12 January and the Minister for Europe on 15 January):

“It has not yet proved possible to arrange a debate, but the scheduling of debates is constantly reviewed and should this change we will write to the Committee at the earliest opportunity.”

1.18 The additional concerns we raised in our report of 7 May are next addressed by the Ministers:

“You expressed concern that the concept of rule of law as set out in the Communication could be read widely. One of the difficulties that the Government does see with the Commission’s Communication is that there is no clearly accepted single definition of rule of law – certainly there is none in the Treaties. We agree that the potentially wide scope of activities described in the Communication could be a matter of concern; however it is notable that under Article 2 TEU, rule of law, democracy and respect for fundamental rights are separate values, and that the Commission has focused this Communication specifically on rule of law.

“You expressed concern about the ‘partial displacement’ of the Council and the European Council from their established roles. This was one of the Government’s principal concerns about the Communication shared by a number of other Member States. It is no coincidence that the Conclusions adopted at the December General Affairs Council assert the important role of the Member States and the Council in addressing concerns with the rule of law and stop short of endorsing the Commission’s Communication. The Government has been clear from the beginning that rule of law concerns are principally matters for Member States themselves.

“You raised concerns about the differing scope of the mechanism set out in the Communication and that set out in Article 7 TEU. It has not been suggested by the Commission that the former would be used to promote values other than the rule of law. Nonetheless, cross-over to other values is certainly not impossible. The Government will, naturally, remain vigilant.

“You asked whether greater transparency in the system would be desirable. As you acknowledge, these matters are sensitive, and in our view it would be difficult to set out firm rules as regards transparency. It would be better to approach these matters on a case by case basis.

“Lastly, you expressed the view that interventions on the rule of law should be driven by political will within the Council and that if the bar was set too high in Article 7, that was a matter for Treaty change. The Government agrees, which is one of the reasons we consider that the conclusions adopted in December represent a good outcome.”

Previous Committee Reports
2 European Semester 2015

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<tr>
<td>Committee’s decision</td>
<td>Not cleared from scrutiny. Recommended for debate in European Committee B, once the Commission’s draft Country-Specific Recommendations are available.</td>
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Legal base: —

Department: HM Treasury

Document numbers: (a) (36690), 6632/15, COM(15) 85; (b) (36691), —, SWD(15) 47

Summary and Committee’s conclusions

2.1 The European Semester is an EU-level framework for coordinating and assessing annually Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances.

2.2 As the second stage of the 2015 European Semester the Commission has published its Communication on an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews of Member States’ macroeconomic situations. It is accompanied by Commission Staff Working Documents giving Country Reports for all Member States (including the UK) apart from Greece. These reports contain an in-depth review of macroeconomic imbalances (where applicable), and an assessment of Member State progress in addressing their 2014 Country-Specific Recommendations.

2.3 The Government tells us that it broadly welcomes the Commission Communication and, with some reservations, the UK Country Report.

2.4 We recommend that these two documents be debated in European Committee B together with, once available, the Commission’s draft 2015 Country-Specific Recommendations. This debate should take place before the documents are considered at the June European Council and we urge the Government to schedule the debate as soon as possible in the new Parliament.

2.5 In the debate Members might discuss the Commission’s overall and Member State specific assessments of economic, particularly macroeconomic, issues. Of particular interest would be the Commission’s UK Country Report.

Full details of the documents: (a) Commission Communication: 2015 European Semester: Assessment of growth challenges, prevention and correction of macroeconomic

Background

2.6 The European Semester is an EU-level framework for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. It attempts to exploit the synergies between these policy areas by aligning their reporting cycles, which would tie together consideration of National Reform Programmes (reports on progress and plans on structural reforms, under the Europe 2020 Strategy) and Stability and Convergence Programmes (reports on fiscal policy, under the Stability and Growth Pact).

2.7 The annual European Semester cycle begins with an Annual Growth Survey (AGS) by the Commission, followed by a series of overarching and country specific documents from the Commission and culminating in examination of the overall and country-specific situations by the European Council. The AGS is accompanied by a draft Joint Employment Report which is based on employment and social developments in the European Economic Forecast, commonly referred to as the EU Autumn Forecast. An element of the European Semester process is the Macroeconomic Imbalances Procedure (MIP). The MIP is a mechanism designed to identify and, if necessary, correct harmful macroeconomic imbalances across the EU, which were a key cause of the current sovereign debt crisis. The first stage of the MIP is publication by the Commission of an annual Alert Mechanism Report (AMR).

2.8 On our recommendation the four documents for the first stage of the 2015 European Semester, the AGS, the draft Joint Employment Report, the EU Autumn Forecast and the AMR, were debated in European Committee B on 4 March, prior to their consideration by the European Council on 19-20 March.5

The documents

2.9 As the second stage of the 2015 European Semester the Commission has now published its Communication, document (a), on an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews. It is accompanied by Commission Staff Working Documents giving Country Reports for all Member States (including the UK) apart from Greece. These reports contain an in-depth review of macroeconomic imbalances (where applicable), and an assessment of Member State progress in addressing their 2014 Country-Specific Recommendations (CSRs), approved by the June 2014 European Council. These documents, together with a package of recommended CSRs, which will reflect the analysis in the Country Reports, together

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with material submitted by Member States in their National Reform Plans and which the Commission is expected to present in May, will be considered by the June European Council.

2.10 The Communication consists of four general sections: context, rebalancing the economy, Member State responses, and next steps in the European Semester. It also has three annexes: an overview table showing updated surveillance as part of the Country Report package, a summary of CSR implementation and the findings of the in-depth reviews of Member States.

2.11 In the section on rebalancing the economy the Commission:

- notes that a number of macroeconomic imbalances are being corrected, but that there are still high risks in certain Member States;
- notes particularly large external liabilities, losses in price competitiveness, high current account surpluses, high levels of government and private debt and high unemployment; and
- assesses, for the eurozone in particular, low inflation and low demand, as holding back recovery, with the larger economies in the eurozone noted as having an impact on the entire area.

2.12 The Commission outlines the response of Member States to the three priorities outlined in the AGS (boosting investment, a renewed commitment to structural reform and pursuing fiscal responsibility). On boosting investment, it notes the recovery of investment last year but that it remains below the levels needed, and says that stabilising the financial sector and the Investment Plan for Europe6 can play a part. The Commission stresses that structural reforms in services, product and labour markets are needed to strengthen and sustain the economic recovery, correct harmful imbalances, improve the conditions for investment and unleash the potential of Member States’ economies. Finally on fiscal responsibility, it says the significant fiscal efforts undertaken by most Member States since 2010 are starting to bear fruit, but that progress is not complete and that there is a need for a greater focus on improving the effectiveness, quality and growth-friendliness of public finances.

2.13 The assessment of progress on fiscal CSRs in the Country Reports excludes assessment of compliance with the Stability and Growth Pact. But in the Communication the Commission does discuss the Stability and Growth Pact, saying that:

- it is recommending a new Council Recommendation to France to correct its excessive deficit by 2017; and
- although Belgium, Finland and Italy appear to be at variance with the debt reference value, it considers that the opening of an excessive deficit procedure is not warranted at this stage.

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2.14 On the in-depth reviews, the Commission recalls that the 2015 AMR identified 16 Member States as showing potential signs of macroeconomic imbalances: Belgium, Bulgaria, Germany, Ireland, Spain, France, Croatia, Italy, Hungary, the Netherlands, Portugal, Romania, Slovenia, Finland, Sweden and the United Kingdom. The in-depth reviews found all of these to have macroeconomic imbalances, and five were identified as having excessive imbalances: Bulgaria, France, Croatia, Italy and Portugal. For Bulgaria, France and Croatia, the Commission will decide in May on the basis of the National Reform Programmes and other commitments to structural reform, whether to activate the Excessive Imbalances Procedure.

2.15 As a result of the in-depth reviews the Commission considers that:

- Belgium is experiencing macroeconomic imbalances, which require policy action and monitoring — developments with regard to the external competitiveness of goods are the key issue identified by the Commission;

- Bulgaria is experiencing excessive macroeconomic imbalances, which require decisive policy action and specific monitoring — according to the Commission, these come from financial sector, the negative external position, corporate overleveraging, and weak labour market adjustment;

- Germany is experiencing macroeconomic imbalances, which require decisive policy action and monitoring — in the Commission’s view, risks have increased in light of the persistence of insufficient private and public investment, which represent a drag on growth, and contribute to the very high current account surplus;

- Ireland is experiencing macroeconomic imbalances, which require decisive policy action and specific monitoring — for the Commission, risks related to the high levels of private and public sector indebtedness, financial sector challenges, labour market adjustment marked by high structural unemployment, continue to deserve close attention;

- Spain is experiencing macroeconomic imbalances, which require decisive policy action and specific monitoring — the Commission view is that risks related to the high levels of private and public sector indebtedness and the highly negative net international investment position continue to deserve close attention in a context of very high unemployment;

- France is experiencing excessive macroeconomic imbalances, which require decisive policy action and specific monitoring — the Commission sees risks stemming from the deterioration in both cost and non-cost competitiveness and from the high and rising French indebtedness, in particular public debt has significantly increased;

- Croatia is experiencing excessive macroeconomic imbalances, which require decisive policy action and specific monitoring — the Commission view is that risks related to weak competitiveness, large external liabilities and rising public debt coupled with weak public sector governance, have significantly increased;
• Italy is experiencing excessive macroeconomic imbalances, which require decisive policy action and specific monitoring — the Commission view is that in a context of protracted weak growth and persistently low productivity, risks stemming from the very high level of public debt and the weakness of both cost and non-cost competitiveness have significantly increased;

• Hungary is experiencing macroeconomic imbalances, which require decisive policy action and monitoring — the Commission sees particular risks stemming from the still highly negative net international position, the high level of public debt as well as the high regulatory burden on financial sector and a high level of non-performing loans;

• the Netherlands is experiencing macroeconomic imbalances, which require policy action and monitoring — risks are seen by the Commission as stemming from the high level of private debt and the high current account surplus;

• Portugal is experiencing excessive macroeconomic imbalances, which require decisive policy action and specific monitoring — for the Commission, risks remain linked to the high levels of indebtedness, both internally and externally, and across various sectors;

• Slovenia is experiencing macroeconomic imbalances, which require decisive policy action and specific monitoring — the Commission believes rebalancing is ongoing; however, weak corporate governance, a high level of state ownership, a still high corporate leverage, and an increasing public debt are seen by the Commission as posing risks for financial stability and growth;

• Finland is experiencing macroeconomic imbalances, which require policy action and monitoring — for the Commission, risks related to the weak export performance in a context of industrial restructuring deserve attention;

• Sweden is experiencing macroeconomic imbalances, which require policy action and monitoring — according to the Commission, household debt remains at very high levels and is the main risk; and

• Romania is experiencing macroeconomic imbalances, which require policy action and monitoring — for the Commission risks come from the relatively large negative net international investment position, with weak medium-term export capacity deserving attention.

2.16 The Commission Staff Working Document entitled Country Report United Kingdom 2015, document (b), comprises an assessment of the general UK economic situation and its outlook, the in-depth reviews of possible macroeconomic imbalances identified in the AMR and a statement of the UK progress regarding the completion of 2014 CSRs. The Commission’s view is that the UK is experiencing macroeconomic imbalances, which require policy action and monitoring. This is the lowest of the five categories of imbalances the Commission makes use of in its Communication.

2.17 The Commission:
• notes that the UK economy continued to grow briskly in 2014 at a rate of 2.6%, a marked rise from 1.7% in 2013 and among the best in the EU and the G7;

• says that as a consequence, the size of the economy is now more than 3% higher than at its peak in 2008 and performance since 2008 now slightly exceeds that of France and Germany;

• forecasts that growth in 2014 is expected to be sustained at a similar pace in 2015 and 2016; and

• says, in this context, that the labour market continues to perform robustly and the recent positive performance is expected to continue with the unemployment rate estimated to fall to 5.6% in 2015.

2.18 The Commission conducted a detailed analysis only of issues relating to private sector indebtedness, with a particular focus on the housing sector. The Commission:

• concluded that household indebtedness has been identified as potentially constituting a macroeconomic imbalance, while noting that although household sector indebtedness remains high, it continues to fall, and is down 10% of GDP from 2008;

• says that developments in house prices have been identified as potentially symptomatic of an underlying macroeconomic imbalance;

• considers that in the short term, the main risk is that the recent pace of house price growth, especially in London, may suddenly cease and reverse in a disorderly manner;

• notes, in the medium term, a sustained high level of house prices may also result in continued high household indebtedness; and

• believes, however, that the likelihood of risks from the housing sector materialising is lower than last year and also assesses that the impact on the economy and the financial sector is lower.

2.19 The Commission also concluded that, after studying the issue in detail in the 2014 in-depth review, the external sector no longer constitutes an imbalance that requires policy action and monitoring.

2.20 Taking the six 2014 CSRs in turn, the Commission concluded the following:

• CSR 1 (fiscal): the UK has made some progress (this overall assessment of CSR1 excludes an assessment of compliance with the Stability and Growth Pact);

• CSR 2 (housing market): the UK has made some progress;

• CSR 3 (youth unemployment and skills): the UK has made some progress;

• CSR 4 (child poverty in low income households): the UK has made limited progress;
• CSR 5 (access to finance): the UK has made substantial progress; and
• CSR 6 (infrastructure): the UK has made some progress.

2.21 The ECOFIN Council is expected to discuss conclusions of the in-depth review section of the Country Reports in May.

The Government’s view

2.22 In his Explanatory Memorandum of 9 March 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that the Government takes note of the Commission’s assessment that the UK has been placed in the “preventive arm” of the MIP. He comments that this means that no further steps are foreseen under the MIP and reminds us that the UK is not subject to sanctions under any aspect of the MIP.

2.23 The Minister comments further, saying that:

• the Government welcomes the Commission’s assessment that the external sector no longer constitutes a macroeconomic imbalance;

• it also welcomes the Commission’s view that the macroeconomic imbalance associated with household indebtedness has fallen since 2014;

• the Government broadly welcomes the Commission’s assessment that it has made substantial progress on structural reforms in the areas covered by the 2014 CSRs, which compares favourably with other Member States;

• it disagrees, however, with the Commission’s assessment that it has made limited progress in the area covered by CSR 4 on child poverty and childcare;

• under this Government, 300,000 fewer children are in relative income poverty, around 390,000 fewer children are growing up in workless families, the attainment gap for deprived pupils has narrowed, and there has been recently the largest annual fall in unemployment on record;

• the Government is also taking action on childcare reforms in order to increase the supply of places, introduce a simpler inspection regime, and improve financial support to parents;

• it notes the publication of the Country Reports for other Member States;

• the Government agrees with the Commission that macroeconomic imbalances are being corrected, but that risks remain in certain Member States; and

• it considers, however, that there can be no room for complacency, and Member States need to take action to tackle fiscal deficits and put in place growth-enhancing structural reforms.

Previous Committee Reports

None.
3 Strategic guidelines for EU Justice and Home Affairs and the renewal of the EU Internal Security Strategy

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Document details

- (a) Commission Communication: The EU Justice Agenda for 2020 — Strengthening Trust, Mobility and Growth within the Union
- (b) Commission Communication: An open and secure Europe: making it happen

Legal base

(Both) —

Department

Home Office and Ministry of Justice

Document numbers

- (a) (35874), 7838/14, COM(14) 144
- (b) (35887), 7844/14 + ADD 1, COM(14) 154

Summary and Committee’s conclusions

3.1 Since 1999, the European Council has agreed strategic guidelines for the development of EU justice and home affairs policies and legislation. The latest set of guidelines to govern legislative and operational planning at EU level for the period 2015–20 was agreed by the European Council in June 2014. The Commission Communications — one covering EU justice policy, the other home affairs — were the only publicly accessible EU documents published in advance of the European Council. They sought to review progress to date, identify future challenges, and set out the political priorities which, in the Commission’s view, should guide EU action up until 2020.

3.2 The home affairs Communication — document (b) — identified “a Europe that protects” as one of the EU’s five thematic priorities. It suggested that the EU Internal Security Strategy, agreed in 2010, should be updated for the period 2015–20 and internal security concerns addressed more systematically in the EU’s external relations. A series of actions were proposed to disrupt international criminal networks, prevent terrorism, and tackle radicalisation and recruitment.

3.3 We recommended the Communications for debate, in April 2014, noting that the EU’s new strategic guidelines would have an important impact on the work not only of our Committee, but also of the Home Affairs and Justice Select Committees. We said that the debate should take place on the floor of the House so that all interested Members would have the opportunity to express their views on the content of the strategic guidelines and the future direction of EU justice and home affairs policy in advance of the meetings of the Justice and Home Affairs Council and European Council in June 2014. That debate has yet

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7 See Conclusions of the European Council.
to take place. Instead, in July 2014, the Home Office Minister for Modern Slavery and Organised Crime (Karen Bradley) and the Parliamentary Under-Secretary at the Ministry of Justice (Mr Shailesh Vara) wrote to inform us of the content of the strategic guidelines agreed by the European Council the previous month.

3.4 We reminded the Ministers that we are a European scrutiny committee, not a European information committee. Our task, as stated in the Standing Orders of the House, is to alert Members to documents which have some legal or political significance and, where appropriate, to recommend a debate so that the House has an opportunity to inform and influence Government policy. We made clear that, to be both meaningful and effective, the accountability of Government to Parliament has to operate before decisions are taken which determine the strategic direction of a policy area which, as in this case, has a direct bearing on the rights and liberties of individual citizens.

3.5 The Minister (Karen Bradley) now writes to us again, explaining that the EU Internal Security Strategy agreed in 2010 expired at the end of 2014 and setting out the next steps for agreeing a renewed Strategy, most of which will take place after Parliament has been dissolved at the end of March.

3.6 The much-anticipated Commission Communication on the successor to the now expired EU Internal Security Strategy is expected to be published in April, while Parliament is dissolved, and the new Strategy to be formally agreed at the June 2015 Justice and Home Affairs Council. This means that neither this Committee nor, in all likelihood, its successor, will be able to scrutinise the Strategy before discussions on its content have concluded.

3.7 Whilst the Government cannot be held responsible for the timing of the decision-making process in Brussels, it was clear last June, when the European Council agreed the EU’s new strategic guidelines, that a successor EU Internal Security Strategy would be agreed “by mid-2015”. This makes the Government’s failure to schedule a timely debate on the strategic guidelines all the more deplorable and indefensible. As the Minister will be only too well aware, by the time our successor Committee has the opportunity to consider the Commission Communication, the Strategy will have been agreed and Parliament, once again, deprived of the opportunity to inform and influence the strategic direction of policies which have a direct bearing on the rights and interests of individual citizens.

3.8 We draw the Minister’s attention to the recital to the Conclusions agreed by the Justice and Home Affairs Council last December which purports to recognise the need for national parliaments to be involved in the development of a renewed EU Internal Security Strategy. We suggest that, at this late stage of the Parliament, the only means for the Government to breathe life into its commitment to “reduce the democratic deficit over EU matters” and to make the Government “more accountable for the decisions it makes in the EU” is to schedule a debate — now nearly a year overdue — on the strategic guidelines, thereby facilitating a broader discussion of the future direction of the EU Internal Security Strategy.\(^8\)

\(^8\) Written Ministerial Statement of 20 January 2011, Hansard, 51-52WS.
Full details of the documents: (a) Commission Communication: The EU Justice Agenda for 2020 — Strengthening Trust, Mobility and Growth within the Union: (35874), 7838/14, COM(14) 144; (b) Commission Communication: An open and secure Europe making it happen: (35887), 7844/14 + ADD 1, COM(14) 154.

Background

3.9 Our earlier Reports, listed at the end of this chapter, summarise the content of these Communications, as well as a subsequent Communication, published in June 2014, reviewing the progress made in implementing the (now expired) EU Internal Security Strategy for 2010–14.

3.10 In June 2014, the European Council agreed Conclusions on the EU Area of Freedom, Security and Justice which establish “strategic guidelines for legislative and operational planning” in the justice and home affairs field up to 2020. They include a commitment to:

- “review and update” the EU Internal Security Strategy by “mid-2015”;
- prevent and combat serious and organised crime, including human trafficking and smuggling, as well as corruption;
- ensure that the EU has an effective counter-terrorism policy; and
- develop tools, such as an EU Passenger Name Record system, to prevent radicalisation and extremism and to tackle the phenomenon of foreign fighters.

3.11 Shortly afterwards, in July 2014, we considered a Commission Communication reviewing the soon-to-expire EU Internal Security Strategy. The Commission reaffirmed the relevance of the five strategic objectives underpinning the Strategy. These are to:

- disrupt international criminal networks;
- prevent terrorism and address radicalisation and recruitment;
- raise levels of cyber security for citizens and businesses;
- strengthen security through border management; and
- increase Europe’s resilience to crises and disasters.

3.12 The Commission also highlighted areas of work which it expected to feature in a fresh Communication on a successor Strategy, to be published early in 2015, following consultation with Member States, the European Parliament, and stakeholders representing civil society, academia and the private sector. It indicated that the revised Strategy would incorporate three "cross-cutting objectives":

- better mechanisms to ensure coherence and complementarity between the internal and external aspects of EU security policies;
- recognition of respect for fundamental rights as an integral element of internal security policies through the effective application of the EU Charter of Fundamental Rights and other relevant secondary legislation; and
the effective use of EU funding mechanisms, including in the field of research, to address internal security challenges, and the provision of training at EU level to forge “a common law enforcement cooperation culture”, build mutual trust and support practical cooperation.

3.13 In clearing the Communication from scrutiny, we noted that there was likely to be a considerable degree of thematic continuity in the revised EU Internal Security Strategy, with a particular focus on serious and organised crime, cybercrime, terrorism, radicalisation and crisis management, and border security, but with a more detailed set of actions to accompany each strategic objective.

3.14 This is borne out by the Conclusions agreed by the Justice and Home Affairs Council in December 2014 which provide the clearest indication so far of the Council’s priorities for the next Internal Security Strategy. The Conclusions:

- expressly recognise “the need for an involvement of the European Parliament and national Parliaments”, as well as the central role of the EU Standing Committee on internal security (COSI) in promoting operational cooperation and in monitoring and implementing the EU’s Internal Security Strategy;

- identify the following “main common threats and challenges”: serious and organised crime; terrorism, radicalisation and recruitment, and terrorist financing; cybercrime and cyber security; threats associated with the use of new technologies; monitoring of new and emerging threats; and crises and natural or man-made disasters;

- set out the main components for ensuring a comprehensive and coherent approach encompassing law enforcement, border management, judicial and customs authorities, civil protection agencies, public and private sector bodies, NGOs, Member States, EU institutions and international organisations;

- underline the need to develop closer links between internal and external security;

- make clear that the protection of fundamental rights should be integrated into the EU’s legislative and operational work in the field of internal security; and

- call for greater emphasis to be placed on strengthening operational cooperation and on the “consistent, coherent and effective implementation, application and consolidation of existing tools, legislation and policy measures”.

The Minister’s letter of 3 March 2015

3.15 The Minister (Karen Bradley) first describes the five strategic objectives set out in the EU Internal Security Strategy which expired at the end of December 2014 (see paragraph 3.11) and notes that the Commission has published three implementation reports to monitor progress, the most recent last June. She refers to the commitment to review and 

See Council Conclusions.
update the EU Internal Security Strategy (ISS) by mid-2015 contained in the new strategic guidelines agreed by the European Council in June 2014, and continues:

“The Government considers that this is an important opportunity to update the existing ISS to reflect the changing world we are operating within. Following the recent attacks in Paris and the disruption of plots throughout Europe, the UK wants particularly to see action taken at a European level to tackle the current threat of terrorism from individuals returning from Syria and Iraq.”

3.16 The Minister lists the Government’s priorities for inclusion in the revised Internal Security Strategy:

- addressing the movement of foreign fighters and weapons throughout Europe;
- ensuring that aviation security keeps pace with the evolving threat;
- supporting the removal of online terrorist and extremist propaganda through referrals at the European level;
- enhancing EU efforts to help Member States be more proactive in countering radicalisation and extremism through strategic communications;
- achieving more proactive information-sharing between law enforcement agencies;
- ensuring more international co-ordination to address the continual threat from cybercrime;
- tackling the specific crimes of human trafficking, slavery and the abuse of free movement; and
- enhancing efforts to strengthen the EU’s external borders and ensuring that all Member States operate effective asylum and border management systems.

3.17 The Minister considers that the Conclusions agreed by the Justice and Home Affairs Council in December 2014 reflect these UK priorities, adding:

“In particular, the Council Conclusions include calls for EU level action to tackle the ‘different forms and consequences of’ human trafficking. We consider this to be a significant commitment at EU level to addressing human trafficking and its read across to the wider issue of modern slavery. In addition, there were references to preventing terrorism and addressing radicalisation; enhancing information sharing; tackling cybercrime; and the reinforcement of the role of COSI [the Standing Committee on operational cooperation on internal security] in monitoring and implementing the new ISS.”

3.18 The Minister outlines the “next steps” which she expects to take place after the dissolution of Parliament but which will remain subject to the usual scrutiny arrangements.

“You will be aware that the European Commission launched an open consultation on the renewal of the ISS in summer 2014 and the UK provided a detailed response to this, based on the key priorities detailed above. The Commission’s follow-up Communication on a ‘European Agenda for Security’ is expected to issue in April, by
which time Parliament would have been dissolved. We expect the Communication to draw on the JHA Council Conclusions from December as discussed above. We also anticipate that it will take into account the recent events such as the Paris attacks in January. Your Committee will, of course, receive the customary EM on this document.”

3.19 The Minister expects the revised EU Internal Security Strategy to be agreed at the Justice and Home Affairs Council in June, fulfilling the commitment in the strategic guidelines for review and renewal by mid-2015. She continues:

“This will stem from the ‘European Agenda on Security’ but at present it is unclear what form the new ISS agreed at Council will take; whether it will be the Communication itself or Council Conclusions stemming from it. I hope that the update on progress above is helpful in setting out the Government’s approach and key priorities for inclusion in the new ISS that will be agreed.”

3.20 The Minister says she will continue to “update the Committee on any future developments”.

Previous Committee Reports


4 Protection of trade secrets

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Draft Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

Legal base

Article 114 TFEU; QMV; ordinary legislative procedure

Department

Business, Innovation and Skills

Document number

(35623), 17392/13 + ADDs 1–3, COM(13) 813

Summary and Committee’s conclusions

4.1 Trade secrets can cover a wide range of different types of information, such as technical innovations, recipes, business processes or customer information. Businesses use trade secrets either alongside formal intellectual property (IP) rights or as an alternative to them.
4.2 Unlike IP rights, the knowledge contained in trade secrets is not exclusive to the trade secret holder. It is possible independently to acquire and use the same knowledge, including through taking a product apart to see how it works.

4.3 Provided it can be kept secret, a trade secret can also be protected indefinitely, in contrast, for example, to the 20-year term of patent protection. For industries with long product life cycles, trade secrets can therefore be an important part of a strategy to protect and exploit intangible assets.

4.4 Our Report of 12 February 2014 provides an outline of the Commission’s proposal. Broadly it would —

• establish a common definition of a “trade secret”;

• harmonise the circumstances which the acquisition, use and disclosure of a trade secret is unlawful; and

• harmonise procedures for redress and the remedies that should be made available to the holder of a trade secret.

4.5 We have already concluded that the stated cross-border objectives of the proposal provide a sufficient basis to justify action at EU level, and noted that the protection of trade secrets under the UK’s common and contract law is consistent with the terms of the proposed draft Directive, other than the shorter limitation period proposed by the Commission.

4.6 On 7 May 2014 we granted a scrutiny waiver to enable the government to agree the General Approach which was adopted at the Competitiveness Council of 26 May 2014, and addressed the issue of limitation periods for actions in such a manner that domestic limitation periods could be maintained. In doing so we asked the Minister for further information on the implications of the EU exercising competence in this area of the first time; and on two concerns raised by national stakeholders, namely the impact on employer/employee relations and the absence of provisions to secure evidence.

4.7 The Minister for Intellectual Property (Baroness Neville-Rolfe) now writes to indicate that trialogue negotiations involving the European Parliament are likely to start in May or June this year, and to provide a comprehensive response to the issues we have raised and an update on the outstanding issues emerging from the early deliberations of the European Parliament.

4.8 We are grateful for the informative update the Minister has provided. It is an example of good scrutiny practice.

4.9 As this matter progresses to trialogue negotiations involving the European Parliament we remain supportive of the Council’s General Approach.

4.10 We draw to the attention of the House the Government’s assessment that the exercise of competence by the EU in this field will have limited impact given the existing EU and international legislation.
4.11 Whilst the Minister has asked for scrutiny clearance, we consider it appropriate to retain this matter under scrutiny pending the outcome of the trialogue negotiations. We ask for a further update when there are significant developments or when the trialogue negotiations have been completed.

**Full details of the documents:** Draft Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure: (35623), 17392/13 + ADDs 1–3, COM(13) 813.

**The Minister’s letter of 26 February 2015**

4.12 The Minister identifies the following key issues:

- **“Confidentiality provisions.”** Concerns have been raised that the provisions in the Directive jeopardise the right to a fair trial and could mean that parties might be unaware of accusations made against them. The courts in the UK have experience of operating similar practices without controversy. However, the General Approach agreed by the Council goes some way to addressing such concerns.

- **“Limitation period.”** We were successful in securing in the General Approach a limitation period that is consistent with the periods currently applied in the UK — six years in England and Wales and Northern Ireland, five years in Scotland. The Government took the view that the period proposed by the European Commission (one to two years) would in many instances be too short a time in which to assemble a case that would be worth pursuing. There has been a suggestion from some MEPs that the period needs to be short to prevent the strategic use of litigation for anti-competitive purposes, particularly where an employee has joined another firm. The Directive already contains provisions in Article 6 that would enable courts to throw out cases or impose sanctions (in accordance with national law), if they find that a claim is manifestly unfounded and has been brought in bad faith.

- **“Labour mobility.”** The Government agrees that labour mobility is good for the economy. When employees move to different firms or start a new business, they bring knowledge, skills and experience that can benefit the firm and the economy as a whole. MEPs have stressed their commitment to the ability of workers to seek new jobs and some are concerned that the Directive could have a negative impact in this respect. The example of Silicon Valley has been cited, but it is important to note that California does in fact have a trade secret law. It does not require non-compete clauses in employment contracts, but these are not a necessary part of trade secret protection.

“I am aware of stakeholder concerns that the Commission’s text seemed to provide lower protection for trade secrets gained by an employee during the course of his or her employment. This is a concern because former employees are among the most commonly cited sources of risk of trade secret misappropriation. Recital 8 of the Commission text said that such information would not come within the definition of ‘trade secret’ if it were ‘known among or accessible to persons within the circles that normally deal with the kind of information in question’. By contrast, the TRIPS
Agreement requires protection of confidential information so long as it is 'not generally known among or readily accessible' to such persons. The General Approach agreed by the Council contains language that is consistent with the TRIPS Agreement. The Government is keen to see that an appropriate balance is struck between the interests of the employer and the employee.”

4.13 In relation to the fact that this would be the first exercise of competence by the EU in this particular field the Minister provides this information:

“Article 39 of The World Trade Organisation’s Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires all members to protect trade secrets. This requirement has been implemented in different ways across the European Union.

“The EU has already exercised its internal competence in the area of trade secrets. Directive 2004/48/EC on the Enforcement of Intellectual Property Rights applies to trade secrets and, insofar as it has done so, it is not therefore open to Member States to exercise competence unless the EU ceases to do so (see Article 2(2) TFEU).

“As regards matters relating to trade secrets which are not covered by the Enforcement Directive, the adoption of the proposed Directive would be an exercise of EU shared competence in the area of trade secrets in the internal market. The responses from business to pre-legislative studies indicate that the differences in treatment can distort the internal market, with 38% of respondents saying that they reduce the incentives to collaborate with companies or research organisations in other Member States.

“The Government thinks that it is appropriate for the EU to exercise its competence in this area, based on Article 114 of the TFEU, allowing for the adoption of EU rules harmonising national legislation if they are necessary for the smooth functioning of the internal market. Member States have adopted different definitions of trade secrets and unlawful behaviour, so that it can be difficult for businesses to understand the scope of protection. There are also significant differences in available remedies and in the ability to maintain confidentiality during legal proceedings. Weaker protection means that trade secret holders have to accept the greater risk of misappropriation or invest more in security measures, and makes it more likely that infringing goods enter the internal market.

“The proposed Directive would provide innovative businesses that operate across the EU with greater clarity. The text, as it currently stands, would not prevent Member States from applying more far-reaching protection, provided that this is consistent with the safeguards contained in the Directive.

“I will now turn to the question of external competence. While the Union has exclusive competence for the conclusion of an international agreement in so far as its conclusion may affect common rules or alter their scope, in so far as the Directive would contain minimum standards, the EU would not have exclusive competence where the international agreement also contains minimum standards.
“The Committee remarked on the role of the Court of Justice of the EU, which would have jurisdiction to interpret the provisions of the Directive, once adopted. As I have explained above, the difference in treatment between Member States decreases businesses’ confidence in sharing knowledge across borders. Applying the same minimum standards across the European Union will reduce such barriers to knowledge and technology transfer.

“Even if the Directive is not adopted, the Court of Justice of the EU has jurisdiction to interpret the provisions of Article 39 of the TRIPS Agreement by virtue of this being considered to be within exclusive EU competence. This follows from the Court’s ruling in (C-414/11).”

4.14 Finally the Minister raises a new issue:

“Stakeholders have noted the absence of provisions for obtaining evidence. Such provisions are available in the IP Enforcement Directive (Directive 2004/48/EC). Recital 13 of that Directive states that ‘It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field and/or by the national law of the Member States concerned’. The Recitals of the proposed Trade Secrets Directive acknowledge that the IP Enforcement Directive applies to trade secrets: ‘… where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council and the scope of this Directive overlap, this Directive takes precedence as lex specialis’ (Recital 28). In practice, the preliminary study by Baker & McKenzie indicates that measures to secure evidence are available in all but three of the then 27 Member States.”

Previous Committee Reports

5 Single-member private limited liability companies

Committee’s assessment \hspace{1cm} Legally and politically important
Committee’s decision \hspace{1cm} Not cleared from scrutiny; further information requested; scrutiny waiver granted to agree a General Approach at the 28 May Competitiveness Council

Document details \hspace{1cm} Draft Directive on single-member private limited liability companies
Legal base \hspace{1cm} Article 50 TFEU; ordinary legislative procedure: QMV
Department \hspace{1cm} Business, Innovation and Skills
Document numbers \hspace{1cm} (35953), 8842/14 + ADDs 1–5, COM(14) 212

Summary and Committee’s conclusions

5.1 This proposal would require Member States to establish, as part of their national law, a specific form of single member private liability company (SUP, standing for Societas Unius Personae) which would be subject to standard and simplified rules for its formation and governance. A business, particularly any small and medium sized enterprises, would then have the option of forming an SUP with a view to alleviating the extra burdens of carrying out cross-border business. Fuller details of the proposal are set out in our Report of 4 June 2014 and some key features are outlined below.

5.2 The Committee has sought the views of stakeholders. The Minister has reported little interest from the business community, but it sees some benefit in the simplification of the rules of other Member States.

5.3 The Committee has also supported the Government’s negotiating objectives of:

- seeking to ensure simplified registration across the EU;
- keeping the proposal as close as possible to UK law;
- removing or limiting the articles relating to the management and control of the SUP, and rules on distributions and dissolution; and
- removing the power of the Commission to determine by the delegated legislation procedure\(^ {11}\) the type of company in each Member State which must conform to the coordinating measures of the proposed Directive.

5.4 In addition the Government has been considering options in relation to powers conferred upon the Commission using the implementing legislation procedure to adopt uniform templates for the articles of association of an SUP and to register it on line.

\(^ {11}\) The delegated legislation procedure, set out more fully in Article 290 TFEU, essentially allows either the European Parliament or the Council to reject a Commission proposal for legislation. The implementing legislation procedure, set out in Article 291 and Regulation 182/2011, requires the Commission proposal to undergo scrutiny by a comitology Committee of the representatives of the Member States scrutinise it. In this case the Committee can, ultimately, reject a proposal if there is a qualified majority of Member States opposed to it.
5.5 The Minister for Employment Relations and Consumer Affairs and Minister for Women and Equalities (Jo Swinson) reports confidence on the part of her officials that “the proposal is now heading in the right direction” and seeks clearance from scrutiny to agree a prospective “General Approach” at the Competitiveness Council of 28 May 2015.

5.6 We are grateful for the further prompt and helpful update provided by the Minister.

5.7 Given the progress of negotiations and the optimistic forecast for future progress we are prepared to give a waiver to enable agreement to be given to a prospective General Approach of the Council at the May Competitiveness Council.

5.8 The document is otherwise retained under scrutiny pending future negotiations with the European Parliament. We should be grateful for a copy of any General Approach agreed with an update covering this and any issues that she anticipates will arise in the trialogue negotiations.

Full details of the documents: Proposal for a Directive on single-member private liability companies: (35953), 8842/14 + ADDs 1–5, COM(14) 212.

Background

5.9 The key elements of the proposal are:

- Member States would be required to provide in their national legislation a company law form for single-member private limited liability companies. Member States would have the choice of how to introduce such a company form, e.g., by creating an additional form of single-member companies or by replacing an already existing form with SUP;

- Member States would be obliged to allow for direct online registration of SUPs, without the need for a founder to travel to the country of registration for this purpose;

- The proposal would provide for a standard template of articles of association, which would be identical across the EU, available in all EU languages and would contain the necessary elements to run a single-member private limited liability company. The use of the standard articles of association would be required if the SUP is registered electronically. If another form of registration is allowed by national law, the template would not have to be used, but the articles of association would need to comply with the requirements of the Directive; and

- Protection for creditors would be ensured, through a balance sheet test and a solvency statement.

The Minister’s letter of 2 March 2015

5.10 The Minister indicates that negotiations are at an advanced stage and the good progress has been made in streamlining the proposal. She continues:
“We are still hoping to achieve some significant changes to the proposal, particularly to Articles 11 (to remove the Commissions’ power to adopt a uniform template for the articles of association via an implementing act). Article 13 (to ensure we can ask for various other items during the registration process). Article 18 (to remove all provisions on distributions and share capital reduction).

“The UK has worked hard collaboratively within the working group and also bilaterally with the Commission, Presidency and individual Member States to successfully gain support and agreement in simplifying the dossier.

“As a result most of Chapter 7 of Part 2 (Organisation) has been removed from the proposal and other Articles have been amended. We continue to push in the negotiations for further streamlining of the proposal and for the proposal to concentrate on registration requirements and ensuring that online registration is offered in all Member States.

“This will offer benefits to UK businesses seeking to establish single member private limited liability companies in other Member States.

“The issue of powers to make delegated and implementing Acts remains and negotiations are progressing. The UK continues to argue against the conferral on the Commission of the power to make delegated acts and of the power to adopt a uniform template for an SUP’s articles of association via an implementing act.

“There is some support from other Member States within the working group for the removal of the power to make delegated acts, and we have made it clear that the UK is opposed to the conferral of such a power in principle.

“We are continuing in the negotiations to push for amendments which will ensure that any template produced by the Commission (by means of an implementing act) for the online registration of SUPs will enable the online registration process for UK SUPs to be as consistent as possible with the online registration process for other UK private limited liability companies.”

Previous Committee Reports

Earth observation satellite data

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; further information requested

Document details
Draft Directive about dissemination of Earth observation satellite data for commercial purposes

Legal base
Article 114(1) TFEU; co-decision; QMV

Department
Business, Innovation and Skills

Document numbers
(36150), 11002/14 + ADDs 1–3, COM(14) 344

Summary and Committee’s conclusions

6.1 The Commission presented this draft Directive, as a single market issue, to harmonise the rules that govern the dissemination of Earth observation data, and particularly that of high resolution satellite data (HRSD), to address possible fragmentation of the EU market. When, in July 2014, we considered this proposal the Government reported to us considerable doubt as to the need for the draft Directive, which the Commission had justified on the basis of a very inadequate consultation and impact assessment. As for the substance of the draft Directive the Government drew attention to its fundamental security concern about the definition of sensitive data, which it said is wider than just HRSD.

6.2 We noted that the Government recognised that some form of control of HRSD is necessary on national security grounds. We commented, however, that the draft Directive appeared unacceptable, at least in its present form. Accordingly, before considering this matter further we asked to hear from the Government on a number of points, which it now addresses.

6.3 We are grateful to the Government for its account of where matters stand on this proposal at present. We look forward to a further account of developments, particularly in relation to the use of Article 114 TFEU as a legal base, and to receiving the Government’s impact assessment. Meanwhile the document remains under scrutiny.

Full details of the document: Draft Directive on dissemination of Earth observation satellite data for commercial purposes: (36150), 11002/14 + ADDs 1–3, COM (14) 344.

Background

6.4 The Commission’s 2013 Communication, EU Space Industrial Policy: Releasing the potential for economic growth in the space sector,12 set out its view on the need for a coherent regulatory framework to foster the EU market in space products and services. It referred in particular to establishing a possible regulatory initiative for the production and

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dissemination of HRSD for commercial purposes. In May 2013 the Council adopted Conclusions on the Communication and related documents which recognised “the need to examine existing legal frameworks with a view to ensuring the security, safety, sustainability and economic development of space activities” and invited “the Commission to assess the need for the development of a space legislative framework in the context of ensuring the proper functioning of the internal market, respecting the principle of subsidiarity”.

6.5 In June 2014 the Commission presented this draft Directive, as a single market issue, to harmonise the rules that govern the dissemination of Earth observation data, and particularly that of high resolution satellite data (HRSD), to address possible fragmentation of the EU market. The Commission noted that currently only three Member States have legislation in place on this issue. It argued that this is liable to cause distortion of competition, and that such distortion is likely to increase as more countries gain HRSD capabilities. The Commission said that approximating Member States’ legislation would ensure the proper functioning of the single market, as it would make dissemination of data more straightforward and predictable for businesses.

6.6 When, in July 2014, we considered this proposal the Government reported to us considerable doubt as to the need for this draft Directive, which the Commission had justified on the basis of a very inadequate consultation and impact assessment. As for the substance of the draft Directive the Government drew attention to its fundamental security concern about the definition of sensitive data, which it said is wider than just HRSD.

6.7 We noted that whilst the Government considered that the necessity for EU action remaining open to question, and it was highly critical of the Commission’s consultations and impact assessment, it nevertheless recognised that some form of control of HRSD is necessary on national security grounds. We commented, however, that this draft Directive appeared unacceptable, at least in its present form. Accordingly, before considering this matter further we asked to hear from the Government:

- about responses to any attempt it might make to persuade the Commission to withdraw the proposal or to persuade Member States to join in blocking it;
- failing success on that front, about negotiation of improvements to the proposal, particularly in relation to a more nuanced coverage of data, the dissemination of which might give rise to security concerns, and to the question of whether a Common Security and Defence Policy legal base would be more appropriate; and
- about the outcome of the Government’s own impact assessment.

6.8 Meanwhile the document remained under scrutiny.

The Minister’s letter of 4 March 2015

6.9 The Minister of State for Universities and Science, Department for Business, Innovation and Skills (Greg Clark), addresses first our question about responses to any

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attempt it might make to persuade the Commission to withdraw the proposal or to persuade Member States to join in blocking it. He says that:

- the Government led efforts to delay negotiations on the draft Directive until Member States’ concerns about the Commission’s impact assessment were addressed;
- as a result, the Member States, in COREPER, on 17 October 2014 called on the Commission to update its impact assessment and confirmed that there would be no further discussion of the legislative text until further evidence was produced;
- the Commission has now provided further evidence requested by Member States and this was discussed at the Space Working Group on 6 February;
- while the evidence did not go as far as some Member States (including the UK) would have liked, it appears to have satisfied the demands of the majority; and
- the Government will keep on making the case for further evidence to be put forward where outstanding issues remain.

6.10 As for negotiation of improvements to the proposal the Minister tells us that:

- whilst the impact assessment was being updated, the Government continued to work with like-minded Member States to address the outstanding security concerns raised by the proposed Directive;
- its aim is to replace the current narrow focus on HRSD with an approach that brings into scope lower resolution data that is sensitive;
- separately, the Government is also looking to agree a mechanism for dealing with disputes when a Member State’s national security is at stake from another Member State’s decision to release data; and
- this would require some exchange of sensitive information between Member States with HRSD capacity and the Government’s view is that this does not sit easily under Article 114 TFEU and may be more appropriately dealt via a series of bilateral agreements or a multilateral one.

6.11 The Minister says that the Government is reviewing its own impact assessment to ensure it fully addresses the concerns that it has raised in working groups relating to the economic impact of the proposal and that, once this is complete, it will inform us of the outcome.

6.12 Finally, the Minister tells us that, at the moment, he does not expect negotiations to conclude before September.

Previous Committee Reports

### 7 Regulation of medical devices

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**Document details**

- (a) Draft Regulation on medical devices
- (b) Draft Regulation on *in vitro* diagnostic medical devices

**Legal base**

(Both) Articles 114 and 168(4)(c) TFEU; co-decision; QMV

**Department**

Health

**Document numbers**

- (a) (34294), 14493/12 + ADDs 1–5, COM(12) 542
- (b) (34295), 14499/12, COM(12) 541

**Summary and Committee’s conclusions**

7.1 These draft Regulations would repeal and replace three existing Directives which establish the EU regulatory framework for medical devices. The first — document (a) — applies to all types of medical devices, including implants. The second — document (b) — applies to *in vitro* diagnostic medical devices used to test samples derived from the human body. Both seek to introduce a more rigorous system for Member State supervision of “notified bodies” — bodies responsible for certifying that medical devices are safe for use — and to ensure greater transparency and accountability in relation to devices and their manufacturers.

7.2 The Government broadly welcomes the draft Regulations, subject to two principal concerns. First, it considers that the Commission’s proposals to introduce additional pre-market scrutiny of higher risk devices by a central Committee of Member State experts would be ineffective, overly bureaucratic and delay patient access to life-changing medical technologies. Second, it questions the proposed removal of an existing exemption for “in house” devices manufactured and used within the same health institution which would substantially increase costs within the NHS.

7.3 Our earlier Reports, listed at the end of this chapter, provide a detailed overview of these important and complex draft Regulations, the Government’s position, the outcome of a public consultation undertaken by the UK’s Medicines and Healthcare products Regulatory Agency (MHRA), and the First Reading amendments agreed by the European Parliament in April 2014.

7.4 Last November, we agreed to grant a scrutiny waiver to enable the Government to support a possible general approach at the December 2014 Health Council. In doing so, we noted that there was broad agreement in Council on the need for an exemption for “in house” *in vitro* diagnostic medical devices, with discussions focussing on ensuring that such devices meet minimum safety standards. We considered that the Government had set
out clearly the terms on which it would be willing to support a compromise on pre-market scrutiny for higher risk medical devices and expressed support for its efforts to secure an outcome which was “clinically focussed”, applicable to a narrowly defined range of products, and did not undermine the wider objective of improving the quality of all notified bodies.

7.5 In the event, the December Health Council was unable to agree a general approach. In his latest letter, the Minister for Life Sciences (George Freeman) explains how the Latvian Presidency intends to approach the negotiations. He anticipates that the Health Council will be invited to reach either a political agreement or a general approach in June and asks us to grant a waiver on the terms previously agreed last November in order to enable the UK to support an acceptable Presidency compromise text.

7.6 As the Minister indicates, there is every prospect that the Council will agree a general approach, or reach a wider political agreement with the European Parliament, in June, before our successor Committee has been established. When we granted a scrutiny waiver last November, ahead of the December Health Council, we noted that the Minister had set out clearly the terms on which the Government would be willing to support a compromise Presidency text. The Minister reiterates those terms in his latest letter. Given the circumstances, and the Minister’s foresight in requesting a scrutiny waiver to obviate the risk of an override, we agree to renew the scrutiny waiver.

7.7 We ask the Minister to report back to our successor Committee on the outcome of the Health Council and to make available the text of the general approach (or any wider political agreement) reached at the Council. Meanwhile, the draft Regulations remain under scrutiny. We draw the latest developments to the attention of the Health Committee and the Science and Technology Committee.

**Full details of the documents:** (a) Draft Regulation on medical devices, and amending Directive 2001/83/EC, Regulation (EC) No. 1223/2009: (34294), 14493/12 + ADDs 1–5, COM(12) 542; and (b) Draft Regulation on *in vitro* diagnostic medical devices: (34295), 14499/12, COM(12) 541.

**Background**

7.8 In our earlier Reports, we indicated that we were content with the way in which the Government intended to approach negotiations. We shared the Government’s concern that the introduction of additional pre-market scrutiny of higher risk medical devices might delay patient access to new technologies and increase costs for manufacturers without delivering any significant benefits for patient safety. We noted that the Government’s consultation of stakeholders revealed mixed views on the need to maintain an existing exemption for high risk *in vitro* diagnostic devices developed and used within a single health institution (so-called ‘in-house’ tests). We asked the Government to inform us of any significant developments in the negotiations, particularly on these two issues, and to indicate what type of compromise the Government would be willing to accept to address shortcomings in the current regulatory system without introducing a further layer of pre-market scrutiny. We also welcomed the Government’s efforts to increase transparency — a key concern raised by the Science and Technology Committee in its Report, *Regulation of*
medical implants in the EU and the UK\textsuperscript{14} — and the Minister’s confirmation that the UK’s efforts in this area would be reflected in the final agreed text.

7.9 The European Parliament (EP) formally agreed its First Reading position on both draft Regulations in April 2014. The EP proposed that certain high risk medical devices should be assessed by “special notified bodies” designated by the European Medicines Agency and that there should be a further tier of scrutiny, applicable on a case-by-case basis, to be carried out by an expert Assessment Committee for Medical Devices. The Government opposes these changes on the grounds that they may dilute responsibility for pre-market approval, create a longer and more uncertain approval process, and increase costs. It also opposes the EP’s proposal to include new provisions on genetic testing, counselling and informed consent in the draft Regulation on in vitro diagnostic medical devices.\textsuperscript{15}

The Minister’s letter of 5 March 2015

7.10 The Minister (George Freeman) notes that the Latvian Presidency’s draft agenda for the Health Council on 19 June envisages two possible outcomes: a political agreement or a general approach. He anticipates that a general approach is the most likely outcome and explains how this differs from a political agreement:

“To clarify, when adopting such a ‘general approach’ after the European Parliament has adopted its position at first reading, the Council is not acting within the meaning of paragraphs 4 and 5 of Article 294 of the Treaty on the Functioning of the EU. This means that the Council is not adopting a formal first reading position.

“The Latvian Presidency would choose this approach because it means that the Presidency can use the ‘general approach’ as a mandate to start trilogues with the European Parliament in an effort to reach an early second reading deal. This is where informal trilogues between the Council, European Parliament and European Commission take place, with Ministers then adopting a first reading position in a subsequent Council meeting, which the European Parliament is then able to accept without any amendments in their second reading position.”

7.11 The Minister considers there to be “a slim chance” that the Latvian Presidency will make sufficient progress to complete informal trilogues with the European Parliament and the Commission and to seek political agreement at the Health Council to a formal first reading position. He continues:

“Either way, with our Parliament expected to prorogue in late March, it is highly unlikely we will be able to return to this Committee to set out the near-final Presidency compromise text before Health Council on 19 June.”

7.12 The Minister acknowledges our hesitancy to clear the draft Regulations from scrutiny until we have a better understanding of the content of any Presidency compromise text on pre-market scrutiny, also one of the Government’s key negotiating objectives. He adds:

\textsuperscript{14} Fifth Report of Session 2012–13, HC 163.

\textsuperscript{15} The main changes proposed by the EP are described in our Twenty-eighth Report of Session 2013–14.
“Therefore I am not requesting formal scrutiny clearance at this stage. However, I would like to reassure the Committee that my officials have been working closely with our coalition of like-minded Member States and the European Parliament to ensure that a compromise involving any additional pre-market scrutiny is clinically focussed and applicable only to a narrowly defined range of products. As I set out in my letter of 24 October, key points we want to avoid are substantial duplication of a notified body’s own pre-market assessment and any shift of decision making away from notified bodies to Member States. If necessary, the UK would be prepared to vote against an unacceptable compromise on pre-market scrutiny, though I note that if we were to be opposed by a qualified majority then the proposal would be accepted regardless.”

7.13 The Minister reiterates his request for a scrutiny waiver “on the basis that the Government will only support a ‘general approach’ or formal first reading position in Council that falls within the parameters I outlined in my earlier letter regarding our key negotiating objectives”. He undertakes to provide a formal update to our successor Committee on the outcome of the Health Council and on the next steps in the negotiating process. Meanwhile, he offers to provide further details on the substance or progress of negotiations at official level.

**Previous Committee Reports**


**8 Vehicle registration**

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<td>(33822), 8794/12 + ADDs 1–2, COM(12) 164</td>
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Summary and Committee’s conclusions

8.1 Businesses and individuals purchasing new and used vehicles in other Member States can find it burdensome to import and re-register the vehicles, depending on the Member State concerned, as there is little harmonisation over the requirements for importation. In April 2012 the Commission presented a draft Regulation to simplify re-registration and transfer of vehicles registered in another Member State.

8.2 We have considered the proposal several times and have commented that clearly simplification of transferring vehicles between Member States and of their re-registration would be welcome to many. When we last considered the draft Regulation, in October 2013, we had an account of where matters stood on the proposal. We said we would not consider the matter again until we heard further from the Government, whether in connection with further developments in Council consideration or with its promised impact assessment. We asked in particular to know then whether the Government believed (perhaps on the basis of its further consideration of the UK position on the proposal) any remaining negative impacts were outweighed by the positive ones.

8.3 The Government tells us now that:

- Council consideration of the draft Regulation was stalled for a long time by the request of a blocking minority of Member States for further Commission analysis of potential tax loopholes;
- following a Commission response, six Member States have again expressed concerns about tax loopholes and additionally about the proposed use of an EU data sharing platform; and
- that a further Commission response is awaited.

8.4 We are grateful for this update of where matters stand and look forward to receiving, in due course, news of progress on the draft Regulation and the Government’s impact assessment, particularly as to whether the positive impacts outweigh the negative ones. Meanwhile the document remains under scrutiny.

Full details of the documents: Draft Regulation simplifying the transfer of motor vehicles registered in another Member State within the Single Market: (33822), 8794/12 + ADDs 1–2, COM(12) 164.

Background

8.5 Businesses and individuals purchasing new and used vehicles in other Member States can find it burdensome to import and re-register the vehicles, depending on the Member State concerned, as there is little harmonisation over the requirements for importation — this would appear to contradict the principles of the single market.

8.6 In April 2012 the Commission presented this draft Regulation to simplify re-registration and transfer of vehicles registered in another Member State. In summary, the proposed Regulation would:
• confirm that Member States are entitled to exempt various categories of motor vehicles from registration (such as vehicles used by the armed forces);

• provide clear definitions for registration of vehicles already subject to existing regulations on type approvals;

• state clearly where and when a vehicle re-registration should occur;

• allow citizens and businesses six months to re-register their vehicles when transferring from one Member State to another;

• elucidate precisely the situations where a Member State may refuse the registration of a vehicle originating from another Member State;

• harmonise rules for the temporary registration of motor vehicles and set out the insurance liabilities of those vehicles;

• organise the electronic exchange of vehicle registration data between Member States; and

• harmonise the rules on so-called “professional registration” (that is, trade plate) schemes for manufacturers, assemblers, dealers and distributors.

8.7 We have considered the proposal several times and have commented that clearly simplification of transferring vehicles between Member States and of their re-registration would be welcome to many. However, we have noted that the Government had reservations on some points, some of which have been resolved, and we have had the Government’s assessment of possible positive and negative impacts of the proposal.

8.8 When we last considered the draft Regulation, in October 2013, we had an account of where matters stood on the proposal. We said we would not consider the matter again until we heard further from the Government, whether in connection with further developments in Council consideration or with its promised impact assessment. But we reminded the Government that we still wished to know the outcome on issues mentioned to us previously, such as the use of EUCARIS, the “European car and driving licence information system”.16 We also still needed to know whether the Government believed (perhaps on the basis of its further consideration of the UK position on the proposal) any remaining negative impacts were outweighed by the positive ones.

8.9 Meanwhile the document remained under scrutiny.

The Minister’s letter of 3 March 2015

8.10 The Parliamentary Under-Secretary of State, Department for Transport (Mr Robert Goodwill), writes now with an update on this proposal. The Minister tells us that negotiations in the Council working group were stalled for a long time because a group of Member States raised strong reservations about Article 3 of the proposal, concerning the
conditions under which a Member State may require a vehicle registration be transferred. He says that those Member States argue that:

- these conditions could create the potential for a tax loophole whereby unscrupulous individuals could form their own personal fleet companies by registering vehicles in one Member State for the purposes of tax avoidance in another Member State; and

- such an outcome could have negative impacts on the ability of the affected Member States to collect taxes on vehicle registrations.

8.11 The Minister continues that:

- in January 2014 a blocking minority of Member States called for the Commission to carry out further analysis of the potential impacts on taxes and vehicle registrations as that part of the original accompanying impact assessment was considered to be flawed;

- in line with the UK’s better regulation principles, the Government joined the call for further impact assessment;

- although the tax loophole issue is not relevant to the UK because of the way the Government collects road tax and the lack of a vehicle registration tax, it sympathises with the position of Member States which believe that this proposal would have significant impact on their tax revenue;

- the call for further analysis led to negotiations being put on hold while the Commission gathered information from Member States, and carried out its analysis of the residency and taxation issues; and

- the Commission set out its analysis in a non-paper in December 2014 (a copy of which the Minister attaches to his letter).17

8.12 The Minister tells us that the non-paper considered the issues Member States raised in this area, but not with the level of detail that would be expected, and the conclusions it reached are not supported by some Member States. He says that, in brief:

- the Commission acknowledges there may be a problem with the text as currently written, but asserts a belief that few incentives are created, citizens and companies are not expected to make significant behavioural changes, and a majority of Member States would see no impact on taxation income; and

- there is also an assumption that the single market benefits would by far outweigh any problems created by the text.

8.13 The Minister continues that:

17 Cabinet Office.
• the position of those Member States which are objecting to the nature of Article 3 is that up to 10% of total taxation revenue in those states comes from ownership and operation of motor vehicles;

• their resistance to any change impacting on this revenue stream is therefore understandable;

• after publication of the non-paper, six Member States wrote to the Commission to reiterate their concerns about tax loopholes, and added further, and possibly more significant, concerns about the shortcomings of the EUCARIS system, which has different levels of opt-in from the Member States and the risks to enforcement of road traffic offences; and

• the Commission’s response is awaited, and in the meantime the Government is giving further consideration to its position on this proposal, including how best to preserve its single market benefits.

8.14 The Minister also tells us that the following concessions have been achieved in negotiations:

• the existing EUCARIS is confirmed as the data sharing platform for re-registered vehicles;

• data shared via EUCARIS would be tightly controlled and not passed to other enforcement bodies, in line with Directive 95/46/EC, the Data Protection Directive;

• there are limits on the extent of vehicle data that is to be shared;

• clearly defined circumstances under which re-registration may be refused (for example, opposite drive vehicles);

• Temporary Registration Certificates will only last thirty days;

• no requirement to register vehicle trailers; and

• no requirement to re-register vehicles on behalf of unincorporated bodies.

Previous Committee Reports
9 European Globalisation Adjustment Fund

Committee’s assessment
Politically important

Committee’s decision
Not cleared from scrutiny; further information requested

Document details
Ten draft Council Decisions to authorise payments from the European Globalisation Adjustment Fund to Poland, Belgium (four), Germany, Greece (two) and France

Legal base
Article 12(3) of Regulation (EC) No. 1927/2006 (based on Article 159 TEC) and (Article 15(4) of Regulation (EU) No. 1309/2013 (based on Article 175 TFEU), in conjunction with point 13 of the Interinstitutional Agreement of 2 December 2013 on budgetary discipline, on cooperation in budgetary matters and on sound financial management; co-decision; QMV

Department
HM Treasury

Document numbers
(a) (36617), 5523/15, COM(15) 13; (b) (36618), 5525/15, COM(15) 9; (c) (36619), 5529/15, COM (14) 725; (d) (36620), 5532/15, COM(14) 735; (e) (36621), 5534/15, COM(14) 734; (f) (36622), 5537/15, COM(14) 726; (g) (36646), 5893/15 +ADD 1, COM(15) 40; (h) (36648), 5895/15 + ADD 1, COM(15) 37; (i) (36659), 6121/15, COM(15) 47; (j) (36683), 6562/15, COM(15) 68

Summary and Committee’s conclusions

9.1 The European Globalisation Adjustment Fund, established in 2006, was designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation. The Government does not apply for finance from this fund. (It opposed its renewal in 2013, an opposition we endorsed.) There is a fairly steady stream of successful applications from other Member States.

9.2 In February, we considered draft Decisions to approve applications from Poland, Belgium (four), Germany and Greece (two) for contributions from the Fund. Noting that we do not normally report substantively on European Globalisation Adjustment Fund applications we said, however, that we had become increasingly concerned about the steady stream of applications assessed by the Commission as eligible for assistance from the fund. Accordingly, we took the opportunity to ask the Government a number of questions about its policy towards applications for use of the fund and its view as to its value for money. Meanwhile these documents remained under scrutiny.

9.3 The Government now gives us helpful responses to some of our questions.
9.4 The new document, a draft Decision to approve a French application for assistance from the Fund, raises similar issues as the earlier documents. The Government comments in familiar terms, including saying that:

- it is essential that EU expenditure is closely scrutinised on the basis of value for money; and

- in line with this approach, it will seek to ensure that all fund criteria have been respected in proposals for assistance.

9.5 **We are grateful to the Government for, insofar as it goes, its response to our questions. However it has not addressed our questions as to what extent the Government’s efforts to ensure that all Fund criteria are respected have resulted in limits to or even rejections of applications by the Council and whether these efforts are supported by any other Member States.**

9.6 **Accordingly, we repeat those questions. We will not consider these proposals again until answers to those questions have been received. Meanwhile the documents remain under scrutiny.**

**Full details of the documents:** (a) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2013/009 PL/Zachem from Poland): (36617), 5523/15, COM(15) 13; (b) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2013/011 BE/Saint-Gobain Sekurit from Belgium): (36618), 5525/15, COM(15) 9; (c) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2013/007 BE/Hainaut steel (Duferco-NLMK) from Belgium): (36619), 5529/15, COM(14) 725; (d) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2014/011 BE/Caterpillar): (36620), 5532/15, COM(14) 735; (e) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2014/012 BE/Arcelor/Mittal): (36621), 5534/15, COM(14) 734; (f) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2014/014 DE/Aleo Solar: (36622), 5537/15, COM(14) 726; (g) Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional

Background

9.7 The European Globalisation Adjustment Fund (EGF), established in 2006 for the period 2007–13, was designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation, in situations where these redundancies have a significant adverse impact on the regional or local economy. It was renewed for the 2014–20 budgetary period by Regulation (EU) No. 1309/2013 (the EGF Regulation), which sets out the rules governing the use (mobilisation) of the EGF. The annual budgetary ceiling for the EGF is €150 million (£120 million) in 2011 prices.

9.8 The Government does not apply for finance from this Fund. (It opposed its renewal in 2013, an opposition we endorsed.) There is a fairly steady stream of successful applications from other Member States.

9.9 In February we considered documents (a)-(i), draft Decisions to approve applications from Poland, Belgium (four), Germany and Greece (two) for contributions from the Fund. The Government commented to us on these proposals in familiar terms, including saying that:

- it is essential that EU expenditure is closely scrutinised on the basis of value for money; and
- in line with this approach, it would seek to ensure that all fund criteria have been respected in proposals for assistance.

9.10 Noting that we do not normally report substantively on EGF applications we said, however, that we had become increasingly concerned about the steady stream of applications assessed by the Commission as eligible for assistance from the fund. Accordingly, we took the opportunity to ask the Government:

- to what extent its efforts to ensure that all fund criteria are respected have resulted in limits to or even rejections of applications by the Council;
- whether these efforts are supported by any other Member States;
• whether there is any evidence that multinational companies, such as Caterpillar, choose to implement redundancies within the EU, rather than elsewhere, because of the availability of support for redundant workers from the fund;

• what significance might be attached to the apparent differences in the cost per redundant worker in different cases; and

• whether the Government is satisfied that continued use of the fund is value for money.

9.11 Meanwhile these documents remained under scrutiny.

The new document

9.12 The new draft Decision, document (j), is to approve an application from France for a contribution from the EGF. Case EGF/2014/017 FR/Mory-Ducros relates to 2,513 redundant workers in the courier services and freight transport sector who will benefit from support with a proposed EGF contribution of €6,052,200 (£4,404,791) — 50% of the total budget. The Commission accepts the French authorities’ justification for the application, that is:

• the EU market for courier services and freight transport has undergone serious disruption as a result of major structural changes in world trade patterns due to globalisation;

• according to Eurostat, road haulage in vehicles weighing more than 3.5 tonnes declined by 13.7% in the EU, and by 21% in France between 2007 and 2012;

• the decrease in volumes to be transported has been exacerbated by the increase in various associated costs (for example, wages), in turn leading to a steady deterioration of operating margins;

• this has been followed by a series of bankruptcies in the road and haulage sector in France, estimated by the Bank of France to have increased by 35% annually from 2007 to 2013; and

• Mory-Ducros, to which this application pertains, arrived at a loss of €80 million (£58.22 million) in 2012, and an estimated loss of €82 million (£59.68 million) in 2013, leading to the company’s bankruptcy and closure in November 2013 and widespread redundancies.

9.13 The Commission says that after a thorough examination of the application and in accordance with all applicable provisions of the EGF Regulation, the conditions for a financial contribution from the EGF are met.

The Minister’s letter of 9 March 2015

9.14 The Financial Secretary to the Treasury (Mr David Gauke) now responds to our questions about the EGF, first saying that:
• it is the Government’s first priority to ensure that EU expenditure does not exceed agreed ceilings;

• in addition to ensuring that expenditure is consistent with the Multiannual Financial Framework (MFF) deal secured in 2013, the Government is committed to continue to work hard to limit EU spending, reduce waste and inefficiency, and ensure that where EU funds are spent they deliver the best possible value for money for taxpayers;

• as part of this, it is essential that expenditure is closely scrutinised on the basis of value for money;

• the Commission is responsible for the thorough examination of each application, ensuring both that compliance with all relevant provisions of the EGF Regulation; and

• based on the information provided by the Commission, the Government seeks to ensure that all Fund criteria are respected.

9.15 On the question of whether the Government considers the Fund value for money, the Minister says that:

• the Government has been consistently clear that the EU Budget should be focused on initiatives which are clearly targeted, have good implementation rates and for which there is a genuine case for investment being made at an EU rather than national level;

• although expenditure is consistent with the MFF deal, the Government continues to be of the view that the EGF does not fulfil these criteria;

• indeed, although it succeeded in substantially reducing the size of the EGF for this MFF period compared to the previous one, and in pushing down the co-financing rate to a single rate of 60% (the European Parliament had wanted three rates of 60, 70 and 80%), in June 2013 the UK voted against the Council’s agreed position to extend the EGF for the current MFF period on the grounds of its significantly extended scope; and

• as a matter of principle the Government continues not to vote in favour of individual EGF applications.

9.16 Turning to what significance might be attached to the apparent differences in the cost per redundant worker in different cases, the Minister comments that:

• in accordance with the EGF Regulation the Fund provides a financial contribution for a package of active labour market measures, which must be specified in the application, aimed at reintegrating those affected into sustainable employment either within or outside their initial sector of activity; and

• the packages of measures are tailored to the needs of the individual employees and, as a result, will be different from case to case, in turn producing the differences in the cost per worker.
Finally, in relation to whether there is any evidence that multinational companies choose to implement redundancies within the EU, rather than elsewhere, because of the availability of support for redundant workers from the Fund, the Minister says that:

- he is not aware of any such evidence;
- applications to the Fund are, however, for Member States and have to meet strict eligibility criteria to be successful; and
- it seems unlikely that companies would be certain that an application would be made or that the eligibility criteria would be met ahead of deciding whether to implement redundancies.

The Government’s view of the new document

In his Explanatory Memorandum of 9 March 2015 the Minister says in familiar standard text that:

- the Government has been clear that it wants to see real budgetary restraint in the EU;
- the 2014–20 Multiannual Financial Framework delivers important progress — this secured a very substantial reduction in the size of the EGF over the period 2014–20;
- the Government is committed to continue to work hard to limit EU spending, reduce waste and inefficiency, and deliver the best possible deal for taxpayers — as part of this, it is essential that EU expenditure is closely scrutinised on the basis of value for money; and
- in line with this approach, the Government will seek to ensure that all EGF criteria have been respected in proposals for EGF assistance.

Clearly the comments in the Minister’s letter apply also to this proposal.

Previous Committee Reports

10 Europol

Committee’s assessment  Legally and politically important
Committee’s decision  Not cleared from scrutiny; further information requested on document (b); drawn to the attention of the Home Affairs Committee

Document details  
(a) Draft Regulation on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA  

Legal base  
(a) Articles 88 and 87(2)(b) TFEU; co-decision; QMV; (b) Article 88 TFEU; co-decision; QMV

Department  Home Office

Document details  
(a) (34843), 8229/13 + ADDs 1–6, COM(13) 173  
(b) (36118), 10033/14,

Summary and Committee’s conclusions

10.1 The Lisbon Treaty requires Europol to be established on the basis of a Regulation, adopted by the Council and the European Parliament, setting out its structure, operation, field of action and tasks, and including (for the first time) provision for scrutiny of its activities by the European Parliament, together with national parliaments. The Commission proposed a draft Regulation — document (a) — in March 2013. Its proposal included provision for the functions of Europol and the European Police College (CEPOL) to be merged within a single European Agency for Law Enforcement Cooperation and Training. As both the Council and the European Parliament opposed the merger, the Commission has abandoned this element of its proposal. Europol and CEPOL will continue to operate as independent EU Agencies.

10.2 The Commission proposal also sought to strengthen the obligation on Member States to share law enforcement information with Europol and to initiate a criminal investigation when requested by Europol. The Government considered that these changes would threaten the operational independence of the UK’s law enforcement authorities. Whilst expressing support for the work of Europol, the Government decided not to opt into the Commission proposal but to play an active part in negotiations and to seek changes which might enable it to recommend opting in following the adoption of the draft Regulation.

10.3 The European Parliament agreed its First Reading amendments to the draft Regulation in February 2014. They include far-reaching and, in our view, excessively prescriptive changes to the provisions on parliamentary scrutiny of Europol contained in the Commission’s original proposal and would give the European Parliament a dominant role in overseeing Europol’s activities.
10.4 The Justice and Home Affairs Council agreed a general approach in June 2014 — a vital step in determining the Council’s negotiating position with the European Parliament during trilogue discussions which began in the autumn. The UK had no right to vote on the Council general approach — set out in document (b) — as it has not opted into the draft Regulation, but the Government considers that it has been able to secure some important changes. These are described in our Ninth Report, agreed on 3 September 2014.

10.5 We supported the general thrust of the changes contained in the Council’s general approach and agreed with the assessment of the Minister for Modern Slavery and Organised Crime (Karen Bradley) that it was “promising” and clarified some of the ambiguities in the Commission’s original proposal concerning the extent of Member States’ obligation to share information with Europol and the role of Europol in initiating criminal investigations.

10.6 We have welcomed the Government’s commitment to securing a satisfactory outcome on the provisions on parliamentary scrutiny of Europol’s activities. To reinforce the strength of our concerns, we wrote last November to the new Commissioner for Migration, Home Affairs and Citizenship (Dimitris Avramopoulos), the then Italian Presidency (Minister for the Interior, Angelino Alfano), the Chair of the European Parliament’s LIBE Committee (Claude Moraes, MEP) and its Rapporteur for the draft Europol Regulation (Mr Agustin Diaz de Mera Garcia-Consuegra, MEP). Our letters drew attention to our Twenty-ninth Report, agreed on 8 January 2014, which included an Opinion of the Home Affairs Committee on the arrangements proposed for parliamentary scrutiny of Europol, as well as a legal opinion explaining why we consider that national parliaments cannot be the subject of binding obligations under the EU Treaties or EU secondary legislation.

10.7 We suggested that the changes proposed by the European Parliament to the provisions of the draft Regulation concerning parliamentary scrutiny were contrary to the spirit of mutual cooperation enshrined in Protocol (No. 1) on the Role of National Parliaments in the European Union which provides (in Article 9):

“The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.”

10.8 By contrast, the changes agreed by the European Parliament at its First Reading of the draft Regulation would go much further, unilaterally establishing a form of scrutiny and oversight by a Joint Parliamentary Scrutiny Group and imposing obligations on national Parliaments which would, in our view, be inconsistent with Article 4(2) TEU which requires the EU to respect Member States’ “national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local government”.

10.9 We have asked the Presidency, Commission and European Parliament to take our concerns fully into account during trilogue negotiations and to resist any attempt to prescribe and impose a new model of scrutiny on national parliaments. We understand that the Dutch Tweede Kamer has written in similar terms, highlighting the “far-reaching changes” on parliamentary scrutiny of Europol proposed by the European Parliament and making clear that “discussion about how to establish efficient and effective procedures for
scrutiny of Europol’s activities should take place between the European Parliament and national parliaments”.

10.10 In this chapter, we report the Minister’s latest update on the progress made so far in trilogue negotiations, ahead of the dissolution of Parliament later this month, as well as the reply we have received from the EP rapporteur responsible for the draft Europol Regulation, Mr Agustin Diaz de Mera-Garcia Conseugra.

10.11 We are heartened to hear that our correspondence with the EU institutions has prompted further consideration of the provisions on parliamentary scrutiny of Europol’s activities. It is essential that Member State Governments defend the interests of national parliaments during the trilogue negotiations and ensure that they are not diluted as part of the trade-offs required to secure a deal with the European Parliament. As we have made clear in our earlier Reports, a satisfactory outcome on this issue will be a key factor in considering the merits of any Government recommendation for a post-adoption opt-in to the Regulation. Such a recommendation would undoubtedly warrant an opt-in debate on the floor of the House.

10.12 We look forward to receiving regular progress reports on the trilogue negotiations. Meanwhile, pending further developments, both documents remain under scrutiny. We draw them to the attention of the Home Affairs Committee.

Full details of the documents: (a) Draft Regulation on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA: (34843), 8229/13 + ADDs 1–6, COM(13) 173; (b) Draft Regulation on the European Union Agency for Law Enforcement Cooperation (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA: (36118), 10033/14, —.

Background

10.13 Our earlier Reports, listed at the end of this chapter, provide a detailed overview of the Commission’s original proposal — document (a) — and the Council’s general approach — document (b) — as well as the Government’s response to various questions we have raised.

10.14 During our scrutiny of the draft Regulation, we have sought to clarify the Government’s position on the consequences for the UK of not opting into the Regulation following its adoption by the Council and the European Parliament. Whilst acknowledging a degree of uncertainty regarding the UK’s position, the Government has been clear that the only means of “guaranteeing” continuing UK participation in Europol would be to opt into the Regulation once adopted. We have recognised that this is the only failsafe option, but have questioned the assumption that UK ejection from Europol would necessarily follow if the UK were to decide not to opt into the Regulation post-adoption, given that some accommodation would also have to be found for Denmark. Denmark, unlike the UK, is precluded from participating in the draft Regulation, but Article 2 of Protocol No. 22 on

18 Letter of 12 February 2015 from the Chair of the Standing Committee on Security and Justice in the Tweede Kamer to the Rapporteur of the LIBE Committee, Mr Diaz de Mera Garcia-Consuegra.
the position of Denmark makes clear that Denmark will continue to remain bound by the 2009 Europol Council Decision and associated Decisions. If these Decisions are to remain operable in relation to Denmark, it is difficult to see how they could not also be considered operable in relation to the UK.\[^{19}\]

10.15 We have made clear that we expect the Government to explore the possibility that the UK would be able to establish some form of cooperation with Europol, short of formal participation, and to provide us with an analysis of options, whether or not it decides to recommend opting into the Regulation once it has been adopted. We have also asked the Government to keep us informed of developments in addressing the concerns expressed by the UK’s Information Commissioner about provisions in the Council’s general approach concerning Europol’s role in responding to Member States’ objections to requests for data access.

**The Minister’s letter of 3 March 2015**

10.16 The Minister (Karen Bradley) thanks us, along with our counterparts on the EU Committee in the House of Lords, for raising our concerns regarding the provisions on parliamentary scrutiny of Europol’s activities directly with the Commission, Council Presidency and European Parliament. She continues:

> “Your letter, with one from the European Union Committee, has been circulated by the Latvian Presidency to all Member States and has prompted further consideration, which has been helpful in advancing our shared objectives. I am pleased to note that the Chair of the standing committee on Security and Justice in the Dutch House of Representatives wrote in similar terms to the European Parliament’s rapporteur. Parliamentary Scrutiny is likely to be a significant issue in the trilogue discussions. The Presidency is defending the General Approach text.”

10.17 Turning to the progress made on other matters, the Minister adds:

> “The Latvian Presidency has held three technical meetings with the European Parliament on 9, 23 and 26 January and a trilogue on 4 February, at which provisions relating to information processing, data protection and Europol’s relations with partners were discussed. Both the Presidency and the EP presented and defended their respective positions. The Latvian Presidency has expressed a wish to advance the negotiations and to that end is considering possible compromises on certain provisions with the European Parliament to take to future technical meetings and trilogues.

> “As your Committee will be aware, two of the Government’s key concerns are that Europol should not be given the power to direct national law enforcement agencies to initiate investigations; and that Governments should not be obliged to share data in ways that conflict with national security. In considering any compromises, the Government will be mindful of these concerns.”

\[^{19}\] Denmark’s position may change if the outcome of a referendum, expected later this year, agrees to replace Denmark’s opt out of post-Lisbon EU police and criminal justice measures with an opt-in Protocol (similar to the UK and Ireland’s opt-in Protocol).
10.18 The Minister does not expect the trilogue process to conclude before the dissolution of Parliament at the end of March and therefore anticipates that any post-adoption opt-in decision will have to be considered by our successors in the next Parliament. She undertakes to continue to provide regular updates on the progress of negotiations.

**Letter of 16 December 2014 from the LIBE Rapporteur**

10.19 In his response to our letter, Mr Agustin de Mera Garcia-Consuegra notes that the European Parliament voted by a large majority for the changes proposed to the draft Regulation at its First Reading, including those concerning Parliamentary scrutiny of Europol’s activities. He adds that, in doing so, the views of the British “shadow rapporteur”, Timothy Kirkhope, were carefully considered. He reiterates the importance which the European Parliament attaches to parliamentary scrutiny, as well as its efforts to work with national parliaments to find a suitable mechanism for implementing Article 88 of the Treaty on the Functioning of the European Union which stipulates that the Regulation shall “also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments”.

**Previous Committee Reports**

11 Data Protection in the EU

Committee’s assessment  Legally and politically important
Committee’s decision  Not cleared from scrutiny; further information requested on document (a); drawn to the attention of the Justice Committee.


Legal base  (a) Article 16(2) and 114(1)TFEU; co-decision; QMV (b) Article 16(2) TFEU; co-decision; QMV (c) and (d) —

Department  Ministry of Justice

Document numbers  (a) (33649), 5853/12 + ADDs 1–2, COM(12) 11 (b) (33646), 5833/12 + ADDs 1–2, COM(12) 10 (c) (35608), 17067/13, COM(13) 846 (d) (35609), 17069/13, COM(13) 847

Summary and Committee’s conclusions

11.1 The Commission initially proposed the Data Protection package, comprised of the General Data Protection Regulation (document (a)) and the Police and Criminal Justice Data Protection Directive (document (b)), in January 2012. This was to update the EU’s 1995 data protection rules in line with technological developments in the use of personal data and to strengthen online privacy rights, increase consumer confidence, boost growth and address divergent national implementation of the existing rules.

11.2 In the course of our scrutiny, we have endorsed the opinion we received from the Justice Committee that the proposal, in its original prescriptive form, would not produce a proportionate, practicable, affordable or effective system of data protection. We agreed with that Committee that there needs to be a selective approach to harmonisation, embracing the co-operation and co-ordination elements of the proposal but leaving implementation of compliance issues to the Member States. We have encouraged the Government to press the Commission to review its own costs’ estimates in the light of impact assessment evidence from the UK and other Member States and to marshal their support in the negotiations.

11.3 Since then, despite the failure of a partial general approach (PGA) in June 2013 and the Snowden disclosures concerning the surveillance of the communications of EU citizens (to which documents (c) and (d) relate), there have been three PGAs agreed at the consecutive JHA Councils of June, October and December 2014. The Government opposed the first two PGAs “in principle” (on third country transfers of data, extraterritoriality and on obligations on data controllers when processing data. However, it
departed from this approach, without warning and without requesting a scrutiny waiver, in supporting the third (on Chapter IX provisions—research and freedom of speech).

11.4 In our last Report of 28 January, we said that we were clear that the Government had overridden scrutiny but awaited their formal recognition of this. We also said:

“ii) the Government’s policy on partial general approaches remains extremely confusing: whilst the Justice Secretary seems to think they are ‘meaningless’ and ‘they do not do anything, because they do not agree the final document’, the Minister now says the Government did not agree the October partial general approach because ‘the scope for coming back to readdress any outstanding issues in the text we remained unhappy with could be relatively slim’. Could the Minister please confirm which of these two conflicting views is preferable? Are partial general approaches open to renegotiation and, if he thinks so, could he please provide us with examples on other dossiers of such renegotiation?”

11.5 Additionally, we asked the Government:

i) to respond to questions still outstanding from our Report of 26 November at paragraphs 9.6 and 9.8, including that on the “right to be forgotten”;

ii) for further clarification, in relation to the “one-stop-shop” mechanism, of the Minister’s assertion that the proposed European Data Protection Board (EDPB) “should not have the power to take decisions which are legally binding on Member States that are not in agreement with its decision” and whether this is workable; and

iii) to explain more about the “alternative” UK model for a one-stop-shop and whether it gains any currency with other Member States.

11.6 We thank the Minister for his letter, which addresses nearly all of the issues outstanding from our last Reports.

11.7 However, we still await a response on the latest UK position concerning the “Right to be Forgotten” provision. We understand from the Home Secretary’s Pre-Council Written Statement of 5 March that a General Approach may be sought in June: “The presidency’s overarching ambition remains to secure a general approach at the June Justice and Home Affairs Council”. Any such agreement would, we assume, require agreement of this important provision which has not yet been covered by a Partial General Approach (PGA). Overall, by our reckoning, the rest of that important Chapter III (rights of data subjects), much of Chapter I (General Provisions) and Chapters VIII (remedies, sanctions), X (delegated and implementing acts) and XI (final provisions) are yet to be the subject of any agreement in Council. As our successor Committee may not have been appointed by that time, we request that we are given the opportunity to scrutinise the position that the Government intends to take on the “Right to be Forgotten” provision before the dissolution of Parliament. Bearing in

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21 HC Deb, 5 March 2015, cols.81-82WS [Commons Written Ministerial Statement].
mind what else remains to be agreed, we also ask to be sent the latest version of the text, albeit limité and subject to the usual restrictions, so that we can consider it before dissolution and for the Government to highlight to us any particularly contentious points on the issues that remain.

11.8 We welcome the Government’s recognition of the previous scrutiny override but firmly reject the reasons it advances to support its previous approach. Our position is based on logic and consistency, not strength of feeling. The Government’s argument that a heavily caveated PGA would not necessarily fall within our scrutiny reserve would create a situation of unacceptable uncertainty—it would be a highly subjective exercise to determine on the occasion of each PGA whether it was sufficiently caveated to fall outside our reserve. In any event, we doubt whether the Government is entirely convinced by its own arguments because:

a) as we have previously pointed out, the Minister himself has doubted whether a previous Partial General Approach might be capable of being renegotiated, which must logically indicate that the Government doubts the effectiveness of PGA caveats; and

b) the Home Secretary in her Written Ministerial Statement to Parliament on the outcome of the December JHA Council described the PGA achieved as a “deal”, suggesting that the Government considered that firm agreement had been achieved.

11.9 We would have appreciated more detail on the possible content of the PGA to be sought at the March JHA, with the exception of the One-Stop-Shop which is addressed in some detail. We understand that the Minister will now abstain in the forthcoming PGA and ask that when he next writes, he informs us of the outcome of the JHA Council immediately after it takes place. We would also appreciate any update on the proposed extension of the scope of the Directive (document (b)) which he has told us about.

11.10 In the meantime, we are drawing this Report to the attention of the Justice Committee and retaining all documents (a)–(d) under scrutiny.

**Full details of the documents:** (a) Draft Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data: (33649), 5853/12 + ADDs 1–2, COM(12) 11; (b) Draft Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data: (33646), 5833/12 + ADDs 1–2, COM(12) 10; (c) Commission Communication: Rebuilding Trust in EU-US Data Flows: (35608), 17067/13, COM(13) 846; (d) Commission Communication on the Functioning of the Safe Harbour from the perspective of EU Citizens and Companies Established in the EU: (35609), 17069/13, COM(13) 847.

**Background and previous scrutiny**

11.11 The background to documents (a) and (b), a detailed account of their provisions and the Government view of them is provided principally in our Fifty-ninth Report of 2010–
12.22 Our Twenty-sixth Report of 2012–13[23] sets out our summary and conclusions on the opinion we obtained from the Justice Committee. An account of the background and contents of documents (c) and (d) and the Government view of them was set out in our Thirty-sixth Report of 2013–14.[24]

**Minister’s letter of 1 March 2015**

11.12 The Minister of State for Justice and Civil Liberties (Simon Hughes) writes to provide us with an update on documents (a) and (b) following the informal JHA Council on 30 January and the negotiations which have taken place in the DAPIX working groups during the first two months of the Latvian Presidency. He also writes to respond to the questions we raised in our last Report (see paragraphs 11.4—11.5 above). He also apologises for the confusion caused by his previous correspondence between points that had been raised in previous scrutiny by us and those raised by the House of Lords’ Committee. He promises that future letters will be suitably tailored to the concerns of the individual committees.

**Informal Justice and Home Affairs Council**

11.13 He first addresses the informal JHA Council. He says:

“The delimitation of the scope of the draft General Data Protection Regulation (GDPR) and the draft Data Protection Directive was discussed at the recent Informal JHA Council in Riga. This is an important matter as it will determine the extent to which the stricter rules under the GDPR apply to law enforcement activities. I believe that it is important that we avoid the creation of a complex patchwork data protection regime for law enforcement authorities, clarify that private companies who have a contractual obligation to carry out processing for law enforcement purposes are covered by the Directive and make sure that the protections established in the Treaties are not undermined.

“During the Council, Member States were asked whether they would like the scope of the Directive to remain as proposed by the Commission (i.e. limited to the processing of personal data by competent authorities ‘for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties’) or whether they would rather the wording be extended to included processing by competent authorities for the purposes of ‘maintaining law and order and the safeguarding of public security.’ In order to avoid a complex, patchwork regime, the Government agrees with Member States who would prefer to see a broader scope for the Directive (for example to include processing carried out under the Victims Directive), however we are concerned about the broad and imprecise language that is currently being proposed to widen this scope. As such, at the Council the Government called for alternative options to

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be considered and for sufficient time to be allocated to discuss this issue so that we can be certain that the lines are correctly drawn.”

**DAPIX Working Group update**

11.14 The Minister tells us:

“In addition to the Informal JHA Council, three rounds of DAPIX working groups have taken place in Brussels under the Latvian Presidency. The first (15/16 January) was dedicated to Chapter II (principles relating to personal data processing), the second (26/27 January) to the ‘One-Stop-Shop’ mechanism and the third (5/6 February) to both the ‘One-Stop-Shop’ and Chapter II. Since then and before JHA Council on 13 March, there will have been three JHA Counsellors’ and two COREPER meetings attended by UKRep officials.”

**Questions outstanding from our previous Reports**

11.15 The Minister responds:

“Turning now to the outstanding questions from your previous correspondence and, firstly, the answer you seek to the questions set out in paragraph 9.6 (sic) of your report of 26 November 2014. These ask how the Government has addressed the “specific concerns raised by the Newspaper Society and the British Medical Association”25. These concerns were set out in your 2013 report26; however, it is worth noting that the current text being discussed has moved on considerably since.

“a) The Newspaper Society and the ‘Right to be Forgotten’

“The Newspaper Society highlighted the potential detrimental effect upon freedom of expression which could be ‘wrought’ by the application of a so-called ‘Right to be Forgotten’. We believe that the CJEU’s 2014 ruling on Google Spain does provide some useful points for discussion when examining the issue of the so-called ‘Right to be Forgotten’. However, direct implementation of the judgment into the text of the Regulation could be very problematic as the judgment was based on a limited set of facts and made in a very specific context.

“Article 17, included in Chapter III of the Regulation and covering the ‘Right to be Forgotten’, is still due for discussion in working groups and the Government is currently lobbying other Member States to make sure that any such direct implementation of the CJEU’s judgment into the Regulation does not happen.

“That said, the Newspaper Society’s concerns from 2012 are less specific and the Government has negotiated hard in favour of exemptions relating to journalistic work and freedom of expression. These are listed in Article 80 of the Regulation that provides derogations to reconcile the right to the protection of personal data with right to freedom of expression and information; this includes processing for

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journalistic purposes as well as the purposes of academic, artistic and literary expression.

"b) The British Medical Association

“The separate concerns of the British Medical Association to which you refer in your 2013 report were also, at one time, of concern to the Government. However, the current Latvian version of the text has made considerable progress in the field of the processing of data for medical research purposes. As I wrote in my previous letter dated 21 January, our concerned stakeholders were supportive of the Council version of the proposed text for Chapter IX (inclusive of Article 83 to which the British Medical Association refer in your report) when this was put forward for a Partial General Approach (PGA) at JHA Council in December 2014.

“In addition to this, the Government has continued its close collaboration with other stakeholders in the medical profession with regards to provisions made for data processing for health purposes in Chapter II. This has resulted in further, positive changes being made to the draft text in this chapter also, including reducing burdens for those processing for health purposes and the inclusion of more flexibility for social care. Here, our stakeholders have expressed themselves as being content and much appreciate the UK’s conduct of the negotiations to gain these improvements over previous versions of the text and crucially, in the lead up to trilogue negotiations, the European Parliament’s agreed wording.”

One-Stop-Shop

11.16 The Minister says:

“With regard to the One-Stop Shop, you quote my assertion that the proposed European Data Protection Board (EDPB) should not have the power to take legally binding decisions and ask whether I ‘really consider that such an approach is workable?’ I do believe that such an approach is workable; this is, in fact, identical to the original model proposed by the European Commission, seen by many as being the purest version of a ‘one-stop-shop’. Whether or not the model is negotiable, however, is a different question and the UK has found it difficult to muster support in working groups for a One-Stop-Shop model that did not give any legally binding powers to a European Data Protection Board.

“The Government also put forward an alternative model for the One-Stop-Shop. This was a model of voluntary arbitration requiring concerned Data Protection Authorities (DPAs) to come to a collective agreement to voluntarily refer cases to the EDPB for resolution should they not be able to agree between themselves. The intention behind this proposal was to ensure that only the most serious cases would be handed over to the EDPB for its judgment and would encourage DPAs to resolve cases on a more localised level.

“Unfortunately, this model did not gain sufficient support among other member states, who thought the threshold for referral to the EDPB was too high. We have, however, been able to gain support for some form of ‘quantitative filter’ whereby a
percentage of concerned DPAs would have to agree to a referral to the EDPB; and a ‘qualitative filter’ so that only reasoned concerns act as a trigger for referral. We have also negotiated to limit the scope of the definition of a concerned DPA to those with a real interest in the case. We also intend to make sure that the EDPB’s role is limited to one of deciding whether or not a breach has taken place; any determination of sanctions would continue to be done by local DPAs, allowing data subjects to challenge these decisions through local courts.”

11.17 The issue of the Government’s approach to Partial General Approaches, particularly in the context of the negotiations of document (a), are addressed next by the Minister. He says:

“You have asked me to clarify the Government’s approach as regards the use of Partial General Approaches (PGAs) in the context of the GDPR. In the oral evidence session the Justice Secretary made his reservations over the use of PGAs clear; however he also highlighted the pragmatic utility of agreeing to one at December JHA Council.

As I stated in my previous letter, at the December JHA Council we had received positive feedback from our stakeholders on the text being voted upon and we considered the proposed Council text to be considerably better than the Parliament’s version. Therefore, despite our misgivings over the principle of PGAs, we supported the proposed text since it helped to advance the UK’s negotiating position overall. As the Justice Secretary has said, his approach was pragmatic: he stated that although he “[does] not like using Partial General Approaches … there are just moments when I judge that it is not in the interests of the United Kingdom to vote against something for the sake of voting against it.

“I remain of the view that it is clear from the manner in which these negotiations have been conducted by successive Presidencies that PGAs are being used as a tool to move negotiations forward in what is a complex file with many interdependencies. We understand it is unusual for PGAs to be as heavily qualified as they have been by the Greek and Italian Presidencies, to the extent that ‘nothing is agreed until everything is agreed’. That language must have some meaning, and we consider it must follow that any Member State would be within its rights to seek to reopen any of the points covered by the PGAs. In these circumstances, we previously took the view that agreeing to such a qualified PGA in December should not be considered a scrutiny override. The Lords Committee appears to share the view that, because of the caveats involved, this did not amount to an override. However, appreciating the strength of feeling in your Committee, I am willing to acknowledge this as an override and I will work with colleagues in the Cabinet Office and Foreign Office to ensure there is a clear and consistent approach taken to PGAs in the future.

“I hope the reasons the Justice Secretary and I have already given have explained the reasons why we supported the PGA in December. I will of course aim to give you the maximum notice when any future PGAs are proposed and take the Committee’s views into account when deciding whether or not to support them.”
Forthcoming JHA Council 13 March 2015

11.18 The Minister informs us as to what might happen at this imminent JHA Council and requests a scrutiny waiver:

“Indeed, I can now confirm that a PGA has been proposed for voting on at March JHA Council on Chapters II, VI and VII. Because we do not have a final text yet, we cannot be absolutely certain whether we would want to support this PGA. However, the timeframe between receiving the final version of the text and the opening of JHA Council is likely to be incredibly tight and I therefore wish to ask you now for a scrutiny waiver should the text proposed in March resemble that which we currently have before us.

“The current texts on the table that will form the foundations for discussion at March JHA Council are in positive place for the UK. Chapter II, concerning consent and the principles for processing, makes reference to ‘unambiguous consent’ as opposed to the much more burdensome “explicit consent” referenced in the European Parliament text. The UK has also secured positive advances in the carve outs for processing data for health purposes, including making sure that special categories of data will continue to be able to be processed for work pertaining to the carrying out of social care.

“With regard to the ‘One-Stop-Shop’, the current working text does currently include both quantitative and qualitative filters to limit the number of possible data protection breaches being sent to the EDPB. Although the quantitative threshold currently being discussed is lower than that the UK had originally negotiated for, it is likely that this is the best deal that the UK will be able to secure. With this in mind, it is therefore important for us to be able to show our support for such a model with a view to limiting movement away from filters altogether (as some Member States argue for) and end up in a position that could, in fact, be damaging to UK interests.”

Further updates

11.19 The Minister ends his letter by promising to update us as to the outcome of the JHA Council of 13 March. He also commits to informing us of “any plans that the Presidency may make regarding the content of future DAPIX meetings or to further progress on the Data Protection Directive, including any developments that may arise during dissolution or shortly thereafter”.

Previous Committee Reports


12 Emissions Trading System: market stability reserve

Committee’s assessment: Politically important
Committee’s decision: Cleared from scrutiny

Document details: Draft Decision on the establishment and operation of a market stability reserve for the greenhouse gas emission trading system

Legal base: Article 192(1) TFEU; co-decision; QMV
Department: Energy and Climate Change
Document numbers: (35755), 5654/14 + ADDs 1–2, COM(14) 20

Summary and Committee’s conclusions

12.1 The third phase of EU’s Emissions Trading System (ETS) from 2013–20 introduced an EU-wide cap on allowances covering emissions of carbon dioxide, and, although the cap had originally been seen as ambitious, the reduction in the level of emissions as a result of the economic crisis resulted in a substantial surplus of allowances. The Commission therefore proposed that the planned auctions of a certain quantity of allowances should be postponed (“backloaded”).

12.2 However, as this would not affect the structural surplus, it put forward in January 2014 this draft Decision establishing a market stability reserve, and setting parameters for adjusting auction volumes to address the mismatch between the largely fixed supply of allowances and the fluctuating level of emissions. The Government sees the ETS as a central component for delivering cost effective emissions reductions, and therefore broadly welcomed the proposal, although it stressed the need for a robust analysis, based on clear and transparent rules, and respect for Member States’ fiscal sovereignty.

12.3 In our Report of 26 February 2014, we drew the proposal to the attention of the House, but, in view of the Government’s comments, we decided to hold the document under scrutiny. In a further Report of 14 January 2015, we noted that we had subsequently received a letter from the Government, confirming that it supported the proposal, but would be seeking to strengthen it in certain respects, and saying that the conclusions of the October 2014 European Council had provided a political commitment to reforming the ETS through the stability reserve. It added that discussions amongst Member States were on-going, and that a plenary vote was expected in the European Parliament in April — a
timetable it regarded as ambitious, but necessary to ensure that urgent reform is delivered in order to provide certainty to industry and restore the effectiveness of the ETS. It also said that, once the stability reserve was agreed, the Commission was expected to issue proposals for Phase IV of the EU ETS (from 2021).

12.4 We have now received a letter of 2 March 2015 from the Parliamentary Under-Secretary of State for Energy and Climate Change (Amber Rudd), confirming that the trilogue negotiations are nearing conclusion, and that final agreement is possible in June, with the European Parliament’s ENVI committee having voted in favour of a strengthened reserve and to proceed to trilogue negotiations, without a vote in Plenary. She adds that the UK continues to be encouraged by the significant number of Member States which support its position in the Council, and that she is optimistic that Council will soon reach a qualifying majority in support of strengthening the reserve. Since there is then a risk that a Council vote will take place before a new European Scrutiny Committee is formed following the General Election, and she has requested either that scrutiny be lifted on the proposal, or that a scrutiny waiver is granted, in order to allow the UK to vote for the adoption of the proposal at a future Council meeting.

12.5 We are grateful to the Government for this further update, and have noted the progress which has been made since our last Report, not least in terms of the position of the European Parliament, and in particular that the Government is optimistic that an acceptable text will be agreed. In view of this, the imminent dissolution of Parliament, and the likelihood of a decision being taken before our successor Committee is formed, we are prepared to clear the proposal from scrutiny.


Background

12.6 The EU’s ETs involves the granting to undertakings in certain areas of allowances covering emissions of carbon dioxide, and in the System’s third phase (from 2013–20) allocations by individual Member States have been replaced by an EU-wide cap. Although the cap had originally been seen as ambitious, the level of emissions was radically reduced by the economic crisis, meaning there was likely to be a surplus of up to 2 billion allowances at the start of Phase III in 2013. The Commission therefore proposed that the auctions of a certain quantity of allowances planned for 2013, 2014 and 2015 should be postponed (“backloaded”).

12.7 However, as this would not affect the structural surplus, it went on to put forward in January 2014 this draft Decision, which would establish a market stability reserve, aimed at addressing the current surplus in the short term, whilst making the ETS more resilient to any potential future large-scale disturbance. More specifically, as we noted in our Report of 26 February 2014, the proposal would set parameters enabling the auction volumes to be adjusted to address the mismatch between the largely fixed supply and fluctuating demand, without affecting the total long-term supply.
12.8 We also noted that the Government saw the ETS as a central component for delivering cost effective emissions reductions, and had long sought to address the surplus of allowances and so strengthen the incentive for investment in low-carbon technology, and avoid pressure for ad hoc reforms, such as back-loading, which had added to the uncertainty. It therefore believed that a properly designed market stability reserve with a clear set of rules might give a more stable investment signal, remove a significant source of uncertainty, and improve the resilience of the ETS: but it also said that this needed to be supported by robust analysis, based on clear and transparent rules, and respect Member States’ fiscal sovereignty.

12.9 We concluded that, given the central role of the EU ETS, it would be right to draw the proposal to the attention of the House, but that, as the Government’s broad welcome had been subject to a number of reservations, the document should be held under scrutiny, pending further developments.

12.10 As we noted in our further Report of 14 January 2015, the Government subsequently drew to our attention its announcement on 20 October 2014, confirming that it supported the proposal, but would seek to strengthen it. In particular, it wished to see an earlier introduction of the reserve in 2017, backloaded allowances placed straight into the reserve, and amendments to ensure that allowances remain in the reserve during “business as usual” circumstances. We were also told that the conclusions of the October 2014 European Council had provided a political commitment to reform the ETS through the market stability reserve, and that, although there was currently no majority view, a number of Member States supported the UK’s approach, whilst others were being encouraged to do so. The Government added that the European Parliament was also discussing the proposal, and that a favourable vote in the ENVI Committee on 23 February would be instrumental in getting a positive outcome in the plenary vote, expected in April.

12.11 Finally, the Government commented that this was an ambitious timetable, but one needed to ensure that reform was delivered urgently. It also said that, once the stability reserve had been agreed, the Commission was expected to issue proposals for the Phase IV of the EU ETS (from 2021).

**Minister’s letter of 2 March 2015**

12.12 We have now received a letter of 2 March 2015 from the Minister, confirming that that the trilogue negotiations are nearing conclusion, and that final agreement is possible in June. In particular, she says that, on 24 February, the European Parliament’s ENVI committee voted in favour of a strengthened reserve and to proceed to trilogue negotiations, without a vote in Plenary. She describes this as a positive outcome which will help accelerate the negotiations, noting also that the Parliament’s position includes starting the reserve by December 2018 at the latest; placing backloaded allowances directly into it; using 300 million of the unallocated allowances to fund industrial low carbon innovation; and the EU ETS Directive (2003/87/EC), in particular its carbon leakage provisions, being reviewed by the Commission within six months of the reserve being agreed (and, if appropriate submitting proposals).

12.13 The Minister adds that the UK continues to be encouraged by the significant number of Member States (including Germany, France, Sweden, Netherlands and Slovenia) which
support the Government’s position in the Council, and that, in view of this and the European Parliament agreement to a strengthening of the proposal, she is optimistic that the Council will soon reach a qualifying majority in support of strengthening the reserve. In that event, she says there is a risk that a vote will take place before the new European Scrutiny Committee is formed following the General Election, and she has therefore requested either that scrutiny be lifted on the proposal, or that a scrutiny waiver is granted, in order to allow the UK to vote for the adoption of the proposal at a future Council meeting.

**Previous Committee Reports**


### 13 Animal health law

**Committee’s assessment**  
Politically important

**Committee’s decision**  
Cleared from scrutiny

**Document details**  
Draft Regulation on animal health law

**Legal base**  
Articles 43(2), 114(3) and 168(4)(b) TFEU; co-decision; QMV

**Department**  
Environment, Food and Rural Affairs

**Document numbers**  
(34913), 9468/13 + ADDs 1–2, COM(13) 260

**Summary and Committee’s conclusions**

13.1 The current framework for European animal health law comprises around 50 basic Directives and Regulations, some of which were adopted in the early 1960s, since when new diseases have emerged, and trading conditions have changed radically. Following an independent review in 2004, the Commission put forward in May 2013 this draft Regulation, which seeks to establish a single, simplified framework.

13.2 As we noted in our Report of 10 July 2013, the Regulation would be divided into seven main parts, and would be underpinned by more detailed delegated and implementing acts (“tertiary legislation”). We were told by the Government that, although certain aspects would need to be clarified, the Commission’s objectives broadly matched UK goals, and that a framework Regulation directly applicable in all Member States would give rise to considerable better regulation benefits.

13.3 In our subsequent Report of 17 December 2014, we noted that the Italian Presidency hoped to secure shortly a mandate enabling trilogue negotiations to commence early in the New Year; that the Council’s position met the UK’s concerns; but that the differences between it and the European Parliament would need to be debated during the trilogue. We
also noted that the incoming Latvian Presidency regarded this dossier as a priority, and expected the trilogue discussions to be concluded by April 2015, with a vote in the Council before June, in which case the Government would regard it as necessary to seek clearance ahead of such a vote.

13.4 In its most recent letter of 24 February 2015, the Government says that a vote on a final compromise text agreed by the Commission, European Parliament and Council has now been provisionally scheduled for the Council on 20 April (although a vote at the May or June Councils is more likely). It does not anticipate that this will raise any substantial issues, and, if that is so, the UK’s aim will be to support the proposed Regulation. It also says that, in view of the limited time before the dissolution of Parliament and General Election, it is keen for the proposal to clear Parliamentary scrutiny at the earliest opportunity.

13.5 *Our most recent Report of 17 December 2014 said that we thought it unlikely that there would be any need for further consideration by the House on the basis of the text agreed by the Council, but, given the uncertainty over the position of the European Parliament, we felt it would be premature to release the proposal from scrutiny at that stage. However, the Government now appears confident that any text arising from the trilogue discussions will be acceptable. In view of this, and the likelihood of a decision being taken before our successor Committee is appointed, we now think it would be right to clear the proposal, bearing in mind also that its broad aims are supported by the UK.*

**Full details of the document:** Draft Regulation on animal health law: (34913), 9468/13 + ADDs 1–2, COM(13) 260.

**Background**

13.6 European animal health law is currently focused on preventing and controlling significant transmissible diseases, as well as their effect on international trade in animals and animal products, and the current framework comprises around 50 basic Directives and Regulations, some of which were adopted in the early 1960s. Since then, new diseases have emerged, and trading conditions have changed radically, and, following an independent review in 2004 which led to the adoption of the EU Animal Health Strategy 2007–2013, the Commission put forward in May 2013 this draft Regulation, which seeks to establish a single, simplified framework, enabling a quick reaction to emerging animal diseases, whilst ensuring consistency, reducing the impact of those diseases, and ensuring the smooth functioning of the internal market.

13.7 In reporting the proposal to the House on 10 July 2013, we noted that the Regulation would be underpinned by more detailed delegated and implementing acts (“tertiary legislation”); that it would be divided into seven main parts;\(^\text{27}\) that the Commission’s objectives broadly matched UK goals; and that, although certain aspects would need to be clarified, the Government believed that there would be considerable better regulation

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\(^\text{27}\) Dealing respectively with general rules; notification, surveillance, eradication and disease freedom; disease preparedness, awareness and control; registration, approval traceability and movements; entry into the EU and export; emergency measures; and final and transitional provisions.
benefits, making it possible to see more clearly how all the related measures would fit together.

**Subsequent developments**

13.8 Our subsequent Report of 17 December 2014, we noted that we had received a number of updates from the Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs (George Eustice) on the discussions in the Council, and that he had also noted that the former European Parliament had adopted numerous amendments — some helpful, others not. In particular, his letter of 7 December 2014 had said that the Italian Presidency hoped to secure a mandate enabling trilogue negotiations to commence early in the New Year, and had also summarised developments on the most important outstanding issues, adding that, as the new European Parliament had endorsed the position taken by its predecessor, the differences between it and the Council would need to be debated. He also said that the Council had an agreed position on the amendments proposed by the Parliament, which largely supported the UK position, and that the Government would seek to minimise the risk of any deviation from this.

13.9 Our Report concluded by noting that the incoming Latvian Presidency expected the trilogue discussions to be concluded by April 2015, with a vote in the Council before June, and that the Minister had commented that this would necessitate seeking clearance of the proposal ahead of such a vote. In view of this, we said that we had considered carefully our handling of this document, and that, given what the Government had told us, we thought it unlikely that we would see any need for further consideration by the House on the basis of the position reached in the Council. On the other hand, we hesitated to release the proposal from scrutiny, whilst uncertainty still existed over the position of the European Parliament and the outcome of the trilogue discussions. We therefore asked the Minister to keep us informed of any further important developments.

**Minister’s letters of 10 January and 24 February 2015**

13.10 We have since received two further letters from him. The first of these, on 10 January 2015, said that there had been significant progress in the Council, where it had been agreed that trilogue negotiations should be opened, and confirmed that these were expected to be completed by April 2015. It added that the Government was broadly satisfied with the final Council text, and that it remained the UK goal to maintain this, and to ensure the principles in it were reflected in any tertiary legislation. The letter also said that the Council had agreed on a transition period of five years, in which case it was anticipated that the Regulation would apply from mid-2020.

13.11 The Minister has now sent a further letter of 24 February 2015, saying that the trilogue negotiations on the proposal have begun, and that a final compromise text could emerge as soon as April, with a vote provisionally scheduled for the Council on 20 April (although a vote at the May or June Councils was more likely). He adds that he is broadly satisfied with the proposed Council text, and does not anticipate that the one finally agreed by the Commission, European Parliament and Council will raise any substantial issues. In that is so, the UK’s aim will be to support the proposed Regulation, and the Minister says that, in view of the limited time before the dissolution of Parliament and General Election,
he is keen for the proposal to clear Parliamentary scrutiny at the earliest opportunity. He therefore hopes that his letter provides us with sufficient information to give clearance, and to support the negotiating position he has outlined.

Previous Committee Reports


14 The EU and the Gulf of Guinea

Committee’s assessment Politically important
Committee’s decision Cleared from scrutiny

Legal base —
Department Foreign and Commonwealth Office
Document numbers 36652, 5442/15, SWD(15) 5

Summary and Committee’s conclusions

14.1 The Joint Communication 18099/13, Elements for the EU’s Strategic Response to the Challenges in the Gulf of Guinea (a 6000 km coastline from Senegal to Angola, including the islands of Cape Verde and Sao Tome and Principe, covering two geographical, political and economic regions), set out a European External Action Service (EEAS)/Commission proposal for a “Comprehensive Approach” to the primary challenges faced in the region, especially in the maritime domain. It was designed to serve as the basis for a Strategic Framework.

14.2 It proposed general areas for action rather than specific programmes, and is based on three principles: partnership with the countries and organisations in the Gulf of Guinea region; a comprehensive approach integrating security, development and governance issues; and applying lessons learned from other strategies. This Joint Communication led to the development of the EU’s Strategy on the Gulf of Guinea, which was developed to provide coherence to the effort of the EEAS and the Commission in West and Central Africa. The Committee’s consideration of these precursor documents is summarised in our previous Report and detailed in those other Reports cited below.28


14.4 The Minister for Europe (Mr David Lidington) noted that the UK was working proactively with the region to tackle the threats, using a tailored approach — learning the lessons from seeking to tackle piracy off the coast of Somalia whilst recognising that the different and varied threats in the Gulf of Guinea and the greater levels of regional capacity necessitated a distinct response. In particular, he and his officials continued to reinforce to partners that the Gulf of Guinea is different: Somalia was a failed state and significant international action was required; whereas the littoral states in the Gulf of Guinea are not failed, and an international naval force would be inappropriate; the international community’s efforts were thus focused on building these states’ own law enforcement functions and capacity.

14.5 In particular, the Government’s favoured approach is assisting states in the region to implement the 2013 Yaoundé Code of Conduct, which commits all the states to taking action to combat maritime crime and piracy and provides the political direction for the work currently underway in West and Central African states.29

14.6 The Minister said that he wanted the Action Plan to follow the Strategy’s objectives, which he and his officials had “worked hard to shape, to in turn achieve our national objectives of a sustainable improvement in West African maritime security, leading to improved economic growth and stability”.

14.7 Thus far, the Minister said, the draft Action Plan had followed the direction set by the Strategy, providing more detail on suggested actions to achieve each of the four strategic objectives and further information on methods of implementation, funding and steering. However, the Minister:

— wanted greater clarity on the mention of CSDP, “particularly the bias towards military capability”, where he saw a risk that a CSDP mission similar to EU Naval Force Operation ATALANTA could be seen by either EU Member States or West African states as a transferable solution for the Gulf of Guinea, which he believed would not be appropriate;

— noted that CSDP is “one of many instruments or mechanisms to be considered and must not be a default response”;

— wished instead to see the variety of development instruments at the EU’s disposal incorporated into long term capacity building planning, with the aim of avoiding the need for a reactionary CSDP mission;

— noted also that there had been little interaction with African states specifically on the development of the draft Action Plan; he would seek to ensure that it was clear in the Action Plan “that there should be a pull from the region rather than a push from Brussels”, and that it underlined the importance of maintaining “good dialogue” in

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29 Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), and the Gulf of Guinea Commission (GGC) created a code of conduct, modelled after the Djibouti Code of Conduct, to increase regional cooperation in combating piracy. The code of conduct was signed on 25 June 2013, after a conference on maritime safety and security in Yaoundé, Cameroon and is also known as the Yaoundé Declaration. See http://www.imo.org/MediaCentre/Pressbriefings/Pages/23-westandcentralafricacode.aspx#VP17jk5s5o for further information.
“ensuring expectations around the speed, quantity and type of assistance available are managed”; and

— supported the appointment of a senior coordinator in the EEAS to ensure monitoring and reporting to the PSC, but with the caveat that it should not involve the creation of new structures or incur new costs.

Our assessment

14.8 The EEAS’s initial leaning towards a CSDP response was still all too apparent, notwithstanding the clear message given to it at the outset to think otherwise. Moreover, as we feared, there had been insufficient engagement with the littoral states themselves in the past year.

14.9 Though the Minister wanted an Action Plan that, in line with UK and the Strategy’s objectives, aimed at achieving a sustainable improvement in West African maritime security, leading to improved economic growth and stability, it was plainly not thus at this juncture. Though he seemed to think that all this could be sorted out in short order in the COAFRA Working Party, we were not so sure. We were concerned that there could not be both “widespread support amongst Member States for this draft action plan”, and also many “who share our view on the importance of regional buy-in and are keen to see the plan implemented effectively”, since regional buy-in was lacking and — we suggested — something better than the current draft was required for the proper implementation of the Strategy.

14.10 We therefore retained the draft Action Plan under scrutiny, pending receipt from the Minister of evidence that it had been satisfactorily revised, and that either it and/or the Council Conclusions that were to endorse it incorporated the approach that he supported and covered the points of concern that he had highlighted. If that meant that it was not ready for the March 2014 Foreign Affairs Council meeting, so be it: it was much better to get this right, rather than to press ahead prematurely on the wrong footing.

14.11 The Minister has now provided both a revised version of the draft Action Plan and a copy of the draft Council Conclusions of which they will form the annex.

14.12 The draft Council Conclusions reassert the importance that the EU attaches to continuing close cooperation with partners across Western and Central Africa, in taking all

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30 Political and Security Committee: 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.

31 Before the ministers assemble in one of the Council configurations, the meetings are prepared in more than 150 working parties and committees. These committees are comprised of officials from the 28 Member States and are highly specialised, dealing with a number of issues varying from the working party on technical harmonisation of motor vehicles to the working party on fruit and vegetables. The main responsibility of the COAFRA group is to follow and analyse the development in the Sub-Saharan African countries, including questions regarding prevention and management of conflicts, and to secure a coordinated and coherent EU policy in relation to the countries and regions concerned. Furthermore, the group is in charge of communication with the African Union and other sub-regional organisations. Finally, the group prepares Africa-related discussions in the Political and Security Committee, the Committee of Permanent Representatives (Coreper) and the Council (external affairs). See http://eu2012.dk/en/EU-and-the-Presidency/About-EU/Arbejdsgrupper/Bekrivelser for full information.

appropriate measures to contain maritime crime, including piracy, illegal fishing, smuggling of migrants and trafficking of human beings, drugs, and arms, and to address the underlying causes to foster long-term security and stability in the region. The Council underlines that the Action Plan aims at supporting the ongoing efforts of the ECOWAS, ECCAS, the GGC, as well as to the Yaoundé Code of Conduct Signatory States. Implementation should also aim to increase the level of coordination among the EU and its Member States, and international partners, via an integrated and cross-sectorial approach, linking the importance of good governance, rule of law, and the development of the maritime domain to enable greater trade cooperation, and job creation for the countries in the region. The Council invites the EEAS and the Commission, in close consultation with Member States, to start implementing the Action Plan, in synergy with the EU Maritime Security Strategy and its Action Plan, and in close cooperation with the region itself, and key international partners; and looks forward to the appointment of an EU Senior Coordinator for the Gulf of Guinea (see paragraph 14.30 below for details).

14.13 With regard to the revised draft Action Plan, the Minister says that significant revisions have now addressed the concerns previously outlined to the Committee. He cites in particular paragraph 19, concerning possible CSDP, which he describes as “now far more balanced around both military and civilian CSDP considerations, with a focus on learning lessons from existing CSDP activity, rather than new action”. The draft action plan “further notes that planning is underway for funding instruments for 2015-2020, which reduces the prospect of any CSDP mission”. There is, he says, “little Member State appetite for a CSDP mission”. Moreover, any such a future mission “would be subject to full parliamentary scrutiny”.

14.14 On the question of regional “buy-in”, the Minister say the EEAS “had previously missed opportunities to communicate the work they had undertaken”, noting that the EEAS have embarked on high level discussions, including briefing a number of African Ambassadors in Brussels and a maritime security meeting in the margins of the EU-Africa summit in April 2014 hosted by the then High Representative of the Union for Foreign Affairs and Security Policy (Baroness Ashton). The draft action plan is “now much clearer on the importance of ensuring regular dialogue at various multilateral and bilateral levels”, which will “help achieve a shared understanding of the threats and opportunities and enhance collective efforts towards implementation of the Action Plan”. This, “coupled with the strength of paragraph two of the draft Council Conclusions”, shows that “serious effort will be put into understanding the assistance that is required, rather than just offering what is convenient” (see paragraphs 14.31–14.33 below for details).

14.15 We are grateful to the Minister for having responded so quickly and so fully. In particular, we welcome his having provided the draft Council Conclusions by way of illustrating how UK objectives have been achieved. We encourage him and his counterparts elsewhere in Government, and their successors, to follow suit, and thus both illuminate and speed up the scrutiny process.

14.16 The Minister now regards the Action Plan language as having removed the original focus on military CSDP, which is now referred to as one of the many EU instruments available, indicating a new focus on underlining the importance of situating the Action Plan within the context of the EU’s Comprehensive Approach, and
as properly reflecting the contribution of Member States and that appropriate lessons should be learnt from on-going/previous CSDP missions.

14.17 Attention is also drawn to the Critical Maritime Routes for the Gulf of Guinea (CRIMGO) programme, as the type of activity that the Action Plan will seek to develop in-line with the regionally agreed and internationally supported Yaoundé Code of Conduct and build regional capacity as it goes forward.

14.18 On the basis of this further information, we now clear the draft Action Plan. However, this is, of course, just the beginning.

14.19 Though the report in the March 2015 “Maritime Security Review” is now somewhat dated, the fact that a special GGC Council of Ministers meeting as recently August 2012 finds the GCC executive secretary urging the organization to play a more active role in the maritime security of that region, and to initiate a civilian and military expert analysis of collaboration between the GCC and the ECCAS, Angola’s Foreign Minister having to highlight the need for solutions to the recovery of the Commission’s economic and financial situation, illustrates just how big the challenge will be in being able to provide the assistance that is required, rather than “just offering what is convenient”.

14.20 Moreover, from the EU perspective, the draft Action Plan notes that in the 11th EDF (2014-2020) programming “Peace, Security and Regional Stability” has been identified as one of the focal sectors in both the West and Central Africa Regional Indicative Programmes, to the tune of €1.5 billion combined; that discussions with ECOWAS and ECCAS include action against money laundering, trafficking, maritime security capacity building, and support to fisheries and aquaculture; and that “numerous” National Indicative Programmes are already signed that are directly or indirectly related to the implementation of the present Action Plan. It is thus essential that a reality is made of the undertaking that particular consideration will be given to synergies and complementarity between EU and Member States funding, including through joint programming at country level, as well as on concentration of resources on the most urgent objectives.

14.21 The same considerations apply to what the Action Plan refers to as the substantial engagement of other international partners, and particularly the US Department of State Africa Bureau and United States Africa Command (AFRICOM), whose initiatives are “very useful in identifying capacity building and information sharing gaps”; we agree that “activities under this Action Plan will need to take these into account”.

14.22 There is no mention of any progress reports. We hope that the Minister will press for some form of regular reporting, and that these are deposited for scrutiny (c.f. the regular reports on similar capacity-building work in the pre-accession countries and under the European Neighbourhood Policy).

14.23 Finally, we note that this Action Plan is to be implemented “in synergy with the EU Maritime Security Strategy and its Action Plan”; and that we do not appear to have

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received any information from the Minister about that Action Plan since we cleared the Strategy from scrutiny last July. 34


**Background**

14.24 In his Explanatory Memorandum of 23 February 2015, the Minister for Europe recalled that the reasons for the UK’s interest in maritime security in the Gulf of Guinea were previously outlined in his 21 January 2014 Explanatory Memorandum on Joint Communication 18099/13, “Elements for the EU’s Strategic Response to the Challenges in the Gulf of Guinea”, i.e., maritime crime in the Gulf of Guinea increases economic fragility, hinders development and poses a risk to seafarers and businesses operating in the region. We set out his additional comments in our most recent Report on this document.

**The Minister’s letter of 6 March 2015**

14.25 The Minister has now provided a revised version of the draft Action Plan and a copy of the draft Council Conclusions of which they will form the annex.

14.26 The draft Council Conclusions read thus:

1. “The Council adopts today the annexed Gulf of Guinea Action Plan 2015-2020 that outlines the European Union’s support to the efforts of the region and its coastal states to address the many challenges of maritime security and organised crime. As with the Strategy, adopted on 17 March 2014, this Action Plan reasserts the importance which the European Union attaches to continuing the close cooperation with partners across Western and Central Africa, in taking all appropriate measures to combat maritime crime, including piracy and armed robbery at sea, illegal fishing, smuggling of migrants and trafficking of human beings, drugs, and arms, and to address the underlying causes to foster long-term security and stability in the region.

2. “The Council underlines that the Action Plan aims at providing support both at the regional and national levels, to the ongoing efforts of the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC), as well as to the Signatory States to the Code of Conduct concerning the repression of piracy, armed robbery against ships, and illicit maritime activity in West and Central Africa, adopted at the June 2013 Heads of State Summit in Yaoundé, Cameroon. The implementation of the Action Plan is intended to reinforce intra-regional cooperation as well as to increase the level of coordination among the EU and its Member States, and international partners. The Council stands ready to assist West and Central African coastal states to achieve long lasting prosperity through an integrated and cross-sectorial approach, linking the

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importance of good governance, rule of law, and the development of the maritime domain to enable greater trade cooperation, and job creation for the countries in the region.

3. “The Council invites the HR and the Commission, in close consultation with Member States, to start implementing the Gulf of Guinea Action Plan, taking into account the EU Maritime Security Strategy and its Action Plan, and in close cooperation with the region itself, and key international partners. In this regards, it looks forward to the appointment of an EU Senior Coordinator for the Gulf of Guinea. The Council will revert to the matter as appropriate.”

14.27 With regard to the revised draft Action Plan, the Minister says that it contains some significant revisions over the first draft and has addressed the concerns that he previously outlined. He cites in particular paragraph 19, which now reads:

“The Action Plan also seeks to make the best use of all EU instruments, including the combined efforts of the Union and its Member States through CFSP/CSDP and the related initiative to support capacity building of partner countries and regional organisations in order to enable them to increasingly manage and prevent crises by themselves. The Action Plan takes into account the contribution of EU Member States’ civilian and military capabilities and expertise to the EU comprehensive approach in the Gulf of Guinea, both on land and sea. Lessons learned, where appropriate, from past experience and from other scenarios, like the Horn of Africa and elsewhere, with ongoing CSDP missions like EUCAP Nestor and EUCAP Sahel Niger, should also be taken into consideration. Moreover, set-out in the Comprehensive Approach, the Action Plan aims at enhancing civilian/military synergies and information sharing.”

14.28 The Minister says:

“I previously mentioned my desire for greater clarity on the EEAS’ intentions for CSDP’s role in this action plan. My officials have raised this issue in the Politico-Military Group and the Council Working Group on Africa (COAFR) to ensure that the UK’s view is known. This is a difficult topic to negotiate on, but paragraph nineteen (concerning possible CSDP) is now far more balanced around both military and civilian CSDP considerations, with a focus on learning lessons from existing CSDP activity, rather than new action. The draft action plan further notes that planning is underway for funding instruments for 2015-2020, which reduces the prospect of any CSDP mission. There is little Member State appetite for a CSDP mission and such a future mission would be subject to full parliamentary scrutiny.”

14.29 On the question of regional “buy-in”, the Minister says:

“The subject of ‘regional buy-in’ was raised at the COAFR Working Group and it appears that the EEAS had previously missed opportunities to communicate the work they had undertaken. While it would be impossible to develop the action plan jointly with the twenty two nations which it is intended to help, the EEAS have embarked on high level discussions. In the last year they have briefed a number of African Ambassadors in Brussels and the HRVP hosted a maritime security meeting in the margins of the EU-Africa summit in April 2014. The draft action plan is now
much clearer on the importance of ensuring regular dialogue at various multilateral and bilateral levels. This will help achieve a shared understanding of the threats and opportunities and enhance collective efforts towards implementation of the Action Plan. This, coupled with the strength of paragraph two of the draft Council Conclusions, shows that serious effort will be put into understanding the assistance that is required, rather than just offering what is convenient.”

**Previous Committee Reports**


**15 EU-Black Sea Cooperation**

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**Document details**

Joint Staff Working document on the report on the Black Sea Synergy Initiative

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**Summary and Committee’s conclusions**

15.1 The Black Sea Synergy initiative was proposed by the European Commission in April 2007, and formally launched in February 2008. A report on the first year of implementation was published in June 2008 (see paragraphs 15.08–15.17 below for summary details).

15.2 This Joint Staff Working Document reviews progress on the Black Sea Synergy initiative since 2009, and highlights lessons learnt. The Minister for Europe (Mr David Lidington) notes (as did his counterpart at the outset) that the Black Sea region continues to represent a challenge for the EU in a number of strategic areas including stability,

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35 The Black Sea region includes Greece, Bulgaria, Romania and Moldova in the west, Ukraine and Russia in the north, Georgia, Armenia and Azerbaijan in the east and Turkey in the south. Though Armenia, Azerbaijan, Moldova and Greece are not littoral states, history, proximity and close ties make them natural regional actors.
security, governance, energy, migration and trafficking. Those challenges have increased following Russia’s illegal annexation of Crimea, and subsequent destabilisation of eastern Ukraine. The need for a well-coordinated EU policy to promote greater intra-regional cooperation “is arguably greater now than in 2008”. In the meantime, the Black Sea Synergy initiative has demonstrated that it has practical value in promoting co-operation in the region but “has yet to develop into a driving force for change, or gain public support in the way that other regional initiatives, such as the Eastern Partnership have”.

15.3 The inclusion of a lessons learnt section, as an important means of assessing progress and ensuring that the Black Sea Synergy improves its effectiveness, is welcomed. The key lessons are: the need to improve participation by partner countries in the Synergy and to engage civil society, business and the public; more needs to be done to involve business in particular; better co-ordination between differing policies and initiatives, to ensure that the full range of EU activity in the region is incorporated. The political situation in the region remains dynamic and the crisis in Ukraine has undermined co-operation. More focus and impetus should be given to co-operation and projects between smaller groups of partners, in order to foster co-operation and deliver the EU’s objectives with partner countries (see paragraphs 15.18–15.23 below for details).

15.4 The Minister’s analysis speaks for itself. The absence of any major developments is reflected in the down-grading of this assessment from a Commission Communication (in 2008) to a Joint Staff Working Document, which is not expected to attract any attention from the Council. This is understandable, given that the Council is inevitably focussing not on regional cooperation, but on a year-long manifestation of its antithesis, instigated by one country, and leading to great destruction and upheaval, and significant loss of life, in the other.

15.5 It is nonetheless a pity, in that greater profile will therefore not be given to the inclusion of a “lessons learnt” section, which we, too, welcome, and which should become a standard feature of such substantive overviews of performance. Right from the outset, both the Minister’s and our predecessors agreed that the key would be for the Commission to synergise activity without duplication, and ensure effective spending via practical projects that delivered concrete results in priority areas. That remains so, even if, for the time being at least, the EU’s ambitions are obliged to be more limited than they were in 2007.

15.6 We draw these developments to the attention of the House because of the widespread interest in the region, and now clear the document.


Background

15.7 In the introduction to its Communication 16371/06 of 4 December 2006, which we considered on 14 December 2006, the Commission recalled the premise of the European Neighbourhood Policy (ENP) — “that the EU has a vital interest in seeing greater economic development and stability and better governance in its neighbourhood”. Responsibility lies primarily with the countries themselves, “but the EU can substantially
encourage and support their reform efforts” and also recalled that “the ENP remains distinct from the process of EU enlargement — for our partners, considerably enhanced cooperation with the EU is entirely possible without a specific prospect of accession and, for European neighbours, without prejudging how their relationship with the EU may develop in future, in accordance with Treaty provisions”.

15.8 The first 18 months had laid a substantial foundation — a single policy framework, 11 ENP Action Plans and a new financial instrument (the European Neighbourhood Policy Instrument; ENPI) — and shown its worth. It was now time for the EU build upon this by strengthening its commitment to the ENP via a series of proposals encompassing:

— **Enhancing the trade and economic component**: deep and comprehensive Free Trade Agreements with all partners; enhanced support for reforms; efforts to improve trade and economic regulatory environment and the investment climate; strengthened economic integration and co-operation in key sectors.

— **Facilitating mobility and managing migration**: removing obstacles to legitimate travel while at the same time ensuring well-managed mobility and migration.

— **Promoting people-to-people exchanges**: educational, youth, business and civil society exchanges; training; increasing the visibility of the EU.

— **Building a thematic dimension**: multilateral dialogue on energy, transport, environment, information society, public health, financial services, border management and migration.

— **Strengthening political co-operation**: more active EU role in conflict resolution; informal ministerial meeting with partner countries; intensified parliamentary co-operation.

— **Enhancing regional co-operation**: particularly in the Black Sea region.

— **Strengthening financial co-operation**: making the most of the new, larger funding instrument, including a new Governance Facility and Investment Fund.

15.9 The Conclusions subsequently adopted at the 11 December 2006 GAERC underlined the importance the Council attached to the ENP “as one of the core priorities of the Union’s external action” and looked forward to considering future proposals from the Commission.

15.10 Against this background, the Commission’s Communication 8478/07, *Black Sea Synergy — A new regional cooperation initiative (BSSI)*, set out a number of proposals for developing cooperation both within the Black Sea region and between the region and the EU, viz:

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37 Council Conclusions, p.20.
38 The Black Sea region includes Greece, Bulgaria, Romania and Moldova in the west, Ukraine and Russia in the north, Georgia, Armenia and Azerbaijan in the east and Turkey in the south. Though Armenia, Azerbaijan, Moldova and Greece are not littoral states, history, proximity and close ties make them natural regional actors.
— promoting democracy, respect for human rights and good governance;
— improving border management and customs cooperation to increase security and tackle cross-border crime;
— more active EU involvement in efforts to address the so-called “frozen conflicts” (involving Moldova (Trans-Dniester), Georgia (Abkhazia and South Ossetia), and between Armenia and Azerbaijan (Nagorno-Karabakh));
— aim to provide a clear transparent and non-discriminatory framework in line with the EU acquis for energy production, transport and transit and cooperate on the upgrading and construction of energy infrastructure;
— supporting regional transport cooperation to improve the efficiency, safety and security of transport operations (including aviation and maritime safety);
— encouragement of Member States to work within the framework of regional seas conventions, to enhance implementation of multilateral environmental agreements and establishing more strategic environmental cooperation in the region;
— promoting sustainable fisheries development through management, research, data collection and stock assessment;
— continuing EU support for trade liberalisation and implementation of ENP Action Plans’ trade provisions;
— stimulating research cooperation, harmonisation and establishing regulatory authorities;
— promoting Science and Technology capacity building and dialogue;
— promoting social cohesion and better integration of minorities through training, information sharing and awareness raising campaigns.

15.11 There would be no new institutions or bureaucratic structures. The majority of EU funding would be through established Commission-managed programmes. New cross border cooperation programmes would also take place between Bulgaria and Romania (funded through the European Regional Development Fund) and between Bulgaria and Turkey (through the Instrument for Pre-accession Assistance). The Commission proposed “a kick-off high level political event” to provide political orientation, visibility and, it hoped, regular ministerial meetings between the EU and Black Sea ENP partners. All of this was broadly welcomed by the then Minister for Europe at the Foreign and Commonwealth Office (Mr Geoffrey Hoon).39

15.12 A report on the first year of implementation was published in June 2008. A number of projects had reinvigorated cooperation in important areas such as tackling climate change, maritime policy and fisheries management, energy, transport, and managing migratory movement. A seminar had been held in Moldova on democracy, respect for

human rights and good governance. The Commission had continued to advocate an active EU role in addressing the underlying causes of the frozen conflicts in the region, including cooperation programmes to bring the otherwise divided parties together. The first civil society activities included a meeting in Odessa of 29 environmental NGOs. All Black Sea countries had been involved. A Foreign Ministers’ meeting in Kiev, initiated by the EU, had welcomed the Black Sea Synergy as “a common endeavour” and stated that greater EU involvement could increase the potential of Black Sea regional cooperation. Relations were also strengthened with the Organisation of Black Sea Economic Cooperation, including the Commission becoming an observer. In 2007 €837 million of Community assistance under the ENPI and the Instrument of Pre-Accession were committed; a new Neighbourhood Investment Facility (NIF) offered a vehicle for pooling grant resources from the Community and the Member States, and the possibility of leveraging additional loan financing from European public finance institutions for investments in neighbouring countries, including in the Black Sea region. Measures to take the BSSI forward included long-term measurable objectives in each area, lead countries and organisations to ensure coordination, sectoral partnerships (which could include Belarus), increasing people-to-people contacts (including a possible Black Sea Civil Society Forum) and Ministerial meetings when justified.

15.13 All in all, the Commission saw the initial results as revealing the practical utility and the potential, in a complex environment, of this new policy approach. The launch phase had been completed and implementation begun. Participants favoured the establishment of a long-term cooperation process and had formulated converging ideas about its content and arrangements. Continued progress required the consistent and active involvement of a growing number of actors, including both Member States and Black Sea partners. As in the first year, the Commission stood ready to contribute to this important work.

15.14 The then Minister for Europe (Mr Jim Murphy) described this BSSI review as “timely”, and noted that the Black Sea region represented a challenge for the EU in a number of strategic areas including stability, security, governance, energy, migration and trafficking. He saw “a well-coordinated EU policy which inspires greater intra-regional cooperation, at all levels of society” as having “great potential for mutual benefit”. He continued as follows:

“The key will be for the Commission to synergise activity without duplication, and ensure effective EC spending. In this context, the Commission’s proposal to set measurable long-term targets, is welcome. We will continue to work closely with the Department for International Development to influence and monitor Commission programming, through their participation in the European Neighbourhood and Partnership Instrument (ENPI) Management Committee. We shall continue to urge that the Synergy focus on practical projects which will deliver concrete results in priority areas.”

40 The BSEC was established in 1992. Initially focusing on economic cooperation, its remit has been gradually widened. Membership includes Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, the Russian Federation, Turkey and Ukraine.

41 The Commission intended to put €700 million (over the period 2007-2013) into a fund which would be used to support IFI lending in ENP partner countries. EU Member States would be invited to match this amount, with the idea that the fund could then leverage as much as four to five times this amount of grant funding, in concessional lending for investment products in ENP partner countries, in priority sectors as identified in their ENP Action Plans.
15.15 The then Minister also noted that the June 2007 European Council had invited the Commission to develop the Polish/Swedish proposals for an Eastern Dimension to ENP; this would cover EU bilateral and multilateral cooperation with Moldova, Ukraine, Armenia, Azerbaijan, Georgia and Belarus, and thus provide another forum needing to gel with the Black Sea Synergy. He welcomed the Eastern Dimension as a further vehicle to support progress for these countries, especially to promote Ukraine’s and Moldova’s further integration with the EU, and would be alert to arguments from other Member States that improved Black Sea cooperation lessened the need for an Eastern Dimension.

15.16 The then Committee agreed that the BSSI had got off to a good start. However, as well as the proposed “Eastern Dimension” to the ENP, the BSSI would also need to interface with the proposed Mediterranean Union (which aimed at reinvigorating the moribund southern dimension of the EU’s relations with its neighbours, known as the Barcelona Process). In its observations on the BSSI, the European Parliament had seen Bulgaria, Greece and Romania as the natural protagonists among existing Member States; the same sort of model might need to be explored if the “regional approach” (which also includes the so-called “Northern Dimension”) was to avoid overload and, instead, gain and maintain momentum and avoid the pitfalls of the Barcelona Process. It would also require some hard thinking on the part of the Commission: as the Minister rightly emphasised, the key would be for the Commission to synergise activity without duplication, and ensure effective spending via practical projects that delivered “concrete results in priority areas”.42

**The Joint Staff Working Document**

15.17 The report sets out progress made since 2009 on each of the main areas of cooperation — Maritime Policy; Environment; Energy; Transportation; Mobility and Security; Research, Science and Education; Democracy, Civil Society and Youth; Employment and Social Affairs; Trade; Cross Border Co-operation; and Working with International Organisations. It then highlights lessons learnt, and includes an annex of activities in each area.

**The Government’s view**

15.18 In his Explanatory Memorandum of 26 February 2015, the Minister for Europe (Mr David Lidington) says that Black Sea region continues to represent a challenge for the EU in a number of strategic areas including stability, security, governance, energy, migration and trafficking.

15.19 He continues as follows:

“The challenges the EU faces in this region have increased following Russia’s illegal annexation of Crimea, and subsequent destabilisation of eastern Ukraine, and the paper does not comment on the impact and role (if any) the Black Sea Strategy could have on regional security. The need for a well-coordinated EU policy to promote greater intra-regional cooperation is arguably greater now than in 2008.”

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15.20 In the meantime, the Minister says that the BSSI:

“has demonstrated that it has practical value in promoting co-operation in the region but has yet to develop into a driving force for change, or gain public support in the way that other regional initiatives, such as the Eastern Partnership have.”

15.21 The Minister also highlights the following as important areas of EU activity:

- “In Maritime Policy, there has been practical work to increase the quality and availability of maritime data, to improve planning for use of maritime space in the Black Sea, and manage fish stocks;
- “On Environmental issues, the Black Sea Synergy has delivered projects to increase the capacity to monitor biological and chemical levels, increase the number of protected areas in the Black Sea and improve the protection of birdlife. It has also helped improve water supply and waste treatment in Moldova;
- “Energy co-operation has been a particular focus, with the development of new supply routes through the Southern gas corridor, and projects in Georgia, Moldova and Romania to improve gas interconnections;
- “Technical assistance has been provided to improve transport infrastructure and safety, and a master plan for improving sea links agreed;
- “The EU has increased its research partnership with countries in the region through Framework Programme 7 and Horizon 2020 Programme, with a focus on looking at the impact of climate change and the implementation of the Marine Strategy Framework Directive;
- “The Black Sea Synergy has been active in improving civil society co-operation through the Black Sea NGO Forum, with over 600 participants taking part in Forum activities over the last five years. This is a positive step which we support, as it increases engagement with partner countries. Child welfare has been a particular focus, with the establishment of the ChildPact initiative to improve child protection policies in the region.”

15.22 The Minister also welcomes the inclusion of a lessons learnt section in the report, which he describes as an important means of assessing progress and ensuring that the Black Sea Synergy improves its effectiveness:

“The key lessons are on the need to improve participation by partner countries in the Synergy and to engage civil society, business and the public. More needs to be done to involve business in particular. There also needs to be better co-ordination between differing policies and initiatives, to ensure that the full range of EU activity in the region is incorporated. The political situation in the region remains dynamic and the crisis in Ukraine has undermined co-operation in the Black Sea Region. More focus and impetus should be given to co-operation and projects between smaller groups of partners, in order to foster co-operation in the region and deliver the EU’s objectives with partner countries.”
Previous Committee Reports


16 EU military mission to contribute to the training of Somali security forces (EUTM Somalia)

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; further information requested

Document details
Council Decision on the training of Somali security forces (EUTM Somalia)

Legal base
Articles 42(4) and 43(2) TEU; unanimity

Department
Foreign and Commonwealth Office

Document number
36656, —

Summary and Committee conclusions

16.1 EUTM Somalia was launched in April 2010. The mission is part of a wider, comprehensive EU approach to Somalia, working with the wider international community. The EU is also involved in EU NAVFOR Operation ATALANTA, the operation to tackle piracy off the coast of Somalia (of which the UK provides the Operational Headquarters and the Operation Commander), and EU CAP NESTOR aimed at increasing the capacity of the region to tackle piracy themselves.

16.2 EUTM Somalia’s objective was to strengthen the Somali security forces through the provision of specific military training, and support to the training provided by Uganda, of 2,000 Somali recruits up to and including platoon level, including appropriate modular and specialised training for officers and non-commissioned officers.

16.3 The prior history of this mission is sketched out below, and detailed in our previous relevant Reports. In sum, the Committee has been concerned over the tendency towards “mission creep”, both in scope and cost, and a lack of prior information at each key stage.

16.4 This further Council Decision proposes to extend EUTM Somalia’s mandate until 31 December 2016. The budget for years 2013 and 2014 was €17.1 million. The proposed
budget for the next 21 months is €17.5 million, with an estimated UK contribution through of €2.7 million (=15.66%).

16.5 In submitting it for scrutiny, the Minister for Europe (Mr David Lidington) said that Somalia is a top foreign policy priority for the Government, which has taken a lead in coordinating efforts in the international community to support Somalia. Somalia had made progress against some of its peace and state-building goals in 2014, and a new Council of Ministers was approved by the Somali Parliament on 9 February 2015, following the recent appointment of a new Prime Minister. Developing Somali National Army (SNA) capacity was crucial if the Federal Government of Somalia was to be able to take responsibility for security in Somalia, enabling an eventual exit strategy for the African Union Mission in Somalia (AMISOM)44 — “though this is a long term goal and strategic patience is required”. Security gains in Somalia had to date been largely due to AMISOM, to which the EU contributed significantly in terms of troop stipends. But the SNA was playing an increasingly important part in AMISOM offensives. For it to become an effective force able to operate independently, continued investment and support from the international community was required.

16.6 The Minister also noted various ways in which the EU was playing a positive role in addressing the threat to regional and international peace, security and development posed by instability in Somalia, and how EUTM complemented these other EU operations. The EUTM and other EU CSDP missions were important elements of the overall framework for international engagement. By demonstrating strong political commitment to the EUTM, the Minister said, the UK could continue to leverage EU impact in support of UK objectives. But the Mission had to be “well-conceived” and “capable of delivering its objectives (hence our proactive input into the Strategic Review)”. The Mission’s operational performance had been hampered by being able to operate effectively only in one location at one time due to force protection and transport capacity constraints; additional force protection measures were being deployed in March 2015 to address this (and cost increases were therefore justified).

16.7 Other significant challenges (the Minister said) included “the lack of capacity and collective political will of the Federal Government of Somalia”. However, the President and new Prime Minister had assured the Government and EU that progress on security sector reform would be their top priority.

16.8 Despite “these very serious challenges”, EUTM Somalia had had “genuine, if to date relatively modest”, impact. The Minister judged, however, that the Mission “has the potential to make a significant difference in developing the Somali Defence Sector, particularly if it continues to take positive steps towards solving some of the challenges it faces, such as strengthening its force protection capabilities”.

16.9 Also, EUTM Somalia “provides EU Member States with the opportunity to share costs and to work together to create a mission which provides better results than if each country were working towards the same goal individually”; provides the Government with “the ability to leverage international resources for an area we are interested in [which] has

44 AMISOM is a regional peacekeeping mission operated by the African Union with the approval of the United Nations, which was created by the AU’s Peace and Security Council on 19th January 2007 with an initial six month mandate.
benefits for our foreign and security policy”; and is “fully in line with the intentions behind the European External Action Service to have a foreign policy structure which is more coherent and able to develop policy on a more consistent basis — getting the collective voice of the EU Member states heard throughout the world”.

Our assessment

16.10 The mission had now been running for five years. Achievements thus far had been “relatively modest”. This further extension would take it to nearly seven. The cost would by then have neared the €40 million mark. There was still a “lack of capacity and collective political will” on the part of the Federal Government of Somalia; assurances from the President and another new prime minister were necessary, but far from sufficient. Al Shabaab might well (as the Minister also said) be increasingly embattled but (ditto) it was clearly still capable — witness the attack carried out on 20 February 2015 on the Central Hotel in Mogadishu, which (according to the UN) resulted in the death and injury of dozens of people, including senior members of the Somali Federal Government.45

16.11 None of this was to say that the International Community should abandon Somalia to its fate; on the contrary. However, if national parliaments were genuinely to have any control over CFSP, then exercises such as this needed more effective, and consistent, parliamentary scrutiny — and that required cooperation on the part of the Government.

16.12 As our earlier Reports relate, the Committee considers that this has not always been the case here. The original 2010 Council Decision was never submitted for scrutiny. We noted (and endorsed) the Minister’s earlier view (from as long ago as 2012) that scrutiny is “an important part of open and transparent government and .... the way of connecting British voters to EU decision-making”. The Committee accordingly found it all the more regrettable that, once again, the Minister had failed to provide any prior indication of the direction of travel — notwithstanding his trumpeting of the UK having been “very active in steering Mandate renewal discussions”, and in steering the EU’s Strategic Review of the Mission in October 2014.

16.13 This was not a question of the Committee wishing to have caveated documents deposited (assuming that the review was either limité or restreint), but of having a reasonable expectation — which the Minister acknowledged in general terms — of being forewarned, once a review has been completed and before the Committee is, once again, effectively presented with a fait accompli. The Committee may well have not have raised any questions: but the Committee is nonetheless entitled to be given the opportunity to do so, which in this instance it had been denied.

16.14 We therefore asked the Minister to explain why no prior information was provided; and (given the time constraints) to do so as quickly as possible. In the meantime, we retained the draft Council Decision under scrutiny.46

16.15 The Minister now explains that, although the review began in October, it was not concluded until early February. The UK was “proactively involved …, including bearing

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45 UN News Centre.
down on costs and ensuring a favourable outcome in line with UK objectives”. Despite “persistent lobbying of the EEAS for an early draft version of the Council Decision”, he did not receive a copy until the end of January, which was finalised on 10 February following conclusion of mandate negotiations on 9 February. He had immediately then prepared his 13 February 2015 EM. Prior to that, he could not be certain of the scope and content of the EEAS proposals, and updating the Committee before receipt of the Council Decision would have risked misleading it. At the end of the day, the Council Decision “is designed to enable the Mission to continue its positive progress”; the Minister is “content that the Review and subsequent negotiations resulted in the right outcome: a modest rebalancing of the way the mission carries out its tasks”, which “aligns with unchanged UK objectives for the EUTM”.

16.16 The Minister goes on to “recognise this was not ideal”, and to say that “had there been more time we would have informed the Committee accordingly”, and that he has “reminded officials of the need to ensure the committees are updated as early as possible”. Looking forward, he undertakes to update the Committee after the April Athena (financial) Committee meeting, and looks to providing further summary updates “as and when developments dictate”.

16.17 As our earlier related Reports relate, we have been here before. In this instance, although it is obvious that the Minister could not have told the Committee all about the review until it had been completed, we see no reason why he could not have written to tell us that it was under way, and what its terms of reference and the timeline were, and to outline what his approach was going to be. This would have given the Committee the opportunity to comment, and to judge how well the outcome corresponded with his objectives.

16.18 The process also once again calls into question whatever assurances the Minister may have received in response to his representations to the new High Representative (Federica Mogherini) in December 2014 about the importance of early publication of documents to allow adequate time for scrutiny to take place.

16.19 Moreover, as our Report on the latest iteration of the EU’s restrictive measures against the Mugabe regime illustrates, this problem is far from confined to this particular mission. Our conclusion is accordingly similar.

16.20 We look forward, of course, to receiving a further update after the Athena meeting to which the Minister refers. But something more systemic seems required.

16.21 Sometime this summer there will be a new government, and a new Committee. In the meantime, we ask the Minister to initiate a “lessons learned” review in his Department, the purpose of which would be to ensure that the requirements of the “upstream” scrutiny is embedded in all parts of the FCO whose business is touched by the CSDP and ESDP process. Even now, “as and when developments dictate” seems a recipe for further misunderstanding.
16.22 We would suggest, as a starting point that, when a Council Decision is presented to the Committee for scrutiny, on restrictive measures or a mission, it should contain no surprises; i.e., it has been preceded by correspondence that prepares the ground and enables the Committee, if appropriate, to respond along the way. In some instances, this happens; but the process is not ingrained.

16.23 We therefore ask the Minister to do what he can to ensure that a system is devised whereby this essentially simple process — of keeping Committee requests under review, and writing as and when requested, or because it is in other ways timely to do so — is embedded in FCO policy departments who handle this business, and becomes part of the overall scrutiny process to which he has so often professed himself committed.

16.24 In the meantime, we now clear the document.

Full details of the documents: Council Decision amending and extending Decision 2010/96/CFSP on a European Union military mission to contribute to the training of Somali security forces (EUTM Somalia): 36656, —.

Background

16.25 As explained in detail in our earlier relevant Report, developments after the adoption of Council Decision 2010/96/CFSP, effectively moved ahead “under the radar”, as the Minister for Europe maintained that the information in the 2011 progress report embodied confidential information from the Crisis Management Concept (one of the planning documents). A letter from the Minister in December 2011 belatedly provided some information about the Council Decision: but it was never submitted for scrutiny.

16.26 After a progress evaluation in July 2011, the Council decided to extend it until December 2012 and refocus on command and control and specialised capabilities, and on the self-training capabilities of the Somali National Security Forces (SNSF), with the intention of transferring EU training expertise to local actors. This was to be achieved by providing military training to commanders and specialists up to company level, and through training trainers, with a view to transferring basic and specialist training expertise up to platoon level, under African ownership, back to Somalia.

16.27 Then, in December 2012, a further Council Decision was put forward, which extended the mandate for a further 27 months; took the total cost over the €20 million mark; shifted training from Uganda to Mogadishu (reflecting welcome improvements in security); and broadened the scope. The Committee noted that this was more than academic: a mission that had begun with a short life in mind had now morphed into one that would not only be, at least, nearly five years long, but which — as it branched into security sector reform, and political and strategic level mentoring that (as the Minister for Europe, Mr David Lidington, put it at the time) “ultimately” might “support moves towards an exit strategy” — already had at least some of the hallmarks of other such missions that had expanded their original, limited role and proved costly, lengthy and of

— Council Decision.
doubtful effectiveness, as in the Democratic Republic of Congo.\footnote{EUSEC RD Congo.} The Committee was also concerned over the lack of information from the Minister during the preceding 18 months. Though there might well be a compelling case for this expansion, the Committee felt that the House was not being given the opportunity to examine it properly, and recommended that it be debated in the European Committee (which was combined with a similar “short notice” draft Council Decision on a new military mission to Mali, EUTM Mali, and took place on 16 January 2013\footnote{The record of the debate is available at Gen Co Deb, European Standing Committee B, 16 January 2013, gols 3–24.}).

16.28 In 2013, the Minister provided further updates on progress thus far and on the budget. Although the EU said previously that €11.6 million would be a maximum amount, he had closely scrutinised the Operation Commander’s more detailed budget of €13.394 million—an increase of 15.4% on the initial estimate — and believed that it was justified. The Minister nonetheless pledged himself to “continue to monitor and to bear down on costs, where appropriate, and evaluate results, including during the next annual review”, and “to push for improvements in the process for EU budgeting and forecasting of future requirements for EU military operations”.

16.29 At that time, the Committee were also considering three other CSDP missions — in Mali, in Niger and in the Horn of Africa — that, to varying degrees, demonstrated challenges to the budgeting process. The Committee noted that it would like to hear more about his success in these areas — budgeting, evaluation and forecasting — at the time of the next annual review, since the need was apparent.\footnote{(34518), —: Eighth Report HC 83-viii (2013–14), chapter 16 (3 July 2013) and Twenty-fifth Report HC 86-xxv (2012–13), chapter 1 (19 December 2012) for full background.}

16.30 The Committee’s consideration of this latest Council Decision is set out above.

**The Minister’s letter of 6 March 2015**

16.31 The Minister says:

“The UK was proactively involved in the Strategic Review, including bearing down on costs and ensuring a favourable outcome in line with UK objectives. Negotiations and discussions on the review and Mandate renewal took between October and early February. Despite persistent lobbying of the EEAS for an early draft version of the Council Decision, to help inform the Parliamentary Committees, we did not receive a copy until the end of January. At this point we began the process of submitting for Parliamentary scrutiny, which we finalised on 10 February following conclusion of mandate negotiations on 9 February.

“Providing a detailed update before receipt of the Council Decision would have risked misleading the Committee. We could only be certain about the scope and content of the EEAS proposals once that Decision was available. We are content that the Review and subsequent negotiations resulted in the right outcome: a modest rebalancing of the way the mission carries out its tasks. This aligns with unchanged UK objectives for the EUTM. The Council Decision is designed to enable the
Mission to continue its positive progress. As soon as we received the Council Decision we started preparing the Explanatory Memorandum to inform the Parliamentary Scrutiny Committee.

“I recognised this was not ideal, and had there been more time we would have informed the Committee accordingly. I have reminded officials of the need to ensure the committees are updated as early as possible. Looking forward, I will update the Committee after the April Athena (financial) Committee meeting, and look to provide further summary updates for EUTM Somalia as and when developments dictate.”

Previous Committee Reports


17 The EU-Ukraine Association Agreement

Committee’s assessment | Legally and politically important
Committee’s decision | Cleared from scrutiny

Document details
Council Decision on the EU position within the EU-Ukraine Association Agreement Association Council regarding implementation of the EU-Ukraine Association Agenda
Legal base | Articles 217 and 218(9) TFEU; QMV
Department | Foreign and Commonwealth Office
Document numbers | (36677), 5910/15 + ADD 1, JOIN(15) 5

Summary and Committee’s conclusions

17.1 Council Decision 2014/295/EU of 17 March 2013 allowed signature and provisional application of the preamble and political chapters (Titles I, II and VII) of the Association Agreement on 21 March 2013. They were cleared from scrutiny by debate in European Committee B in November 2013.

17.2 The Committee then agreed to waive scrutiny clearance on the Council Decisions concerning the signing and provisional application of the rest of the Association Agreement, so that they could be agreed at the 23 June Foreign Affairs Council 2014 (this being in line with the EU’s political commitment so to do, following a proper presidential election).

17.3 As requested by the Committee, the Minister for Europe (Mr David Lidington) then deposited both these later Decisions and the texts of the Decisions agreed in March 2014
for signature and provisional application of the core political provisions. They gave rise to competence concerns; but, as they had now been agreed and adopted, the Committee cleared them from scrutiny on 16 July 2014.

17.4 In so doing, the Committee nonetheless highlighted the compromise on competence and asked the Government, on future similar occasions, to identify clearly the provisions of the international agreement where the EU has exclusive competence and provide justification for it acting in areas of shared competence.

17.5 The Minister then submitted a further Council Decision, which authorised postponement of the provisional application of the trade elements — the so-called Deep and Comprehensive Free Trade Area — until 31 December 2015. This was the one of the elements of the so-called 12 September 2014 Minsk agreement. Given the ongoing competence issues and that this was (to quote the Minister) “clearly a politically important decision on which I would have liked to have given you the opportunity to scrutinise”, the Committee recommended that the Council Decision be debated on the Floor of the House at the earliest opportunity (and, in the meantime, retained it under scrutiny).

17.6 Notwithstanding several further explanations of why the Committee had made this recommendation, that debate did not take place until 29 January 2015, and in European Committee. That Committee supported the Government’s aim of demonstrating flexibility on timing of the provisional application of parts of the EU-Ukraine Association Agreement, “as part of an intense wider effort to descale tensions on the ground in Ukraine” and encouraged “the use of the Association Agreement between the EU, its Member States and Ukraine to embed sustainable reform, security and prosperity in Ukraine and the eastern neighbourhood”.

17.7 The Minister now explains that Association Agendas are the successor mechanism to the European Neighbourhood Policy Action Plans. He says that, similar to Action Plans, Association Agendas contain “purely political commitments which are primarily on the part of the third-country”, and aim “to prepare and facilitate” implementation of the Association Agreement, by “creating a framework to help achieve the objectives of political association and economic integration by providing a list of priorities for joint work on a sector by sector basis”.

17.8 The Minister also notes that an earlier version of the Association Agenda was adopted by the EU-Ukraine Cooperation Council on 23 November 2009; that its operational part was amended several times; and that the last update was endorsed by the EU-Ukraine Cooperation Council in Luxembourg, on 24 June 2013. Now:

“Following a Ukrainian government request, the Association Agenda has now been updated again to reflect recent developments, including the provisional application of the Association Agreement and the urgent need for reforms in Ukraine.”

17.9 The Minister outlines the political context, the purpose of the Association Agreement, its endorsement by the European Parliament as well as the Council and the benefits to both parties in familiar terms. He likewise rejects the view that EU actions or the proposed signature of the Association Agreement in November 2013 were the cause of the crisis in Ukraine: successive Ukrainian governments had expressed aspirations of a closer
relationship with the EU, negotiations began in 2007; the EU had always made clear to
Russia that a closer EU-Ukraine relationship need not be at the cost of the Ukraine-Russia
relationship; when Russia initially expressed concern about the Association Agreement, the
EU “quickly engaged in dialogue with them, to set out facts and dispel myths”; the
Government is “committed to continuing the dialogue with Russia to provide a sustainable
way to de-escalate tensions, while not allowing Russia to dictate Ukraine’s sovereign
choices”.

17.10 The Minister welcomes the Association Agenda, which he says:

“respects the provisions in the Association Agreement and does not provide for any
further areas of co-operation nor have any implications for Member State
competence, past what has already been set out in the Agreement.”

17.11 In recent years the adoption of Action Plans has created a legal difficulty, with the
Government seeking their adoption by informal means. These are set out in our
Report in relation to the adoption of the Tunisia Action Plan of 4 March.\textsuperscript{54} However,
the Government now appears to accept that this Action Agenda, like the Tunisia Action
Plan, must be adopted by a formal decision. This is consistent with the long-held view
of the Committee, and welcome.

17.12 So far as the Association Agreement itself is concerned, the issues — both
political and legal — have been thoroughly exposed in our earlier Reports and via two
European Committee debates, in which the Government’s approach has been endorsed.

17.13 The Association Agenda raises no new issues, and we now therefore clear the
Council Decision from scrutiny.

**Full details of the document:** Joint Proposal for a Council Decision on the Union
position within the Association Council established by the Association Agreement between
the European Union, the European Atomic Energy Community and its Member States and
Ukraine, with regard to the adoption of a Recommendation on the implementation of the
EU-Ukraine Association Agenda: (36677), 5910/15 + ADD 1, JOIN(15) 5.

**Background**

17.14 The Association Agreement with Ukraine is intended to support and encourage
reform in Ukraine to bring it closer to EU norms, as well as to give Ukraine gradual access
to parts of the EU Internal Market. It includes a Deep and Comprehensive Free Trade Area
(DCFTA). It is the first of its kind between the EU and one of its “near neighbours”; similar
Agreements have been signed with Moldova and Georgia.

17.15 Four decisions authorising the EU to sign and provisionally apply the Association
Agreement between the EU and Ukraine, and subsequently to conclude (ratify) it, were
cleared from scrutiny by debate in European Committee B on 11 November 2013, and by
resolution of the House the following day.\textsuperscript{55} This was in anticipation of the Agreement

\textsuperscript{54} (36675).— Thirty-fifth Report HC 219-xxxiv, chapter 19 (4 March 2015).

\textsuperscript{55} The record of the European Committee debate is available at Gen Co Deb, European Committee B, 11 November
2013, cols 2-20.
being signed at the Vilnius summit later that month. In the event the Agreement was not signed as planned.

17.16 However, following the subsequent events in Ukraine, on 21 March 2014 the EU Council and the new Ukraine authorities signed certain core political chapters and the EU decided to apply them provisionally — although, in accordance with Article 486 of the Agreement, provisional application of any part of the Association Agreement only takes effect once the Ukraine has ratified the Agreement and the EU has notified that the necessary procedures have been completed.56

17.17 Following the election of President Poroshenko on 25 May 2014, both he and the Council pressed ahead with the signature and provisional application of the other elements of the Agreement: Title III — Freedom, Justice and Security; Title IV — Trade and Trade-related Matters; Title V — Economic and Sector Cooperation; Title VI — Financial Cooperation, with Anti-fraud Provisions; and Title VII — Institutional, General and Final Provisions. Council Decisions 2014/668 and 2014/669 of 23 June 2014 accordingly authorised the signature of the remainder of the Association Agreement subject to the conclusion of the said Agreement and in accordance with the Final Act.57 The Agreement was signed at the European Council on 27 June 2014 by all 28 EU Member States, the President of the European Commission and the President of the European Council, and the President of Ukraine.

The most recent Council Decision

17.18 A further Council Decision amending Decision 2014/668/EU of 23 June 2014 was submitted for scrutiny on 29 September 2014. Following consultations with the Ukrainian side and in the context of the overall efforts for the implementation of the peace process in Ukraine, the Commission proposed delaying until 31 December 2015 the provisional application of the trade-related provisions of the Association Agreement and, at the same time, continuing the application of the Union’s autonomous trade measures for the benefit of Ukraine. The provisional application of the relevant provisions of Titles III, IV, V, VI and VII, and the related Annexes and Protocols, of the Association Agreement would take effect in stages.

17.19 In respect of Titles III, V, VI and VII, and the related Annexes and Protocols, the notification of provisional application provided in Article 486 of the Association Agreement was to be made without delay, in conjunction with the notification of provisions provided for in Article 4 of Council Decision 2014/295/EU.58

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56 The EU procedures were completed in respect of the core political chapters of the Association Agreement by Decision 2014/295.
57 Decision 2014/669 dealt separately with Article 17 of Title III of the Association Agreement, which relates to the treatment of third-country nationals legally employed in the territory of a party and to which the UK opt-in applies in accordance with Protocol 21 to the Treaties.
17.20 In respect of Title IV — Trade and Trade-related Matters — and the related Annexes and Protocols, the notification was to be made so that the provisional application took effect on 1 January 2016.

17.21 The Commission’s proposal reflected the outcome of trilateral consultations between the European Union, Ukraine and the Russian Federation on implementation of the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA), which forms Title IV of the Association Agreement — viz., the Joint Ministerial Statement of 12 September 2014 in which the EU proposed, as a contribution to a wider negotiation process aimed at de-escalating tensions on the ground in Ukraine, delaying the provisional application of the DCFTA so that provisional application takes effect on 1 January 2016, whilst continuing autonomous trade measures of the EU to the benefit of Ukraine for the same period. 59

17.22 The Minister described this proposal as offering “a pragmatic and flexible solution by delaying the provisional application of the DCFTA, whilst leaving the text of the Association Agreement unchanged”. He noted that the Government judged that a closer relationship with the EU was the best way to encourage an independent and successful Ukraine. The Association Agreement, including the DCFTA, was “an essential milestone on this path”. The reforms supported by the Agreement, “if implemented”, offered “the best chance for Ukraine to address corruption and become a free-market economy underpinned by democracy and rule of law”.

17.23 Ukraine had now ratified the Association Agreement (so, too, the European Parliament) — “a strong signal of continued commitment despite Russian pressure”. The Government believed that the flexibility embodied in the draft Council Decision “allows Ukraine additional time to prepare for implementation of the DCFTA and also contributes to wider negotiations to de-escalate tensions in Ukraine and help the Government of Ukraine to deliver the stability, democracy and prosperity that the Ukraine’s citizens deserve”. The Minister went on to explain that Article 486 of the Association Agreement provided that provisional application came into force on the first day of the second month after Ukrainian ratification and notification by the EU of what it intended to apply.

17.24 He then said:

“Therefore, if the Council Decision is agreed by the 30 September we would remain on schedule for provisional application of the non DCFTA elements on 1 November as planned, whilst agreement in October means provisional application would slip to 1 December.

“After much consideration, I regret that I must override scrutiny in this instance in order to allow the Council Decision to be agreed and the non DCFTA elements of the Association Agreement to be implemented in the necessary timeframe. It is my strong view that we cannot delay provisional application of the non DCFTA elements of the Association Agreement. Russia has already sought to misinterpret the agreement and imply that the 12 September deal applies to the Association

59 See the Press Release Statement.
Agreement in its entirety, not just the DCFTA, it is politically important to remain on schedule.

“It remains the case that any amendments to the Association Agreement, including DCFTA, can only be at the request of one of the two Parties to the Agreement. Any amendment would require the unanimous agreement of EU member states and Ukraine, and changes to the Agreement itself would require further ratification procedures. The informal trilateral consultations between the EU, Ukraine and Russia on the possible impact of the DCFTA on Russia do not affect the autonomy of the decision of the EU and Ukraine as the two Parties to the Agreement, and does not impact on Ukraine’s right to make its own sovereign decisions and determine its own future.”

17.1 After the General Affairs Council meeting of 29 September 2014, the following statement was issued:

“The Council and the Commission
1. Welcome the ratification of the EU-Ukraine Association Agreement, which constitutes a single instrument, by the Ukrainian Parliament and the consent given by the European Parliament on 16 September 2014, and look forward to a swift completion of the ratification by all Member States.
2. Refer to the Joint Ministerial Statement of 12 September on the implementation of the EU-Ukraine Association Agreement/DCFTA, and underline the importance for all parties to strictly abide by their commitments therein. This statement is part and parcel of a comprehensive peace process in Ukraine, respecting Ukraine’s territorial integrity and the right of Ukraine to decide on its destiny.
3. Recall that the Association Agreement is a bilateral agreement and any adaptations to it can only be made at the request of one of the parties and with the agreement of the other, according to the mechanisms foreseen in the text and in compliance with international law and with the respective internal procedures of the parties.
4. Encourage Ukraine, following the start of provisional application of the relevant provisions of Titles I-III and V-VII, to continue the process of envisaged reforms and economic modernisation, in accordance with its international commitments and with EU support and monitoring.
5. Reaffirm the importance of adequate preparation for the implementation of Title IV of the Association Agreement, in line with the timeframe specified in the Council Decision, and taking into account Ukraine’s international commitments.”

Our assessment

17.2 We noted the Minister’s explanation for over-riding scrutiny. However, as he himself said, this was “clearly a politically important decision on which I would have liked to have given you the opportunity to scrutinise”.

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17.3 Moreover, like the Decisions relating to the similar Georgia and Moldova Agreements, the earlier Decisions gave rise to concerns relating to EU competence. As we noted in our most recent relevant Report on the documents, at that stage of the proceedings:

— it was clear that the UK had, contrary to usual practice, acquiesced in the exercise by the EU of shared competence in respect of the provisions of the Agreement on the basis of declarations that, not being legally binding, could only alleviate, not remove, competence concerns;

— this issue might cover a considerable area of the Agreement, given that the UK Statement provided by the Minister sought to avoid creating a precedent in respect of “[t]he provisional application of those areas of the previously unexercised shared competence within the trade elements of the Association Agreement”; and

— the “trade elements” formed a very significant part of the Agreement (see our most recent relevant Report for full details).

17.4 Whilst the current proposal did not exacerbate them, these concerns remained. We therefore concluded that the House should have an opportunity to debate the political context that had given rise to that further Council Decision, the wider economic questions that arose due to the situation in Ukraine, and to press the Minister to:

- identify more clearly than he had done thus far those elements of the Agreement where the EU was acting — either by signing and concluding the Agreement, or by provisionally applying it — for which its competence was not exclusive; and

- provide a clear explanation of the Government’s position.

17.5 We emphasised that, because of the very considerable importance that this Council Decision, it should be debated on the floor of the House at the earliest opportunity.

17.6 In the meantime, we retained the Council Decision under scrutiny.

17.7 Notwithstanding several further explanations of why the Committee had made this recommendation, that debate did not take place until 29 January 2015, and in European Committee. At the end of the debate, the Committee resolved thus:

“That the Committee takes note of European Documents No. 13519/14, a Council Decision on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols, No. 1351/2014, Council Regulation (EU) of 18

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61 For the Committee’s consideration of these Agreements, see our Eighth Report of 16 July 2014, at http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-viii/21915.htm.

December 2014 amending Regulation (EU) No. 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol, and No. 2014/933/CFSP, Council Decision of 18 December 2014 amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol; supports the Government’s aim of demonstrating flexibility on timing of the provisional application of parts of the EU-Ukraine Association Agreement, as part of an intense wider effort to deescalate tensions on the ground in Ukraine; encourages the use of the Association Agreement between the EU, its Member States and Ukraine to embed sustainable reform, security and prosperity in Ukraine and the eastern neighbourhood; and supports the Government’s aim of fully implementing its policy of non-recognition of the illegal annexation of Crimea and Sevastopol.”

The draft Council Decision

17.8 In its Explanatory Memorandum, the EEAS/Commission note that, given recent developments — the provisional application of the Association Agreement and “the urgent need for reforms in Ukraine” — it became “an important political priority to update the Association Agenda so as to reflect the current state of play of the relations between the EU and Ukraine”. They describe the aim of the Association Agenda as being to prepare and facilitate the implementation of the Association Agreement, by “creating a practical framework through which the overall objectives of political association and economic integration can be realised and by providing a list of priorities for joint work on a sector by sector basis”. The Association Agenda is also:

“a vehicle for monitoring and assessment of Ukraine’s progress in implementing the EU-Ukraine Association Agreement, achieving the overall objectives of political association and economic integration, ensuring respect for common values, and converging with the EU’s acquis in specific areas, as foreseen in the Association Agreement.”

17.9 That the Association Agenda focuses on a more limited number of priorities:

“does not affect the scope or the mandate of existing dialogues under the PCA or other agreements nor should it prejudge the implementation of the commitments made in the Association Agreement/DCFTA.”

17.10 In his Explanatory Memorandum of 4 March 2014, the Minister for Europe makes the following observations about its legal dimensions:

“On 18 December 2014 the European Court of Justice (ECJ) dismissed the UK’s application to annul Council Decision 2012/776/EU which sets out the EU’s position on amendments to the provisions on social security schemes contained in the EU-Turkey Association Agreement. The Court ruled in that case that Council approval of measures implementing aspects of an Association Agreement was to be agreed by Qualified Majority Voting (QMV).”

\[63 \text{The record of the debate is available at Gen Co Deb, European Committee B, 29 January 2015, cols. 3-18.} \]
“The Court’s ruling departs from the view held previously by the UK, that voting decisions for these types of Decisions adopted pursuant to Article 217 TFEU, which implement Association Agreements, should be made by QMV. This means that voting on Action Plans and Council Decisions on rules of procedure where they concern Association Agreements will be subject to QMV rather than unanimity. The judgement cannot be appealed.”

The Government’s view

17.11 With regard to the political context, the Minister says:

“In 2014 Ukraine suffered protests which led to nearly 100 killed in Maidan Square, the illegal annexation of Crimea by Russia, the Russian-supported conflict in eastern Ukraine and the tragic downing of Malaysian Airlines flight. The IMF also forecasted Ukraine’s GDP to contract by at least seven percent in 2014. However, Ukraine’s parliamentary elections on 26 October 2014 were viewed by international observers as largely meeting international standards and Ukraine now has a pro-reform President, Government and Parliament. The Coalition Agreement commits the government to political and economic reforms includes many positives such as commitments to tackling corruption (and lifting MPs’ immunity), judicial reform, decentralisation, public administration reform and reforming the energy sector. The Ukrainian government will continue to need substantial support from international partners to help them tackle these economic and stability challenges.

“The Ukrainian Rada (Parliament) ratified the wide ranging EU-Ukraine Association Agreement, including the Deep and Comprehensive Free Trade Area, on 16 September 2014 and the European Parliament gave its assent to the Agreement in parallel. These actions demonstrated the continuing commitment by both parties to the Association Agreement and was significant step towards closer relations between the EU and Ukraine. It provides a strong mechanism through which to deliver security, democracy and prosperity to Ukraine. It commits Ukraine to deep and meaningful reforms, more closely aligning legislation to EU norms, focusing on support to core reforms including economic recovery and growth, good governance, improved respect for rule of law and human rights. It will allow for the closer integration Ukraine with the EU and promote increased prosperity and stability in the European neighbourhood.

“The crisis in Ukraine was not a result of EU actions or the proposed signature of the Association Agreement (AA) in November 2013. Successive Ukrainian governments had expressed aspirations of a closer relationship with the EU; negotiations on an AA began in 2007. The UK, together with our EU partners, has always made clear to Russia that a closer EU-Ukraine relationship need not be at the cost of the Ukraine-Russia relationship. When Russia initially expressed concern about the AA the EU quickly engaged in dialogue with them, to set out facts and dispel myths. We are committed to continuing the dialogue with Russia to provide a sustainable way to de-escalate tensions, while not allowing Russia to dictate Ukraine’s sovereign choices.”

17.12 Regarding the UK’s bilateral contribution, the Minister says:
“The UK is providing £10 million in technical assistance to support economic and governance reforms in Ukraine. This technical assistance includes support to the policy reforms needed to stabilise the economy and build a more accountable and transparent government; support for anti-corruption reforms; and support to public financial management reform. The UK has committed an additional £15 million for humanitarian assistance to support the appeal launched by the United Nations and Ukrainian government in February 2015.”

17.13 Turning to the proposal itself, the Minister says:

“The Government welcomes Association Agenda as it provides a practical framework to implement the objectives of the Association Agreement by providing a list of priorities for joint work on sector by sector basis. The Agenda respects the provisions in the Association Agreement and does not provide for any further areas of cooperation nor have any implications for Member State competence, past what has already been set out in the Agreement”.

17.14 Finally, on the method of adoption, the Minister says:

“The Government considers the provisions in the Association Agenda are political in nature and simply represent a recommendation for how the underlying Association Agreement should be implemented. However, the Government accepts that the very existence of the Association Agreement affects the ENI Regulation such that the Association Agreement can be said to have legal effects. The Government therefore agrees that, as with the recently considered Tunisia Action Plan, the Ukraine Association Agreement may be appropriately adopted by Council Decision.”

Previous Committee Reports

18 Use of EU contract staff

Committee’s assessment Politically important
Committee’s decision Cleared from scrutiny; further information requested

Legal base —
Departments Foreign and Commonwealth Office
Document numbers (36678), 6466/15, COM(15) 67

Summary and Committee’s conclusions

18.1 The Commission is required to provide reports on the use of contract staff in each year within the EU institutions and agencies. Contract staff are divided into four function groups and include: (1) mail staff, drivers, administrative support, skilled workers (2) nursery staff, office managers, clerks, secretaries, technical staff (3) financial management, ICT, executive/technical tasks (4) administrative, communication and advisory tasks, researches, engineers, linguists.

18.2 This report reviews the situation in 2012 and 2013. The key findings are:

- there was an increase in staff employed across the institutions and agencies from 9,697 in 2011 to 9,904 in 2012 and 9,986 in 2013;

- the approximately 60% Commission share in 2012 and 2013 compares with a two thirds share in 2011, but the drop is attributable to increased numbers at other institutions and agencies;

- the Commission attributes the overall increase in staff to replacement of auxiliary staff by auxiliary contract staff, the replacement of former Category D contract staff, the conversion of permanent official posts into contract staff and the employment of contract staff as temporary replacements for permanent staff;

- 5,921 contract staff were serving in the Commission as at 31 December 2012 and 5,807 as at 31 December 2013, with the largest function group being group 3;

- there has been a rise of 7.7% and 4.9% in the use of contract staff at other institutions and agencies between 2011–12 and 2012–13 respectively;

- the gender balance has remained stable with women making up 63.2% of all contract staff in 2011, compared with 63.2% in 2012 and 62.8% in 2013; and

- the UK, Germany, Poland and the Netherlands are underrepresented on a population basis, compared with a high contract staff representation for Belgium and Italy measured on the same basis.
18.3 The Government is disappointed both with the rise in the numbers of contract staff and UK underrepresentation. However, as the Minister for Europe (Mr David Lidington) explains in his Explanatory Memorandum, the Government is taking action to address both issues.

18.4 The increase in the use of contract staff and the underrepresentation of the UK in the staff of the EU institutions and agencies is concerning. However, we note that the Government recognises these difficulties and is taking action to address both staff costs and better recruitment from the UK. So, although we draw this Report to the attention to the House for information, we now clear it from scrutiny.


The Government’s view

18.5 In his Explanatory Memorandum of 5 March, the Minister for Europe sets out the key findings of the Report, as summarised in paragraph 18.2 above. He adds that:

- the MFF provision for a 5% cut in staff for 2013–17 did not apply to contract staff but the Commission has instead given assurances that increased numbers of contract staff will not be used to compensate for reductions in permanent staff;

- the institutions must be efficient and subject to the same reduction in administrative costs as domestic civil services have been during austerity;

- the rise in contract staff is therefore disappointing;

- the Government will work with like-minded Member States to maintain calls for a reduction in the costs of all categories of staff;

- the Government will also review the impact of the recruitment of new candidates for the institutions which took place in September 2013 and which will be felt in 2014, when a further increase in contract staff could be expected; and

- it remains a key Government priority to address the underrepresentation of UK citizens in the staff of the institutions and agencies. The Government has established an EU staffing unit in April 2013, promoting EU careers, is providing training for the recruitment process across Government and is also increasing secondments for the UK in strategic roles.

Previous Committee Reports

19 Restrictive measures against Zimbabwe

Committee’s assessment  Politically important
Committee’s decision  Cleared from scrutiny

Document details
(a) Council decision and (b) Council Regulation on EU restrictive measures against the Mugabe regime

Legal base
(a) Article 29 TEU; unanimity; (b) Article 215 TFEU; QMV

Department  Foreign and Commonwealth Office

Document numbers  (a) (36694), —; (b) (36695), —

Summary and Committee’s conclusions

19.1 Ever since 2002 the EU has imposed a variety of “targeted” measures against the Mugabe regime in Zimbabwe. Since the formation in 2009 of an inclusive power-sharing Government and an external regional process led by South Africa, the EU has sought to perform a delicate balancing act of keeping up the pressure but rewarding progress.

19.2 When the EU restrictive measures in question here were last renewed, in February 2014, only two individuals and one entity — Robert and Grace Mugabe, and the parastatal “Zimbabwe Defence Industries”64 remained “actively subject” to these measures (i.e. continuation of the asset freeze and travel ban in suspended form in respect of 84 individuals and eight entities did not apply to them).

19.3 In addition, a separate Council Decision extended the validity, and suspension, of the “Appropriate Measures” under Article 96 of the Cotonou Agreement until 1 November 2014.

19.4 Last December, the Committee considered a letter from the then Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone), in which she explained why Member States had allowed the “Appropriate Measures” to lapse. In that letter, the then Minister noted that:

“this is a separate decision to that on the Restrictive Measures, which remain in force until February 2015, and will also require unanimity of EU MS to renew. Colleagues in the FCO (who hold responsibility for UK policy on Restrictive Measures) will be actively reviewing these Measures in the coming months, in close consultation with

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64 Described in the Zimbabwe Independent, a business weekly, a year ago as the “bankrupt state-owned Zimbabwe Defence Industries (ZDI), a company that manufactures and supplies army uniforms, field equipment and ammunition for both the domestic and international markets, [and which] is now buying and selling scrap metal to keep afloat amid reports the majority of its workforce has been sent on forced leave”. A more recent local report cites company general manager (Retired) Colonel Tshinga Dube as telling the Sunday News that ZDI “is in dire straits because of a tight liquidity crisis precipitated by Western sanctions which have prohibited its US and European Union (EU) customers from doing business with it since 2002”, which has been “actively compounded by high local production and costs for small arms ammunition – its remaining principal product – when compared to mass producers like China”, a huge salary bill and failure to sell its stockpile of small arms ammunition due to a lack of funding from the ZDF and the Zimbabwe Republic Police, which had remained the principal consumers after the US-EU embargo shut down the external market — all of which has led to the company temporarily ceasing operations while contemplating a final shutdown. See Nehanda Radio.
EU Member States. I understand the FCO will engage the Committees as soon as possible ahead of February and engage the EEAS to align negotiation and scrutiny timelines.”

19.5 The Committee noted that the then Minister had copied her letter not only widely within the Government (to the Prime Minister, the Foreign Secretary, the International Development Secretary, the Minister for Europe and the Minister for Africa) but also to the Chair of the relevant APPG. We were accordingly content for interested Members to pursue any questions that they felt might immediately arise from this determination via the many means at their disposal.

19.6 Looking ahead to the fate of the extant Council Decision beyond February 2015, given recent developments within the ruling ZANU-PF party revolving around the future beyond President Mugabe, whatever decision the Council came to over restrictions that now applied directly only to the President and his wife, was likely to be controversial. In the Minister for Europe’s and his officials “engagement” with the EEAS, the Committee therefore looked to him and them to make a reality of aligning “negotiation and scrutiny timelines”. There seemed to us no reason why, as had happened on previous occasions, matters should go “down to the wire”, since there appeared to be nothing between last December and the expiry date that was likely to change minds one way or the other. We therefore looked to the Minister for Europe “engaging” the Committee no later than 8 January 2015. At that time, as well as updating the Committee on the review process, also asked for his assessment of the political situation in Zimbabwe and his views on the right way forward.65

19.7 The Minister now writes to say that, via a Council Decision and Council Implementing Regulation adopted on 19 February 2015, the asset freeze and travel ban will continue in suspended form in respect of 84 individuals and eight entities, with the measures remaining in full effect against Robert Mugabe, Grace Mugabe and Zimbabwe Defence Industries only (and that five deceased individuals have been removed from the listing). The Minister’s approach to the negotiations leading up to this determination was approach to these discussions was guided by two key principles:

— “that the package of Measures must remain legally robust, and that measures should be lifted where they are found to no longer satisfy the legal criteria of the sanctions regime (ensuring that the sanctions are lawful and are retained as a sustainable and effective foreign policy tool in the long run); and

— “that the Measures should promote democratic reform and respect for Human Rights in Zimbabwe, but remain flexible and respond to circumstances on the ground, taking account of factors such as the economic, humanitarian and human rights situation”.

19.8 In terms of timing, the Minister says that discussions among Member States had to await a report from EU Heads of Mission in Harare, which was only finalised on 10 January because of the need to take account of ZANU-PF’s (five yearly) Party Congress in December “and the significant political upheaval that followed”. There was a wide range of views held by Member States; any extension of the Measures required unanimous

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agreement, or the measures would have lapsed on 20 February; the UK “worked hard to secure the best outcome for continuation of sanctions listings, including lobbying at the highest level”; despite UK pressure, many Member States were unable to confirm their respective positions until late January. On 4 February, the EU’s Political and Security Committee agreed to a full 12-month rollover. Obtaining draft Council documents “in a timelier manner” was not possible.

19.9 While, given the timescales involved, an override was necessary and regrettably unavoidable, the Minister also believes that “the FCO should have sent you an Explanatory Memorandum earlier and I apologise for the fact that this was not done”.

19.10 While we can see why the Minister might have delayed writing to the Committee on 8 January, we can see no reason why he could not have written to us once the EU Heads of Mission report had been received, in line with our plainly-stated request that he should update the Committee at that point on the review process, his assessment of the political situation in Zimbabwe and his views on the right way forward.

19.11 No doubt he would have also had to say what he says now about what then lay ahead, in terms of the range of Member State views and the 20 February deadline. But the key decision was renewal or expiry: and that was taken on 4 February by the Political and Security Committee (PSC). Again, we can see no reason why the Minister could not have written to us immediately after that PSC decision.

19.12 Moreover, a draft Council Decision was circulated to Member States for discussion on 12 February. Given how straightforward the eventual outcome was in drafting terms, it is extraordinary that it took so long for the EEAS to produce it — which, once again, demonstrates the hollowness of whatever assurances the Minister may have received in response to his representations to the new High Representative (Federica Mogherini) in December 2014 about the importance of early publication of documents to allow adequate time for scrutiny to take place.

19.13 Even so, the Minister could have brought us up to date and alerted us in time for our meeting on 18 February. Instead, the Decision was officially adopted by written procedure on 19 February, and we did not learn about this until we received his Explanatory Memorandum until 5 March.

19.14 We operate only on the basis of Explanatory Memoranda and, thereafter, letters from Ministers in response to questions raised, or observations or requests made, by the Committee. The Minister suggests that he is himself unhappy with the way this matter has been handled. In other circumstances, we would ask the Minister to provide a more detailed explanation as to why these opportunities were not taken to keep the Committee informed. But the House will shortly be dissolved, prior to the general election. On this occasion, therefore, we look to the future.

19.15 Sometime this summer there will be a new government, and a new Committee. In the meantime, we ask the Minister to initiate a “lessons learned” review in his Department, the purpose of which would be to ensure that the requirements of the “upstream” scrutiny is embedded in all parts of the FCO whose business is touched by the CSDP and ESDP process. The Committee, as the Minister will assuredly
acknowledge, is entirely understanding of overrides that arise out of genuine operational requirements (e.g., currently, the regime operating in the context of the Ukraine crisis). But this is not the case here. Our requirements are simple that, when a Council Decision is presented to the Committee for scrutiny, on restrictive measures or a mission, it contains no surprises; i.e., that it has been preceded by correspondence that prepares the ground and enables the Committee, if appropriate, to respond along the way. In some instances, this happens; in others, such as this, tricks are missed. Departments with perhaps more “churn” than others, because of desk officers’ peripatetic responsibilities, must ensure that the scrutiny process is truly embedded, and not prone to job holders moving on and replacements having to learn “on the job”, as the need arises.

19.16 We therefore ask the Minister to do what he can to ensure that a system is devised whereby this essentially simple process — of keeping Committee requests under review, and writing as and when requested, or because it is in other ways timely to do so — is embedded in FCO policy departments who handle this business, and becomes part of the overall scrutiny process to which he has so often professed himself committed.

19.17 In the meantime, we now clear the documents.


Background

19.18 The EU first imposed Restrictive Measures on Zimbabwe in 2002, following the escalation of political violence related to the elections that year. The Measures were introduced to put pressure on those considered responsible for the violence. These measures have been renewed, in some form, each year since 2002. Since February 2012, the Restrictive Measures have been progressively suspended, in order to facilitate dialogue between the EU and the Government of Zimbabwe.

19.19 The full background is set out in our Report of 22 February 2012; subsequent developments in the later Reports cited below; and most recently in our 2014 Reports.

19.20 In brief, a Constitutional Referendum in Zimbabwe on 16 March 2013 was judged to have been well-managed and peaceful. Thus, in March 2013, the Council agreed to suspend — though not lift — sanctions against 81 individuals and eight entities; it did not, however, suspend the listings of ten individuals, comprising President Mugabe, Grace Mugabe and a core group of senior Zanu-PF officials prominent in the operation of the

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security sector; it also left two entities under active restrictive measures — the mining parastatal (ZMDC) and the defence parastatal (ZDI). Then, after the July 2013 elections, ZMDC was delisted in line with an EU internal agreement so to do if the EU judged that it had not been involved in undermining the free and fair conduct of those elections.69

19.21 The two Council Decisions adopted in February 2014 incorporated the latest manifestation of the “targeted measures”:

— the customary EU “travel ban + asset freeze package”, and embargoes on arms and internal repression items, was maintained until 20 February 2015;

— the travel ban and asset freeze was suspended on a further eight individuals;

— two individuals and one entity: “Robert and Grace Mugabe; Zimbabwe Defence Industries” remained actively subject to these measures (i.e. the suspension did not apply to them); and

— the validity, and suspension, of the Article 96 “Appropriate Measures” was extended until 1 November 2014.

19.22 The “Appropriate Measures” permitted under Article 96 of the Cotonou Agreement when an ACP70 country is guilty of egregious breaches of its Article 8 “good governance” provisions. Thus Council Decision 2002/148/EC was introduced after the first “stolen” election in 2002. The Council introduced them because of serious violations of human rights and of freedom of expression, association and peaceful assembly, and in response to attempts by the Zimbabwe government to prevent free and fair elections, notably by refusing access for international election observers and the media. They were renewed annually over the following decade.

19.23 The main features of the Article 96 measures are: suspension of budgetary support, and of financial support for all projects except those in direct support of the population, in particular in the social sectors and in support of the 2009 General Political Agreement; no effect on humanitarian support; channelled exclusively through multilateral organisations such as the UN and civil society organisations and not through Government channels.

19.24 As the then Minister at the Department for International Development (Lynne Featherstone) recalled in her letter to the Committee of 29 October 2014, the EU:

“suspended their application in July 2012 in response to progress on a range of issues by the government. The Appropriate Measures have remained in suspended form since (having been renewed in August 2013 and February 2014). At the last review, EU Member States agreed that unless they saw a ‘serious deterioration in the governance and human rights situation’, the Appropriate Measures would automatically lapse on 1 November. Member States agreed in February that a review before November was the best approach given timelines for the EU’s internal

70 The African, Caribbean and Pacific group of States, who are the EU’s principal development partners, and the principal beneficiaries of the European Development Fund, or EDF.
planning for the 11th European Development Fund (EDF). The EDF provides support to African, Caribbean and Pacific (ACP) countries who are signatories to the Cotonou Agreement.”

19.25 When, on 5 February 2014, the Committee cleared the Council Decisions, it asked the Minister for Europe, who had submitted them jointly for scrutiny, to write to us in October 2014 and outline the direction that the review process was taking, his expectations of the final outcome, and his views on it.

19.26 In responding, the then DFID Minister said that:

— in early October, Member State officials and the European External Action Service (EEAS), drawing on the advice of EU Heads of Missions in Harare, assessed the situation as “stable but fragile”, and agreed that, “while there had been less progress than we might hope for on a range of issues”, they had “not witnessed a serious deterioration since February, and in some areas had seen improvements”;

— as such, the conditions for renewing the Appropriate Measures beyond 1 November 2014 had not been met;

— in practice, the lapse of Appropriate Measures “would have no material impact on the way the EU provides aid to Zimbabwe”;

— the EU was planning to continue to channel support through partners such as the UN and Civil Society Organisations until 2017 at least;

— in November 2014, she expected the EU to present a National Indicative Programme (NIP), setting out a proposed programme of support worth €234 million to Zimbabwe from the 11th EDF in 2014–20;

— average annual support was envisaged of €33.4 million, almost exactly the same as the annual average provided from the EDF between 2009 and 2013 (€33 million);

— the EU was not proposing that any aid went directly through Government of Zimbabwe Ministries; and

— DFID did not put funds directly through Government of Zimbabwe systems and decisions on how EU aid was provided had no bearing on the UK’s bilateral aid programme to Zimbabwe.

The Council Decision and the Council Implementing Regulation

19.27 These instruments continue all EU Restrictive Measures against Zimbabwe until 20 February 2016, apart from against five deceased individuals (who have been removed).

The Government’s view

19.28 In his Explanatory Memorandum of 5 March 2015, the Minister for Europe recalls that the restrictive measures comprise an arms embargo, targeted asset freeze and, for individuals, a travel ban, and that prior to the adoption of this Council Decision and Council Implementing Regulation, 91 individuals and nine entities were listed; and says:
— the asset freeze and travel ban continue in suspended form in respect of 84 individuals and eight entities, with the measures remaining in full effect against Robert Mugabe, Grace Mugabe and Zimbabwe Defence Industries only;

— five deceased individuals have been removed from the listing.

19.29 The Minister describes restrictive measures as:

“one of the EU tools to promote the objectives of the Common Foreign and Security Policy, which include: preserving peace, developing and consolidating democracy, and the Rule of Law and respect for Human Rights and fundamental freedoms. They are designed to bring about a change in policy or activity by the target country, entities or individuals. Measures are therefore always targeted at such policies or activities that have prompted the decision to impose Measures, the means to conduct them and the persons responsible for them.”

19.30 In the specific case of Zimbabwe, “the Measures aim to support the Zimbabwean people to achieve a more prosperous and democratic future”.

19.31 The Minister then says:

— “discussions on this year’s renewal of Restrictive Measures concluded on 4 February 2014 at the EU Political and Security Council71 meeting;

— “the UK approach to these discussions was guided by two key principles:

a) “that the package of Measures must remain legally robust, and that measures should be lifted where they are found to no longer satisfy the legal criteria of the sanctions regime (ensuring that the sanctions are lawful and are retained as a sustainable and effective foreign policy tool in the long run); and

b) “that the Measures should promote democratic reform and respect for Human Rights in Zimbabwe, but remain flexible and respond to circumstances on the ground, taking account of factors such as the economic, humanitarian and human rights situation.”

The Government’s view

19.32 The Minister makes the following additional comments:

“The attached Council documents were adopted to ensure that all Restrictive Measures continue to be legally robust, responsive to the situation on the ground and relevant to the objectives of the sanctions regime, whilst maintaining financial and travel restrictions on the key individuals and entity responsible for undermining democracy and respect for human rights. The Measures are a preventative tool, and not punitive.

71 We presume that the Minister is referring to the Political and Security Committee: i.e., 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.
“The Decision to continue the Restrictive Measures in full (with the exception of 5 deceased individuals) reflects ongoing EU concerns around the human rights situation and the need to address outstanding political reform in Zimbabwe. On the whole, Member States assessed there were no grounds to warrant the scaling back of the Measures, including those already suspended, at this juncture. The Measures therefore remain in place against a small and targeted number of individuals and entities and aim to support the Zimbabwean people to achieve a more prosperous and democratic future.”

19.33 Finally, on the timing of his Explanatory Memorandum, the Minister says:

“The attached documents were published in the Official Journal of the European Union on 20 February 2015, having been subject to a Ministerial override of the normal parliamentary scrutiny process. This is a post-adoption Explanatory Memorandum.”

**The Minister’s letter of 5 March 2015**

19.34 The Minister says that the purpose of his letter is to set out “why the use of an override was necessary in this case”, which he does as follows:

“EU Restrictive Measures against Zimbabwe were due to expire on 20 February 2015 unless an extension was adopted before that date. Unfortunately, draft Council documents were not available in time to allow for Parliamentary Scrutiny ahead of the 20 February deadline. Allowing measures to expire would seriously undermine the effectiveness of the sanctions regime, and risk asset flight from previously frozen bank accounts in the EU.

“On 4 February, the EU’s Political and Security Committee agreed to a full 12 month rollover of the EU’s Restrictive Measures against Zimbabwe. This agreement continues: i) asset freezes and travel bans against President Mugabe, the First Lady and one entity, Zimbabwe Defence Industries; ii) an arms embargo; and iii) suspended asset freezes and travel bans against a further 84 individuals and 8 entities. It was also agreed that five deceased individuals would be removed from the suspended listings. This was an excellent result and met all of our policy objectives.

“On 12 February, a draft Council Decision to this effect was circulated to Member States for discussion. The Decision was officially adopted by written procedure on 19 February.

“Ideally the draft Council Decision would have been available several weeks earlier, to allow the UK to undertake the normal scrutiny process. In ESC Report 35761-35762 the Scrutiny Committee expressed their concern that the 2014 Restrictive Measures annual review had “come down to the wire”, and asked that this situation not be repeated. Sharing your concerns, I wrote to High Representative Federica Mogherini in December 2014 to highlight the importance of early publication of documents to allow adequate time for scrutiny to take place.

“Negotiations in Brussels, on the annual review of Restrictive Measures, were primarily based on a Harare Heads of Mission’s report. Drafting of this report...
commenced in early December but was only finalised on 10 January. Earlier completion was not feasible as Heads of Mission needed to take account of ZANU-PF’s (five yearly) Party Congress in December and the significant political upheaval that followed. This included the purge of 16 Ministers and elevation of Grace Mugabe to the Politburo. A report that failed to take account of these issues would not have been a sound basis for discussions in Brussels.

“Despite UK officials engaging other Member States on the review at the earliest opportunity, many Member States were unable to confirm their respective positions until late January. Given the wide range of views held by Member States, and the fact that any extension of the Measures required unanimous agreement of all 28 Member States, discussions took a number of weeks before agreement was reached. Failure to reach a unanimous agreement would have resulted in all the Measures lapsing on 20 February. The UK worked hard to secure the best outcome for continuation of sanctions listings, including lobbying at the highest level.

“As a result, obtaining draft Council documents in a timelier manner was not possible. Ministerial scrutiny override was regrettably unavoidable in this case. While I think, given the timescales involved, an override was necessary, I also believe that the FCO should have sent you an Explanatory Memorandum earlier and I apologise for the fact that this was not done.”

Previous Committee Reports


20 EU restrictive measures against Egypt

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Summary and Committee’s conclusions

20.1 This Council Decision amends Council Decision 2011/172/CFSP concerning restrictive measures against certain persons and entities in Egypt by extending the current sanctions for another year until 22 March 2016.

20.2 The Decision thus provides for the further extension of restrictive measures against “persons responsible for misappropriation of Egyptian State funds, and who are thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country”. These measures consist of a freezing of funds and economic resources of those persons listed in the annex to the CFSP Decision.

20.3 They were introduced in 2011, following Hosni Mubarak’s resignation as President of Egypt on 11 February 2011 and, in response to requests from the then Egyptian authorities, froze assets belonging to Mubarak, his family members and other former regime figures. This was done by the Council on 31 January 2011, via Council Decision 2011/172/CFSP, and has been annually extended, unchanged, in in each subsequent year (see the “Background” section below for further details).

20.4 The Minister for Europe (Mr David Lidington) says that the Egyptian authorities have confirmed that judicial proceedings are continuing against all 19 individuals currently listed. The asset freeze itself does not enable Member States to seize assets deemed to have been corruptly obtained, or return them to the Egyptian State; further action through the criminal justice system of the requesting state is required. Supporting the request to extend the current restrictive measures will allow investigations into the alleged corruption of listed individuals to continue; and also send a strong message of continued support for efforts to tackle the corruption of members of the former Mubarak regime and reclaim stolen assets.

20.5 He also notes that Egypt remains the top priority of the UK Asset Recovery Taskforce: significant work has been undertaken to build Egyptian capacity and strengthen links between UK and Egyptian experts; now, the CPS lawyer deployed to Cairo since February 2013, and the Metropolitan Police financial expert deployed since February 2014, will return to the UK at the end of March 2015, as originally planned, and continued support will be provided by visits to Cairo as and when operationally required (see paragraphs 20.18-20.19 below for details).

20.6 Given the political upheavals that have characterised the past four years, it is perhaps unsurprising that progress has been slow. But the purpose of these measures remains as valid as ever.

20.7 Though their renewal raises no questions in and of themselves, we are drawing it to the attention of the House because of the widespread interest in the developments in Egypt.

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**Full details of the documents:** Council Decision amending Council Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt: 36708, —.

**Background**

20.8 The full background to the measures in question, and to their renewal in March and November 2012 and in 2013, is set out in our previous relevant Reports. The following is a brief summary.


20.9 On 11 February 2011, following 18 days of country-wide protests, the then Egyptian Vice-President Omar Suleiman announced that Hosni Mubarak had resigned as President of Egypt and handed over control to the Military Council.

20.10 Council Decision 2011/172/CFSP (and the “implementing” Council Regulation (EU) 270/2011) provide for restrictive measures against persons “responsible for the misappropriation of Egyptian State funds and who are thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country”.

20.11 The Committee cleared them on 16 March 2011.

20.12 The Committee cleared their renewal, for a further 12 months, on 21 March 2012. At that time, the Minister of Europe (Mr David Lidington) said that, following the EU’s response to requests from the Egyptian authorities, and the freezing of assets belonging to former President Mubarak, family members and those of former regime figures, investigations into the alleged corrupt activities of individuals listed in the sanctions measures continued in Egypt. He noted that a new Egyptian Parliament had been elected; there been a partial lifting of the State of Emergency; and there were to be Presidential elections and a transfer of power from the SCAF to a new president by 1 July 2012.

20.13 Of the restrictive measures themselves, he said:

“The imposition of a uniform and consistent asset freeze across the EU sends a strong message of support for efforts to tackle the corruption of members of the previous regime and reclaim stolen assets. However, the asset freeze does not enable Member States to seize any assets deemed to have been corruptly obtained, or return them to the Egyptian State. Further action through the criminal justice system, as permitted by the EU restrictive measures, is required before such measures can be taken.”

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76 The Supreme Council of the Armed Forces, a group of some 20 senior military officers who assumed power after the departure of former President Mubarak.
“The EU has offered assistance to the Egyptian authorities to ensure that they fully understand the legal procedures that must be followed in order to secure return of frozen assets.”

20.14 In his Explanatory Memoranda of 15 November 2012, the Minister for Europe explained that the further amendments submitted for scrutiny would (his italics):

— explicitly allow HM Treasury to share information on frozen assets directly with the Egyptian government in order to assist it in securing the return of misappropriated state assets; and

— also allow HM Treasury to repatriate to Egypt assets “which have been held to have been misappropriated in judicial proceedings commenced after the date of designation’’.

20.15 Formerly, the Minister said, “the measures only allowed the Treasury to licence the release of frozen funds where proceedings had begun prior to that date’’.

20.16 The Minister also said:

— of the first proposed change that:

“’The Council Legal Service has provided assurances that this change will not conflict with data protection obligations that Member States will still be required to satisfy’’;

— and that

“Both changes are technical and bring the EU restrictive measures into line with their original intention: to facilitate the return of assets misappropriated by members of the former Mubarak regime to their rightful owners, the Egyptian people.’’

20.17 In conclusion, the Minister commented thus:

“HMG is confident that it has acted in line with the sanctions and has conducted appropriate due diligence with regard to the EU asset freeze. However, over the course of the last year and a half, the UK has received criticism on its asset recovery record, including implementation of the EU sanctions. At UNGA, the Prime Minister pledged to redouble the UK’s efforts on asset recovery in Egypt, Libya and Tunisia, part of this effort was to seek amendments to the EU sanctions on Egypt and Tunisia. Securing the changes to the regulations, as set out in paragraph one above, will deliver part of the Prime Minister’s commitment and help HMG to manage this sensitive aspect of the bilateral relationship with Egypt.’’

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78 The United Nations General Assembly.
79 A reference to the relevant para in the Minister’s Explanatory Memorandum.
20.18 Although these changes raised no questions in and of themselves, we cleared them via a Report to the House nonetheless because of the level of interest in developments in Egypt.80

20.19 Council Decision 2011/172/CFSP further extended the extant sanctions for another year until 22 March 2014. Although the renewal of these measures was again straightforward, we reported it to the House not simply because of the level of interest in developments in Egypt, but also because — as we had observed in January when we cleared a similar renewal regarding Tunisia81 — it illustrated how the UK, as well as the EU, was endeavouring to help inculcate a law-based approach, in no doubt challenging circumstances that, if it could be achieved in this sensitive area, would undoubtedly have a much wider positive spin-off.

20.20 A year ago, in his Explanatory Memorandum of 11 March 2014, the Minister for Europe explained that the proposal submitted for scrutiny again amended Council Decision 2011/172/CFSP by extending the current sanctions for another year, until 22 March 2015; noting that no amendments were otherwise being made.

The draft Council Decision

20.21 The draft Council Decision once again provides for the extension of restrictive measures against “persons responsible for misappropriation of Egyptian State funds, and who are thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country”.

The Government’s view

20.22 In his Explanatory Memorandum of 6 March 2015, the Minister for Europe recalls that, following Hosni Mubarak’s resignation as President of Egypt on 11 February 2011, the EU, in response to requests from the Egyptians authorities, froze assets belonging to Mubarak, his family members and other former regime figures and some of their family members; that power was transferred to an elected President, Mohammed Mursi, on 1 July 2012 and a new government was announced on 2 August 2012; and recounts recent developments in Egypt thus:

“On 3 July 2013 President Mursi’s government was removed after mass protests and an intervention from the Egyptian Armed Forces. It was replaced by an interim government led by de facto President Adlai Mansour. In January 2014 a new constitution was approved by referendum. President Abdel Fattah Al-Sisi was elected in May 2014. Parliamentary elections were planned for March and April 2015. However on 1 March 2015 the Supreme Constitutional Court declared that the Constituency Boundaries Law is unconstitutional. Sisi has called for the law to be amended within a month, to allow for the elections to proceed at the earliest opportunity.”

80 (34408), — and 34392, 15927/12: Twentieth Report HC 86-xx (2012–13), chapter 21 (21 November 2012). In this same chapter, we also dealt with similar amendments to the similar EU restrictive measures in Tunisia.
20.23 With regard to the measures themselves, the Minister says:

“The Egyptian authorities have confirmed that judicial proceedings are continuing against all 19 individuals currently listed. The asset freeze itself does not enable Member States to seize assets deemed to have been corruptly obtained, or return them to the Egyptian State. Further action through the criminal justice system of the requesting state is required. Supporting the request to extend the current restrictive measures will allow investigations into the alleged corruption of listed individuals to continue. It will also send a strong message of continued support for efforts to tackle the corruption of members of the former Mubarak regime and reclaim stolen assets.

“Egypt remains the top priority of the UK Asset Recovery Taskforce82 that was set up in September 2012. Significant work has been undertaken to build Egyptian capacity and strengthen links between UK and Egyptian experts. This has included the deployment of a CPS lawyer to Cairo since February 2013 to help the Egyptian authorities prepare Mutual Legal Assistance requests, and a financial expert from the Metropolitan Police since February 2014, to assist the Egyptian authorities with evidence gathering. Both these officers will return to the UK at the end of March 2015, as originally planned. Continued support will be provided by the Metropolitan Police and Crown Prosecution Service from the UK, with visits to Cairo as and when operationally required.”

Previous Committee Reports

None, but see (35850), —: Forty-first Report HC 83-xxxviii (2013–14), chapter 14 (19 March 2014) and the earlier Reports cited herein.

21 EU Military Advisory Mission in the Central African Republic (EUMAM CAR)

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82 On 26 September 2012, the Prime Minister announced at the UN General Assembly that the UK would create a new cross-Government Task Force to return assets stolen by members of the former regimes of the Arab Spring countries, i.e., Egypt, Libya and Tunisia. The Task Force was established as a multi-agency team, under a single operational lead, involving staff from the Home Office, Serious Organised Crime Agency, Metropolitan Police and Crown Prosecution Service. See Asset Recovery Task Force for full information.
Summary and Committee’s conclusions

21.1 Status of forces agreements (SOFAs)/status of mission agreements (SOMAs) are bilateral or multilateral treaties that define the legal position of military forces/civilian personnel deployed by one or more states or by an international organization in the territory of another state with the latter’s consent.

21.2 In this instance, the 19 January 2015 Foreign Affairs Council established EUMAM CAR — the EU Military Advisory Mission to the Central African Republic. (c. 50–60; no British troops; c. €1.2 million UK share of an estimated €7.9 million common costs) to work with the UN peace-keeping force, MINUSCA (which has absorbed the AU forces and whose numbers are to be further increased) on security sector reform (SSR), i.e., introducing order into the CAR armed forces (FACA), about whose reliability the interim president and prime minister were deeply concerned.

21.3 This follows the deployment of 1,600 French troops in the CAR since early December 2013 on a mission to stem fighting between ex-Seléka (mostly Muslim) militants and bands of Christian vigilantes, the Anti-balaka (= anti-machete). The UN and AU became involved in early 2013; then the EU deployed EUFOR CAR, who have helped to stabilise Bangui, the capital. EUFOR CAR’s mandate expires on 15 March 2015. EUMAM CAR will take over from EUFOR CAR; any extension of its 12-month mandate will depend on progress and CAR political reforms.

21.4 Most recently, the Committee cleared from scrutiny the Council Decision authorising the launch of the mission. Looking forward to this next stage, the Committee recognised that the Minister for Europe (Mr David Lidington) and his officials had done as much as could have been expected at that juncture to “fireproof” EUMAM CAR against “morphing” into a more broadly-based, long-term mission, involving non-operational training for the FACA, on the basis of judgements made by civilian and military officials. We were concerned about an apparent absence of political endorsement of such a crucial shift of gear.

21.5 The Committee therefore asked the Minister, when he submitted for scrutiny this final Council Decision on the status of EUMAM CAR in the CAR, to explain how political control would be exercised over any decision to add military training to the mission mandate; and also explain how, and at what stage, he would (as he put it in his previous EM) “engage with [us] fully should this be proposed”.

21.6 The Minister now says that this final Council Decision is to conclude negotiations between the High Representative (HR; Federica Mogherini) and the CAR Interim President, Ms Catherine Samba-Panza, on the agreement on the status of EUMAM CAR. The Mission Commander hopes to be able to secure final necessary contributions to the Mission on 9 March which would enable launch of the mission; this will allow EUMAM CAR to have the best possible transition between the two missions so that EUMAM CAR is as effective as possible, and avoid potential legal issues from having personnel arrive in the country after the EUFOR CAR mandate has expired.

21.7 With regard to the issues raised by the Committee, the Minister says:
— subject to agreed conditions and further political consent, EUMAM CAR could transition to conduct targeted non-operational training in co-ordination with the UN;

— but any decision to transition the mission to include non-operational military training would need to be “driven by a clear needs assessment, the conditions on the ground would need to be right and would require consensus from all 28 Member States — so the UK would in effect have a veto over this”;

21.8 The Minister then goes on to state:

“This would not involve a change of mandate or Council Decision requiring an EM, … I would update the Committees by letter giving our assessment of the proposals. I would at that stage welcome any feedback the Committee had, before discussions took place in Brussels. As part of the wider process, the PSC\textsuperscript{83} would have an initial discussion and would task the EU Military Committee\textsuperscript{84} to provide military advice, to which my officials would contribute. The PSC would then consider and make the final decision on whether to proceed. To avoid any misunderstanding, our PSC Ambassador would speak and act in accordance with a decision taken by Ministers on whether or not to agree to the provision of military training.

“Your Committee plays an important role in how we approach policy discussions and negotiations in Brussels. I have asked officials to ensure that your Committee continues to be regularly updated about this mission.”

21.9 We are glad that the Minister recognises the Committee’s role in the policy discussion/negotiation part of the process, and look forward to being “regularly updated about this mission”.

21.10 We also look forward to this practice being applied by his officials with respect to all such ongoing and future missions, civilian as well as military.

21.11 We remain concerned, however, about how any final decision to widen the scope of this mission would be made. The Minister seems to suggest that, though the PSC would “speak and act in accordance with a decision taken by Ministers”, any decision “to transition the mission to include non-operational military training” would “not involve a change of mandate or Council Decision requiring an EM”. We do not

\textsuperscript{83} Political and Security Committee: 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.

\textsuperscript{84} The EU Military Committee (EUMC) is the highest military body within the Council of the EU. It is composed of the Chiefs of Defence (CHOD), represented by their military representatives (Milreps). It may meet at CHOD or Milrep level. The Chairman (who must be a four-star flag officer) represents the EUMC at the Political and Security Committee (PSC) and the Council, and chairs the EUMC meetings at Milrep and CHOD levels. On the basis of consensus, the EUMC provides the PSC with advice and recommendations on military matters, such as:

- the overall concept of crisis management in its military aspects;
- military aspects relating to political control and to the strategic direction of operations;
- the risk assessment of potential crises;
- the military dimension and implications of a crisis situation;
- the elaboration, assessment and review of objectives;
- the financial estimation for operations and exercises;
- military relations with applicant countries, third countries and international organisations.
understand this, and ask the Minister to explain the basis upon which he takes this view.


**Background**

21.12 The Council agreed to establish an EU military stabilisation force in the Central African Republic (EUFOR CAR) on 10 February 2014. It was launched on 1 April 2014 and operates under a UN Security Council mandate (UNSCR 2134 (2014)). It ends on 15 March 2015.

21.13 Earlier, some 1,600 French troops had been deployed in the CAR since early December 2013 on a mission to stem fighting between predominantly Muslim militants, known as the ex-Séléléka, and bands of Christian vigilantes, the Anti-balaka.

21.14 UNSCR 2149 (2014) authorised the UN Peacekeeping Operation, MINUSCA, which replaced the African Union Mission (MISCA) on 15 September 2014. MINUSCA should reach Full Operational Capability in April 2015.

21.15 Stability is central to any progress. Elections are scheduled for July 2015. The plan is for an EU advisory mission of c. 50–60 in number (no British troops to be involved); with a c. €1.2 million UK share of an estimated €7.9 million common costs; and working with MINUSCA (which has absorbed the AU forces and whose numbers are to be further increased) on security sector reform (SSR), i.e., introducing order into the CAR armed forces, about whose reliability the interim president and prime minister are deeply concerned. Thus the EU Military Advisory Mission to the Central African Republic (EUMAM CAR) was established via the Council Decision that the Committee cleared on 14 January 2015, and which was adopted at the Foreign Affairs Council on 19 January 2015. Any extension of EUMAM CAR’s 12-month mandate would depend on progress and CAR political reforms.

21.16 On that occasion, looking ahead, the Committee also pointed to the danger that — as in the Democratic Republic of Congo — what began as a one-year mission morphed into one that went on for years. We also asked for greater clarity about how EUMAM CAR

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

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


88 The EUSEC RD Congo mission has been deployed in the Democratic Republic of the Congo (DRC) since June 2005, reforming their army, working with the other contributing members of the international community, giving advice and assistance directly to the competent Congolese authorities on security-sector reform. Since the original mandate, which aimed to support integration into the Armed Forces of the DRC (FARDC) and to run the “Chain of payments” project for ensuring the security of payments to the military, the mission has expanded its activities in this area with a view to modernising both administration and human resources management, and diversified its activities, providing assistance to its Congolese partners in the field of troop training. See [http://www.eeas.europa.eu/csdp/missions-and-operations/eusec-rd-congo/index_en.htm](http://www.eeas.europa.eu/csdp/missions-and-operations/eusec-rd-congo/index_en.htm) for full details.
and MINUSCA were to work together, i.e., who is going to do what and with whom, since the UN is supposedly taking the lead on SSR.  

21.17 The Minister provided a detailed response on both points in his letter of 29 January 2015. In essence, he said that he understood the Committee’s concern but he and his officials had “done all we can to guard against this happening”, noting that:

— they had emphasised the importance of a realistic exit strategy by securing specific time limiting language in the Council Decision and other planning documents;

— the mission had a clear 12-month mandate, starting when the mission reached full operating capacity (FOC), and the Reference Amount for financial planning was for a specific 14 month period (12 months of the mission plus a two-month redeployment and close-down phase);

— they had also helped secure an agreement that the mission would adopt a “phased approach”, which:

“would ensure that it would only progress to include non-operational training if the conditions allow. And we made clear that the mission’s aims complement UN efforts on Security Sector Reform (SSR), with the UN being the lead in CAR on SSR. Any proposal to extend the mandate would require consensus at 28 and would need to be driven by a clear and transparent needs assessment and a full business case.”

21.18 The Minister also said:

“We also expect that some EU Member States, and possibly the UN and CAR authorities, may look for further EU support to the FACA. As part of the Political Framework for Crisis Approach (PFCA) on CAR, one of the long term suggestions was for the possibility of an EU military training mission (similar to that in Mali) to further develop the FACA. As the UN plans develop and the EUMAM mission runs its course, this issue might reappear. We will engage with you fully should this be proposed (see our previous relevant Report for full details).”

21.19 That previous Council Decision concerned the next stage, i.e., to launch EUMAM CAR. The Minister said that an early Decision was needed to ensure the Mission could deploy in late February, with a view to declaring Initial Operating Capability (IOC) on 1 March 2015 and Full Operational Capability (FOC) on 15 March 2015; this would allow EUMAM CAR to have a two-week handover with EUFOR CAR; EUMAM CAR was mandated to last for 12 months from the point it reached FOC.

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90 On 18 February 2013, at the request of the Malian authorities, and in accordance with international decisions on the subject, in particular United Nations Security Council Resolution 2085 (2012), the European Union launched a training mission for Malian armed forces, EU TM Mali for an initial mandate of 15 months. Twenty-three Member States (Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom) are contributing with military personnel. See http://www.eea.europa.eu/csdp/missions-and-operations/eutm-mali/index_en.htm for full information.

Our assessment

21.20 We thanked the Minister for the detailed response to our earlier observations and recognised that he and his officials had done as much as could have been expected at that juncture to “fireproof” EUMAM CAR against “mission-morph”. However, part of the Mission’s “marching orders” (the Initiating Military Directive) said:

“Subject to a recommendation from you [i.e., the mission commander] and a decision by the PSC, and following advice from the EUMC, the Mission will conduct limited and targeted non-operational training for the FACA, focused on further developing those FACA capabilities and competences that are required to transform EUMAM RCA’s advice into concrete action with tangible results, thereby enhancing the FACA’s absorption capacity and preparing the ground for the upcoming reforms.”

21.21 This suggested an absence of political endorsement of a crucial shift of gear. Before then, however, a number of stages would need to have been successfully passed. The first, we presumed, would be a Council Decision covering a “Status of Mission Agreement” (SOMA) with the CAR authorities. The Committee therefore asked the Minister, when he submitted this for scrutiny, to explain how political control would be exercised over any decision to add military training to the mission mandate; also explain how, and at what stage, he would “engage with [us] fully should this be proposed”.

21.22 In the meantime, we cleared this Council Decision from scrutiny.92

The draft Council Decision

21.23 This draft Council Decision concerns the Status of Mission Agreement (SOMA) for EUMAM CAR.

21.24 In his Explanatory Memorandum of 6 March 2015, the Minister for Europe says that the Agreement is in the form of an Exchange of Letters between the EU and the Central African Republic, and that the Council Decision approves that Exchange of Letters and authorises the President of the Council to designate the person empowered to sign the respective letter in order to bind the Union.

The Government’s view

21.25 The Minister says that the European External Action Service (EEAS) and Member States hope to secure an early Council Decision allowing the Mission to deploy before the mandate for the existing EUFOR CAR expires on 15 March.

21.26 He continues as follows:

“Deploying before this date will allow EUMAM CAR to have the best possible transition between the two missions so that EUMAM CAR is as effective as possible. Furthermore, there are potential legal issues having personnel arrive in the country

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after the EUFOR CAR mandate has expired. EUMAM CAR is mandated to last for 12 months from the point it reaches Full Operating Capability (FOC).

“The operational implications of deploying after the mandate for EUFOR CAR expires would be that handover of key information and corporate knowledge between EUFOR CAR and EUMAM CAR would have to be done remotely. This will diminish the effectiveness of the handover and gives EUMAM CAR a less than ideal start.

“This Council Decision is to conclude negotiations between the HR/VP and the CAR Interim President Ms Catherine Samba-Panza on the agreement on the status of EUMAM CAR. This would be in the form of an exchange of letters between the EU and CAR. The Mission is deploying at the express request of the CAR Government and in conjunction with UN authorisation.

“Force generation is ongoing. Force Generation Conferences (FGC) took place on 3 February, 10 February and 23 February 2015. A further FGC took place on 5 March 2015.

“The Mission Commander hopes to be able to secure final necessary contributions to the Mission on 9 March which would enable launch of the mission.

“Once the Mission Commander has secured the forces required, his recommendation for formal launch of the Mission could happen very quickly and as early as the 10 March. The mission is essentially ready to go. The UK is supportive of an early deployment of EUMAM CAR.”

The Minister’s letter of 9 March 2015

21.27 The Minister thanks the Committee for clearing these earlier draft Council Decisions so quickly. He notes that Force Generation discussions are ongoing in Brussels and, if successful, the mission may be launched shortly; and says that he hopes to be able to write about this imminently and “address what impact, if any, it may have on the Scrutiny process”.

21.28 He then continues as follows:

“When you cleared the draft Council Decision to launch EUMAM CAR you requested further information on how political control would be exercised over any decision to transition into a non-operational military training phase. I wanted to respond to that question as early as possible.

“As highlighted in the explanatory memorandum for establishing the mission, we worked to ensure that the mission incorporated a ‘phased approach’, meaning it would start off as an advisory mission which, subject to agreed conditions and further political consent, could transition to conduct targeted non-operational training in co-ordination with the UN. Any decision to transition the mission to include non-operational military training would need to be driven by a clear needs assessment, the conditions on the ground would need to be right and would require
consensus from all 28 Member States — so the UK would in effect have a veto over this.

“You also asked me ‘to explain how and what stage I would engage fully with you’. If and when the Mission Commander was satisfied that the conditions on the ground were conducive to starting a non-operational military training phase, we would expect him to write to and brief the PSC. This would not involve a change of mandate or Council Decision requiring an EM, but I would update the Committees by letter giving our assessment of the proposals. I would at that stage welcome any feedback the Committee had, before discussions took place in Brussels. As part of the wider process, the PSC would have an initial discussion and would task the EU Military Committee to provide military advice, to which my officials would contribute. The PSC would then consider and make the final decision on whether to proceed. To avoid any misunderstanding, our PSC Ambassador would speak and act in accordance with a decision taken by Ministers on whether or not to agree to the provision of military training.

“Your Committee plays an important role in how we approach policy discussions and negotiations in Brussels. I have asked officials to ensure that your Committee continues to be regularly updated about this mission.”

Previous Committee Reports


22 Value added taxation

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Summary and Committee's conclusions

22.1 The Commission has proposed this draft Directive to introduce an EU level standard VAT return, aiming for a balance between simplification for EU business and the needs of all 28 tax authorities. Negotiation of the proposal has proved difficult.

22.2 When in February we last considered the proposal we heard of a Latvian Presidency suggestion that there might be an optional standard VAT return and of the Government hope that the Commission might improve a new EU web portal in support of this solution.

22.3 The Government now tells us that all Member States support an optional standard VAT return, that the Presidency is likely to seek a political agreement on the basis of its solution to the negotiating difficulties, that the Commission is looking at ways to improve the web portal and that, in the Government’s view, these are good outcomes for UK businesses. The Government asks us to now clear the document from scrutiny so that it might support a Latvian sponsored political agreement.

22.4 We are grateful for this information and, on the basis that the Presidency does seek political agreement to its proposed solution, clear the document from scrutiny.


Background

22.5 The principal VAT Directive, Directive 2006/112/EC, requires all taxable persons to submit a declaration (a VAT return) with all the information needed to calculate the tax that has become chargeable and the deductions to be made, including, as required, the total value of the relevant transactions. However, Member States retain discretion over the content of the declaration, frequency of submission, payment, error correction and all other related processes.

22.6 The Commission has proposed this draft Directive to introduce an EU level standard VAT return, aiming for a balance between simplification for EU business and the needs of all 28 tax authorities.

22.7 When we considered the proposal in December 2014 we reminded the Government of our wish to receive regular reports about developments in Council consideration of the proposal and asked to receive the next report no later than shortly after the end of the Latvian Presidency. In fact in February the Government gave us a full account of the context within which that Presidency was starting work on the proposal, mentioning in particular its request that Member States consider a standard VAT return on the basis of implementation being optional for Member States. We looked forward to further reports as negotiations progress. Meanwhile the document remained under scrutiny.

The Minister’s letter of 9 March 2015

22.8 The Financial Secretary to the Treasury (Mr David Gauke), reminding us of the Latvian Presidency request to Member States to consider a standard VAT return on the
basis of implementation being optional for Member States, says that at a Council working group meeting on 27 February all Member States signalled support for an optional standard VAT return. The Minister continues that:

- this formed the basis of discussion and as a consequence there was broad agreement to reducing the information boxes on the standard VAT return;

- Member States saw merit in a common format (in terms of numbering and content of the boxes) but saw no real benefit in any common presentation (colour, logo etc); and

- Member States agreed that there should be no need for any of the provisions to be left to the comitology process.

22.9 The Minister reiterates his previous comments to us that:

- an optional standard VAT return is an approach the Government could support since UK businesses trading across Member States could see a benefit;

- it is unlikely that the Government will want to opt into a standard VAT return because UK businesses value the UK’s existing simple nine box return and are very clear that they would prefer to keep that; and

- the Government, with other Member States, continue to make the case for a wider application of the EU web portal as this initiative has the potential to provide substantial benefit to businesses trading across the EU.

22.10 The Minister then says that:

- given the strong support from Member States the Government expects the Latvian Presidency to seek political agreement (in May or June) to an optional standard VAT return, with the proviso that work should then continue on the detail to reduce the number of information boxes and to firm up content;

- overall, this would be a welcome outcome for UK businesses — they would continue to benefit from the simple UK return and those that trade with Member States which adopt a standard VAT return would benefit too;

- businesses would also be able to call for reform in Member States that do not have a simplified VAT return; and

- the Commission is now looking at ways to take forward the initiative for a wider application of the EU web portal building on the 2015 model so as to include additional information.

22.11 The Minister concludes by asking us, on the basis of the information he now provides, to consider clearing the proposal from scrutiny, in order that the Government could take a positive position at an ECOFIN Council should the Latvian Presidency seek political agreement.
Previous Committee Reports


23 UK participation in the Schengen Information System

Committee’s assessment    Politically important
Committee’s decision       Cleared from scrutiny; drawn to the attention of the Home Affairs Committee

Document details
Council Implementing Decision (EU) 2015/215 on the putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland

Legal base
Article 6(1) and (3) of Council Decision 2000/365/EC; unanimity

Department
Home Office

Document number
(36657), —

Summary and Committee’s conclusions

23.1 The purpose of this Council Implementing Decision (“the Decision”) is to authorise the UK to participate in the second generation Schengen Information System (“SIS II”) on a provisional basis, pending the outcome of an evaluation confirming the UK’s capacity to implement SIS II correctly and the adoption of a final Council Implementing Decision establishing the date on which SIS II will be permanently put into effect in the UK. The Decision was adopted on 10 February 2015 and entered into force on 13 February, the date on which it was deposited in Parliament and an Explanatory Memorandum submitted by the Minister for Modern Slavery and Organised Crime (Karen Bradley). In a separate letter, the Minister explains why the Decision was not deposited sooner and why the Government decided to override our scrutiny reserve.

23.2 We note, but are far from convinced by, the Minister’s explanation of the reasons for the delay in depositing the Council Implementing Decision and for overriding our Scrutiny Reserve. UK participation in SIS II, though long anticipated, is of clear political significance. The Council Implementing Decision is an important staging post in what has been a lengthy and costly process of preparing for the UK’s connection to SIS II and should, as a consequence, have been drawn to our attention far sooner.
23.3 The Minister says that UK participation in SIS II was debated and endorsed by both Houses last November “as part of the 2014 opt-out decision”. She will recall that the debate in the House of Commons, on 10 November 2014, was on the basis of a motion to approve the draft Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. Those Regulations had no direct bearing on UK participation in SIS II and the debate and vote should not, in our view, be regarded as constituting specific endorsement of the Government’s decision to participate in SIS II.

23.4 We are aware that a *limité* marking “places constraints” on our handling of EU documents. We question why the use of such a marking is justified, given the Minister’s description of the Council Implementing Decision as a “technical” document which “did no more than set the date of the UK’s connection” to SIS II. The Minister does not indicate whether she objected to the use of a *limité* marking, what efforts she made to have it removed ahead of the adoption of the Decision, and why, meanwhile, she did not submit an Explanatory Memorandum explaining that an official text was not yet available but setting out the purpose of the Decision.

23.5 We do not agree with the Minister that “such technical decisions are not required for scrutiny” or that the Council Implementing Decision fell “outside the normal rules for deposit”. We note that she does not substantiate her assertions with reference to the terms of our Standing Order setting out the categories of EU documents which the Government is required to deposit. The Government’s failure either to deposit the document, or to submit a timely Explanatory Memorandum, is more than a mere “inconvenience”. It undermines the principle of Government accountability to Parliament on which our system of Parliamentary scrutiny is founded.

23.6 We note that, following an evaluation of the UK’s provisional participation in SIS II in June, a further Council Implementing Decision will be required to establish the date on which SIS II will be permanently put into effect in the UK. We expect this draft Decision to be deposited for scrutiny and clearance sought before the Government agrees to its adoption later this year.

23.7 As the Council Implementing Decision giving provisional effect to UK participation in SIS II has been adopted and is in force, we clear it from scrutiny, while drawing it to the attention of the Home Affairs Committee.

**Full details of the documents:** Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen *acquis* on data protection and on the provisional putting into effect of parts of the provisions of the Schengen *acquis* on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland: (36657); —.

**Background**

23.8 The Schengen Information System allows participating Member States to share information (so-called “alerts”) on the following matters:

- individuals wanted for arrest for surrender (under the European Arrest Warrant) or extradition;
• missing persons;
• individuals required in connection with judicial proceedings;
• individuals and/or objects that should be subject to “discreet checks” (such as police surveillance) or “specific checks”; and
• objects to be seized or used as evidence in criminal proceedings.

23.9 The Schengen Information System also includes alerts on third country (non-EU) nationals to be refused entry at the EU’s external borders. It forms an integral part of the Schengen free movement area and is intended to ensure a high level of security within the EU area of freedom, security and justice. The Schengen Information System was part of the Schengen acquis brought within the legal framework of the EU Treaties in May 1999. The Schengen Protocol incorporating the acquis recognised that the UK and Ireland were not bound by that acquis but that they might “at any time request to take part in some or all” of its provisions.93

23.10 In May 2000, following a request by the UK, the Council adopted a Decision identifying those parts of the incorporated Schengen acquis that would apply to the UK.94 They include most of the Schengen acquis concerned with policing, law enforcement and judicial cooperation in criminal matters, as well as the Schengen Information System, with the exception of those parts relating to external border controls.

23.11 Until recently, the UK has not had access to the Schengen Information System, pending the development of SIS II, an up-graded version of the Schengen database with enhanced capacity (to accommodate more Member States) and enhanced functionalities (it includes more information than its predecessor, such as photographs and fingerprints). SIS II became fully operational in April 2013 for those Member States (excluding the UK) already participating in the Schengen Information System. UK progress in connecting to SIS II has been hampered by parallel negotiations concerning the UK’s decision, in July 2013, to opt out of a number of EU justice and home affairs measures adopted before the Lisbon Treaty entered into force (in December 2009) and to seek to rejoin a smaller number of these measures, including two relating specifically to SIS II.95

23.12 Following the conclusion of negotiations on the UK’s block opt-out, and approval of the UK’s request to rejoin 35 EU police and criminal justice measures (including those relating to SIS II) with effect from 1 December 2014, the Minister wrote to inform us that the UK had been unable to connect to SIS II in the final quarter of 2014, as originally intended, but expected the UK would be able to do so early in 2015, once the Commission had proposed and the Council adopted the necessary Implementing Decision.96

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93 See Protocol (No. 19) to the EU Treaties, Article 4.
95 See Command Paper 8897, published in July 2014, for a full list of the 35 measures the Government decided it would seek to rejoin.
96 Letter of 11 December 2014 from the Minister (Karen Bradley) to the Chair of the European Scrutiny Committee.
reply, we looked to receiving further information concerning the UK’s formal SIS II connection date.97

**The Council Implementing Decision**

23.13 The Decision is based on the recently amended Council Decision 2000/365/EC which authorises the UK to participate in elements of the Schengen *acquis*. Article 6(1) and (3) of the 2000 Decision establish that a unanimous Council Implementing Decision is required to bring SIS II into effect in the UK.

23.14 Article 1 of the Council Implementing Decision:

- confirms that the UK meets the data protection requirements necessary to enable it to participate in SIS II;
- authorises such participation, on a provisional basis, with effect from 13 February 2015;
- provides for the UK to have access to the categories of alerts listed above in paragraph 8 from 1 March 2015; and
- requires the UK to enter data into SIS II, and act on alerts entered by other Member States, from 13 April 2015.

23.15 Article 2 requires an evaluation of the functioning of SIS II in the UK to be undertaken within six months of February 2015 and a decision to be taken by 31 October 2015 to proceed to the adoption (by unanimity) of a further Council Implementing Decision establishing a definitive date for UK participation in SIS II.

**The Government’s Explanatory Memorandum of 13 February 2015**

23.16 The Minister explains that the Council Implementing Decision was adopted at the General Affairs Council on 10 February. It authorises the UK to start loading and validating data on its national SIS II system from 1 March 2015 and sets 13 April 2015 as the UK’s “go live” date:

“On that date the United Kingdom will be entering alert data into SIS II and providing SIS II data to the police and Border Force.”

23.17 Before then, from 13 February, the UK will be able to validate SIS II alerts, thereby enabling the National Crime Agency to start checking European Arrest Warrants and extradition requests contained in SIS II.

23.18 The Minister describes the benefits of SIS II in the following terms:

“SIS II is currently used by 28 European countries; it will provide real-time alerts to speed up the exchange of information on wanted foreign criminals. Warnings from other countries will automatically appear on the Police National Computer and on

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97 Letter of 17 December 2014 from the Chair of the European Scrutiny Committee.
border watch lists, helping to stop offenders slipping unnoticed into the UK. Alerts can also be issued by the UK to help find and bring to justice criminals who offend here and flee abroad.

“SIS II will also help tackle the terror threat from foreign fighters returning from Syria and Iraq, tracking them as they travel around Europe. The system already contains 1,500 discreet warnings on people believed to pose a serious national security risk, with numbers continuing to rise in the wake of the Paris terror attacks.

“SIS II will give the UK access to details of:

- 37,000 European Arrest Warrants (EAWs). EAWs were previously circulated to the UK for more serious crimes or where there was a known link to this country;
- over 43,000 discreet alerts for national and public security threats; this includes alerts for suspected foreign fighters;
- over 60,000 alerts for missing children and vulnerable adults, speeding up the process of finding those who have been abducted and identifying the victims of human trafficking;
- over 100,000 alerts for judicial purposes, such as a court summons; and
- 40 million alerts on identity documents, three million on vehicles, and eight million on other lost or stolen items.\(^98\)

The Minister’s letter of 5 March 2015

23.19 The Minister recognises that the Government’s failure to deposit the Council Implementing Decision before its adoption on 10 February resulted in an override of our Scrutiny Reserve Resolution, for which she apologises and provides the following explanation:

“Firstly I would like to reiterate that I take scrutiny of important matters, such as these, very seriously. I am also keen to ensure that my Department maintains an effective and cooperative relationship with the Parliamentary Scrutiny Committees. As you are aware, I have previously provided written updates to your Committee setting out any significant developments with regard to the UK’s connection to SIS II. The UK’s participation in the measure has also been subject to debate on a number of occasions and, as part of the 2014 opt-out decision, both Houses endorsed the Government’s decision to rejoin the measure in November last year.

“My letter of 11 December 2014 set out that our planned date of implementation would be early 2015. However, this relied on the publication of a technical Implementing Decision which did no more than set the date of the UK’s connection to the system.

\(^98\) Paras 10–12 of the Minister’s Explanatory Memorandum.
“The Implementing Decision was produced and considered in accelerated timescales, as the importance of concluding the UK’s connection to the system expeditiously was recognised in the wake of the attacks in Paris. It was also only available until its adoption as a limité text, which, as you are aware, places constraints on its handling. A publicly available, published, version was only issued on 13 February, after its adoption. This is clearly not ideal.

“The Implementing Decision was adopted at the General Affairs Council (GAC) on 10 February, and it was necessary for the UK to vote in favour given unanimity was required for its adoption. If the UK had voted against or abstained the measure would not have passed and our connection would have been further delayed.

“Normally, the Government considers such technical decisions are not required for scrutiny. However, following your Committee’s request, I deposited the UK’s SIS II Implementing Decision and EM on 13 February 2015. If time had permitted I would, of course, have done so before the GAC on 10 February. We regret any inconvenience that the override caused. We will of course continue to work with your Clerks to ensure that decisions that fall outside the normal rules for deposit are identified quickly in order to facilitate full scrutiny by your Committee.

“As I am sure you will agree, the UK’s connection to SIS II is a significant step to enhancing the security of the UK, and it was very much in the UK’s interest that this Implementing Decision was adopted in such short timescales.

“Since the Implementing Decision was published on 13 February, the National Crime Agency (NCA) has begun pre-validating the 35,000 SIS II European Arrest Warrants (EAWs). This ensures all the SIS II EAWs are legally compliant against our domestic legislation (section 2 of the Extradition Act 2003). Being able to start this work at the earliest opportunity has allowed the NCA to identify new EAWs with a UK connection, which have previously been unknown to us.

“We have, in addition to this, agreed with the Presidency that our UK SIS SIRENE evaluation will take place in June 2015, which will be our final evaluation on our implementation of SIS II. The subsequent report and recommendations will be issued in October 2015.”

Previous Committee Reports

None.
24 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Department for Business, Innovation and Skills

(36668) 6234/15 COM(15) 65
Commission Communication concerning an Observer status in the International Centre for Synchrotron-light for Experimental Science and Applications in the Middle East (SESAME).

(36670)
European Court of Auditors’ Report on the annual accounts of the Galileo Joint Undertaking in liquidation for the financial year ended 31 December 2013 together with the Joint Undertaking’s replies.

Foreign and Commonwealth Office

(36681)
Council Decision updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2014/72/CFSP.

(36682)

HM Revenue and Customs

(36679)

Office for National Statistics

(36674) 6349/15 COM(15) 42
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 11.8 read and agreed to.

Paragraphs 11.9 to 11.10 read, amended and agreed to.

Paragraphs 11.11 to 24 read and agreed to.

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

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

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[Adjourned till Wednesday 18 March at 10.00am.]
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, Seaford 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)