Documents considered by the Committee on 18 March 2015, including the following recommendations for debate:

Financial services, taxation and financial assistance to Member States

Broad guidelines for economic policies

The European Police College
House of Commons
European Scrutiny Committee

Thirty-seventh Report of Session 2014–15

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Financial services, taxation and financial assistance to Member States

Broad guidelines for economic policies

The European Police College

Report, together with formal minutes

Ordered by the House of Commons
to be printed 18 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

<table>
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<th>Abbreviation</th>
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<td>EC</td>
<td>(in &quot;Legal base&quot;) Treaty establishing the European Community</td>
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<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 &quot;Legal base&quot;) 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>
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<td>TEU</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</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

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, Telford House, 14 Tothill Street, London SW1H 9NB. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk
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**Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House**

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**Standing Order and membership**

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Meeting Summary

The Committee considered the following documents:

**Restrictive measures against Iran: nuclear issues**

We consider a Council Decision, agreed on 12 February, which relists, as subject to restrictive measures, one individual (Gholam Hossein Golparvar) and an entity (National Iranian Tanker Company). The original listings were annulled by the General Court, and solicitors acting for both have expressed objections to the relisting of their clients directly to us. When we last considered this (then draft) Decision we declined to substitute ourselves for a Court in considering the detailed evidence in support of the relistings, but we did ask the Minister why he could not provide us with open source information used to justify them. We also sought assurances that the relistings were robust and that they could withstand legal challenge. We have received a response from the Minister, which we report this week. The Minister says that the relistings are “proportionate, adequately supported by open-source evidence, and consistent with Government policy towards Iran”. This falls short of the confirmation he was invited to give. We also strongly doubt that the Council or Government will be able to enforce the confidentiality of open source material or sustain it if challenged.

In supporting the adoption of the relistings at Council, the Minister overrode scrutiny. We do not accept that the override was unavoidable or justifiable. In fact we consider that scrutiny of this matter has been characterised by mistakes and omissions, and we ask for the handling of this matter to be reviewed. The outcome of this review, and particularly steps taken to improve engagement with Parliament, should be reported to our successor Committee. In the meantime, we retain the Decision under scrutiny.

**Broad guidelines for economic policies**

EU “integrated guidelines”, for economic and employment policies, underpin the Europe 2020 Strategy and are relevant to the annual European Semester. The Commission has proposed four broad guidelines for economic policies, as part of new “integrated guidelines”, for consideration by the June European Council. The Government tells us that it is broadly supportive of the Commission’s proposed text, but is critical of some of the detail, concerning third country labour migration and taxation. The broad guidelines for economic policies are important in the context of both the Europe 2020 Strategy and the European Semester. We therefore recommend that they are debated in European Committee B and we urge the Government to ensure that the debate takes place before the June European Council.

**National Emissions Ceilings**

We return to the draft Directive on the reduction of national emissions of certain atmospheric pollutants. We retained this draft Directive under scrutiny in January 2014 pending further information, as the Commission had not provided an assessment of the impact of the proposal, and the Government said it would be undertaking its own analysis. During the course of 2014, we received updates from the Government on the predictions
of the costs and benefits of the draft Directive. The Government then wrote on 14 January 2015 to say that the proposal would be modified as part of the legislative follow-up to the 2030 Climate and Energy Agreement. The Government now writes to say that the Commission has suggested some changes to the ceilings previously proposed for 2030, and has also given an updated impact analysis for both the EU as a whole and for the UK (although, in the latter case, UK officials are continuing their own analysis). The Government says that the European Parliament is progressing with its consideration, and that its lead committee is expected to vote on a draft report before the summer. In view of this, the Minister asks whether, given the limited time before the dissolution of Parliament, we would be prepared to release the document from scrutiny. There are still a number of uncertainties, and we are yet to see the UK’s own analysis of the proposal. Given the general importance of the proposal, it does not seem right to clear the document at this stage. However we do not wish to unduly fetter the Government’s negotiating freedom in the period before our successor Committee is appointed. We therefore grant a scrutiny waiver allowing the Government to support a General Approach in the Council, but we expect the Government to provide further updates as the negotiations progress.
1 Financial services, taxation and financial assistance to Member States

Committee’s assessment
(a), (c)-(d), (h), (j)-(n), (q) Legally and politically important
(b), (e)-(g), (i), (o)-(p), (r) Politically important

Committee’s decision
(b) For debate in European Committee B, decision reported 7 January 2015
(a) (c)-(d), (h)-(i), (l)-(r) Not cleared from scrutiny; further information requested
(j) Not cleared from scrutiny but scrutiny waiver granted; further information requested; decision reported 4 February 2015
(e)-(g) Cleared from scrutiny
(k) Cleared from scrutiny, decision reported 19 November 2014

Document details
(a) Draft Directive about taxation of energy products and electricity
(b) Draft Regulation concerning the VAT rules for vouchers
(c) Draft Regulation about financial assistance for non-eurozone Member States
(d) Draft Directive about the fight against fraud using criminal law
(e) Commission Communication about tax fraud and evasion
(f) Commission Recommendation on aggressive tax planning
(g) Commission Recommendation about third country standards of good governance in tax matters
(h) European Central Bank Opinion on document (c)
(i) Draft Regulation about money market funds
(j) Draft Regulation about benchmarks used in the financial services sector
(k) Draft Regulation to make securities financing transactions more transparent
(l) Draft Regulation to improve the resilience of credit institutions
(m) Commission impact assessment for documents (k) and (l)
(n) Draft Directive about occupational retirement provision
(o) Draft Regulation about a “Controller of procedural guarantees” for those under investigation by the European Anti-Fraud Office
(p) European Central Bank Opinion on document
(i)
(q) European Central Bank Opinion on document
(l)
(r) European Court of Auditors Opinion on document (o)

**Legal base**

(a)-(b) Article 113 TFEU, consultation, unanimity
(c) Article 352 TFEU; consent; unanimity
(d) Article 83(2) TFEU; co-decision; QMV
(e)-(h), (m), (p)-(r) —
(i)-(l) Article 114 TFEU; co-decision; QMV
(n) Articles 53, 62 and 114(1) TFEU; co-decision; QMV
(o) Article 325 TFEU; co-decision; QMV

**Department**

HM Treasury

**Document numbers**

(a) (32715), 9270/11 + ADDs 1-3, COM(11) 169
(b) (33886), 9926/12 + ADDs 1-2, COM(12) 206
(c) (34077), 12201/12, COM(12) 336
(d) (34091), 12683/12 + ADDs 1-4, COM(12) 363
(e) (34548), 17637/12 + ADDS 1-16, COM(12) 722
(f) (34554), 17617/12, —
(g) (34555), 17669/12, —
(h) (34657), 5477/13, —
(i) (35298), 13449/13 + ADDs 1-2, COM(13) 615
(j) (35328), 13985/13 + ADDs 1-2, COM(13) 641
(k) (35780), 6020/14 + ADD 1, COM(14) 40
(l) (35781), 6022/14 + ADDs 1-4, COM(14) 43
(m) (35800), 8633/14 + ADDs 1-5, SWD(14) 167
(n) (36131), 10943/14 + ADD 1, COM(14) 340
(p) (36211), 12713/14, —
(q) (36523), 15924/14, —
(r) (36561), 16042/14, —

**Summary and Committee’s conclusions**

1.1 At present we have a number of documents concerned with EU economic and financial matters, including financial services, taxation and financial assistance to Member States, which are under scrutiny, pending either receipt of further information from the Government or debates we have recommended.
1.2 The Government gives us now, in anticipation of dissolution, an update on the position in relation to many of these documents. It also informs about one document already cleared from scrutiny.

1.3 We are grateful to the Government for the information it now gives us.

1.4 However, in relation to the Commission Communication about tax fraud and evasion and the two accompanying Recommendations, it is true that the Government has drawn our attention to the connection of the Communication with the draft Directive on exchange of tax information and the mandate for negotiations with Norway (but not with the draft Parent Subsidiary Directive). But, it would have been helpful if examples such as these had been drawn to our attention in a specific response on the Communication, particularly informing us that the Government was not adopting the Recommendations. This would have allowed us to clear these documents from scrutiny long ago, which we now do.

1.5 As for the other documents we maintain the decisions we have already made in relation to them.

Full details of the documents: (a) Draft Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity: (32715), 9270/11 + ADDs 1–3, COM(11) 169; (b) Draft Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers: (33886), 9926/12 + ADDs 1–2, COM(12) 206; (c) Draft Regulation establishing a facility for providing financial assistance for Member States whose currency is not the euro: (34077), 12201/12, COM(12) 336; (d) Draft Directive on the fight against fraud to the Union’s financial interests by means of criminal law: (34091), 12683/12 + ADDs 1–4, COM(12) 363; (e) Commission Communication: An Action Plan to strengthen the fight against tax fraud and tax evasion: (34548), 17637/12 + ADDS 1–16, COM(12) 722; (f) Commission Recommendation of 6.12.2012 on aggressive tax planning: (34554), 17617/12, —; (g) Commission Recommendation of 6.12.2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters: (34555), 17669/12, —; (h) ECB Opinion on a draft Council Regulation establishing a facility for providing financial assistance for Member States whose currency is not the euro (CON/2013/2): (34657), 5477/13, —; (i) Draft Regulation on Money Market Funds: (35298), 13449/13 + ADDs 1–2, COM(13) 615; (j) Draft Regulation on indices used as benchmarks in financial instruments and financial contracts: (35328), 13985/13 + ADDs 1–2, COM(13) 641; (k) Draft Regulation on reporting and transparency of securities financing transactions: (35780), 6020/14 + ADD 1, COM(14) 40; (l) Draft Regulation on structural measures improving the resilience of EU credit institutions: (35781), 6022/14 + ADDs 1–4, COM(14) 43; (m) Commission Staff Working Document: Impact Assessment accompanying the draft Regulation on structural measures improving the resilience of EU credit institutions and the draft Regulation on reporting and transparency of securities financing transactions: (35829), 6860/14 + ADDs 1–3, SWD(14) 30; (n) Draft Directive on the activities and supervision of institutions for occupational retirement provision (recast): (35944), 8633/14 + ADDs 1–5, COM(14) 167; (o) Draft Regulation amending Regulation (EU, Euratom) No. 883/2013 as regards the establishment of a controller of procedural guarantees: (36131), 10943/14 + ADD 1,
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COM(14) 340; (p) European Central Bank Opinion of 22.052014 on a draft Regulation on money market funds: (36321), 12713/14, —; (q) European Central Bank Opinion of 19.11.2014 on a draft Regulation on structural measures improving the resilience of EU credit institutions: (36523), 15924/14, —; (r) European Court of Auditors’ Opinion No. 6/2014 concerning a draft Regulation amending Regulation (EU, Euratom) No. 883/2013 as regards the establishment of a controller of procedural guarantees: (36561), 16042/14, —.

Background

1.6 We consider a steady stream of documents concerned with EU economic and financial matters, including financial services, taxation and financial assistance to Member States. This chapter concerns a number of these documents which are under scrutiny, pending either receipt of further information from the Government or debates we have recommended. It also covers information on one document already cleared from scrutiny.

The Minister’s letter of 10 March 2015

1.7 The Financial Secretary to the Treasury (Mr David Gauke) writes now, in anticipation of dissolution, to update us on the position in relation to these documents, as in the following paragraphs.

Draft Directive about taxation of energy products and electricity, document (a)

1.8 Directive 2003/96/EC, the Energy Taxation Directive, which came into effect in January 2004, provides an EU framework for taxation of energy products and electricity. In April 2011 the Commission presented this draft Directive to revise the Energy Taxation Directive. We have shared the Government’s concerns about aspects of the proposal and have noted difficult negotiations about its content. The Minister reminds us now that the Commission has indicated, in its 2015 Work Programme, that it intends to withdraw the proposal.

Draft Regulation concerning the VAT rules for vouchers, document (b)

1.9 The 2006 Principal VAT Directive consolidated the legislation governing value added taxation in the EU. In order to ensure smooth operation of the single market and equal treatment for all businesses trading across the EU, the Directive lays down rules to ensure a consistent approach to the questions about how much VAT to charge, when it should be declared and to which tax jurisdiction the tax should be paid. However, vouchers can present difficulties in relation to all these questions. In May 2012, after a lengthy period of consultations, the Commission issued this draft Directive to amend the Principal VAT Directive, in order to clarify and harmonise the rules on the VAT treatment of vouchers.

1.10 In January we recommended this proposal for debate in European Committee B, a debate which is yet to take place. The Minister tells us now that:

- there have been no further Council working group meetings since he last updated us, on 18 December 2015; but
• the possibility remains that this file will be put to the ECOFIN Council in the coming months, although this is looking doubtful at this stage.

**Draft Regulation about financial assistance for non-eurozone Member States and an European Central Bank (ECB) Opinion on the proposal, documents (c) and (h)**

1.11 Council Regulation (EC) 332/2002 established a medium term financial assistance facility for non-eurozone Member States, known as the EU balance of payments facility. In June 2012 the Commission presented this draft Regulation seeking to develop the facility. In its Opinion the ECB showed itself broadly supportive of the draft Regulation. Previously we have been told of delays in Council consideration of the proposal and have noted that if adopted in would engender the need for a UK Act of Parliament.

1.12 The Minister tells us that:

• since the ECOFIN Council in December 2013, there have been no further discussions on the reform of the EU balance of payments facility; and

• whether negotiations recommence is a matter for upcoming Presidencies, and there is currently no indication that this might be the case.

**Draft Directive about the fight against fraud using criminal law, document (d)**

1.13 EU institutions and Member States share responsibility for countering fraud affecting the financial interests of the EU. The proposed Directive aims to enforce these responsibilities by harmonising fraud related criminal offences and sanctions. Issues with the proposal have included questions as to the possibility of Justice and Home Affairs opt-in by the UK and encroachment on Member State competence on tax matters.

1.14 The Minister tells us that:

• there have been no substantive developments on the draft Directive since, in February, he last updated us;

• trilogues with the European Parliament continue, and there has been no substantive agreement as yet on a compromise text;

• the Government regularly attends working group meetings following trilogues to shape the Presidency's negotiating position;

• agreement between the Council and the European Parliament does not seem imminent; and

• the likely timeframe for adoption will be clearer once the Latvian Presidency has concluded at the end of June.
1.15 Although taxation is very largely a Member State competence (the major exception being common rules on VAT), there is some provision, legislative and administrative, for cooperation in tackling tax fraud and evasion. In December 2012, in this Communication, the Commission presented an Action Plan to strengthen the fight against tax fraud and tax evasion. The Communication was accompanied by two Commission Recommendations. The first, on aggressive tax planning included measures on double non-taxation, such as providing a tax exemption on income from third countries in double taxation conventions and a common general anti-abuse rule. The second, regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters, proposed minimum standards of good governance in tax matters. It also suggested using criteria to identify third countries that are non-compliant in respect of standards.

1.16 When we last considered these documents, in June 2013, we noted that we still awaited information about the outcome of the examination of the Commission’s proposals by the Council’s technical experts. So the documents remained under scrutiny. The Minister tells us now that:

- he has informed us about the outcome of the examination as the Commission’s plans for specific proposals have become clearer, for example, on the amendments to the Parent Subsidiary Directive, the amended Directive for Administrative Cooperation (concerning exchange of tax information) and the Commission’s proposed mandate for negotiating a VAT Administrative Cooperation Agreement with Norway;

- looking forward, the Commission will publish in June a report on Member States’ progress on implementing the two Recommendations;

- the Government’s objective throughout to tackle tax fraud and evasion internationally has been through automatic exchange of tax information, on which it has rapidly secured agreement to implement in the EU through the Directive on Administrative Cooperation;

- it has previously said it will not adopt the Recommendations as they stand; and

- the Government continues to do that on the basis that the it believes the UK has met the objectives in the two Recommendations, but does not agree with the specific methods and actions that the Commission proposed.

1.17 Money market funds (MMFs) are open-ended funds that invest in short-term debt securities such as treasury bills and commercial paper. They take one of two forms — constant net asset value (CNAV) MMFs, which seek to maintain a fixed value of units in the fund so that the redemption values of investors’ holdings do not change, and variable net asset value (VNAV) MMFs, which have a floating unit value that fluctuates with
changes in the value of the underlying assets. This draft Regulation would introduce rules specific to MMFs. It would deal with investment policies, risk management, valuation rules, CNAV MMFs and external support. The ECB has published this Opinion on the Draft Regulation, seeking to influence negotiation of the text.

1.18 When in February we last considered the proposal we looked forward to hearing about further consideration of the proposal, whether under the Latvian Presidency or subsequently, and for the Government’s assessment of any text that might be nearing agreement by the Council. However we reminded the Government that we wished to hear also how the ECB Opinion was playing into the negotiation. Meanwhile the documents remained under scrutiny.

1.19 The Minister tells us now that:

- negotiations on the draft Regulation have not progressed under the Latvian Presidency;
- however, the European Parliament is due to vote in Plenary on the text proposed by the ECON Committee in April, which may put pressure on the Latvian Presidency to restart discussions;
- if discussions do resume, it is likely that the Presidency will seek views on the ECON Committee’s proposed compromise, which deletes the Commission’s proposed capital buffer for CNAV MMFs and replaces it with a regime that seeks to preserve some of the utility of CNAV MMFs while dealing with financial stability risks;
- the ECON Committee’s proposals are consistent with the ECB Opinion, for example on clarifying when sponsor support can be given, the impact on securities markets and market concentration and in refining the internal ratings system, which the Government welcomes;
- views in the Council on the appropriate treatment of CNAV MMFs have been polarised;
- it is not yet clear whether Member States will support a compromise which builds on the ECON Committee’s proposals; and
- if progress is made in this direction, however, there is a chance that discussions could progress quickly, especially since the European Parliament is likely to be in a position to begin trilogue discussion by April.

**Draft Regulation about benchmarks used in the financial services sector, document (j)**

1.20 This draft Regulation concerns indices used as benchmarks in financial instruments, financial contracts or to measure the performance of investment funds. It seeks to improve governance of the benchmark process, prevent conflict of interests of benchmark administrators and contributors, enhance the quality and accuracy of input data and methodologies used by administrators and ensure adequate protection for consumers and
investors using benchmarks. On the basis of our recommendation the House of Commons issued a Reasoned Opinion on this proposal (in November 2013), challenging the supposed benefits of EU level action.

1.21 In February the Government told us of a new compromise text tabled by the Latvian Presidency, which contained significant improvements over the previous version and which it wished to support in a General Approach. We welcomed the improvements: the focus on a limited number of “critical benchmarks” and the reduced role for the European Securities and Markets Authority in favour of national supervisory authorities. Although we found it premature to clear the document from scrutiny we granted a scrutiny waiver to enable the Government to support a General Approach in the Council in line with the improvements in the compromise text.

1.22 The Minister tells us now that:

- the Government expects trilogues to begin in April;
- as with Council negotiations, the major issues are likely to be the scope of the proposal, the treatment of third-country benchmarks and the definition and treatment of critical benchmarks; and
- a political agreement may be reached by June.

Draft Regulation to make securities financing transactions more transparent and the Commission’s impact assessment, documents (k) and (m)

1.23 In January 2014 the Commission presented this draft Regulation aimed at increasing transparency of certain financial transactions outside the regulated banking sector. The purpose was is to prevent banks from attempting to circumvent the rules contained within a draft Regulation, document (l), on improving the resilience of EU credit institutions by shifting parts of their activities to the less-regulated shadow banking sector. In November 2014 the Government reported to us helpful developments on the issues and told us that the Presidency was expected to seek agreement on a General Approach shortly. On the basis of those improvements we cleared the document from scrutiny. (However, we kept the Commission’s impact assessment under scrutiny because it also related to the draft Regulation on EU credit institutions, which had not yet been cleared).

1.24 The Minister tells us now that:

- a General Approach was reached by the Council shortly after we cleared it;
- the European Parliament’s consideration of the proposal is ongoing;
- there are limited points of divergence in the ECON Committee, and discussions so far have been broadly in line with the final Council agreement that the Government supported; and
- it is currently expected that trilogues will commence in April and it may be possible for political agreement to be achieved under the Latvian Presidency.
Draft Regulation on measures improving the resilience of EU credit institutions, the Commission’s impact assessment and an ECB Opinion on the proposal, documents (l), (m) and (q)

1.25 With the draft Regulation the Commission proposed structural measures to improve the resilience of EU credit institutions, with two main elements:

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

1.26 When we last considered this proposal we reminded the Government that we do not accept its view that an opt-in choice exists irrespective of whether the Commission has chosen a JHA legal base for a proposal — if it believed in this case that there was a JHA issue it needed to seek a JHA legal base. On the substance of the draft Regulation we said that we would await news of how Council negotiations were developing and meanwhile the documents remained under scrutiny. As for the ECB Opinion, in December 2014 we noted the Government’s reservations and ask it to inform us about how the Opinion was playing into Council negotiation of the draft Regulation, as it updated us on that negotiation.

1.27 The Minister tells us now that:

- the Latvian Presidency has held Council working groups on 19 January and 13 February, at which it presented and elaborated on a concept paper on the separation process;
- Member States discussed the principles that should be incorporated into such a process, including predictability, following a risk-based approach to assessment and applicability and enforceability;
- the Commission has also presented analytical work on how certain metrics on assets and trading activities could be used to categorise banks in terms of their potential systemic risk;
- a further working group was scheduled for 13 March;
- the Presidency has indicated that it is aiming to reach a General Approach by the ECOFIN Council in May, which would form the basis for trilogue negotiations with the European Parliament; and
- on the basis of current negotiations, the Government’s assessment is, however, that reaching a broad compromise in the Council currently looks unlikely.

1.28 On the ECB Opinion the Minister says that:

- the Bank’s criticism of the Commission’s proposed derogation (principally aimed at accommodating the UK in its application of the Banking Reform Act) in Article 21 is primarily based on concerns about the effectiveness of the Single Supervisory Mechanism and its own ability to apply legislation in a consistent manner;
- the ECB is also concerned about precedent;
- however, the ECB’s concerns have been tempered in the wider discussions by the clear willingness of the majority of Member States to seek an accommodation for the UK, as set out in the Italian Presidency’s progress report on the dossier;
- several ECON Committee MEPs across political groups also recognise that the regime the UK has established is clear and robust;
- how that accommodation can best be framed in the Regulation is the subject of many ongoing discussions the Government is having with the Commission, the Presidency and other Member States, and it remains committed to achieving a satisfactory outcome.

1.29 The Minister also tells us that:
- the ECON Committee rapporteur for this matter, Gunnar Hökmark, published his report on the Commission proposal on 6 January with an amendment deadline set for 30 January;
- over 800 amendments were submitted;
- the report diverges from the original proposal by making separation optional (supervisors could instead enhance supervision or apply increased capital requirements if they wished), but it also reformulates the proposed derogation into an exemption aimed at achieving the same effect;
- the ECON Committee had an exchange of views on the proposal on 21 January and then on 23 February; and
- MEPs will now consider and discuss the raft of amendments with a view to voting on them in late March.

1.30 The Minister concludes that given the divisions in both the Council and the European Parliament on some of the fundamental elements of the Commission proposal, such as the separation process, it currently looks unlikely that there will be a Council General Approach or trilogues by May, although the Government expects the Latvian Presidency to continue to push for this.

Draft Directive about occupational retirement provision, document (n)

1.31 Institutions for Occupational Retirement Provision, or IORPs, more commonly known as occupational pension funds, are collective schemes which manage financial assets on behalf of employers in order to provide retirement benefits for their employees. The 2003 IORP Directive sets out a minimum harmonisation framework for occupational pension schemes and their supervision, including rules which oblige occupational pension funds to invest their assets prudently, in the best interest of members and beneficiaries. This draft Directive to recast (revise) the IORP Directive is confined to new rules on the governance of schemes and the information that schemes should provide to their beneficiaries.
1.32 Both we and the Government have been concerned about the lack of justification for the proposal, subsidiarity issues and the practical consequences of the measure. In December 2014 the Presidency presented an extensively amended version of the draft Directive for adoption as a General Approach and the UK was the only Member State not to support the compromise. We looked forward to hearing about the outcome of the Government’s discussions with stakeholders about the Presidency compromise text adopted as the Council’s General Approach. Meanwhile the document remained under scrutiny. We also said that we presumed that, whilst it would take any opportunity to improve the text, against the possibility that the draft Directive might actually be enacted, the Government would strive to reinforce doubts in the European Parliament about any need at all for this proposal.

1.33 The Minister tells us now that:

- the European Parliament’s ECON and Employment and Social Affairs Committees are expected to have their first exchange of views in March;
- consideration of first draft reports are expected in July, with final consideration by the committees expected in October and possible first reading votes in November or December; and
- if this timetable works out, the Government expects trilogue negotiations to begin in December or January 2016.

Draft Regulation about a “Controller of procedural guarantees” for those under investigation by the European Anti-Fraud Office and a European Court of Auditors Opinion on the draft Regulation, documents (o) and (r)

1.34 The European Anti-Fraud Office (OLAF) was established to enhance the effectiveness of action to combat fraud and other illegal activities detrimental to the EU’s interests. With this draft Regulation the Commission proposes amendments to the Regulation which governs OLAF’s management of its investigations, to further strengthen the procedural guarantees set out in that Regulation. To achieve this, the Commission proposes introduction of a Controller of Procedural Guarantees, charged with:

- reviewing complaints lodged by those under investigation about violation of their procedural guarantees; and
- authorising OLAF to conduct certain investigative measures in relation to members of EU institutions.

1.35 In July 2014 we heard that the Government regards a Controller of Procedural Guarantees, a concept which has been rejected previously by the Council, as unnecessary. We hoped that negotiation of this premature proposal would be postponed until the need for some change, if any, to the OLAF Regulation became clearer. In January we considered this European Court of Auditors Opinion on the draft Regulation, which supports the proposal for a Controller of Procedural Guarantees and makes several suggestions for enhancing the text. We shared the Government’s continued opposition to the proposal and noted that its concern was shared by the majority of other Member States. As for the European Court of Auditors Opinion we asked the Government to tell us how it was
playing into Council consideration of the draft, if and when resumed. Meanwhile both the documents remained under scrutiny.

1.36 The Minister tells us now that there has not been Council consideration of the proposal since September 2014, but the Government will continue to work with other Member States in Council to prevent the Commission from pursuing this unhelpful proposal.

**Previous Committee Reports**

2 Broad guidelines for economic policies

Committee’s assessment Politically important
Committee’s decision Not cleared from scrutiny; recommended for debate in European Committee B

Document details Draft Council Recommendation on broad guidelines for economic policies of Member States and the EU
Legal base Article 121(2) TFEU; —; QMV
Department HM Treasury
Document numbers (36712), 6813/15 + ADD 1, COM(15) 99

Summary and Committee’s conclusions

2.1 EU “integrated guidelines”, for economic and employment policies, underpin the Europe 2020 Strategy and are relevant to the annual European Semester. The Commission has proposed four broad guidelines for economic policies, as part of new “integrated guidelines”, for consideration by the June European Council.

2.2 The Government tells us that it is broadly supportive of the Commission’s proposed text, but is critical of some of the detail, concerning third country labour migration and taxation.

2.3 The broad guidelines for economic policies are important in the context of both the Europe 2020 Strategy and the European Semester. So we recommend that this document be debated in European Committee B and we urge the Government to ensure that the debate takes place before the June European Council.

2.4 We suggest that in the debate Members will want to examine particularly the texts concerning labour migration and taxation.

Full details of the documents: Draft Council Recommendation on broad guidelines for the economic policies of the Member States and the Union: (36712), 6813/15 + ADD 1, COM(15) 99.

Background

2.5 In 2005 EU “integrated guidelines”, for economic and employment policies, were introduced. The Lisbon Treaty contains the present legal base for integrated guidelines — Article 121 TFEU for broad economic policy guidelines and Article 148 TFEU for employment policy guidelines. The latter article provides that the employment guidelines must be consistent with the economic guidelines. The guidelines are to be taken into account by Member States in preparing and annually updating their National Reform Programmes.

2.6 In March 2010 the European Council endorsed a “Europe 2020 Strategy” for the coming decade, to follow on from the Lisbon Strategy. The strategy was to continue with integrated guidelines and the associated reporting and monitoring process. It set out the
challenges facing the EU over the coming decade and the need for “a strategy to turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion” and proposed:

- policy priorities that focused on smart, sustainable and inclusive growth;
- seven flagship initiatives to deliver on those policy priorities;
- mobilising EU instruments and policies such as the single market to pursue the strategy’s objectives; and
- a governance structure that included five headline targets that the EU should aim to achieve by 2020.

2.7 Alongside the Europe 2020 Strategy has been the Growth and Stability Pact. The Pact, adopted in 1997, emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the ECOFIN Council issues an Opinion on the updated stability or convergence programme of each Member State. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts.

2.8 In endorsing the Europe 2020 Strategy the European Council said that “The timing of the reporting and assessment of the National Reform Programmes and Stability and Convergence Programmes should be better aligned, in order to enhance the overall consistency of policy advice to Member States”. In June, September and October 2010 the European Council considered and endorsed measures to increase coordination of EU economic governance, including strengthening the Stability and Growth Pact and a “European Semester” which would tie together annual consideration of National Reform Programmes and Stability and Convergence Programmes.

2.9 More generally 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. The European Semester cycle begins with an Annual Growth Survey 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 document

2.10 The previous Council Recommendation on broad economic policy guidelines was adopted in July 2010 and it was indicated that they would remain stable until 2014. The Commission now proposes these new guidelines to underpin the Europe 2020 Strategy.

2.11 The draft Recommendation itself is largely a preamble with seven recitals and the draft guidelines are annexed to the draft Recommendation.

2.12 The Commission’s draft preamble:
• notes that the EU has developed policy coordination measures, combined under the European Semester;

• says that the financial crisis revealed weaknesses in the economy of the EU and of the Member States;

• says that moving the EU to a state of job creation and growth is the key challenge faced today, and that this requires ambitious and coordinated policy action;

• suggests that these actions should encompass a boost to investment, a renewed commitment to structural reform, and exercising fiscal responsibility;

• suggests that Member States and the EU should address the social impact of the crisis, and says Member States should make sure the benefits of growth reach all citizens and all regions;

• suggests that action in line with the guidelines would contribute to reaching the goals of the Europe 2020 Strategy;

• continues that the guidelines are addressed to the Member States and the EU, and should be implemented in partnership with national, regional and local authorities, parliaments, social partners and civil society; and

• says that the proposed guidelines are in line with the Stability and Growth Pact and should form the basis of the European Semester's Country-Specific Recommendations.

2.13 The Commission proposes four broad economic policy guidelines:

• boosting investment;

• enhancing growth by the Member States implementation of structural reform;

• removing key barriers to growth and jobs at the EU level; and

• improving the sustainability and growth-friendliness of public finances.

2.14 With respect to the investment guideline, the Commission’s proposed text says:

• increasing the level of investment is key to boosting demand, and improving competitiveness and the growth potential in the EU;

• the potential of EU funds to finance investment should be exploited, and making finance reach the real economy calls for increasing transparency and information provision; and

• macroeconomic and financial stability, as well as regulatory predictability and financial sector openness and transparency, are critical elements for keeping the Union an attractive host for foreign investment.

2.15 The Commission’s proposed text for the guideline on structural reform says:
- ambitious implementation of reform by Member States in product and labour markets and social welfare systems is crucial to the recovery, correcting imbalances, and unleashing the potential of EU economies;

- Member States should coordinate reform closely;

- labour market and social systems reforms need to be pursued closely, and actions on legal migration should make the EU an attractive destination for talent;

- reforming and integrating product markets should be continued, and efforts should continue to streamline the regulatory environment; and

- information and communication technologies and the digital economy, and in-depth reform to modernise research and innovation systems are emphatically important.

2.16 On the third recommended guideline, on removing key barriers to growth and jobs at the EU level, the importance of further integration of the single market is highlighted, specifically mentioning the Digital Single Market, the Capital Markets Union and the Energy Union as areas where the EU can make a contribution. The Commission’s text also says EU legislation should focus on those issues that are best dealt with at the EU level.

2.17 The Commission’s proposed text for the guideline on improving the sustainability and growth-friendliness of public finances starts by saying stable finances are key for growth and job creation. It then says that:

- Member States should secure long term control over the deficit and debt levels, through the EU rules based framework, and this should be complemented by national budgetary arrangements;

- budgetary consolidation should prioritise growth-enhancing expenditure items and expenditure reforms should target efficiency gains;

- a common consolidated tax base should be pursued, and taxes should be shifted from labour to consumption, property and environmental taxes; and

- broadening tax bases should also be considered.

2.18 After a written procedure, the ECOFIN Council is expected to endorse draft broad economic policy guidelines in May. These are expected to be the base for a discussion at June European Council. (The Commission has also proposed new employment guidelines as the other half of new integrated guidelines, which will also be processed for the June European Council.)

The Government’s view

2.19 In his Explanatory Memorandum of 13 March 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that:

\[\text{\footnote{35703}, 6144/15 + ADD 1, for which we are awaiting the Government’s Explanatory Memorandum.}\]
• the Government welcomes the emphasis in the recommendation on structural reform at both the Member State and EU levels, the importance of investment, and the need for fiscal responsibility;

• it supports the statement that EU legislation should focus on those issues that are best dealt with at the EU level;

• while the Government broadly supports the case for labour market reform set out in the Annex, it believes, however, regarding the references to legal migration, that the regulation of labour migration from outside the EU should be a matter for Member States to determine on the basis of national assessments of economic need;

• it also does not support the recommendations on taxation, which the Government believes is overly prescriptive, in particular the need to pursue a common consolidated tax base, which contravenes the principles of proportionality and subsidiarity; and

• the Government believes decisions on specific matters of taxation are best made by Member States taking into account country-specific circumstances.

Previous Committee Reports
None.

3 The European Police College

Committee’s assessment
Politically important

Committee’s decision
Not cleared from scrutiny; further information requested; recommendation for opt-in debate in European Committee B made on 3 September 2014

Document details
(a) Commission Communication: Establishing a European Law Enforcement Training Scheme
(b) Draft Regulation establishing a European Union agency for law enforcement training (Cepol), repealing and replacing Council Decision 2005/681/JHA

Legal base
(a) —, (b) Article 87(2)(b) TFEU; co-decision; QMV

Department
Home Office

Document numbers
(a) (34842), 8230/13, COM(13) 172; (b) (36238), 12013/14, COM(14) 465
Summary and Committee’s conclusions

3.1 The European Police College — CEPOL — is an EU Agency based (since September 2014) in Budapest. It provides training for senior police officers on the European dimension of policing.

3.2 Document (a) is a Commission Communication proposing a comprehensive European Law Enforcement Training Scheme (“LETS”) to strengthen cross-border law enforcement cooperation and broaden access to all officials with responsibility for law enforcement, regardless of their rank. Document (b) is a draft Regulation which would establish a new legal base for CEPOL, align its structure and governance with the principles set out in the Common Approach on EU decentralised Agencies agreed by the Commission, Council and European Parliament in July 2012, and enable CEPOL to implement a new training approach based on LETS. The draft Regulation is subject to the UK’s Title V (justice and home affairs) opt-in. It would repeal and replace a 2005 Council Decision on which CEPOL is currently based.

3.3 In light of concerns expressed by the Government that the draft Regulation would extend CEPOL’s current mandate and “limit the flexibility for Member States to decide how police and other border and law enforcement training should be delivered”, we considered that an opt-in debate was warranted and that it should take place before the Government notified its opt-in decision to the Council Presidency. The deadline for the Government to notify its opt-in decision expired on 24 November 2014.

3.4 We also asked the Government to:

- clarify its position on subsidiarity, given that its view that “the professionalism and training of the police and other law enforcement agencies should be led and developed by those organisations themselves, at a national or local level”, and its opposition to an increased role for the EU, might suggest that there was no justification for further EU action; and

- explain whether it would be legally or politically feasible for the UK to continue to take part in CEPOL, on the basis of the current 2005 Council Decision, if the UK were to decide not opt into the draft Regulation.

3.5 Nearly four months after the expiry of the deadline for opting into the draft Regulation, the Minister for Policing, Criminal Justice and Victims (Mike Penning) writes to inform us that the Government has decided not to opt in and to address the questions raised in our earlier Reports.

3.6 The Government’s delay in notifying us directly of its opt-in decision, and its failure to schedule an opt-in debate, are reprehensible and unacceptable. The Government has failed to “ensure full transparency and accountability of opt-in decisions”, despite the commitment it made to Parliament in January 2011 to do so. Although the Minister tells us that the Government takes debate recommendations “very seriously” and seeks

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2 Letter of 12 November 2014 from the Minister for Policing, Criminal Justice and Victims (Mike Penning) to the Chair of the European Scrutiny Committee.

3 Written Ministerial Statement of 20 January 2011 by the Minister for Europe (Mr David Lidington).
to schedule debates “in a timely manner”, the evidence during this Session is entirely to the contrary. There have been persistent delays in scheduling debates and, as in this case, no compelling reasons given to explain the Government’s evident reticence to expose itself to scrutiny by the House and be held accountable for its decisions. We will be looking to the next Government not only to re-affirm the commitments made to Parliament by the Minister for Europe in his Written Ministerial Statement of 20 January 2011, but to demonstrate that there is the political will to honour them.

3.7 The Minister’s letter makes no reference to the possibility that the UK may seek to opt into the draft Regulation once it has been adopted, or to the negotiating objectives the Government intends to pursue in the meantime to ensure that UK interests are protected. When the Government provides its next update, we expect to hear how active a role the UK is playing in negotiations, what changes it is seeking to the draft Regulation, and whether, if achieved, the Government would be willing to contemplate a post-adoption opt-in.

3.8 We note the Government’s view that CEPOL, in its current role, “plays an important role and adds value”. We ask the Minister to ensure that any changes to CEPOL’s existing mandate remain consistent with the principle of subsidiarity and add value to, rather than supplant, Member States’ primary responsibility for law enforcement and training.

3.9 As the Minister’s letter indicates, there remains some uncertainty as to the political and practical feasibility of remaining part of CEPOL on the basis of the 2005 Council Decision rather than the new Regulation (if adopted). We expect the Government to provide a detailed analysis of the options available to the UK to continue to participate in, or otherwise cooperate with CEPOL, once the draft Regulation has been adopted and the question of a possible post-adoption opt-in arises.

3.10 We note the Minister’s opposition to the inclusion in the draft Regulation of a provision on the location of CEPOL. As we have previously stated, we consider that the UK position will be difficult to defend in future, in light of the UK’s support for a 2014 Regulation expressly confirming Budapest as the new “seat” for CEPOL. We look forward to hearing how negotiations evolve on this aspect of the draft Regulation.

3.11 Pending further information from the Minister, as well as the regular updates he has promised on the progress of negotiations, the draft Regulation and Commission Communication remain under scrutiny.

**Full details of the documents:** (a) Commission Communication: Establishing a European Law Enforcement Training Scheme: (34842), 8230/13, COM(13) 172; (b) Draft Regulation establishing a European Union agency for law enforcement training (Cepol), repealing and replacing Council Decision 2005/681/JHA: (36238), 12013/14, COM(14) 465.

**Background**

3.12 Our earlier Reports, listed at the end of this chapter, provide a detailed overview of the Commission’s original proposal to merge Europol and CEPOL (which has been
abandoned, following opposition in the Council and the European Parliament), its Communication setting out the content and objectives of LETS, and the content of the draft CEPOL Regulation.

3.13 Whilst expressing support for the work of CEPOL, the Government voiced reservations about:

- the extension of CEPOL’s mandate to encompass a broader range of law enforcement officers from all ranks, not just senior police officers;
- the expansion of CEPOL’s tasks to include the development of “common curricula” on cross-border criminal phenomena, the assessment of the impact of EU-related law enforcement training policies and initiatives, the management of EU funding to support capacity-building in third countries, and promotion of the mutual recognition of law enforcement training and European quality standards; and
- the inclusion of a provision establishing in the draft Regulation establishing Budapest as the “seat” (location) of CEPOL, since this would give the European Parliament a right of co-decision on the location of an EU Agency.

3.14 The Government also considered that the requirement to designate a National Unit to cooperate with CEPOL would represent an additional burden for the UK’s current national contact point (the College of Policing) at a time of budgetary restraint and cost-cutting.

The Minister’s letter of 12 March 2015

3.15 The Minister (Mike Penning) confirms what we have seen elsewhere — in the Government’s Fifth Annual Report on the UK’s Title V opt-in and Schengen opt-out Protocols (published in February 2015), and in its Balance of Competences Report on EU police and criminal justice matters (published in December 2014) — that the Government has decided not to opt into the draft Regulation. He apologises for the delay in informing us of the Government’s position and notes that the House has been informed by means of a separate Written Ministerial Statement. He continues:

“I apologise that no date has been set for the debate you recommended. We take ESC debate recommendations very seriously and seek to schedule debates in a timely manner, but unfortunately this is not always possible.”

3.16 Turning to the Government’s position on subsidiarity and the justification for EU action, the Minister recognises the importance of cooperation between law enforcement agencies across Europe:

“We consider that CEPOL plays an important role and adds value in providing training in matters with an EU dimension that affect policing. However, it is also vital that we protect the autonomy of UK law enforcement agencies which must be able to determine what training they provide to their officers.”

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4  
HC Deb, col. 32WS, 12 March 2015.
3.17 The Minister confirms that the UK will remain bound by the 2005 CEPOL Decision if it does not opt into the new Regulation after it has been adopted. He continues:

“The UK would be working with CEPOL according to the old Council Decision, while other Member States work according to the new Regulation.

“Practically speaking, this may not be impossible, especially if the new Regulation does not significantly alter the focus of CEPOL. However, if the Commission considers that UK non-participation makes CEPOL inoperable, it could seek to have us ejected from CEPOL (from the 2005 Decision) through the provisions set out in Article 4a(2) of Protocol 21 of the JHA opt-in Treaty.

“Clearly, this depends on a number of questions that are currently hypothetical: whether we opt in post-adoption; and whether, if we do not, the Commission seeks to trigger the ejection mechanism. However, should we reach that stage, it would be important to note that the Protocol sets a very high threshold for ejection. It requires the measure to be ‘inoperable’ – not merely inconvenient or difficult to operate. And it must be inoperable for the other Member States, not just for the UK. These are tough tests for the Commission to meet. But we are a long way from that point at the moment.”

3.18 The Minister reiterates the points he has made in earlier correspondence concerning the inclusion of a provision in the draft Regulation stipulating the location of CEPOL. He explains that the Government only supported such a provision in a Regulation adopted in 2014, providing for CEPOL to move from its previous base at Bramshill, in the UK, to Budapest, as it was amending the 2005 CEPOL Decision which already included a provision on the location of CEPOL. He adds:

“This was an exceptional decision, based on the fact that the change had to be made by legislation. However, our general position remains that the seat of an EU Agency should be determined by common accord of the Governments of the Member States, as laid down in Article 341 of the Treaty on the Functioning of the European Union.”

3.19 The Minister undertakes to provide regular updates on the progress of negotiations.

**Written Ministerial Statement**

3.20 The Minister’s Written Ministerial Statement, published on 12 March 2015, restates the Government’s concerns about the draft Regulation and concludes:

“The Government believe that the focus of an EU-wide law enforcement training strategy should be to encourage Member States to collaborate on matters that are mutually beneficial but to avoid mandating training requirements. The Government do not want the police and other UK law enforcement agencies to be accountable to an EU Agency and we need to be satisfied that our training and other operational priorities are not subject to EU determination.

“The option to opt into this measure post-adoption remains open to the UK and Government will make a decision on that when the final text has been agreed.”
4 Gender balance on corporate boards

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Innovation and Skills Committee

Document details
Draft Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures

Legal base
Article 157(3) TFEU; co-decision; QMV

Department
Business, Innovation and Skills

Document numbers
(34423), 16433/12 + ADDs 1–3, COM(12) 614.

Summary and Committee’s conclusions

4.1 The draft Directive seeks to redress the gender imbalance on the boards of many publicly listed companies by introducing new procedural requirements for the recruitment and selection of non-executive directors. Although drafted in gender-neutral terms, the objective of the Directive is to increase the presence of women on company boards so that they comprise at least one third of a company’s executive or 40% of its non-executive directors by 2020, or sooner (by 2018) in the case of public undertakings.

4.2 Whilst endorsing the objective of greater gender balance on company boards, the Government has consistently opposed EU legislation on the grounds that establishing an EU-wide 40% quantitative objective would be tokenistic, counter-productive and tantamount to introducing quotas. It has advocated, instead, national measures which can be better tailored to the business culture and company law requirements of each Member State. We have also questioned the necessity for action at EU level and recommended issuing a Reasoned Opinion which the House endorsed in January 2013.

4.3 Progress since then has been slow, not least because the range and diversity of company systems have hampered efforts to agree measures that would work in all 28 Member States. The European Parliament broadly supports the Commission proposal but a number of Member States — sufficient to constitute a blocking minority within the Council — share the Government’s concerns. Whilst continuing to oppose the draft Directive, the Government has been willing to explore possible compromise proposals to protect against the eventuality that the blocking minority may not be sustainable.
4.4 The Minister for Employment Relations and Consumer Affairs (Jo Swinson) has provided regular progress reports on negotiations within the Council. In her latest letter, she provides a brief update on developments in advance of the Dissolution of Parliament.

4.5 As we noted in our earlier Report, further progress on the draft Directive within the Council, as well as the UK’s ability to sustain a blocking minority, remain uncertain but there appears to be a renewed impetus for agreement. We reiterate our request for early warning and, if possible, sight, of any compromise proposal on which the Presidency may seek to secure a general approach, accompanied by a detailed assessment of its content and policy implications for the UK.

4.6 Whilst we welcome progress made by FTSE 100 companies in achieving greater gender balance on their boards, we note that the draft Directive would set a more ambitious target and apply to a much larger number of listed companies. A clear understanding of the scope of the derogations contained in any text agreed by the Council will therefore be essential to assess the impact of the draft Directive for the UK. We ask the Minister to ensure that her assessment of any compromise text put forward by the Presidency fully addresses its implications for non-FTSE 100 listed companies. Given the possibility of a general approach in June, we draw our chapter to the attention of the Business, Innovation and Skills Select Committee. Meanwhile, the proposal remains under scrutiny and we ask the Government to provide regular progress reports.

**Full details of the documents:** Draft Directive on improving the gender balance among non-executive directors of companies listed on the stock exchange and related measures: (34423), 16433/12 + ADDs 1–3, COM(12) 614.

**Background**

4.7 Our earlier Reports (listed at the end of this chapter) provide a detailed overview of the draft Directive, the Government’s position, and the grounds on which we recommended that the House issue a Reasoned Opinion. Whilst rejecting the case made by the Commission for EU legislative action on subsidiarity grounds, we have also sought to explore:

- the trajectory of change within the UK, and across the EU, in securing more balanced gender representation on company boards;

- the number of publicly listed companies in the UK likely to be affected by the draft Directive — although the Government has indicated that there are approximately 950 such companies in the UK, those qualifying as small or medium-sized enterprises (“SMEs”) would be excluded from its application;

- the scope of possible derogations from the draft Directive and their application to publicly listed UK companies; and

- stakeholder views on the draft Directive.

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5 [BoardWatch](http://boardwatch) tracks the appointment of women to FTSE 100 and FTSE 250 company boards.
**The Minister’s letter of 16 March 2015**

4.8 The Minister (Jo Swinson) says that the Government’s position on the draft Directive has not changed:

“We, along with some other Member States, believe that EU level action is not required. We have made good progress in the UK and believe we should be able to continue our own domestic policy, in a way that suits the UK.”

4.9 She notes that the European Parliament debated the proposal on 13 January 2015 and expressed disappointment at the lack of progress made within the Council. The Latvian Presidency has pledged to advance discussions and scheduled a Council working group meeting for 23 March 2015, followed by further consideration at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council in June. The Minister explains that “this could just be an update” or the Presidency may seek agreement to a “general approach”, depending on the progress made within the Council working group.

4.10 Turning to the progress made in the UK in achieving greater gender balance on company boards, the Minister observes:

“Domestically, we have seen an improvement in FTSE 100 figures in the last few months, with the figure now at 23.5%. This is positive and shows improvement from what we were seeing late last year/early this year. We are not certain of what caused this slowing in the figures, but this could be a seasonal phenomenon and we can look into this. We are confident that business will be able to achieve the 25% target that Lord Davies set before the end of the year.”

**Previous Committee Reports**

## 5 Network Information Security across the EU

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**Document details**

Draft Council Directive to ensure a high common level of network and information security across the European Union

**Legal base**

Article 114 TFEU; ordinary legislative procedure; QMV

**Department**

Business, Innovation and Skills

**Document numbers**

(34685), 6342/13 + ADDs 1–2; COM(13) 48

### Summary and Committee’s conclusions

5.1 The proposed Directive, of early 2013, aims to put measures in place in order to avert or minimise the risk of a major attack or technical failure of information and communication infrastructures (ICT) in Member States.

5.2 In essence, it aims to put measures in place in order to avert or minimise the risk of a major attack or technical failure of information and communication infrastructures (ICT) in Member States. It includes:

- obliging all Member States to produce a national cyber security strategy, including establishment of “competent authority” and a Computer Emergency Response Team (CERT) in each Member State;

- mandating information sharing between Member States, as well as establishing a pan-EU cooperation plan and coordinated early warnings and procedure for agreement of EU coordinated response for cyber incidents;

- promoting the adoption of good risk management practices by the private sector through expanding the requirement of obligatory security breach disclosure (currently imposed only upon the telecoms sector) to the finance, energy, transport and health sectors, as well as to “providers of internet society services”; and

- encouraging the take up of cyber security standards, with possible harmonisation measures being taken by the Commission.

5.3 In the intervening 18 months, a number of contentious issues were satisfactorily resolved, and have been reported to the House.

5.4 As of last November, on the two outstanding issues of scope (much the more important) and operational cooperation, differences of view still obtained between the UK and some other Member States (with the European Parliament (EP) seemingly in their camp), and the Commission and some other Member States.
5.5 In January 2015, the Minister for Culture and the Digital Economy at the Department for Culture, Media and Sport (Mr Edward Vaizey) said that “some considerable differences” had emerged between the positions of the Council and the EP on which businesses should be included within the Directive’s scope. For its part, the Council wished to see the Directive focussing on those businesses that provided critical services on whose networks a cyber-incident would cause major disruption to society or the economy; and only Member States were in the position to identify these businesses at a national level — retaining these two principles within the text was of utmost importance to the UK Government. On the other hand, the European Parliament (EP) wanted to include all businesses within the sectors identified in the Directive (the original list included energy, transport, health, finance, banking and digital services) with an exception for micro-enterprises. He understood that the Latvian Presidency intended to schedule sufficient time at working group level to debate this issue of scope and critical infrastructure and also to reach agreement on the unresolved issue of whether digital services should be included in the text. He firmly believed that such businesses should not be included within scope of the Directive, and warmly welcomed this pause in proceedings, which would “give us sufficient time to properly consider any possible compromise text”.

5.6 The Minister now reports that:

— in order to bridge the gap between the Council and the Parliament the Presidency has “suggested some stronger criteria for Member States to use when determining which companies would fall within scope”, which he believes “would be sufficiently flexible for there to be minimal change to the way that the UK currently identifies critical operators”;

— though the UK has pushed extremely strongly to exclude digital services from the scope of the Directive throughout the negotiation and has some support for this position in Council, “we have encountered strong opposition from those countries that want digital services included in the final agreement”;

— in order to reach a compromise, the Presidency has suggested reducing the list of digital sectors so that it would include search engines, e-commerce platforms and cloud computing services but exclude e-payment gateways, application stores and social media;

— given this reduction in the list and the important concession that it will be up to Member States to identify which companies should be in or out of scope, he considers this to be a considerable narrowing of scope;

— his officials will also be working closely with their counterparts in the European Parliament to encourage them to stick to their position that digital services should be entirely out of scope during the informal trilogue; and

— the third informal trilogue will take place “at some point in late March”.

5.7 The Minister then:

— says that, given the upcoming election, it will be impossible to communicate the detail of any informal agreement to the Committee before Parliament is prorogued;
— lists the changes secured to the original text during the course of the negotiation, which he hopes that the Committee will agree are important; and

— asks the Committee to release the file from scrutiny in order for the Government to take part in the formal vote on the Directive, which he expects to take place in early summer.

5.8 In a subsequent press release of 11 March 2015, the Council has confirmed that the Latvian presidency is “ready to resume informal trilogue meetings with the European Parliament with a view to reaching a deal on a draft directive on network and information security”, on the basis of a mandate agreed by the Permanent Representatives Committee on 11 March 2015; that the trilogue will be the first one on this proposal under the current presidency and the third one in total; and that the meeting is scheduled to take place in late April, as requested by the European Parliament. The press release also contains a summary of the objectives of the Directive, of the proposed rules being negotiated with the European Parliament and of the purported benefits to consumers and citizens (see paragraph 5.38 below for details).

5.9 We are, as always, grateful to the Minister for his openness, which has characterised his approach to this difficult dossier, and which we regard as worthy of wider study by the Cabinet Office and scrutiny teams across Whitehall.

5.10 However, there is still much uncertainty about important elements of what remains of the original text. The EP has changed its tune before. By early summer we hope that there will be not only a new Government but also a new Committee. And even if there is one but not the other, the new Committee will be interested in the final outcome.

5.11 We are therefore unable to accede to the Minister’s request for scrutiny clearance. We recognise that, in the circumstances, he may well be unable to submit the final text of the draft Directive to the next Committee for scrutiny prior to a formal vote in Council. That being so, we are confident that our successors will not object to the Minister agreeing to its adoption, should he (or his successor) decide that it is in the national interest so to do.

5.12 But we shall expect nonetheless that the Minister, or his successor, deposit any final text along with a fresh Explanatory Memorandum, outlining its provisions in detail, and explaining why he (or she) voted as he (or she) did at the end of the day.

5.13 In the meantime, we shall continue to retain the document under scrutiny.

**Full details of the documents:** Draft Directive concerning measures to ensure a high common level of network and information security across the Union: (34685), 6342/13 + ADDs 1–2, COM(13) 48.
Background

5.14 The context to the proposed Directive is set out in the over-arching Joint Communication 6225/13, "Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace", which we also considered at our meeting on 13 March 2013.6

The draft Directive

5.15 The draft Directive is fully summarised in our first 2013 Report.7 In essence, it aims to ensure a high common level of network and information security (NIS): to put in place measures to avert or minimise the risk of a major attack or technical failure of information and communication infrastructures (ICT) in Member States.

5.16 Most recently the Minister wrote on 26 January 2015 to explain that “some considerable differences” had emerged between the positions of the Council and the EP on which businesses should be included within the Directive’s scope:

— “For the Council it is important that the scope of this Directive focuses on those businesses that provide critical services on whose networks a cyber-incident would cause major disruption to society or the economy. Furthermore, it is only Member States that are in the position to identify these businesses at a national level. Retaining these two principles within the text is of utmost importance to the UK Government”; and

— the European Parliament “would prefer to include all businesses within the sectors identified in the Directive (the original list included energy, transport, health, finance, banking and digital services) with an exception for micro-enterprises”.

5.17 The Minister understood that the Latvian Presidency intended to schedule sufficient working group time to debate this issue of scope and critical infrastructure and also to reach agreement on the unresolved issue of whether digital services should be included in the text. The Minister “firmly” believed “that such businesses should not be included within scope of the Directive”, and warmly welcomed “this pause in proceedings”, which he said would “give us sufficient time to properly consider any possible compromise text”.

5.18 In its response, the Committee noted that he had made the Government’s position very clear: but that there was now a major gap to be closed. In the first instance, the Committee asked for a further update once the working group process had got under way and there was any sign of a resolution to this impasse.

5.19 The Committee also reminded the Minister that the dossier remained under scrutiny and that it expected him and his officials to have in the forefront of their minds the earlier exchanges on this matter, as set out in detail in our earlier Reports.

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The Minister’s letter of 4 March 2015

5.20 The Minister now provides a further update on the progress within the Council working group and, “given the timing of the upcoming election”, asks the Committee to release the document from scrutiny.

5.21 He does so in the following terms:

“When I last wrote to you I explained that the informal trilogue negotiations with the European Parliament had been paused to give Council the time to discuss the detail of two aspects of the file. First, whether the final decision on which companies should fall in or out of scope of the requirements should rest with Member States and second, whether digital services should fall within scope of the Directive.

“On the first point, the Council has been extremely clear: given that it is only Member States that can determine which companies provide an ‘essential service’, it must be left up to Member States to draw up the final list of operators that fall within scope of the Directive’s requirements. The European Parliament would prefer for all but the smallest operators in a sector to automatically fall within scope of the Directive. In order to bridge the gap between the Council and the Parliament the Presidency has suggested some stronger criteria for Member States to use when determining which companies would fall within scope. I am content that the criteria would be sufficiently flexible for there to be minimal change to the way that the UK currently identifies critical operators.

“On the second point, there has not yet been an agreement on the Council position but we have made considerable progress. As I have outlined in my previous letters the UK has pushed extremely strongly to exclude digital services from the scope of the Directive throughout the negotiation. Whilst we do have some support for this position in Council, we have encountered strong opposition from those countries that want digital services included in the final agreement.

“In order to reach a compromise the Presidency has suggested reducing the list of digital sectors so that it would include search engines, e-commerce platforms and cloud computing services but exclude e-payment gateways, application stores and social media. Given this reduction in the list and the important concession that it will be up to Member States to identify which companies should be in or out of scope, I consider this to be a considerable narrowing of scope. My officials will also be working closely with their counterparts in the European Parliament to encourage them to stick to their position that digital services should be entirely out of scope during the informal trilogue.

“Following two working groups to iron out the final details, on 11 March the Latvian Presidency will ask COREPER to agree to a mandate for the third informal trilogue, the meeting with the European Parliament will then take place at some point in late March. This presents an issue with the timing given the upcoming election as it will be impossible to communicate the detail of any informal agreement to the Committee before Parliament is prorogued. I am therefore asking you to release the
file from scrutiny in order for the Government to take part in the formal vote on the Directive which I expect will take place in early summer.

"Whilst it is obviously disappointing that I am not able to provide the Committee with the final detail of the text, I hope that you will agree that considerable progress has been made on this file:

- "With regards to the institutional architecture that Member States are required to have in place we have secured considerable flexibility in comparison with the original proposal. Instead of one single ‘competent authority’ on network and information society, we will be able to have a number of sector-specific competent authorities which will more closely mirror the structures that we already have in place. Likewise requirements related to developing a national cyber security strategy and the national Computer Emergency Response Team (CERT) have been made more flexible and I anticipate minimal disruption to the current UK system.

- "The changes to pan-EU cooperation and information sharing have been the widest reaching as this section of the Commission’s original proposal has been entirely rewritten. The UK was the driving force behind these changes and much of the new language comes directly from UK suggestions. The mandatory operational cooperation aspects have been entirely deleted and the Directive now includes an extremely limited compulsory information sharing requirement: we will only have to share limited information about incidents when they have a significant impact in another country. There will be cooperation on a political and strategic level between Member State officials and also on a technical level between our CERTs which I hope will be helpful in developing trust between Europe on network and information security.

- "I have outlined above the changes that we have secured with regard to the scope of the Directive. The original proposal anticipated that all but the very smallest companies in a wide range of sectors would fall within scope of the requirements. During the negotiation we have successfully changed the approach so that it is now up to the Member States to decide which operators provide essential services to their economy and society and should therefore fall within scope of the Directive. In addition I am confident that the number of digital services sectors will be significantly reduced — either to three or (ideally) to none. In practice this will considerably reduce the number of companies that fall that have to meet these new regulatory requirements.

- "As anticipated from the start of negotiations, mandatory reporting of security breaches has remained within the text of the agreement: the Commission, the European Parliament and most other Member States view this as the backbone of the legislation. We have made important changes to this text though which will provide far more flexibility around reporting, for example the sort of incident that would need to be reported, which will make it easier to implement the legislation in a light touch fashion.

- "All delegated acts have been removed from the text and only one implementing act remains which will require the Commission to define the logistics of how the
cooperation group will work. As this will be not be politically contentious I judge this to be an appropriate use of an implementing act.”

5.22 The Minister concludes by hoping that the Committee will agree that he has secured important changes to this text during the course of the negotiation and, “mindful of the dates of the upcoming election”, reiterates his request that the Committee release the Directive from scrutiny.

5.23 On 11 March 2015, the Council issued the following statement:

“The Latvian presidency of the Council is ready to resume informal trilogue meetings with the European Parliament with a view to reaching a deal on a draft directive on network and information security (NIS). This reflects the priority given to this issue by heads of state and government at their 12 February informal meeting. The mandate was agreed by the Permanent Representatives Committee on 11 March 2015. The trilogue will be the first one on this proposal under the current presidency and the third one in total. The meeting is scheduled to take place in late April as requested by the European Parliament.

“What is the network and information security proposal about?

The objective of the network and information security proposal is to ensure a secure and trustworthy digital environment throughout the EU.

The proposed rules being negotiated with the European Parliament would require designated operators that provide essential services (in areas such as energy, transport, banking and healthcare) and key Internet enablers (such as e-commerce platforms and search engines) to take measures to manage risks to their networks and notify their incidents to authorities. All member states would be required to adopt network and information security strategies and set up teams to respond to incidents. Cooperation networks would be created at EU level.

“What benefits is it expected to bring?

Citizens and consumers will have more trust in the technologies, services and systems they rely on day-to-day. This increased confidence will mean a more inclusive cyberspace, and a digital economy that grows even faster, supporting economic recovery. Governments and businesses will be able to rely more on digital networks and infrastructure to provide their essential services at home and across borders. More secure e-commerce platforms could bring more customers online and create new opportunities. Providers of ICT security products and services would also benefit, as demand for their products and services is bound to increase, leading to innovative products and economies of scale. The EU economy will benefit as sectors that rely heavily on NIS will be better supported to offer a more reliable service.

“How will it become a law?

The presidency negotiates the terms of the directive with the European Parliament on behalf of the Council. In order to be adopted, the legal act must be approved by
both institutions. The Parliament adopted its position (first-reading amendments) in
March 2014.8

Previous Committee Reports
Sixteenth Report HC 219-xvi (2014–15), chapter 1 (29 October 2014); Fifteenth Report HC
chapter 6 (15 October 2014); Twelfth Report HC 219-xii (2014–15), chapter 4 (10
September 2014); First Report HC 219-i (2014–15), chapter 2 (4 June 2014); Thirty-fifth
Report HC 86-xxxv (2012–13), chapter 6 (13 March 2013); Fortieth Report HC 86-xxxix
April 2014); also see (34680), 6225/13: Thirty-fifth Report HC 86-xxxv (2012–13), chapter
3 (13 March 2013).

6 Shareholder rights

Committee’s assessment
Legally important

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

Document details
Directive amending Directive 2007/36 as regards the encouragement of long-term shareholder
engagement and Directive 2013/34 as regards certain elements of the corporate governance statement

Legal base
Articles 50 and 114 TFEU; ordinary legislative procedure; QMV

Department
Business, Innovation and Skills

Document numbers
(35957), 8847/14 + ADDs 1–3, COM(14) 213

Summary and Committee’s conclusions
6.1 This proposal amends the existing Shareholders’ Rights Directive (2007/36) by
introducing new provisions intended to facilitate the exercise of shareholders’ rights, give
shareholders a greater say over directors’ remuneration and increase transparency in
respect of: the strategies of institutional investors and asset managers; the activities of proxy
advisors; directors’ remuneration; and related party transactions. Further details are set out
in our Report of 4 June 2014.

6.2 The Government have been broadly supportive of this proposal and have been
negotiating with a view to it more fully reflecting the UK’s approach to corporate
governance.

8 Press Release
6.3 The only matter outstanding from our previous consideration was an assessment by the Government of the Commission’s power to adopt subordinate legislation. This was first raised in its Explanatory Memorandum of 1 May 2014.

6.4 The Minister for Employment Relations and Consumer Affairs and Minister for Women and Equalities (Jo Swinson) now provides an update on negotiations, and helpfully provides the current text (on which we are unable to explicitly report as it remains classified as *limité*). She indicates that there are expected to be further working group meetings of the Council, that other Member States are broadly satisfied with the current text, that the Latvian Presidency is only expected to provide an update on this matter, and that the Legal Affairs Committee of the European Parliament may have difficulty in adopting its report as scheduled in March as over 300 amendments to it have been received. Her letter does not provide a Government view on the provisions for subordinate legislation to be adopted by the Commission.

6.5 We are grateful for the update from the Minister. She has asked for clearance from scrutiny, but we consider that this would be premature. However, given her assessment that the current Council text “will have a low impact on our current corporate governance framework” we are prepared to grant a waiver from scrutiny to enable her to agree a General Approach in the Council, should the Presidency seek one, subject to the conditions that (a) any further changes to the text remain within the bounds of the UK’s corporate governance framework, and (b) that the provisions for subordinate legislation do not change from the current text.

6.6 Should a General Approach be agreed we ask the Minister to provide a copy of the text with a commentary as to the changes from the current text and an analysis of the prospects for trialogue negotiations with the European Parliament. If not we ask the Minister to provide an update to the new Committee.

**Full details of the documents:** Proposal for a Directive amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement: (35957), 8847/14 + ADDs 1–3, COM(14) 213.

**The Minister’s letter of 2 March 2015**

6.7 In addition to the matters summarised above, the Minister assesses the progress of negotiations to date:

“We have achieved the main aims of the negotiation and, while officials will continue to negotiate in line with the UK government’s agreed position, we consider that the latest text does reflect our position.

“I am satisfied that this minimum harmonisation directive will have a low impact on our current corporate governance framework. The main changes, which we support, will be limited to measures aimed at increasing transparency amongst institutional investors, asset managers and proxy advisers. The impact of the new requirements will be moderated by a ‘comply of explain’ approach.”
Previous Reports


7 Access to published works for the visually impaired

Committee’s assessment
Legally and politically important

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

Document details
Draft Council Decision on the conclusion of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled

Legal base
Articles 114, 207 and 218(6)(a)(v) TFEU; QMV

Department
Business, Innovation and Skills

Document numbers
(36437), 14617/14, COM(14) 638

Summary and Committee’s conclusions

7.1 This document would enable the EU to conclude (ratify) the Marrakesh Treaty sponsored by the World Intellectual Property Organisation (WIPO). It comes into force once 20 WIPO Parties have ratified it.

7.2 This is the first multilateral treaty in the field of copyright exceptions. It is seen by many commentators as an historic agreement and an important step forward for the rights of disabled people around the world. The UK already complies with the majority of its provisions.

7.3 Whilst the EU has already signed the Treaty, it does give rise to ongoing legal issues: first as to whether the Treaty is entirely a matter of exclusive EU competence or whether the Member States are also entitled to become parties (as participants in a “mixed agreement”); and second as to the appropriate legal basis. Insofar as it is a mixed agreement the Committee have been looking for transparency as to which party (the EU or the individual Member States) are exercising that competence in respect of the specific provisions of the Treaty.

7.4 The Decision on the signature of the Treaty was cleared by the Committee at its meeting of 4 June 2014, having been adopted on 14 April 2014 in the face of a contrary UK vote. In doing so the Committee asked as to the legal consequences of some Member States

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*A mixed agreement is one where the EU acts in respect of some provisions and the Members States in respect of others.*
signing the Treaty but not others. The adopted Decision\textsuperscript{10} did not clarify the competence issue and had only an internal market substantive legal basis. It also expressed disappointment at the lack of transparency in the legal texts concerning the exercise of competence by both the EU and the Member States.

7.5 The Committee first considered this draft Decision to conclude the Treaty at its meeting of 26 November 2014. It noted (a) that the Decision on signature stood as an unhelpful precedent on the legal issues; and (b) that the Government approach to the legal basis appeared to have changed, in that it appeared to favour neither a common commercial policy nor an internal market legal basis. We asked that solutions to these issues be pursued vigorously and re-iterated the request, made from our very first consideration of this Treaty, that it be made clear the extent to which the EU and the Member States were exercising competence.

7.6 In her letter of 13 January 2015 the Minister for Intellectual Property reported a broad degree of consensus amongst Member States that the Treaty was a matter of shared competence and also indicated (and repeats in the current letter) that “We will also seek to ensure that the respective competences of the EU and Member States are clearly set out in the text of the Decision”.

7.7 The Minister now indicates that the negotiations are at an impasse over both the appropriate legal basis and the division of competence, although the Latvian Presidency is expected to table a revised proposal. She provides some detail as to the Government’s view of the division of competence and indicates that the Government would not support the adoption of a Decision in the terms of the current proposal but may wish to support an amended proposal, or abstain, and therefore seeks clearance in view of the forthcoming dissolution of Parliament.

7.8 The Marrakesh Treaty is widely regarded as a ground breaking development for the benefit of disabled people. It is a pity that its implementation continues to be bedevilled by legal difficulties, relating to the appropriate legal basis and the exercise of competence. These difficulties illustrate the importance of addressing the legal aspects of the implementation of external agreements at an early stage and with maximum clarity.

7.9 In relation to any mixed external agreement, competence creep can arise by the Commission claiming extensive exclusive competence (in this case in respect of the common commercial policy) or by giving it the opportunity, through a lack of transparency, to claim that the EU is exercising competence in respect of those parts of the Treaty which are matters of shared competence.\textsuperscript{11} This is why we seek clarity that the EU is only acting where it has exclusive competence and also clarity as to where the EU and the Member States are exercising competence.

7.10 In this case we do not consider that the legal issues are sufficiently close to resolution to enable us to clear the document. We therefore retain it under scrutiny and ask the Government to provide an update for our successor Committee in the new

\textsuperscript{10} Decision 2013/275.

\textsuperscript{11} Where there is shared competence, either the EU or the Member States individually, may act.
Parliament, including on the continued outstanding questions raised by this Committee: namely the Government’s analysis of the appropriate legal basis; the steps taken to make it clear in the legislation that the EU is only acting where it has exclusive competence; the steps taken to clarify the parts of the Treaty where the EU is exercising competence and the parts where the Member States are exercising competence; and the legal consequences of some, but not all Member States, ratifying the Treaty.

**Full details of the documents:** Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled: (36437), 14617/14, COM(14) 638.

**Background**

7.11 As set out in more detail in our first Report on this subject, the Marrakesh Treaty of 26 March 2014 seeks to achieve its objectives through the international harmonisation of copyright exceptions (i.e. acts that do not need the permission of the copyright owner) for the benefit of those who are visually impaired or otherwise print-disabled people to enable accessible versions of copyright works (for example, Braille versions of books) to be produced under certain conditions without infringing copyright. The Marrakesh Treaty also provides for the import and export of accessible copies subject to certain conditions.

**The Minister’s letter of 10 March 2015**

7.12 In addition to the matters set out above the Minister provides some justification for the Treaty being a mixed agreement based on its Articles 3, which establishes who can benefit from the Treaty; and Article 4, which sets out the exceptions to copyright law which must be given:

> “the Government does not consider an exclusive competence approach to conclusion of the Treaty to be appropriate, including such an approach based on the proposed joint Article 207 and Article 114, of the TFEU, legal base. Even if the Council were to accept that some provisions of the Treaty fell within the common commercial policy Article 207 legal base, it is probable that other important aspects of the Treaty, such as Articles 3 and 4, may be considered to fall outside the common commercial policy, and outside the exclusive competence of the EU, so Member States would remain competent to ratify the Treaty in their national capacities as regards those Articles.”

7.13 She also re-iterates Government support for the Treaty:

> “The Government remains a strong supporter of the Marrakesh Treaty and is committed to the principle of access to copyright works for visually impaired people. In seeking to ensure that the Treaty enters into force at the earliest possible date, we are committed to ensuring that the aforementioned legal difficulties reach a satisfactory conclusion.”


Previous Committee Reports


8 Extra-territorial effects of legislation from third countries

Committee’s assessment
Legally important

Committee’s decision
Not cleared from scrutiny

Document details
Draft Regulation on protection against the effects of extra-territorial legislation from third countries (recast)

Legal base
Articles 64, 207(2) and 352 TFEU; co-decision; unanimity

Departments
Business, Innovation and Skills

Document numbers
(36669), 6237/15 + ADD 1, COM(15) 48

Summary and Committee’s conclusions

8.1 This document proposes to consolidate Regulation (EC) 2271/96 and its subsequent amendments. The aim of that Regulation is to protect the economic and/or financial interests of natural or legal persons\(^{12}\) against the effects of the extra-territorial application of legislation. The laws in question are specified in the Annex to the Regulation. The protection concerns international trade and/or the movement of capital and related commercial activities between the EU and third countries.

8.2 Any persons whose economic and financial interests are affected by foreign legislation must inform the Commission accordingly within 30 days from the date on which it obtained such information.

8.3 Persons protected by the Regulation do not have to comply with any requirement or prohibition based on the specified third country laws. However authorisation may be granted where full or partial non-compliance with such foreign laws, including the requests of foreign courts, would cause serious damage to the person concerned. The Commission

\(^{12}\) The Regulation protects any natural person being a resident in the EU and a Member State national; any legal person incorporated within the EU Member State nationals established outside the EU and to shipping companies established outside the EU and controlled by nationals of a Member State, if their vessels are duly registered with a Member State; natural persons being a resident in EU, unless that person is in the country of which he is a national; and any other natural person within the EU, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.
sets those criteria through implementing acts. The Member States determine the sanctions to be imposed in the event of breach of any relevant provisions of the Regulation.

8.4 The current document is a recast, as opposed to a consolidation of the existing Regulation, because the Commission has proposed that it establish authorisation criteria by delegated powers instead.

8.5 This proposal is jointly based on Articles 64, 207(2) and 352 TFEU. Likewise, the Regulation was based on the predecessor to Article 352 TFEU, namely Article 235 TEC. Section 8 of the EU Act 2011 requires the UK to introduce primary legislation for any Article 352 measure before the UK can vote in favour or otherwise support it, unless one of several exemptions applies.

8.6 The Government now provides an Explanatory Memorandum on the document. It considers that the UK’s JHA opt-in applies to the document (despite the absence of a Title V legal base), is minded to opt-in and also notes that the document comes within the scope of the EU Act 2011.

8.7 It is well-established that we do not agree with the Government asserting that the JHA opt-in protocol applies to a measure in the absence of a Title V legal base. However, we note the Government’s position that it is minded to opt into the measure on the grounds of national interest and because the measure does not impose any additional JHA obligations. We note that the Government assesses the JHA content (specifically, but not limited to Article 6) to be “incidental” to the “predominant purpose” of the measure. Applying the Government’s own analysis, we understand that this would mean that should the Government not “opt in”, it would not consider itself bound by that JHA content. We ask the Minister whether, that potential legal difficulty will be a factor it takes into account in its final opt-in decision and whether there are other arguments against participation which the Government may consider.

8.8 We also note that the Government is continuing to reflect on whether the EU Act 2011 will apply in this situation. We infer that it may be considering the exemption set out in Section 8(6)(e) of the Act which applies where the purpose of a measure is “to consolidate existing measures adopted under that Article without any change of substance”. We would ask the Minister in due course to confirm whether that is the case and what Government lawyers have concluded as to the availability of the exemption.

8.9 We continue to hold the proposal under scrutiny, pending the Minister’s responses.

Full details of the document: Proposal for a Regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom (recast): (36669), 6237/15 + ADD 1, COM(15) 48.

The Government’s view

8.10 In his Explanatory Memorandum of 4 March, the Minister of State for Trade and Investment (Lord Livingston of Parkhead) says of the proposal in general:
“The government strongly supports consolidation measures. We believe that the proposal does not contain any new and/or substantive material and therefore does not change the measure in substance and can therefore be supported.”

8.11 On the question of the application of the opt-in protocol, the Minister comments:

“We consider that, at least, Article 6 of the proposal amounts to JHA content which would trigger the UK’s opt-in. Article 6 provides for the Brussels 1 (recast) Regulation to apply to proceedings brought under that Article. We consider the JHA content in this measure to be incidental to the predominant purpose of the measure.

“The Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process. In relation to this measure, given that this is a recast of an existing measure which does not add any new JHA obligations, with which the Government is content, the Government is minded to opt in.”

8.12 On the issue of the application of the EU Act 2011, the Minister comments:

“The Government is considering the implications of the proposed Treaty base and will provide further information on our position in due course.”

8.13 On the question of the proposed switch from the use of implementing powers under the original Regulation to delegated powers under the current document the Minister says:

“The new comitology procedure, empowering the Commission to adopt delegated acts, does not have anything in it that could be considered to be new and/or substantive material and therefore does not change the measure in substance.”

Previous Committee Reports

None.
9 The Telecommunications Single Market

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; further information requested; drawn to the attention of the Culture, Media and Sport Committee

Document details
(a) Commission Communication on the Telecommunications Single Market
(b) Draft Regulation laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent

Legal base
(a) —; (b) Article 114 TFEU; ordinary legislative procedure; QMV

Department
Culture, Media and Sport

Document numbers
(a) (35305), 13562/13, COM(13) 634; (b) (35304), 13555/13 + ADDs 1–2, COM(13) 627

Summary and Committee’s conclusions

9.1 The Commission Communication sets out measures that the Commission believes are needed to change the existing regulatory framework (last revised in 2009); the subsequent legislative package, A Connected Continent: Building a Telecoms Single Market, was published on 11 September 2013.

9.2 Over the past 18 months, this dossier has moved forward intermittently. The focus has now boiled down to two issues: mobile roaming charges and net neutrality. The Latvian Presidency then decided to prioritise this dossier, with this dual focus, but also making it clear that should the Council fail to agree the content of the proposed Regulation to the extent that trilogues (the Presidency, the Commission and the European Parliament) can begin within three months, they would cease all work on the proposal.

9.3 In the most recent of a series of open and very helpful updates, the Minister for Culture and the Digital Economy (Mr Edward Vaizey) said on mobile roaming charges, that:

— whilst the text did not immediately introduce a “roam like at home” (RLAH) solution, it “contains a clear indication that this is the first step on the journey to that ultimate destination”;

Net neutrality is the principle that Internet service providers and governments should treat all data on the Internet equally, not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, and modes of communication. Proponents often see net neutrality as an important component of an open internet, where policies such as equal treatment of data and open web standards allow those on the internet to easily communicate and conduct business without interference from a third party.
— whilst it did not contain a commitment to immediately assess and address any competitive distortions created by, and within, the current wholesale pricing regime, “it does contain a longer-term commitment to address same”;

— therefore, it “clearly does have the potential for a RLAH solution to be introduced in the longer term”;

— the combination of an allowance plus a further reduction in retail roaming charges “represents a greater level of consumer benefit compared to the current roaming regime”, i.e., “before the introduction of Roaming 3, the average cost of data in the EU was €7.00/MB; under this proposal, once any allowance is used, it will be €0.05/MB — a 99.2% reduction since the introduction of Roaming 3 and a further 75% reduction in data roaming rates compared to current retail cap”.

9.4 The Minister then said:

“However, there is some concern that the absence of any short-term action on wholesale pricing will limit the finally agreed size of the allowance as a balance is struck between meeting consumer expectation and avoiding an excessive impact on the revenues of operators. My current estimate is that an allowance of the size proposed by the Presidency — 5 minutes of voice; 5 SMS; and 5 MB data per day for seven days per annum — could drive a reduction in revenues of UK operators by around 0.45%. It follows that any increase in allowance size will drive this upwards.”

9.5 In sum, the Minister said:

“The proposal has been met with some level of support within Council and discussions regarding the size of the allowance continue.”

9.6 On the question of net neutrality, the Minister said:

“The regulatory text is relatively short — running to a single definition and two Articles. The single definition sets out ‘internet access service’. Notable by their absence are specific definitions of ‘net neutrality’ (the text is, in effect, an implied definition) and ‘specialised services’ (a situation with which I am content).”

9.7 In terms of risks and opportunities, the Minister said:

“I believe that the lack of specific definitions of ‘net neutrality’ and ‘specialised services’ future-proofs the regulation by providing sufficient flexibility in the text. Although there was a push by some Member States, this has been resisted by the Presidency. This flexibility is supplemented by the principles-based approach that has been adopted and I support.

“However, the current text sets out the principle that all traffic should be treated the same, whilst also setting out what constitutes reasonable traffic management, followed a series of instances when exceptional traffic management can take place. Council remains undecided on this point. I am seeking to have the formulation of this text altered in order to make it clear which forms of traffic management are acceptable in order to effectively manage networks — and thus ensure quality of services for users across a variety of services — and which forms of traffic
management are not considered to be acceptable and may drive or underlie anticompetitive behaviours.

“A further risk arises from attempting to minimise the Regulation’s impact on the current self-regulatory system here in the UK. In particular, I am seeking to ensure that the text will allow the continuation of self-regulatory processes for blocking of unlawful material. Progress towards this outcome is well-developed and positive.”

9.8 The Minister also said that the matter of Spectrum Management was currently not being actively considered, in that “Council remains unanimous in its opposition to the Commission’s proposals and the Presidency have offered no plans for further discussions on same”. He said that there were both positives and negatives related to this outcome. On the one hand, the Commission’s plans for creating new powers over spectrum auctions, along with taking control of wider management processes that are currently under the aegis of Member States, had been successfully resisted. On the other, it had been necessary to forego the opportunity to make changes to the current existing governance structure — through evolving the Radio Spectrum Policy Group — along with capitalising on associated gains in terms of sharing of best practise and coordination of spectrum management; and the Commission could revive its proposal, without taking into account Council’s current view and suggestions for change, via the anticipated review of the existing Telecoms Framework that is due to begin later this year.

9.9 The Minister also responded fully and helpfully to the questions we raised in what was then our most recent Report.

Our assessment

9.10 We were once again grateful to the Minister for a further full and open update. We noted that he believed it more likely that, rather than carry out their threat to close down the whole process at the end of February if the Council has not agreed a text upon which the trilogue process (with the Commission and the European Parliament) could begin, negotiations would continue into March. That being so, we said that we should need to hear again from the Minister no later than Friday 20 March.

9.11 In the meantime, we continued to retain the documents under scrutiny.

9.12 We also again drew this chapter of our Report to the attention of the Culture, Media and Sport Committee.14

9.13 On 4 March 2015, the Council announced that, following Member State agreement on 4 March 2015 at COREPER,15 the Latvian presidency of the Council now had a mandate to start negotiations with the European Parliament on new rules to cut mobile phone

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15 COREPER, from Comité des représentants permanents, is the Committee of Permanent Representatives in the European Union, made up of the head or deputy head of mission from the EU member states in Brussels. Its job is to prepare the agenda for the ministerial Council meetings; it may also take some procedural decisions. It oversees and coordinates the work of some 250 committees and working parties made up of civil servants from the member states who work on issues at the technical level to be discussed later by COREPER and the Council. It is chaired by the Presidency of the Council of the European Union. There are in fact two committees: COREPER I consists of deputy heads of mission and deals largely with social and economic issues; COREPER II consists of heads of mission (Ambassador Extraordinary and Plenipotentiary) and deals largely with political, financial and foreign policy issues.
roaming fees and safeguard open internet access. The mandate covers EU-wide rules on open internet, safeguarding end-users’ rights and ensuring non-discriminatory treatment in the provision of internet access services; and changes to the current roaming regulation (known as Roaming III), representing an intermediate step towards phasing out roaming fees. The other parts of the original Commission proposal on the telecommunications single market (“Connected Continent”) have been left out by common decision of the Council. The regulation would apply from 30 June 2016 (see paragraph 9.25 below for details).

9.14 The Minister now confirms this situation. He says that the text on roaming has been largely stable since his last update; the main components being the introduction of a roaming allowance — the size of which remains unspecified and will be subject to development during Trialogue — and a commitment to review the current wholesale price and take action if found necessary. He describes the matter of wholesale pricing as having played a pivotal role in preventing a full “roam like at home” solution being adopted in the short-term but says that “this commitment retains the potential for the adoption of such an action in the longer term”. Here and now, his intention is to focus future efforts on “ensuring that any allowance results in a meaningful and tangible benefit to consumers, whilst striving to ensure this is balanced against revenue impacts for operators”. The proposal also envisages a further reduction in retail data roaming charges, and a modification of the current “SMS alert” mechanisms for consumers when “roaming”.

9.15 The current net neutrality text “remains principles-based and “technology and service neutral”, and retains sufficient flexibility for it to be regarded as future-proof and to provide adequate space for future innovation with regard to emerging and new digital services. However, were the current text to come into effect, it would have a negative impact on the current child online protection regime in operation within the UK, namely the matter of “default on” filters for mobile devices and home broadband, and potentially the filtering of public WiFi services. As such, “this formulation is a clear breach of a UK Red Line and was therefore sufficient for UK to vote against the text at the recent Coreper meeting”. Both the Presidency and the Commission have indicated their willingness to continue to work with his officials on this section of the text “to fully mitigate this negative impact in advance of Trialogue commencing”. The Minister therefore intends to “monitor this situation as it develops over the next month or so”, but notes that “it may be necessary for the UK to vote negatively again at the appropriate time should UK be unsuccessful in its attempt to garner such a change” (see paragraphs 9.26–9.31 below for details).

9.16 Given these uncertainties, the current timetable and the imminent dissolution, the Minister recognises that the final formulation of the text will not be known until after Parliament dissolves and the last meeting of the Committee has taken place. Therefore, he says:

“the existing scrutiny reserve will necessarily remain in place as negotiations reach their conclusion and the point of decision on accepting that outcome, or otherwise, is reached. As such, it is my intention to write again upon conclusion, noting the final outcome and setting down any relevant points”.

9.17 Elsewhere in this Report we consider a related draft Directive on Network Information Security that, as here, is about to enter the trilogue process on the basis of
a much reduced text that contains a number of important uncertainties. Somewhat oddly, in that instance, the Minister asks the Committee to clear the proposal from scrutiny (the revised text of which has, of course, not been deposited for scrutiny, any more than this revised text has). In that instance, we have rejected the Minister’s request and have continued to retain the document under scrutiny. In this instance, however, the Minister has, of course, come to the right conclusion.

9.18 Here, as in that other instance, we again thank the Minister for his and his officials’ openness that has characterised his approach to this difficult dossier, and which we likewise regard as worthy of wider study by the Cabinet Office and scrutiny teams across Whitehall.

9.19 By early summer we hope that there will be not only a new Government but also a new Committee. We recognise that, in the circumstances, it is nonetheless likely that he may well be unable to submit the final text of the draft Directive to the next Committee for scrutiny prior to a formal vote in Council. And even if there is one but not the other, the new Committee will be interested in the final outcome. We therefore expect the Minister, or his successor, to deposit any final text along with a fresh Explanatory Memorandum, outlining its provisions in detail, and explaining why he (or she) voted as he (or she) did at the end of the day.

9.20 In the meantime, we shall continue to retain the documents under scrutiny.

9.21 We also again draw these developments to the attention of the Culture, Media and Sport Committee.

**Full details of the documents:** (a) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Telecommunications Single Market: (35305), 13562/13, COM(13) 634; (b) Draft Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No. 1211/2009 and (EU) No. 531/2012: (35304), 13555/13 + ADDs 1–2, COM(13) 627.

**Background**

9.22 Recalling the conclusions of the 2013 Spring European Council, calling for measures to create a Single Telecoms Market as early as possible, on 11 September 2013 the Commission published a legislative package for a Connected Continent: Building a Telecoms Single Market, which it says is aimed at building a connected, competitive continent and enabling sustainable digital jobs and industries; with proposed legislative changes to several regulations that (the Commission says) would “make a reality of two key EU Treaty Principles: the freedom to provide and to consume (digital) services wherever one is in the EU”.

16 (34685), 6342/13 at chapter 5 of this Report.
9.23 The full background to the Commission Communication and this draft Regulation is set out in the first of our previous Reports; likewise the very detailed and helpful analysis of both documents by the Minister in his Explanatory Memorandum of 10 October 2013.17

9.24 Our subsequent Reports embody a number of series of full and very helpful updates ever since this package was first deposited.18 They include, in September, the Opinion of the Culture, Media and Sport Committee (CMS), along with Ofcom’s submission to that Committee. The CMS Committee deemed it clear from Ofcom’s submission that at least some of the proposals lack sufficient grounding in terms of evidence, analysis and consultation, and that much work remained to be done to achieve outcomes that were proportionate and struck an appropriate balance between national and wider European interests.19

9.25 On 4 March 2015, the Council issued the following press release:

“The Latvian presidency of the Council now has a mandate to start negotiations with the European Parliament on new rules to cut mobile phone roaming fees and safeguard open internet access. The mandate was agreed by member states at the Permanent Representatives Committee on 4 March 2015.

“Council’s negotiating stance

“The mandate to negotiate the new regulation covers

- “EU-wide rules on open internet, safeguarding end-users’ rights and ensuring non-discriminatory treatment in the provision of internet access services
- “changes to the current roaming regulation (known as Roaming III), representing an intermediate step towards phasing out roaming fees.

“The other parts of the original Commission proposal on the telecommunications single market (“Connected Continent”) have been left out by common decision of the Council.

“The regulation would apply from 30 June 2016.

“Roaming reform

“The Council stance sets up a new pricing mechanism, which will make it much cheaper to use your mobile phone when travelling abroad in the EU. Within certain limits to be determined, consumers could make and receive calls, send SMSs and use data services without paying anything extra on top of the domestic fee. Once this basic roaming allowance is used up, the operator may charge a fee, but this fee will be much lower than current charges. In the case of calls made, SMSs sent and data used, the roaming fee could not in any case be higher than the maximum

18 List of previous Reports at the end of this Chapter.
wholesale rate that operators pay for using the networks of other member states. For calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU.

“As the next step, the Commission will be asked to assess by mid-2018 what further measures may be needed with a view to phasing out roaming charges. If so, the Commission will propose new laws to address the situation.

“Roaming III regulation

“Protecting open internet

“The draft regulation is to enshrine the principle of end-users’ right to access and distribute content of their choice on the internet. It also sets out to ensure that companies that provide internet access treat traffic in a non-discriminatory manner.

“It sets common rules on traffic management, so that the internet can continue to function, grow and innovate without becoming congested. Blocking or slowing down specific content or applications will be prohibited, with only a limited number of exceptions and only for as long as it is necessary. For instance, customers may request their operator to block spam. Blocking could also be necessary to prevent cyber-attacks through rapidly spreading malware.

“As regards services other than those providing internet access, agreements on services requiring a specific level of quality will be allowed, but operators will have to ensure the quality of internet access services.

“National regulatory authorities will play a key role in ensuring that telecom companies and operators respect the rules on open internet. For this, they will receive guidance from the Body of European Regulators BEREC.20

“How will this become a law?

“The presidency will negotiate the terms of the regulation with the European Parliament on behalf of the Council. In order to be adopted, the legal act must be approved by both institutions. The Parliament adopted its position (first-reading amendments) in April 2014.”21

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20 BEREC replaced the European Regulators’ Group (ERG) in January 2010, following the adoption of the BEREC regulation in November 2009 (this being part of the major revamping of the telecoms regulatory framework in that year). The ERG, which was set up as part of the original 2002 framework, was simply a network of EU NRAs (national regulatory authorities; in the UK, Ofcom), but had no formal role in the regulatory framework. The Commission originally proposed to replace it with a new EU agency – a Community body, called the European Electronic Communications Market Authority (EECMA). The previous Government had misgivings from the outset: essentially, that it was not at all clear how the EECMA would operate; that it would be seeking to involve itself unnecessarily and unhelpfully in areas that were the preserve of national authorities, particularly spectrum management; and that the Commission would be much better employed in ensuring that the established system — based on a strong and independent NRAs which is encouraged by its government to get on with the job of promoting competition, new services and a better deal for consumers, in which the UK took the lead — was implemented effectively in those Member States who were either dragging their feet or being obstructive. This view prevailed. As a result, the Body of European Regulators for Electronic Communications (BEREC) replaced the ERG. It is supported by a small European agency called the BEREC Office, situated in Riga.

21 Press Release.
The Minister’s letter of 11 March 2015

9.26 The Minister provides a further update on progress and next stages before Parliament prorogues, and an analysis of the current text before it enters the trialogue process (and also responds to the queries regarding the provisions on roaming raised by our counterparts in the Lords in their 25 February 2015 letter to him).

9.27 The Minister confirms that the Presidency now has a mandate to commence with informal Trialogues, noting that the dates of the first three Trialogue meetings (towards the end of March, with the second and third in April) have yet to be confirmed; but assuming that the latter two will take place after Easter, and thus after the last Committee meeting (which he deals with below).

9.28 The Minister also confirms that text adopted by Coreper retains elements covering mobile roaming and net neutrality alone.

Mobile roaming

9.29 He continues as follows:

“The text on roaming has been largely stable since my last update letter and the main components are:

- “The introduction of a roaming allowance – the size of which remains unspecified and will be subject to development during Trialogue. I understand that the Presidency continues to support an allowance totalling: 35 minutes of voice calls; 35 SMS; and 35 MB of data (spread over seven days per year). It remains my ambition for the allowance to be greater than is proposed, especially for data, and I will continue to monitor this aspect as discussions continue;

- “A commitment to review the current wholesale price and take action if found necessary. The matter of wholesale pricing played a pivotal role in preventing a full ‘roam like at home’ solution being adopted in the short-term but this commitment retains the potential for the adoption of such an action in the longer term;

- “A further reduction in retail data roaming charges. This would permit operators to charge a surcharge over their domestic tariffs, equivalent to no more than the current wholesale rate i.e. €0.05/minute for voice; €0.02 per SMS; and €0.05/MB for data. This represents a significant cut in roaming charges for consumers once they have used their allowance. It is also coupled with a mechanism that would further reduce the cost of incoming voice calls;

- “A modification of the current ‘SMS alert’ mechanisms for consumers. Under the current provision contained within the third Roaming Regulation, consumers receive SMS messages with regard to the cost of roaming. This has been extended to make them aware of such charges, as well as allowances when roaming.
“I believe it is worth noting that this outcome is regarded by all as a staging-post to the eventual introduction of a full ‘roam like at home’ solution following the review of the wholesale prices. As such, I am content that the roaming text in its current form meets HMG’s negotiating objectives and it is my intention to focus future efforts on ensuring that any allowance results in a meaningful and tangible benefit to consumers, whilst striving to ensure this is balanced against revenue impacts for operators.”

**Net neutrality**

9.30 The Minister confirms that the current net neutrality text “remains principles-based and “technology and service neutral”.

9.31 He continues as follows:

“The main components are:

- “Provisions that ensure that end-users are able to access content of their choice whilst allowing operators to reach commercial and technical agreements with regard to matters such as price, volume and speed that do not breach this overarching end-user right;

- “Clarifies conditions under which permissible traffic management may take place; and

- “Clarifies existing powers for national regulatory authorities as to when they may intervene if they believe that the requirements of the Regulation and those already within the existing Telecoms Framework are being breached.

“Further, I believe it also retains sufficient flexibility for it to be regarded as future-proof and so allows adequate space for future innovation with regard to emerging and new digital services. UK was also successful in ensuring that any negative impacts on the current UK regime with regard to the Internet Watch Foundation and the prevention of access to child abuse images were mitigated.

“However, the current text, if coming into effect, contains a negative impact on the current child online protection regime in operation within the UK, namely the matter of ‘default on’ filters for mobile devices and home broadband, and potentially the filtering of public WiFi services. As such, this formulation is a clear breach of a UK Red Line and was therefore sufficient for UK to vote against the text at the recent Coreper meeting.

“Both the Presidency and the Commission have indicated that they are willing to continue to work with my officials to further work on this section of the text to fully mitigate this negative impact in advance of Trialogue commencing. I intend to monitor this situation as it develops over the next month or so. However, it should be borne in mind that it may be necessary for the UK to vote negatively again at the appropriate time should UK be unsuccessful in its attempt to garner such a change.”
"Current timetable"

"Given the current timetable for the progression of the proposal, it is clear that the final formulation of the text will not be known until after Parliament dissolves and the last meeting of your committee has taken place. Therefore, the existing scrutiny reserve will necessarily remain in place as negotiations reach their conclusion and the point of decision on accepting that outcome, or otherwise, is reached. As such, it is my intention to write again upon conclusion, noting the final outcome and setting down any relevant points."

9.32 Finally, the Minister responds to the two questions raised by our counterparts in the Lords:

"The first question asked whether a potential increase in domestic prices of £1-2 when set against an annual roaming allowance of: 35 minutes; 35 SMS; and 35 MB of data per annum, provided value for money for consumers. When considering this issue, I believe it worth bearing in mind that should operators fully pass on costs in this potential ‘water-bed’ effect, that this would be indicative of a complete lack of competition in the UK domestic market. I do not believe that this is the case and so this figure represents a theoretical maximum. Under the current regime, if a consumer were to roam, and assuming they don’t subscribe to the current market offerings covering roaming, the total maximum cost of roaming at that level would be €15.75; around £11.40 at current exchange rates. This cost can be expected to drop to €4.20, or £3.04, if the new proposed regime is adopted. Further, given that UK consumers used 1.7bn MB of data while roaming in 2013, this price drop has the potential to represent a significant benefit to consumers. As such, it could be considered to represent value for money for those consumers who engage with roaming services.

"The second question asks whether the telecommunications industry could absorb the impact on revenue that this change may bring about. This is a highly subjective matter and difficult to offer an absolute response. However, given that data roaming prices have previously seen to be highly elastic, a potential outcome may see any drop in revenue offset by increased volumes and thus associated revenue increases, as consumers begin to engage more widely in roaming services. Further, as consumption increases, further revenue may be generated by consumption of other digital services offered by the operators and the telecommunications industry more widely. Furthermore, UK operators will see any potential revenue loss partially offset by increased wholesale revenue from incoming EU visitors. Finally, this measure is seen as one that will drive further integration of the telecom single market and this may also provide other wider benefits to both consumers and the industry that would be offset against any predicted revenue decreases."

Previous Committee Reports

10 Fishing conditions for deep sea stocks

Committee’s assessment
Politically important

Committee’s decision
Not cleared from scrutiny, but scrutiny waiver granted

Document details
Draft Regulation establishing specific conditions for deep-sea fishing

Legal base
Article 43(2) TFEU; co-decision; QMV

Department
Environment, Food and Rural Affairs

Document numbers
(34133), 12801/12 + ADDs 1–2, COM(12) 371

Summary and Committee’s conclusions

10.1 Deep sea stocks are particularly vulnerable to over-fishing, and have therefore been subject since 2003 to detailed management restricting fishing opportunities and effort, augmented latterly by restrictions on the use of certain gears and of fishing effort in areas with vulnerable marine ecosystems. In particular, a Member State is required to issue a permit to vessels which catch more than 10 tonnes of these species a year, the number of eligible permits being determined by the corresponding effort in either 1998, 1999 or 2000.

10.2 However, the Commission says that the stocks in question remain vulnerable, as do various marine ecosystems, and it proposed in July 2012 this draft Regulation putting in place new rules, which would include requiring a vessel targeting deep-sea species (ie where those species comprise more than 10% of its catch on a given day) to be subject to a fishing authorisation; the aggregate fishing capacity of vessels holding an authorisation should not exceed that of the Member State’s vessels landing more than 10 tonnes of deep sea species in either of the two calendar years preceding the entry into force of the Regulation; and a limit on any use of bottom trawls or bottom-set gillnets to the two years following the entry into force of the Regulation.

10.3 Whilst the Government supports the protection of vulnerable species and marine environments, it wished to focus primarily on the criteria used to define deep sea fisheries (and their implications for mixed fisheries), and to be satisfied that any ban on targeted deep sea fisheries involving sea bed contact achieved the stated environmental conservation aims. In addition, catch data profiles for UK vessels would be examined to establish the likely impacts of the catch percentage criterion.
10.4 It subsequently confirmed that basing the regime on a percentage criterion was a central flaw, and would affect many more vessels; that the proposal limit on permit numbers meant that a large number of UK vessels requiring a permit could not be issued with one; and that, as much of the deep sea species caught represented a by-catch in mixed fisheries, it could not be landed, and would hence have to be discarded. It saw this as a key objection to a percentage criterion, and would therefore be pressing for an alternative approach which limited where such activity could take place.

10.5 However, in December 2013, the European Parliament suggested two significant amendments. First, instead of relying on catch percentages, it recommended a spatial approach of the kind advocated by the UK, with activity confined to a fishing footprint established by deep sea activity in specified reference years. Secondly, ling, tusk and conger eel would be removed from the list of deep sea species, thereby drastically reducing the number of vessels which would be affected. As this had attracted general support from Member States, this raised the prospect of progress in the Council, leading to the adoption of a general approach paving the way for trilogue discussions with the Commission and European Parliament.

10.6 We have now been told that, although little headway was made when a draft Presidency compromise was tabled last year, the current Latvian Presidency now intended to resurrect this — a development which the UK welcomes, as most of the elements are in line with the approach it supports. The Government believes that it should be possible for an agreed Council position to be achieved during the current Presidency, making it likely that a vote will take place before a new Committee is formed, and it has suggested that it might be prudent for us to grant a scrutiny waiver, so as to enable the UK to vote in favour of a text which supported its main policy stance.

10.7 This is a technical and complex proposal, and, although a number of detailed issues have still to be resolved, it would appear that a solution acceptable to the UK is in prospect. Consequently, although we believe it would be premature to release the proposal from scrutiny, we are willing to grant a waiver for the purposes of agreeing a General Approach in the Council in order to provide the Government with the necessary negotiating freedom.

**Full details of the document:** Draft Regulation establishing specific conditions for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic and repealing Regulation (EC) No 2347/2002: (34133), 12801/12 + ADDs 1–2, COM(12) 371.

**Background**

10.8 Deep sea stocks in the North-East Atlantic are caught beyond the main fishing grounds of the continental shelf in both EU and international waters, and are particularly vulnerable to over-fishing. They have therefore been subject since 2003 to detailed management restricting fishing opportunities and effort, augmented latterly by restrictions on the use of certain gears and the deployment of fishing effort in areas with vulnerable marine ecosystems. In particular, a Member State is required to issue a permit to vessels which catch (and retain on board) more than 10 tonnes of these species a year, the number of eligible permits being determined by the aggregate power and gross tonnage of its vessels.
which landed more than 10 tonnes of deep-sea species in either 1998, 1999 or 2000. In addition, vessels with a permit must provide information on their fishing gear and operations, and any landings in excess of 100kg must be at designated ports.

10.9 However, the Commission says that the stocks in question remain vulnerable, as do various marine ecosystems, and, as we noted in our Report of 12 September 2012, it proposed in July 2012 this draft Regulation, putting in place new rules, which would:

- require a vessel targeting deep-sea species (i.e., where those species comprise more than 10% of its catch on a given day) to be subject to a fishing authorisation, with a separate, and clearly distinguishable, authorisation where these species are taken as a by-catch;

- require that the aggregate fishing capacity of vessels holding an authorisation should not exceed that of the Member State’s vessels which landed more than 10 tonnes of deep sea species in the either of the two calendar years preceding the entry into force of the Regulation;

- prohibit the landing of more than 100kg of deep-sea species other than at a designated port;

- limit any use of bottom trawls or bottom-set gillnets to the two years following the entry into force of the Regulation;

- require fishing opportunities to be fixed at a rate of exploitation consistent with the maximum sustainable yield;

- enable the Council to decide that fishing opportunities should be based only on the limitation of effort, rather than on both effort and catch limits; and

- require Member States to put in place accompanying measures.

10.10 We were told by the Government that, whilst it supported the protection of vulnerable species and marine environments, it was likely to focus primarily on the criteria used to define deep sea fisheries and the implications for mixed fisheries (in which they are an important by-catch). It would also wish to be satisfied that any ban on targeted deep sea fisheries involving sea bed contact achieved the stated environmental conservation aims, and did not have unintended consequences.

10.11 In addition, we noted that typical catch data profiles for UK vessels would be examined to establish the likely impacts of the catch percentage criterion; that, although the Government supported achieving maximum sustainable yields, it did not agree that the stocks should be managed entirely by effort, or with giving the Commission power to specify measures where it deemed Member State provisions to be inadequate. We therefore decided to draw the proposal to the attention of the House, but to hold it under scrutiny, pending further information.

10.12 On 28 November 2012, we reported that we had recently received a letter from the Government, which said that basing the regime, not on the weight caught, but on a percentage criterion was a central flaw, and would affect many more vessels, as it required both targeting and by-catch vessels to be considered together. Also, as the proposal limits
the capacity of each Member State to that under the current regime, a large number of UK vessels which would in future require a permit could not be issued with one. Furthermore, much of the deep sea species caught represented a by-catch in mixed fisheries, which they would be unable to land, and would hence have to be discarded. The Government describes this as a key objection to a percentage criterion, adding that it would therefore be pressing for an approach replacing a reliance on defined catches of deep water species by one which limits where such activity can take place, a shift in approach which it says the industry would welcome.

**Subsequent developments**

10.13 On 25 October 2014, the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs (George Eustice) wrote saying that, whilst discussion in the Council had been limited, the European Parliament had suggested two significant amendments. First, instead of phasing out bottom fishing methods by relying on catch percentages, it had recommended a spatial approach of the kind advocated by the UK, with activity confined to a fishing footprint established by deep sea activity in specified reference years. Secondly, it would remove ling, tusk and conger eel from the list of deep sea species, thereby drastically reducing the number of UK vessels which would be affected. He added that there was general support from Member States for a spatial approach, and that, with a “bible” document recording their views having been finalised, the Presidency had indicated a wish to make progress in the Council, leading to the adoption of a general approach which would pave the way for trilogue discussions with the Commission and European Parliament.

10.14 The Minister has now sent a further letter of 12 March 2015, saying that a draft Presidency compromise based on the “bible” document, and aimed at agreeing a general approach had been tabled last year, but had made little headway. However, the Latvian Presidency now intended to resurrect this — a development he welcomes, as most of the elements are in line with the approach supported by the UK. He believes that it should be possible for an agreed Council position to be achieved during the current Presidency, making it likely that a vote will take place before a new Committee is formed, and he suggests that it might be prudent for us to grant a scrutiny waiver, so as to enable the UK to vote in favour of a text which supported its main policy stance.

**Previous Committee Reports**

11 National Emissions Ceilings

Committee’s assessment
Politically important

Committee’s decision
Not cleared from scrutiny, but scrutiny waiver granted

Document details
Draft Directive on the reduction of national emissions of certain atmospheric pollutants

Legal base
ArtcI192(1) TFEU; co-decision; QMV

Department
Environment, Food and Rural Affairs

Document numbers
(35693), 18167/13 + ADDs 1–7, COM(13) 920

Summary and Committee’s conclusions

11.1 Although the National Emissions Ceiling Directive (2001/81/EC) had led to reductions in emissions of the main atmospheric pollutants, significant adverse health and environmental impacts still remained, and the Commission put forward this proposal in December 2013 in order to address those impacts, and to align EU law with new international commitments. However, as the Commission had not provided an assessment of the impact of the new measures, and the Government had said it would be undertaking its own analysis, we decided on 29 January 2014 to retain the document under scrutiny, pending further information.

11.2 During the course of 2014, we received from the Government information on the estimates which the Commission had subsequently provided on the cost and benefits, and on the UK’s own estimates (which put the benefits at broadly the same level as the Commission, but believed that the cost could be considerably higher). The Government then wrote on 14 January 2015 to say that the proposal would be modified as part of the legislative follow-up to the 2030 Climate and Energy Agreement, and this was followed by another letter on 25 February, which said that Commission had suggested some changes to the ceilings previously proposed for 2030, and had also given an updated impact analysis for both the EU as a whole and for the UK (although, in the latter case, UK officials were continuing their own analysis). The Government also said that the European Parliament was progressing its consideration, and that its lead committee was expected to vote on a draft report before the summer. In view of this, it concluded by asking whether, given the limited time before the dissolution of Parliament, we would be prepared to release the document from scrutiny.

11.3 Whilst we are grateful to the Minister for this update, we would have found it helpful to have been given more detailed information about the ceilings now proposed for 2030, and in particular to know whether these reflect the changes referred to in the Commission’s 2015 Work Programme, or whether further changes can be expected. Also, the Government does not say whether it agrees with the Commission’s latest cost and benefit figures, but we note that it is in any case carrying out its own analysis of the proposal, based on UK evidence, and we need to see the results of that before we can sensibly take a view.
11.4 Given also the general importance of the proposal, we do not think it would be right to release the document from scrutiny before these uncertainties have been resolved, but nor would we wish to unduly fetter the Government’s negotiating freedom in the period before our successor Committee is appointed. We are therefore willing to grant a waiver, to enable the Government to support a General Approach in the Council, but we would expect the Government to provide further updates as the negotiations progress.


11.5 In its Communication 22 setting out a Clean Air Programme for Europe, the Commission noted that, in order to reduce air pollution and comply with the provisions of the Gothenburg Protocol to the Convention on Long-range Transboundary Air Pollution (CLRTAP), the National Emissions Ceilings Directive (2001/81/EEC) had required Member States to establish national programmes and emissions inventories to limit their emissions of the main pollutants from 2010 onwards. However, although these had given rise to a range of reductions, significant adverse health and environmental impacts remained.

11.6 The Commission accordingly put forward in December 2013 this draft Directive, which seeks to address these impacts, and to align EU law with new international commitments arising from an amendment to the Gothenburg Protocol adopted in 2012. As we noted in our Report of 29 January 2014, the proposal laid down more detailed conditions for national plans and inventories, and set out new national emission reduction commitments, to be met by 2020 and beyond. Thus, new ceilings would apply from 2020 and 2030 for sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds (NMVOC), ammonia and fine particulate matter ($P_{2.5}$), as well as a new ceiling for methane for 2030, and Member States would be required to limit their annual emissions of these pollutants in 2025 to levels consistent with a linear trajectory between 2020 and 2030, unless this would entail disproportionate costs.

11.7 In addition, the proposal stipulated the measures to be taken to control emissions of ammonia from agriculture and black carbon (a component of particulate matter, which is a short lived climate pollutant). It also seeks to address some of the perceived shortcomings in the implementation of the current Directive by providing for Member States to adopt national air pollution control programmes describing how their ceilings will be met, and for enhanced co-ordination between emission reductions and air quality as well as climate change and biodiversity protection. However, as the impact assessment published by the Commission had related to the over-arching Clean Air Programme, and not to individual measures within the package, or their impact on the UK, we noted that the Government would be undertaking its own analysis of the impacts, the expectation being that it would provide the first such analysis by Easter 2014. We therefore decided to retain the document under scrutiny, pending further information.

Subsequent developments

11.8 We next received a letter of 10 April 2014 from the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs (George Eustice), which said that the Commission had now provided estimates of the costs and benefits of the new limits for each Member State, and had suggested that in 2030 annual costs in the UK would be €0.3 billion and the health benefits some €3.8 billion, with benefits to crops and materials also estimated at almost €45 million a year. However, he added that it was important to analyse this in further detail, and in particular to understand the Commission’s assumptions, how the impacts would be distributed between sectors and businesses, and possible non-quantified costs and benefits, such as reduced damage to ecosystems. The Minister added that UK officials would be meeting the Commission to discuss the underlying assumptions in detail, in order to progress their own analysis, and so develop the UK’s negotiating position.

11.9 This was followed by a further letter on 9 July 2014, which said that subsequent bilateral meetings between the Commission and Member States had led to a better understanding, and that the Commission had undertaken to update its analysis and to produce a report by 15 September 2014 (which the Minister expected to reduce some of the discrepancies between UK and Commission data), and to consider the impact of changes in the proposed emission limits for 2030. The Minister added that, in parallel, the UK had been continuing its own analysis of the costs and benefits of the proposal, its initial results suggesting that annualised health benefits would be in the region of €3.7-5.0 billion (with around half of this being attributable to emission reductions in other Member States). There would also be environmental benefits in terms of reduced eutrophication and acidification, though these needed further refinement. He also noted that, whilst the UK’s estimate of the benefits was broadly in line with that of the Commission, it believed that the cost could be considerably higher.

Minister’s letters of 15 January 2015 and 25 February 2015

11.10 Further updates from the Government reported that there had been little progress in negotiations in Brussels, but the Minister then wrote to us on 15 January 2015, noting that the Commission Work Programme for 2015 had said that the proposal would be modified as part of the legislative follow up to the 2030 Climate and Energy Agreement, and that the Government would be seeking further clarification about the implications of this.

11.11 He has now sent us a letter of 25 February, saying that, following bilateral meetings with Member States, the Commission has recently published a report updating its impact analysis on the proposal, and suggesting some changes to the ceilings proposed for 2030, which he says would resolve UK concerns regarding non-methane volatile organic compounds, but make the ceilings for nitrogen oxides, particulate matter, sulphur dioxide and ammonia more stringent. He adds that, as a result, the Commission has calculated that the annual cost for the EU-28 would fall from €3.3 billion to €2.2 billion, and that its analysis shows the corresponding costs for the UK falling from €303 million to €173 million. However, in parallel with assessing the Commission’s analysis, his officials are continuing their own analysis of the proposal, based on UK evidence.
11.12 The Minister adds that the European Parliament is progressing its consideration of the proposal, with the lead committee (ENVI) expected to publish a draft report in mid-March, and to vote on it before the summer. In the meantime, his officials are engaging with the rapporteur and other key MEPs to make them aware of UK concerns, but, in view of the limited time before the dissolution of Parliament and General Election, he is keen for this matter to clear Parliamentary scrutiny at the earliest opportunity. He therefore expresses the hope that his letter provides sufficient information to enable us to do that and to support the negotiating position he has outlined.

Previous Committee Reports


12 The EU and the post-2015 development agenda

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; further information requested; drawn to the attention of the International Development Committee

Document details

Commission Communication: A Global Partnership for Poverty Eradication and Sustainable Development after 2015

Legal base —

Departments

International Development; Environment, Food and Rural Affairs; Energy and Climate Change

Document numbers

(36644), 5902/15 + ADD 1, COM(15) 44

Summary and Committee’s conclusions

12.1 This Commission Communication is the latest stage in a process that began with Commission Communication 7075/13 — “A decent life for all: ending poverty and giving the world a sustainable future”. That earlier Commission brought together the debate about what international framework should succeed the MDGs and the process to establish new Sustainable Development Goals (SDGs) arising from the Rio+20 — where government leaders agreed that the new SDGs should be coherent and integrated with the post-2015 development agenda.

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

12.2 Commission Communication 12434/13 on the Commission’s perspectives on financing the post-2015 development framework is also relevant.25

12.3 Both Communications were examined in a European Committee debate on 11 December 2013.26 And Commission Communication 7075/13 was also recently debated, in European Committee B, on 11 March 2015 (see paragraphs 12.17-12.32 below for details).

12.4 This further Commission Communication, A Global Partnership for Poverty Eradication and Sustainable Development after 2015, sets out the European Commission’s views on the delivery of a new global partnership for poverty eradication and sustainable development after 2015. SDGs for post 2015 will be agreed at the UN in September 2015. The global partnership will provide the “Means of Implementation” for the post 2015 agenda. The Communication sets out the Commission’s view on the principles that should underpin the partnership and the components needed to implement the post-2015 agenda. It also puts forward specific proposals on possible contributions by the EU and its Members States.

12.5 It proposes the following eight key components of the global partnership:

— an enabling policy environment at all levels;
— capacity development;
— mobilisation of domestic public finance;
— mobilisation of international public finance;
— stimulation of trade;
— change through science and technology;
— mobilising the domestic and private sector;
— ensuring mechanisms for monitoring, accountability and review.

12.6 The Communication will form the basis for agreeing an EU position in advance of the UN Financing for Development Conference in July and the “Post-2015” Summit at the UN in September. The Communication strongly supports the UN Secretary General’s call that all developed countries meet the UN target of 0.7% ODA/GNI and agree to concrete timetables for doing so.

12.7 The Ministers at the Department for International Development (Baroness Northover), the Department for Environment, Food and Rural Affairs (Dan Rogerson) and the Department of Energy and Climate Change (Amber Rudd) note that agreeing an EU recommitment to 0.7% ODA/GNI is a top UK objective, and say that they will make “all efforts to ensure that this includes a renewed timetable and target dates for countries that have not yet met their commitments”.


26 The record of the European Committee is available at Gen Co Deb, European Committee B, 11 December 2013, cols. 3-20.
12.8 The Ministers go on also to note that, though based on recent discussions within the EU, Member States were not formally consulted on the text during its preparation and it is “not an articulation of agreed EU policy”. The Communication will, however, “set the tone for this year’s Council Conclusions on EU post-2015 development financing which will be negotiated by Council working groups”, and the Council “will choose how to respond to the views expressed by the Commission in the Communication”. The UK’s input to this response will reflect cross-HMG views and will be in line with the position set out below; they “will remain closely engaged with the EU Presidency and other Member States as work proceeds on drafting the Council Conclusions this spring”.

12.9 The Ministers describe the Commission as a good overview of what is needed for effective implementation of the post-2015 development agenda and for laying the groundwork for more specific policy development. The principles and key components set out in the Communication are broadly in-line with established HMG positions. They welcome in particular:

— inclusion of the annex as a useful compendium of possible specific policy measures which could be adopted as part of the “Means of Implementation” of the post-2015 development agenda;

— the Communication’s emphasis on integration of the three dimensions of sustainable development as well as climate change issues;

— the Commission’s support for the UN Secretary General’s call that all developed countries should meet the UN target of 0.7% ODA/GNI and agree to concrete timetables to do so;

— calls for Upper Middle Income Countries (UMICs) and emerging economies to commit to increasing their contribution to international public financing and to specific targets and timelines;

— recognition that finance and non-finance Means of Implementation need to go hand in hand;

— the focus on the need for countries to ensure optimal levels of domestic revenue to fund their own development;

— the inclusion of trade and agree that it plays a critical role in development. They welcome too the effort to categorise different actions between ‘actions for all’ and actions for the EU;

— the emphasis on the role of the private sector. It is rightly characterised as a key actor in the transition to sustainable development and an important engine for innovation, sustainable growth, job creation, trade and poverty reduction;

— the principles set out for addressing private sector engagement;

— references to the important linkages between climate change, sustainability, and development, since eradicating extreme poverty is impossible without addressing climate change and sustainability;
— the emphasis on the need for a monitoring, accountability and review framework underpinned by the principles of transparency, inclusiveness and responsiveness, efficiency and effectiveness; and

— the strong focus on data and participation, connecting national, regional and global reporting and accountability, while avoiding duplication and building on existing systems (see paragraph 12.39 below for the Ministers’ comments on each of these issues).

12.10 The Ministers also “broadly support” the references made to migration within the context of a global partnership for development, and consider it “important that migration should be well-managed, legal and safe:

“We therefore welcome the focus in this report as we consider that, through collaboration, migration can act as an enabler to achieving the sustainable development goals. We will also seek to ensure that the Council Conclusions do not reflect or imply support for burden sharing/intra-EU relocation of migrants and asylum seekers, a position the UK does not support. We believe solidarity is best demonstrated through practical cooperation to support the asylum and migration systems of Member States under pressure, and to reduce the drivers of irregular migration.”

12.11 Looking ahead, the Ministers:

— do not envisage any change in UK financial commitments as a result of this Communication, but are in discussion with the private sector about what the Finance for Development agenda proposals that relate to private sector activity might mean in practice;

— are also closely engaged with EU partners in the context of the ongoing UN negotiations, to ensure that the EU negotiating position does not stray into areas of Member State competence; and

— note that the process of developing the EU position and “offer” on Financing for Development is taking place through a series of Joint Working Group and Expert Meetings, with a view to the adoption of Council Conclusions at the 25 May Development Ministers meeting.

12.12 There will no doubt be a time when this process will warrant debating. However, as the Ministers make clear, this Commission Communication is not an EU position, and that this has to be elaborated between now and the end-May “development” Foreign Affairs Council. The Council Conclusions agreed thereat will thus be the key document.

12.13 The Committee would therefore be grateful if the Ministers would provide the Committee with:

— a copy of the draft Council Conclusions that will go to the Council, with their views thereon; and
then a copy of the agreed Council Conclusions, and their assessment of the final outcome.

12.14 The latter should demonstrate how they have ensured that “the EU negotiating position does not stray into areas of Member State competence” (c.f. paragraph 12.30 below).

12.15 In the meantime, we shall retain the documents under scrutiny.

12.16 We also draw these developments to the attention of the International Development Committee.

**Full details of the documents:** Commission Communication: A Global Partnership for Poverty Eradication and Sustainable Development after 2015: (36644), 5902/15 + ADD 1, COM(15) 44.

**Background**

12.17 The 25 June 2013 Council Conclusions on the “Overarching Post 2015 Agenda”\(^27\) stressed that the post-2015 process should reinforce the international community’s commitment to poverty eradication and sustainable development and set out a single comprehensive and coherent framework for effective delivery and results at all levels. The framework should be defined around a single set of global goals in order to drive action in all countries. The EU and its Member States reiterated their commitment to play a full and active role in the work to define the post-2015 framework and to work inclusively with all partners, including civil society, scientific and knowledge institutions, local authorities, the private sector and social partners, in considering priority areas for the framework.

12.18 This follow-up Joint Communication sets out the Commission’s and European External Action Service’s thinking on the post-2015 development agenda, so as to secure international agreement for a new set of sustainable development goals (SDGs) that would shape global development priorities to 2030. The Committee first considered this Joint Communication at its meeting on 2 July 2014.\(^28\)

12.19 The next stage was the UN Secretary General’s (UNSG) Open Working Group (OWG) report, which was adopted at the 69th UNGA in September 2014. A synthesis of this report was to feed into the intergovernmental negotiations due to commence in early 2015 that Kenya and Ireland would facilitate, and which would culminate in a Summit at the 70th UNGA in September 2015, when the post-2015 framework would be agreed.

12.20 In our 3 September 2014 Report, we noted that we were content thus far with the Ministers’ (Baroness Northover and Dan Rogerson) clarification regarding both the negotiating timetable and in what ways “the EU will negotiate on behalf of Member States”; the latter being essentially because:

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27 See Council Conclusions.

— of EU competence in development issues;29

— this is a tried and tested method, with previous such processes having demonstrated that negotiating as the EU is more likely to secure UK objectives than acting alone, given the tendency in UN negotiations to adopt a “bloc” approach;30 and

— because the Ministers envisage a “team EU approach”, with a burden sharing agreement enabling individual Member States, including the UK, to lead negotiations on certain issues or goal areas.

12.21 However, as the Ministers noted, how this would work in practice needed to be agreed with the Commission, Member States and legal advisers; we asked the Ministers to write again with full information on these arrangements, once they had been agreed, explaining how they reflected the proper division of competences under the Treaties.

12.22 The Ministers set out their aims with regard to the Council Conclusions that were due to be agreed in December 2014, shortly after the publication of the UNSG’s synthesis report. We asked them to write to us with their evaluation of those Council Conclusions, at which point we envisaged recommending that this Commission Communication be debated, so that the House would have the benefit of both documents when the debate took place.

12.23 We also continued to look forward to hearing from them in the New Year about arrangements that, as they rightly put it, “reflect the proper division of competences under the Treaties”.31

The Ministers’ letter of 8 January 2015

12.24 The Ministers (Baroness Northover and Dan Rogerson) said that the Council Conclusions: “A transformative post-2015 agenda” were endorsed at the 12 December 2014 Foreign Affairs Council (Development), adopted by the 16 December 2014 General Affairs Council and endorsed by the Environment Council on 17 December 2014.32 They updated and set the broad parameters of the EU’s negotiating position. They helpfully remained firm on principle, avoid setting out a detailed negotiating position prematurely, yet maintained strong reference to the Government’s priorities on poverty eradication, gender, environmental sustainability, climate change and governance. What was needed

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

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


was a final framework of goals and targets that was simple, inspiring and workable while retaining the breadth and balance of the 17 goals and 169 targets proposed in the Open Working Group (OWG) Report; and with a strong focus on eradicating extreme poverty with sustainable development at the core. This was, they said, within reach in the forthcoming negotiations and the Conclusions provided a good basis for the Government to continue to build support for this approach.

12.25 The Conclusions welcomed the UN Secretary General’s synthesis report (published on 4 December 2014 and proposing a framework and organising principles for the final goals framework), which would be an important input into the intergovernmental negotiations that commenced in January. It provided a helpful framing of the issues and points to the need for a more focused outcome on post-2015. It also highlighted the inseparability of environmental sustainability from poverty eradication and growth, and proposed six “essential elements” to frame the post-2015 goals and targets. How these elements related to one another would need to be clarified in due course and the Government would need to ensure that there was sufficient integration of important cross-cutting issues such as environmental sustainability and climate change, into all relevant goals and targets.

12.26 The Ministers also professed themselves pleased that the Conclusions recalled that the EU had formally undertaken to collectively commit 0.7% of GNI to Official Development Assistance by 2015 — “an important signal that we take the means of implementation seriously and that we will collectively honour our commitments”.

12.27 Looking ahead, the Ministers anticipated a further Commission Communication and subsequent Council Conclusions on means of implementation in the New Year, and would be “working to ensure effective co-ordination between the goals and financing tracks.

12.28 On the EU negotiating arrangements, the Ministers said that the exact details of the negotiating arrangements for the negotiations within the EU remain to be discussed and developed under the Latvian Presidency and that they continue to favour a “Team EU” or similar approach involving EU actors, the Presidency and Member States based on their expertise”; this, they believe, would be “beneficial in allowing us to maximise our ability to achieve UK objectives”; but, they recognised:

“an EU position may require compromise or may not be reached in certain areas and will therefore need to ensure sufficient flexibility for both the EU and Member States to play a constructive role in negotiations without prejudicing existing competence/representation arrangements.”

12.29 The Ministers concluded by asserting that “the UK has been a key player in post-2015 discussions”, and declare that they are “committed to ensuring an ambitious and implementable framework that is needed to drive action over the next fifteen years”.

Our assessment

12.30 We noted the question marks over the detailed arrangements that would underpin the “Team EU” approach, and that some compromise and flexibility might be needed at
times. However, as had been noted previously, this approach was tried-and-trusted, and to
the best of our knowledge had not infringed upon the proper division of competences
under the Treaties in the past. We looked forward to being updated on how these
arrangements were working in practice during the process of scrutinising the forthcoming
Communication on means of implementation.

12.31 In the meantime, we concluded that it was now time for the issues set out in the Joint
Communication and the Council Conclusions on it to be debated in European Committee
B.\textsuperscript{33}

12.32 That debate took place on Wednesday 11 March, at the end of which the Committee
resolved thus:

“That the Committee takes note of European Union Document No. 10412/14 and
Addendum, a Commission Communication: A decent Life for all: from vision to
collective action; welcomes the document as an important contribution to a debate
that is central to both development and environment policy; and supports the
Government’s efforts in taking forward the post-2015 development agenda.”\textsuperscript{34}

The Commission Communication

12.33 This Communication, \textit{A Global Partnership for Poverty Eradication and Sustainable
Development after 2015}, sets out the European Commission’s views on the delivery of a
new global partnership for poverty eradication and sustainable development after 2015.

12.34 The Global Partnership will provide the “Means of Implementation” for the post
2015 agenda. The Communication sets out the Commission’s view on the principles that
should underpin the partnership and the components needed to implement the post-2015
agenda. It also puts forward specific proposals on possible contributions by the EU and its
Members States. It proposes the following key components:

— an enabling policy environment at all levels;
— capacity development;
— mobilisation of domestic public finance;
— mobilisation of international public finance;
— stimulation of trade;
— change through science and technology;
— mobilising the domestic and private sector; (viii) harnessing positive effects of
  migration; and
— ensuring mechanisms for monitoring, accountability and review.

\textsuperscript{33} See (36070), 10412/14 + ADD 1, COM(14) 335: Twenty-ninth Report HC 219-xxviii (2014-15), \textit{chapter 1} (14 January
2015).

\textsuperscript{34} The record of the debate is available at Gen Co Deb, European Committee B, 11 March 2015, \textit{cols. 3-18}. 
12.35 The Communication will form the basis for agreeing an EU position in advance of the UN Financing for Development Conference in July and Post-2015 Summit in September. The Communication strongly supports the UN Secretary General’s call that all developed countries should meet the UN target of 0.7% ODA/GNI and agree to concrete timetables for doing so.

12.36 In their joint Explanatory Memorandum of 25 February 2015, the Ministers say that, though the Commission Communication is based on recent discussions within the EU, Member States were not formally consulted on the text during its preparation and it is “not an articulation of agreed EU policy”.

12.37 The Communication will, however, “set the tone for this year’s Council Conclusions on EU post-2015 development financing which will be negotiated by Council working groups”, and that the Council “will choose how to respond to the views expressed by the Commission in the Communication”. The UK’s input to this response will reflect cross-HMG views and will be in line with the position set out below; they “will remain closely engaged with the EU Presidency and other Member States as work proceeds on drafting the Council Conclusions this spring”.

12.38 The Ministers also note that this Commission Communication was also informed by the 2014 EU Accountability Report on Financing for Development, which was published in October 2014, and reports against EU commitments on all areas of Finance for Development:

“The Report found substantial progress against EU commitments on domestic resource mobilisation, private finance for development, combining public and private finance for development, and using development finance effectively; and limited or no progress on EU commitments concerning international public finance for development. We welcome the Report as a valuable accountability tool, and a platform to demonstrate considerable EU progress against many aspects of the Finance for Development agenda.”

**The Government’s view**

12.39 The Ministers’ detailed views are as follows:

“We are supportive of the principles and key components set out in the Communication, which are broadly in-line with established HMG positions. We welcome the inclusion of the annex as a useful compendium of possible specific policy measures which could be adopted as part of the Means of Implementation of the post-2015 development agenda.

“The Council Conclusions adopted at the EU General Affairs Council in December 2014 set out the EU’s high-level position on the post-2015 development framework. This Communication now provides a good overview of what is needed for effective implementation of the post-2015 development agenda and lays the groundwork for more specific policy development. This is an important step in the process towards agreeing an EU position for the UN negotiations on Finance for Development.
“We welcome the Communication’s emphasis on integration of the three dimensions of sustainable development as well as climate change issues.

“We welcome in particular the Commission’s support for the UN Secretary General's call that all developed countries should meet the UN target of 0.7% ODA/GNI and agree to concrete timetables to do so. Agreeing an EU recommitment to 0.7% ODA/GNI is a top UK objective. We will make all efforts to ensure that this includes a renewed timetable and target dates for countries that have not yet met their commitments. We also welcome calls for Upper Middle Income Countries (UMICs) and emerging economies to commit to increasing their contribution to international public financing and to specific targets and timelines.

“We welcome the recognition that finance and non-finance Means of Implementation need to go hand in hand. Efforts should focus equally on setting up the right policies and on mobilising adequate financial resources as these are mutually dependent. The Communication rightly highlights the importance of good governance and policy coherence in facilitating an enabling policy environment for inclusive and sustainable growth. It also highlights key issues including tackling environmentally harmful subsidies.

“We welcome the focus on the need for countries to ensure optimal levels of domestic revenue to fund their own development. This should be achieved through fair, efficient, transparent and accountable administration of both revenue and expenditure policy. Domestic revenue is the most sustainable form of development finance. The Communication highlights ways in which this can be enhanced including by deepening and broadening the domestic resource base, effective debt management and natural capital accounting. We also welcome the acknowledgement that national action should be complemented by international cooperation, for example to combat tax evasion and avoidance. It will be important that this international cooperation extends to combatting corruption and money laundering.

“We welcome the inclusion of trade and agree that it plays a critical role in development. We welcome too the effort to categorise different actions between ‘actions for all’ and actions for the EU. We agree with the commitment made to the WTO, extending market access to Least Developed Countries and the focus on trade facilitation. The Communication recognises that the EU and its Member States are the leading providers of Aid for Trade and the EU market is the most open to developing countries. These achievements are worth noting, but we believe that we can be even more ambitious with our offers on trade in Financing for Development. In moving forward it will be important to also consider reducing compliance costs for LDC exporters and removal of subsidies and distortions in agricultural trade.

“We welcome the emphasis on the role of the private sector. It is rightly characterised as a key actor in the transition to sustainable development and an important engine for innovation, sustainable growth, job creation, trade and poverty reduction. We also welcome the principles set out for addressing private sector engagement. Moving forward we would like to see more specific proposals on how to mobilise private sector finance for poverty eradication and sustainable development.
“We welcome references to the important linkages between climate change, sustainability, and development, since eradicating extreme poverty is impossible without addressing climate change and sustainability. It will be important to visibly integrate climate and sustainability issues into the post-2015 development framework.

“We broadly support the references made to migration within the context of a global partnership for development. The UK considers it important that migration should be well-managed, legal and safe. We therefore welcome the focus in this report as we consider that, through collaboration, migration can act as an enabler to achieving the sustainable development goals. We will also seek to ensure that the Council Conclusions do not reflect or imply support for burden sharing/intra-EU relocation of migrants and asylum seekers, a position the UK does not support. We believe solidarity is best demonstrated through practical cooperation to support the asylum and migration systems of Member States under pressure, and to reduce the drivers of irregular migration.

“We welcome the emphasis on the need for a monitoring, accountability and review framework underpinned by the principles of transparency, inclusiveness and responsiveness, efficiency and effectiveness. The strong focus on data and participation is also welcome. We agree the importance of connecting national, regional and global reporting and accountability, while avoiding duplication and building on existing systems. We hope that such a system would serve to drive political action where progress is off-track, and look forward to discussing further within the EU and in ongoing negotiations in New York.”

12.40 Concerning the impact on UK business or civil society, the Ministers say:

“We do not envisage any impact on UK business or civil society as a result of this Communication. Some of the proposals which may be adopted as part of the Finance for Development agenda relate to private sector activity, and we are in discussion with the private sector about what this might mean in practice. We are also closely engaged with EU partners in the context of the ongoing UN negotiations, to ensure that the EU negotiating position does not stray into areas of Member State competence.”

Previous Committee Reports

13 Increasing the number of judges at the General Court

Committee’s assessment  Legally and politically important
Committee’s decision  Not cleared from scrutiny; further information requested

Document details  Response of the Court of Justice to the Presidency’s invitation to present new proposals on increasing the number of Judges at the General Court
Legal base  —
Department  Foreign and Commonwealth Office
Document numbers  (36554), 14448/1/14, —

Summary and Committee’s conclusions

13.1 The question of how to tackle the increasing workload of the General Court and its significant backlog of cases, has been a vexed issue for the EU. The last attempt failed in 2012 when a proposal to increase the number of Judges of the General Court by 12, from 27 to 39, was removed from a package of reform to the Statute of the Court of Justice. This was because the Member States could not agree on how to share the Judges between them or how to rotate the appointments between them.

13.2 The Statute of the Court of Justice can be amended on the basis of Article 281 TFEU on the request of either the Court itself or the Commission. Such amendments are to be agreed between the Council and the European Parliament by the ordinary legislative procedure. Such amendments of the Court’s Statute are subject to the provision of section 10(1)(e) of the European Union Act 2011. Section 10 states that a “Minister of the Crown may not vote in favour of or otherwise support [such] a decision... unless Parliamentary approval has been given in accordance with this section”. Parliamentary approval is given in each House “if a Minister moves a motion that the House approves Her Majesty’s Government’s intention to support the adoption of a specified draft decision, and each House agrees to the motion without amendment.

13.3 The Court of Justice, in response to a request from the Greek Presidency to present new proposals on the procedures for increasing the number of General Court judges, presented the current document which was deposited with us on 5 December 2014. It envisages doubling the number of judges at the General Court to 56 in three stages, together with abolishing the Civil Service Tribunal, in order to address its significant backlog of cases. It also provides for a selection mechanism for those additional judges. This would involve amending the Statute of the Court of Justice. However, as the Government was expecting a revised proposal to be circulated, it has not yet submitted an Explanatory Memorandum. In any event, the current document, as such, does not

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** The motion to approve the Government’s intention to support the adoption of draft Regulation 2011/0901A(COD) was put during the debate of 12 July 2012 referred to in paragraph 13.2 above.
represent a formal legislative proposal: this has yet to be published. However, the Minister for Europe (Mr David Lidington) now writes at length with an update on the current state of play of informal negotiations in Council on the proposal and the Government’s view of it. Given the importance of any legislative proposal and the need for transparency in relation to developments on this document of considerable legal and political importance, we consider that a Report to the House is now warranted, albeit in the absence of an Explanatory Memorandum.

13.4 We thank the Minister for his detailed letter. Given the importance of this matter we request that a comprehensive and detailed Explanatory Memorandum is submitted promptly on the formal legislative proposal to amend the Court’s Statute when that is published.

13.5 Our chief cause for concern, is the tardiness of this Government update on this document of such self-evident legal and political importance. It is clear that, as matters lie, the UK is isolated in its opposition not only to the proposed mechanism for selecting the additional General Court Judges but to the overall approach of increasing their number. It seems to us therefore, that for all for political and practical purposes, the matter has been presented to us, with dissolution looming, as a “fait accompli”. We note that, this measure is subject to QMV, and therefore could be passed without UK Government support.

13.6 Without wishing to pre-empt our successor Committee, it seems likely to us that, timing willing, the wider House may wish to express a view on this document and on any subsequent formal legislative proposal in a debate on the floor of the House early in the next Parliament.

13.7 In the meantime, the current document remains under scrutiny.

**Full details of the document:** Response of the Court of Justice to the Presidency’s invitation to present new proposals on the procedures for increasing the number of Judges at the General Court of the European Union: (36554), 14448/1/14, —.

**Background and previous scrutiny**

13.8 An account of the last proposal to amend the Statute of the Court of Justice and the Government’s view of it were scrutinised in our Ninth Report of 2012-13, our Forty-seventh and Thirty-fourth Reports of 2010-12. That document was cleared after having been debated on the floor of the House on 12 July 2012.37

**Minister’s letter of 4 March 2015**

13.9 The Minister for Europe (Mr David Lidington) referring to the history of the previous 2011 proposal to increase by 12 the number of judges in the General Court, explains that it failed because Member States could not agree on a selection mechanism. He adds:

37 HC Deb, 12 July 2012, cols. 501-514.
“An increase in the numbers of judges by up to twelve would have meant that at any one time there would have been more judges from some Member States than from others. While the UK, some other Member States, the European Parliament and the Court itself have argued historically that it is the professional quality of these judges that matters the most, other Member States have refused to accept any system that would not guarantee ‘equal representation’ of Member States over time. Four years on, the impetus in Brussels is now to resolve this question.”

13.10 He then explains the genesis of the current document. In response to being informed by the Greek Presidency of the failure to resolve the issue of the selection mechanism and that there was little prospect of success of any proposal that did not involve each Member State having an additional judge, the President of the Court of Justice put forward the current document. This not only proposes doubling the number of judges to 56 in total, but also abolishing the Civil Service Tribunal (CST) and re-allocated its caseload to the General Court.

13.11 The Minister then sets out a summary of how the mechanism would work, but the way this has been developed under the Latvian Presidency is detailed later in the Minister’s letter:

“The proposed increase in judges would be phased-in in three tranches: an initial increase of twelve judges in 2015, a further increase of seven in 2016 consequent upon the dissolution of the CST and the transfer of its case-load to the General Court and finally an additional nine judges being appointed in 2019. He argued that this suggestion would resolve the existing backlog of cases in the General Court whilst also equipping it to address an anticipated future increase in its case-load. President Skouris’ suggestion was not accompanied by a revised legislative proposal to amend the statute of the General Court to reflect these ideas. The Court of Justice estimates that the net increase in operating costs would be about €23m per year after tranche 3 had been appointed.”

13.12 The progress of the negotiations on the Court’s proposal is then described by the Minister:

“During the course of the Italian Presidency, discussions proceeded on the basis of the President’s letter, albeit absent a formal legislative proposal. Although it was widely known that the General Court itself was opposed to the proposal and some Member States indicated reservations, it became apparent that many also believed that the only way that the current impasse could be resolved was if all Member States were assured an additional judge, and that doing nothing was not an option given the serious backlog in cases and increasing risk of claims for damages being brought against the EU due to undue delays in the General Court.

“Against this back-drop the respective positions of the Member States in the discussions to date can be broadly categorised as follows;

- Those which fully support the proposal;
- Those which will not oppose the proposal, but want to look closely at the costs involved and possible efficiencies;
Those which support the proposal only on the condition that all phases are provided for and agreed in a single legal instrument;

- The UK, which does not support this proposal.

“At the COREPER meeting held on 11 December the Italian Presidency concluded that there was broad agreement that negotiations could proceed on the basis of President Skours’ proposed approach, despite UK opposition and the absence of any formal proposal text. Only the UK opposed this, although several Member States indicated that they would want to look at the cost implications associated with the proposal as matters were taken forward. The key question of which Member States would secure an additional judge under tranche 1 was left for the incoming Latvian Presidency to resolve.”

13.13 The Minister then reports on progress on the proposal which the Latvian Presidency is now prioritising; in particular, on the question of determining which Member States would qualify for judges in each separate tranche of the selection mechanism. He explains that at an informal COREPER meeting of 18 February, the Presidency sought Member States’ views on whether quadrilogues (between the Commission, Presidency, European Parliament and the Court) could proceed on the proposal and on the question of the details of the three phase selection mechanism. He then explains that in respect of that selection mechanism, the Council has concluded that consensus would be required:

“While the proposal to amend the Statute of the Court to make provision for the additional judges requires a qualified majority in the Council, Article 254 of the Treaty on the Functioning of the European Union requires the common accord of all Member States to the appointment of every individual judge. The Council has therefore been proceeding on the basis that Member State agreement by consensus would be required to a selection method for which judges would be appointed under each tranche.”

13.14 The Minister says that the Latvian Presidency is proposing the following selection mechanism:

“Tranche 1 — September 2015 (12 judges)

a. The first judge to be appointed under Tranche 1 will be drawn by lot from a total of 24 Member States (the four Member States who have sitting CST judges will be automatically excluded from the first stage);

b. The next eleven judges in Tranche 1 will then follow based on the order of the Rotating Presidency following on from the first Member State (i.e. if UK were to be drawn first then the next potential candidate would be Estonia);

c. If Portugal, Bulgaria and Belgium are drawn in Tranche 1 they could opt to take either a General Court judge or have their outstanding candidate for the CST appointed to the CST; and

d. Any Member State drawn in Tranche 1 but which indicates that it does not intend to nominate a candidate will then be placed in Tranche 3.
“Tranche 2 — September 2016 (7 judges)

The Member States who have sitting CST judges would have the option to nominate their CST judges to the General Court or select a new candidate to be appointed; and

“Tranche 3 — September 2019 (9 judges)

Remaining Member States secure their second judge.”

13.15 The UK is alone in opposing this proposal. All the others are also content for quadrilogue talks to proceed, despite the absence of a formal proposal. The Minister then sets out the Government’s position on the proposal:

“The Government recognises the problem of the backlog in the General Court. Delays have been increasingly raised before the Court of Justice in appeals from General Court judgments and, in three key cases, the Court of Justice has found that the delays in resolving those cases were unreasonable, and breached Article 47 of the Charter on Fundamental Rights. As a result, actions for damages have been commenced which seek a cumulative amount of €20m. An efficient and well-functioning Court is in the interests of British business, and accordingly, the Government has consistently engaged with the proposals to increase the number of judges in the General Court with the aim of ensuring that the General Court’s case handling can be improved and that any reforms to the General Court promote the effective passage of justice, are based on clear evidence of need, minimise additional costs - or ideally involve no additional cost - and avoid full-scale treaty change. On the question of appointing additional judges, we have aimed to ensure that any selection model should promote the UK’s interests and offer equality of Member State representation (in particular in terms of civil and common law legal systems), supporting judicial continuity and expertise, as well as being relatively simple and cost-effective.

“However, the UK has been consistently clear that we do not consider these new proposals to be a proportionate way to address the General Court’s backlog. It is extremely disappointing that more proportionate alternative solutions – such as the institution of new specialist courts – have not been properly considered. Other Member States also expressed doubts that this was the best way to address this problem, or that all these judges are actually needed. Nevertheless, after four years of negotiations, many Member States and the EU institutions have concluded that this is the least bad proposal on the table, and that it will break the deadlock and improve the capacity of the General Court. The proposal therefore has real momentum and is supported by all Member States except the UK. There is now no appetite to consider any alternative way forward and a great desire to put in place the additional judges as soon as possible.”

13.16 Next, the Minister addresses the implications for Parliamentary scrutiny, including the requirements of the EU Act 2011 of their being no formal proposal as yet:

“The Government recognises its obligations under the EU Act 2011 to ensure that both Houses of Parliament give their assent before the Government moves to
support a proposal to modify the Statute of the Court. At present, there is no legal proposal to put to a motion before either House, and there are important elements to these proposals that still need resolution, most particularly, the issue of how these proposals might be financed, and the question of whether there will be appropriate levels of common law representation throughout the proposed phased increase. I intend to submit the legislative proposals, when they come, to Parliament on a scrutiny basis in the usual manner.”

13.17 He then recognises that, as a QMV dossier, the Government, being as yet in a minority in its opposition, will try to influence the substance of the proposal in other ways:

“The Government considers that there are better ways to address the General Court’s backlog. However, since this is a QMV dossier, the Government intends to engage on the substance of the proposal and to work with other budget sensitive allies to ensure the costs of the changes will not increase payment appropriations beyond the adopted annual EU Budget in the immediate term and to ensure the reform does not result in changes to the 2014-2020 Multiannual Financial Framework (MFF) in the longer term. The UK will also seek to encourage further efficiencies and professional improvements in the General Court, so that it can better serve its customers. The Government will also seek to ensure fair representation of the common law system at each stage.”

13.18 Looking forward, the Minister says that after informal “quadrilogue” discussions, he understands that a finalised draft text will be presented to the Council and European Parliament for adoption. He adds:

“We have consistently expressed our concerns about the lack of transparency in these negotiations and the need to ensure that national Parliaments are given a proper opportunity to scrutinise the text of the proposed amendment to the Statute of the Court. We continue to voice our concerns in this regard and have also highlighted that we cannot agree to any text unless it has been approved by both Houses of Parliament in accordance with the provisions of the EU Act 2011.

“To allow Member States to meet their obligations under the ambitious timeline, the Presidency propose that, without prejudice to the decision on whether to adopt the proposed amendments to the Statute, the Member States responsible for making nominations in the first tranche could be chosen.

“I will make clear that the UK will not agree to any appointments being made under these proposals, nor will I endorse the proposed amendments to the statute, until Parliament has been given proper opportunity to scrutinise the formal proposals.”

13.19 The Minister then commits to keeping the Committee updated on this “rapidly moving dossier” and negotiations. He encloses the Presidency’s limité informal quadrilogue document, which is subject to the normal disclosure restrictions.
Previous Committee Reports

14 Restrictive measures against Iran: nuclear issues

Committee’s assessment
Legally and politically important

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

Document details
Council Decision concerning restrictive measures against Iran

Legal base
Article 29 TEU; unanimity

Department
Foreign and Commonwealth Office

Document number
(36568), —

Summary and Committee’s conclusions
14.1 As well as implementing the measures contained in UNSCR 1929 of 9 June 2010, Council Decision 2010/413/CFSP imposed additional EU sanctions in the energy sector, the financial sector, trade, the Iranian transport sector in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; and new visa bans and asset freezes, especially on the Islamic Revolutionary Guard Corps.


14.3 This Council Decision relists one individual, Gholam Hossein Golparvar (Golparvar) and one entity, the National Iranian Tanker Company (NITC). Their original listings had been annulled by the General Court. Solicitors acting for both entities have expressed objections to the relisting of their clients direct to the Committee. Further challenge to any relisting is likely and indeed it is understood that NTIC has been given leave to bring domestic judicial review proceedings in the United Kingdom.

14.4 When we last considered this proposal at our meeting of 21 January 2015 we held the matter under scrutiny, and in doing so:

- Noted that a lack of urgency on the part of the Council in relisting resulted in the original listings expiring and therefore the risk of asset flight;

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38 Cases T-58/12, judgment of the 12 December 2013 and T-565/12, judgment of 3 July 2014.
• Sought an explanation why open-source information provided to Golparvar and NITC could not be provided to Parliament; and

• In the light of the sensitive history of these listings sought confirmation from the Minister for Europe (Mr David Lidington) that he considered the reasons for the relisting and the underlying evidence sufficiently robust to deter or withstand further legal challenge. We specifically did not seek to put ourselves in the place of a court in judging the detailed evidence supplied direct by the entities.

14.5 The Minister wrote on 4 February 2015 in response to our questions and others posed by the European Select Committee of the House of Lords.

14.6 On 12 February the Council adopted a Decision relisting Golparvar and NITC.\textsuperscript{39} It also adopted two Regulations covering the same ground in respect of matters falling within the TFEU: one extending until 30 June 2015 the exceptions to the restrictive measures originally granted by Regulation 267/2012 until 31 December 2014\textsuperscript{40}; and another relisting Golparvar and NITC.\textsuperscript{41} We therefore held back consideration of his letter of 4 February in order to deal with an anticipated letter from the Minister addressing the override of scrutiny. This was forthcoming on 12 March.

14.7 In his letter of 12 March the Minister says, “the responsibility to keep your Committee informed on issues concerning Iran sanctions is something I take seriously and the need for the override of scrutiny on this occasion was regrettably unavoidable”. We do not accept that the override of scrutiny was unavoidable or justified, and we consider that the Minister’s engagement with this Committee is below the standard that this House should expect. It has been characterised by mistakes, omissions, and unsatisfactory responses as set out in more detail in this chapter. We therefore ask that the handling of this matter be reviewed in the light of this chapter and the outcome, particularly steps taken to improve the engagement with Parliament, be reported to our successor Committee in the new Parliament. In the meantime we hold this matter under scrutiny.

14.8 As we indicated in our Report of 21 January 2015 it is important that a relisting of an entity or individual should be legally robust as multiple failures to withstand legal challenge undermines the credibility of the sanctions regime.

14.9 The Minister has expressed his belief that these relistings are “proportionate, adequately supported by open-source evidence, and consistent with the broader Government policy towards Iran”. In contrast to his response concerning Syria which report at chapter 29, this falls short of providing the confirmation he was invited to give.

14.10 Unfortunately, the history of this matter does not inspire confidence in the handling of this matter by either the Government or the Council.

\textsuperscript{39} Decision 2015/236.

\textsuperscript{40} Regulation 2015/229.

\textsuperscript{41} Regulation 2015/230
14.11 We strongly doubt that the Council or the Government will be able to enforce the confidentiality of open source material or sustain it if challenged.

14.12 We consider that the Minister’s statement in his original Explanatory Memorandum that no fundamental rights issues apply was an inadequate assessment and we welcome the Minister’s assurance, in his letter of 4 February, that future Explanatory Memoranda concerning the imposition of restrictive measures will include a more expansive description of why it is felt that fundamental rights are not breached.

14.13 We do not invite the Minister to deposit retrospectively drafts or provide Explanatory Memoranda in respect of Regulations 2015/229 and 2015/230 as they do not add, in substance, to Decision 2015/236 which is the subject of the present scrutiny. The Minister’s letter of 12 March fails to mention Regulation 2015/229 and offers no explanation or apology for the fact that neither of these Regulations had been mentioned in his Explanatory Memorandum or previous correspondence. We therefore ask that the review we have requested to include why these matters were not made subject to scrutiny. We also ask for an analysis of the effect of allowing the exceptions to the restrictive measures to expire on 31 December 2014 until the extension adopted by Regulation 2015/229.

Full details of the document: Council Decision amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran: (36568), —.

The Minister’s letter of 4 February 2015

14.14 The substance of this letter is set out in full as the responses to issues raised by the European Select Committee of the House of Lords provide a full picture of the Government’s approach to restrictive measures:

“In your letters, a number of questions were posed which I seek to address below. In summary, I believe that the relistings of NITC and Mr Golparvar are appropriate, proportionate, adequately supported by open-source evidence, and consistent with our broader Government policy towards Iran. Whilst I understand the desire for the Parliamentary Scrutiny Committees to have access to the open-source evidence which supports relisting proposals, I am unfortunately not in a position to share such information. This is a consistent position which is taken in respect to all such requests, the reasons for which I set out below.

“I will first elaborate the processes both within Her Majesty’s Government and the EU, by which individuals or entities are proposed for listing or relisting under an EU restrictive measures regime, with a focus on Parliamentary Scrutiny.

“Scrutiny

“It is clearly desirable for Government processes to be as transparent as possible, and I confirmed my intention in this regard during my recent evidence session in the Commons on scrutiny reform. However, as the Committees are aware, there are particular sensitivities with regard to EU restrictive measures which limit the instances in which the normal Parliamentary Scrutiny process may be followed. By
way of example, the risk of asset flight, if a designated individual or entity becomes aware that they are being proposed for listing under a sanctions regime, precludes scrutiny in most instances of new listings; the use of a Ministerial override is well established in this scenario.

“It is not unusual for the decision to relist an individual or entity to be the subject of a scrutiny override. This may be due to time pressures (often dictated by EU business) involved in negotiating and adopting a revised Statement of Reasons, which will also need to be supported by evidence for the relisting. It is preferable for agreement to have been reached before the effect of any annulment by the Court is realised (usually two months and ten days post notification of judgment). Failure to relist the individual or entity within this timeframe risks asset flight and can undermine the effectiveness of restrictive measures.

“With regards to the scrutiny history for NITC and Mr Golparvar, the situation is unusual for two reasons. First, the risk of asset flight was considerably reduced (both had been delisted since the Court’s annulment decisions had taken effect). Second, the sensitivity and timing of nuclear negotiations between the E3 + 3 and Iran were significant factors in considering proposals for relisting, and when proposals could be negotiated and adopted by the Council.

“**EU processes**

“I recall my previous letter of 20 January 2015 to the European Union Committee, copied to the European Scrutiny Committee, in which I elaborated on the EU process for sanctions listings and reviews.

“I should here like to clarify a particular point. Listing decisions require unanimity by the Council. Agreement may be reached at meetings of the Foreign Affairs Committee (FAC) but agreement may also be reached at any time by way of the Council’s written procedure. In circumstances where Ministers judge it appropriate to do so, for example where there are pressures of timing, a scrutiny override may be used in conjunction with the written procedure at any time. For the avoidance of doubt that option is available in the case of NITC and/or Mr Golparvar.

“**Information sharing**

“The Committees have asked for access to the open-source evidence which supports the relisting proposals for certain individuals and entities. The Government adopts a consistent policy of declining to provide the evidence which supports listing, or relisting, proposals to the Parliamentary Scrutiny Committees. The reasons for this I set out below.

“The listing proposals which the Parliamentary Scrutiny Committees scrutinise may be put forward by the UK or one of the other EU Member States, or the EEAS. The underlying evidence is made available to the Council and held on file. Information that forms part of the Council’s internal decision making can be shared between Member States, however the Council decides collectively on the sharing of information externally.
“Member States are bound by a duty of professional secrecy with respect to Council documents unless they have been made publicly available, as set out in the Council’s Rules of Procedure. Article 6 (1) states “...the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council decides otherwise”. Professional secrecy maintains non-disclosure of the identity of the proposing Member State, and limits the scope for third countries to play divide and rule with the EU’s sanctions policy.

“There are specific procedures for sharing information with the designated individual or entity. All open-source evidence is disclosed to them, upon their request, by the Council. They may share this information with their legal representatives in preparing their defence.

“The sharing of information externally with other actors is a collective decision for the Council. The Council Secretariat holds the responsibility to disclose such documents, or not, in accordance with applicable EU law.

“Fundamental rights

“In its letter of 22 January 2015, the European Union Committee of the House of Lords note that Explanatory Memoranda on EU restrictive measures commonly conclude that ‘no fundamental rights issues apply’. The designation of an individual under a regime of restrictive measures may engage fundamental rights, however any interference with those rights is considered to be proportionate which is why, on analysis, no fundamental rights issues apply. Consideration is given to this during the process of targeting an individual or entity and gathering the evidence to support their listing.

“Restrictive measures against an individual often include a travel ban and an asset freeze. It is standard practice to make exemptions to both of these constraints in order to address humanitarian needs, such as travel for medical treatment or access to funds to pay for basic expenses.

“The fundamental right of defence has been the focus of many sanction related court cases; notably Kadi II, OMPI I and OMPI II. The Kadi II judgment created the requirement for a listing to be supported by open-source evidence in order to provide for the individual’s right of defence. I consider that current practice does not breach the fundamental rights of a designated individual.

“Future Explanatory Memoranda will include a more expansive description of why it is felt that fundamental rights are not breached.

“NITC open-source evidence

“You ask us to explain the extent to which listings and relistings are based on open-source versus confidential information. Specifically you enquire whether the relisting of NITC is supported exclusively by open-source material.

“The European Court of Justice’s (ECJ) judgment in Kadi II made clear that the relevant EU institution must substantiate at least one of the reasons for listing with
open-source material. There is, however, no requirement for all supporting evidence to be open-source. I am unable to go into the details of specific cases.

**“NITC financial support”**

“You note that ‘a significant burden rests on the Council to ensure that evidence exists to show that the shareholders... provide financial support to the Iranian Government’. On this point, the Statement of Reasons reads, ‘The National Iranian Tanker Company provides financial support to the Government of Iran through its shareholders the Iranian State Retirement Fund, the Iranian Social Security Organization, and the Oil Industry Employees Retirement and Savings Fund, which are State-controlled entities’. The Council takes its responsibilities with regard to relisting individuals and entities extremely seriously.

**“Consistency of NITC relisting with Joint Plan of Action”**

“The Joint Plan of Action (JPoA) agreed between the E3+3 and Iran in November 2013 does not have the effect of suspending in their entirety U.S. and EU sanctions on oil exports and related sectors; it allows Iran to maintain, at current levels, oil exports to existing customers, consistent with U.S. measures under the National Defense Authorisation Act (NDAA). In support of that, the EU suspended articles of the EU Regulation related to transport, insurance, and related finance. This was, however, entirely without prejudice to listings, or relistings, where an individual or entity meets the criteria for designation under Article 23 of the Council EU Regulation 267/2012, as amended. JPoA suspensions do not apply to designated persons or entities, unless an explicit exemption is made in the legislation. The relisting of NITC is therefore consistent with the JPoA.

**“Mr Golparvar’s evidence to the Council”**

“I understand, from your letter, that you have been made aware by Mr Golparvar’s solicitor that he has provided documents to the Council explaining that the proposed reason for his relisting is factually incorrect and that a link with the Islamic Republic of Iran Shipping Lines (IRISL) is out of date.

“The Council takes all material provided to them into consideration when determining the evidential basis supporting an individual’s relisting. When an individual is proposed for relisting, a pre-notification letter is sent to them; the Council usually provides some supporting documents to the individual at this time. If an individual asks for access to their file, all open-source evidence held by the Council will be provided to them, upon their request, in order that they may prepare their defence.

**“EU full time sanctions staff”**

“With regard to your query on staffing, we have been informed that there are eight staff in the EEAS sanctions unit who work full-time on sanctions. There are no staff in the CLS / Council Secretariat who work full time on sanctions. There are three CLS lawyers and two Council Secretariat (RELEX) staff who work mainly but not exclusively on sanctions, with an additional three CLS lawyers (including a Director)
who work partly on sanctions and a further five lawyers whose work focuses partly on sanctions litigation. These figures we understand do not include secretarial assistants.

**“Smarter Sanctions Policy and other Member States**

“The UK’s Smarter Sanctions Policy codifies our desire to use appropriately targeted and legally robust restrictive measures as a foreign policy tool. The views of the CLS, which demonstrate great awareness of legal risk, weigh heavily in decision making. EU sanction regimes are usually subject to annual review and decisions are adopted by unanimity; the UK can, and has, significantly influenced proceedings where necessary. The evolving jurisprudence around EU sanctions regimes have necessitated all Member States to adhere to similar best practices. Elements of the UK’s approach to sanctions are followed by other Member States.

**“Controversial’ listings**

“You note that where the UK proposes a listing or relisting, the decision is taken by FCO Ministers if it is ‘controversial’, and ask for clarification of what is meant by this term. I will illustrate by way of example. Decisions pertaining to listings or re-listings under the Iran sanctions regime are taken by FCO Ministers, in view of the sensitivity of the nuclear talks and the effects of considering a listing or relisting on the negotiations process at a given moment. Further examples may be where a proposed listing carries a small risk of unintended, detrimental humanitarian impact for instance. In clear cut cases, where broader political considerations are not in play, the decision to propose a listing is made by a Civil Servant at a senior level; Head, or Deputy Head of Department.

“There is extensive Ministerial involvement in decisions relating to sanctions, I am unable, however, to provide a clear indication as to the actual proportion of UK listing proposals directly considered by FCO Ministers. Listing proposals are worked up by a range of officials across the FCO and data on Ministerial involvement is not centrally held nor systematically collected at present.”

**The Minister’s letter of 12 March 2015**

14.15 This letter deals with the override of scrutiny:

“The Council Decision and Regulation relisting NITC and Mr Golparvar were adopted by written procedure on 12 February 2015 and published in the Official Journal of the EU on 14 February 2015. I regret that it was not possible to complete parliamentary scrutiny.

“Following the annulment of the listings by the General Court the Council decided not to appeal the judgments but opted instead to relist both. The relistings were not considered within the EU process until November 2014 due to other pressures on the Council, most obviously the Ukraine crisis, which had worsened in the preceding months.”
“Political considerations regarding the E3+3 negotiations on the Iranian nuclear programme also informed thinking about timing of relisting. We had argued for delaying the relisting to avoid getting in the way of the E3+3 talks. After those talks concluded in November, the issue was revisited by the EU. The initial Explanatory Memorandum relating to the relisting of NITC and Mr Golparvar was submitted for Parliamentary Scrutiny on 15 December 2014 once we had the draft EU texts required for Parliamentary Scrutiny. The document was under scrutiny for ten weeks prior to adoption. During this time we came under increasingly significant pressure from other Member States to agree the listings for the following reasons.

“The increasing time gap between annulment and relisting risked opening the possibility of other parties portraying the imposition of restrictive measures against NITC and Mr Golparvar as new listings, rather than relistings. Any claim that new listings were being imposed could have negatively impacted on the Iran nuclear negotiations. Furthermore, it was desirable to relist NITC and Mr Golparvar before negotiations reached a more sensitive stage.

“This explains why I felt I had to agree these relistings without completing the scrutiny process. However, be in no doubt that the UK only agreed to relisting of this individual and entity following careful consideration of the relevant judgments of the General Court and a thorough assessment of the evidence presented by the proposing Member State. We can only disclose that it was not the UK that proposed these two listings following a court hearing on 06 February 2015.”

**Our Analysis**

**Engagement with Parliament**

14.16 The engagement with Parliament has been characterised by mistakes, omissions and unsatisfactory responses.

14.17 The Minister’s original Explanatory Memorandum was inaccurate as to the date of the judgment in respect of Gholan Golparvar. This was a significant mistake as it helped obscure the fact that the failure to relist either Golpavar or NTIC had led to a gap in the restrictive measures and therefore the risk of asset flight. The Minister failed to mention this important risk at all in his Explanatory Memorandum, although in a letter to Lord Boswell of 19 January 2015, copied to our Chairman, he erroneously suggested that the delay in relisting NTIC had been raised in his Explanatory Memorandum, when in fact he had only provided this explanation when asked to do so by this Committee. He has since declined to indicate whether this risk has materialised.

14.18 In his letter of 4 February the Minister said “The Kadi II judgment created the requirement for a listing to be supported by open-source evidence in order to provide for the individual’s right of defence” and The European Court of Justice’s (ECJ) judgment in *Kadi II* made clear that the relevant EU institutions must substantiate at least one of the reasons for listing with open source information. There is no requirement for all supporting evidence to be open-sourced. Both these statements are incorrect. Whilst it is
true that this judgment requires a listing to be supported by evidence if challenged (which need justify only one of the reasons given for the listing), it is not the case that the Court has required this evidence to be open source information. That is the choice of the Council.  

14.19 The Minister declines to provide Parliament with the open source information used to justify the relistings, on the basis that it would be contrary to the Council Rules of Procedure preventing disclosure of the “deliberations of the Council”. In particular it might disclose which Member State has requested the restrictive measures. However our request did not seek information as to which Member State proposed restricted measures, nor the deliberations of the Council in respect such information. As it happens, we understand from the Minister’s correspondence with Lord Boswell, which he copied to our Chairman, that during proceedings brought by NTIC against the Government on 6 February, it was disclosed that the UK was not the proposing Member State. In any event, it lacks credibility that information available to the public should become clothed in confidentiality simply because it is included in a document considered by the Council. We strongly doubt that the Council or the Government will be able to enforce the confidentiality of open source material or sustain it if challenged.  

14.20 The correspondence of the Minister perpetuates the uncertainty as to the status of the open source information provided to Golparvar and NTIC. In his letter of 14 January he indicated that the EU Council can share with the individual or entity concerned information which has informed the decision-making process but that “this information is not for public consumption. This is why the underlying evidence for these relistings cannot be shared with either the ESC or the House of Lords Select Committee”. However in a letter to Lord Boswell of 4 March 2015, copied to our Chairman, he has indicated that “Where there is additional open source evidence, which does not form an integral part of the listing proposal then it may be disclosed by the listed person without any caveat” and that “Some additional information on the Council file on NITC was shared without that caveat so has effectively now been made publicly available”.

**The scrutiny override**

14.21 The background is that Council acted throughout 2014 with a notable lack of urgency, allowing the risk of asset flight. The reasons given for not pursuing these relistings in 2014 were given by the Minister in his letter of 14 January 2015 as (a) that the Council prioritised other business, (b) that the summer break intervened and (c) that decision was taken not to pursue relisting until the end of the E3+3 negotiations with Iran.  

14.22 In his letter of 12 March the Minister asserts that the document was held under scrutiny for ten weeks from 15 December to its adoption on 12 February. This is another incorrect statement. This period amounts to eight weeks and three days and included the Christmas break. The reason why this matter could not be cleared sooner was the poor quality of the Explanatory Memorandum he originally provided and the lack of credibility in his subsequent explanations. Having written to the Committee on 4 February he left it to the Committee to discover for itself that the Decision (and Regulations) had been adopted on 12 February. Neither the Explanatory Memorandum nor the letters from the Minister

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* Kadi II, Joined cases C-584/10 P, C-593/10 P and C-595/10 P.
of 14 January or 4 February indicate any urgency. This is not surprising given the failure of the Council to act with any urgency throughout 2014.

14.23 The reason given in the letter of 12 March for the override, being pressure from other Member States, lacks credibility given the previous lengthy period of inaction – in Golpavar’s case over a year since the judgment annulling his original listing. Furthermore these relistings had already been delayed so as not to get in the way of E3+3 talks. During 2014 it was clearly regarded as beneficial to negotiations to delay these relistings. However by February 2015 the Minister indicates that the opposite was the case. It is therefore not clear to us why waiting a short while longer to complete Parliamentary scrutiny would have significant adverse impact on negotiations.

14.24 The Minister’s explanation that the matter had become urgent enough to override Parliamentary scrutiny because further delay may have changed perception of this matter from a being a “relisting” to a “new listing” is not, in our opinion, significant. These are simply labels making an unhelpful distinction. As the original listings had ended, the reality was that listing them again was both “relisting” them and imposing “new listings.”

Previous Committee Reports


15 Restrictive measures against Syria

| Committee’s assessment | Legally and politically important |
| Committee’s decision | Not cleared from scrutiny; further information requested |

Document details


Legal base

(a) Article 30(1) TEU; QMV; (b) Article 32(1) of Regulation 36/2012; QMV

Department

Foreign and Commonwealth Office

Document numbers

(a) (36716),— (b) (36717),—
Summary and Committee’s conclusions

15.1 These proposals will impose, for the first time, restrictive measures on seven individuals and six entities, some linked to the restrictive measures re-imposed by the draft measures considered at chapter 29.

15.2 The Minister for Europe (Mr David Lidington) writes separately to explain that it was necessary to override scrutiny due to fear of asset flight. However in his Explanatory Memorandum he indicates that EU legislation requires the individuals and entities concerned to have an opportunity to present observations on the reasons for their listing.

15.3 We ask the Minister when the individuals and entities concerned were given the opportunity to make observations on the reasons for their listings. If this was prior to the adoption of the measures, we further ask him to explain why this prior notice could not have cleared the way for prior parliamentary scrutiny of the draft measures.

15.4 In the meantime we retain the matter under scrutiny.


The Explanatory Memorandum of 10 March 2015

15.5 The Minister sets out the background and lists the individuals and entities concerned:

“On 6 March 2015, the EU Council agreed the designation of 7 individuals and 6 entities under Syria restrictive measures. The attached Council Regulation (EU) No.2015/375 and Council Decision 2015/383 refers. The new designations target individuals and entities supplying oil to the Syrian regime, figures involved in chemical weapons use and production, regime businessmen and regime officials. The new designations are as follows:

- Bayan Bitar — Managing Director of the Organisation for Technological Industries (OTI) and the Syrian Company for Information Technology, which are both subsidiaries of the Syrian Ministry of Defence.

- Brigadier General Ghassan Abbas — Manager of a branch of the sanctioned Syrian Scientific Studies and Research Centre, which is involved in the production of chemical weapons.

- Wael Abdulkarim — Managing Director of the sanctioned oil importer Pangates International.

- Ahmad Barqawi — General Manager of the sanctioned oil importers Pangates and Al Karim Group.

- George Haswani — Prominent Syrian businessman, involved in the purchase of oil from ISIL on behalf of the Syrian regime.
• Emad Hamscho — Has a senior role at Hamsho Trading, which is a subsidiary of the sanctioned entity Hamsho International. Funds regime affiliated militias.

• Samir Hamscho — Owner and Chairman of Al Buroj and Syria Steel, subsidiaries of the sanctioned entity Hamsho International.

• Organisation for Technological Industries — A subsidiary of the Ministry of Defence and involved in the production of chemical weapons.

• Syrian Company for Information Technology — A subsidiary of the Ministry of Defence and involved in the production of chemical weapons.

• Hamsho Trading — subsidiary of Hamsho International, which has been sanctioned by the Council.

• Syria Steel — Subsidiary of Hamsho International and Hamsho Trading, which have both been sanctioned by the Council. Supports Syrian regime and its militias.

• Al Buroj Trading — Subsidiary of Hamsho International and Hamsho Trading, which have been sanctioned by the Council.

• DK Group — A supplier of banknotes to the Central Bank of Syria, which has been sanctioned by the Council.”

15.6 He sets out the policy implications as follows.

“The Syria policy imperative for listing these individuals and entities is high. Each provides substantial financial and material support to the Syrian regime or is closely associated with those that do. By adding them to the EU sanctions list we are freezing any assets they may hold in the EU and are denying them travel to the EU. In doing so we are limiting their ability to provide support to Assad and further isolating his brutal regime.

“Targeted, legally robust sanctions are one of the tools the EU can use to increase pressure on the Syrian regime and incentivise renewed constructive engagement with the moderate opposition on the political track. EU sanctions have cut off many of the regime’s pre-war funding streams and limited revenue from others. Taken as a package, they have had a tangible effect on Assad’s ability to conduct his war effort and are sending a vital political signal that we will not work with Assad. The UK remains firm in its belief that a negotiated political settlement is the only solution to the conflict and Syria’s worsening humanitarian crisis.”

15.7 His fundamental rights analysis, meeting a commitment to provide a fuller analysis than previously (see chapter 14), is as follows:

“The procedures for designating individuals under Council Decision 2013/255/CFSP and Council Regulation (EU) 36/2012 (‘the principal Decision and Regulation’), which the above Decision and Regulation amend so as to designate new individuals and entities, are considered to be compliant with fundamental rights.
“Provision is made in the principal Decision and Regulation for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic needs of listed persons or their dependents and where necessary for extraordinary expenses. Decisions by competent authorities of Member States in this regard would be subject to challenge in Member States’ courts. In addition, Member States may grant exemptions from the travel ban where travel is justified, inter alia, on the basis of urgent humanitarian need.

“The principal Decision and Regulation respect fundamental rights, notably the right to an effective remedy and to a fair trial and the right to the protection of personal data.

“The principal Decision and Regulation state that the Council shall provide designated persons and entities with an opportunity to present observations on the reasons for their listing. Where observations are submitted, the EU will review its decision in the light of those observations and inform the person or entity concerned accordingly. In addition, the measures will be kept under review. Furthermore, the Courts of the European Union must, in accordance with the powers conferred on them, ensure the review of the lawfulness of all European Union acts in respect of fundamental rights.

“Those fundamental rights include respect for the rights of the defence and the right to effective judicial protection.

The Minister’s letter of 10 March 2015

15.8 In this letter the Minister expands upon the policy imperative of the listings and the risk of asset flight:

“The new designations target individuals and entities supplying oil to the Syrian regime, those involved in chemical weapons use and production, and prominent Syrian businessmen and regime officials.

“The policy imperative for listing these individuals and entities is high. Each provides substantial financial and material support to the Syrian regime or is closely associated with those that do. By adding them to the EU sanctions list we continue to limit their ability to provide support to Assad and further isolate his brutal regime.

“However, in order to ensure that details of these designations were not made public before they entered into force, I agreed to the adoption of the Council Decision and Regulation before your Committee had an opportunity to scrutinise the documents. This was regrettable, but as I have discussed with your Committee previously, a necessary step in order to mitigate the risk of asset flight on this occasion.

“As you know, the responsibility to keep your Committee informed on issues concerning Syria sanctions is something I take seriously and the need for the override of scrutiny on this occasion was regrettably unavoidable.
Previous Committee Reports


16 Taxation

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Draft directive about a common consolidated corporate tax base

Legal base

Article 115 TFEU; consultation; unanimity

Department

HM Treasury

Document numbers

(32617), 7263/11 + ADDs 1-2, COM(11) 121

Summary and Committee’s conclusions

16.1 In March 2011 the Commission presented a draft Directive to create an EU common consolidated corporate tax base. We and the Government have shared considerable concerns about this proposal.

16.2 The Government now reports to us Council working group consideration of the draft Directive since May 2011.

16.3 We are grateful to the Government for its detailed, albeit tardy, account of developments on this draft Directive. We are sure that our successor Committee will expect to have more frequent accounts of developments and that it will wish to recommend, at an appropriate moment, a debate on the proposal. Meanwhile the document remains under scrutiny.


Background

16.4 In the past the Commission has made plain its hope of introducing harmonisation of direct taxation for companies, in particular by establishing a “Common Consolidated Corporate Tax Base” (a CCCTB). In Communications in October 2001, April 2006 and May 2007 it reported on efforts to develop a proposal for a CCCTB. In February 2007, in its Annual Policy Strategy for 2008, the Commission announced its intention to introduce a proposal for a CCCTB in 2008 — however this did not happen. In response to all this the previous Government consistently made clear that direct taxation is primarily a matter for
Member States and that in its view fair tax competition, not tax harmonisation, was the basis on which the EU could compete with the rest of the world.

16.5 In March 2011, the Commission sought, with this draft Directive to introduce a CCCTB. The draft Directive would:

- provide for a single set of harmonised rules for calculating the tax base for taxable profits of companies resident in Member States;
- allow companies to opt into this CCCTB or to continue to operate within national tax systems;
- allow groups of companies to calculate their total EU-wide consolidated profit for tax purposes;
- provide for that profit to be allocated to companies making up the group on the basis of an apportionment formula composed of sales, payroll, number of employees and assets in each Member State; and
- provide that Member States would then tax the profit apportioned to companies in their Member State.

16.6 Allocating profit on this basis would be a significant change from the status quo — the current arrangements are for separate accounting in each Member State to determine location of income and thus tax due. The proposal would redistribute the tax base between Member States, but they would continue to set their own corporate tax rates.

16.7 We have been concerned about five matters, the basic justification for the proposal, its legal base and its actual legality, the detailed content of the proposal, subsidiarity and proportionality. Although the House has debated and adopted, on our recommendation, a Reasoned Opinion on the proposal, we have not yet thought the time right for a debate on issues other than subsidiarity. However, when we last considered the draft Directive we saw no further advantage in debating with the Government the issue of the correct legal base, our view being that Article 115 TFEU was not appropriate for approximation of direct taxation.

The Minister’s letter of 16 March 2015

16.8 The Financial Secretary to the Treasury (Mr David Gauke) writes now about recent developments in negotiations on the draft Directive. Recalling the substance of the proposal, the Minister says that:

- the Government’s position on this matter was as expressed in the Reasoned Opinion, which we had suggested and which set out the view of the House that the CCCTB proposal contravenes EU principles of proportionality and subsidiarity, and is therefore unlawful;
- in addition, the Government is not convinced by the economic arguments for a CCCTB; and
it will not, however, stand in the way if other Member States want to push forward with the proposal and has committed to engaging constructively in negotiations.

16.9 The Minister then reports that:

- official-led technical discussion on the Commission’s draft Directive began in May 2011;

- following an initial comprehensive read-through of the text in the Council working group, Member States agreed to set aside the articles dealing with consolidation and formulary apportionment for the time being, and focus on the detail for a common tax base;

- the Irish, Lithuanian and Greek Presidencies therefore concentrated on issues such as depreciation, intangibles, detailed definitions, and compatibility with the International Accounting Standards;

- in addition, they led discussions on anti-avoidance, including on a General Anti-Abuse Rule, and generally sought to achieve a common understanding so as to ensure a consistent implementation of the proposal;

- considering that the technical analysis of the tax base was sufficiently advanced to move on to issues related to consolidation, the Italian Presidency focused on international aspects, in particular on issues closely linked to Base Erosion and Profit Shifting (BEPS) such as mismatches, controlled foreign companies rules and interest deductibility;

- the Latvian Presidency intends to continue discussions on this basis;

- negotiations to date have been slow with little willingness among Member States to make substantial progress on the dossier whilst work on the G20/OECD BEPS project is still in progress;

- however, in light of the international focus on corporate tax avoidance, the CCCTB has received increased attention;

- in November 2014, the Economic and Finance Ministers of France, Italy and Germany wrote to Commissioner Moscovici calling for tax harmonisation in the EU;

- the new Commission has interpreted this as a new-found appetite for a CCCTB and, keen to build momentum, has been promoting the proposal as the long-term solution to BEPS issues;

- several Members of the European Parliament are echoing calls for progress on the dossier;

- the Government does not believe that a CCCTB would contribute towards tackling BEPS — the proposal was not designed to prevent tax avoidance and it is unclear how it would do this;
the system would only apply to the EU and companies could decide whether to opt in or not — this would risk creating mismatches both within and outside the EU, and hence even more opportunities for aggressive tax planning;

on the other hand, Member States would be less inclined to sign up to a compulsory system because of the substantial concerns it would raise around tax sovereignty;

moreover, the Commission’s impact assessment suggests that the negative economic impacts of a CCCTB would be greater if optionality were removed; and

it is, instead, essential that the Government secures global agreement on the G20/OECD BEPS recommendations due to be published this year, as this is the most efficient way to ensure that profits are taxed where they are generated.

16.10 The Minister concludes that:

the Government will continue to engage constructively in discussions at the technical working group level in order to help shape the proposed Directive;

thus far, such engagement has helped to identify and mitigate certain risks to the UK’s competitiveness and tax code that would manifest if a version of the proposal were to be adopted, or if a smaller group of Member States pressed ahead under EU enhanced cooperation rules;

for instance, officials have supported amendments to strengthen anti-abuse provisions in the Directive and, together with other Member States, have advocated a closer link to the International Accounting Standards;

at the same time, the Government has maintained a scrutiny reservation and made clear that it retains overarching concerns on the proposal; and

for the reasons he has set out the Government will continue to challenge the assertion that a CCCTB would solve BEPS issues.

Previous Committee Reports

17 Capital Markets Union

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

Document details  Commission Green Paper about a Capital Markets Union
Legal base  —
Department  HM Treasury
Document numbers  (36667), 6408/15 + ADD 1, COM(15) 63

Summary and Committee’s conclusions

17.1 The Commission has published a Green Paper, about building a Capital Markets Union, to consult on a range of issues relating to improving market-based financing of the EU economy. It says that it will decide on appropriate follow-up measures on the basis of the consultation to put in place the building blocks for such a union by 2019. The Commission calls for responses to the questions posed by the Green Paper by 13 May and says that it expects to present an action plan in the summer.

17.2 The Government tells us that it welcomes the publication of the Commission’s Green Paper and the opportunity to consider the options for developing a Capital Markets Union. It says that, overall, it strongly supports the vision of a well-regulated and integrated union of all 28 Member States, which maximises the benefits of capital markets and non-bank financing for the real economy.

17.3 We note the Government’s intention to respond quickly to the Commission’s Green Paper and ask it to inform our successor Committee of the content of that response. Meanwhile the document remains under scrutiny.

Full details of the documents:  Green Paper: Building a Capital Markets Union: (36667), 6408/15 + ADD 1, COM(15) 63.

Background

17.4 As early as July 2014 the new Commission President presaged the intention to create a “Capital Markets Union” (CMU). Lord Hill, one of the Commissioners, has specific responsibility, amongst other matters, for the CMU.

The document

17.5 The Commission has now published this Green Paper, about building a CMU, to consult on a range of issues relating to improving market-based financing of the EU economy. In the Green Paper the Commission:

- identifies free movement of capital as one of the fundamental freedoms of the EU;
• describes how the degree of market integration in the EU has declined since the financial crisis;

• explains that the creation of a CMU is a key priority for the Commission as it seeks to increase growth in the EU by increasing access to finance; and

• identifies areas for early action and then seeks views in an extensive consultation.

17.6 The Green Paper is divided into four sections. The first sets out the rationale for creating a CMU and its objectives:

• improving access to finance for business and infrastructure projects;

• helping small and medium-sized enterprises (SMEs) raise finance as easily as large companies;

• creating a single market for capital by removing barriers to cross border investments; and

• diversifying sources of funding and reducing the cost of funding.

17.7 Section two comprises a brief analysis of the existing barriers to deeper capital markets, with some comparison between the size and maturity of EU and US markets. The analysis also highlights the differing experiences in each Member State. More detail is provided in the accompanying Commission Staff Working Document “Initial reflections on the obstacles to the development of deep and integrated EU capital markets”. Section three elaborates on the five areas identified by the Commission for early action:

• reviewing the Prospectus Directive to lower barriers to accessing capital markets;

• developing a common minimum set of comparable information for credit reporting and assessment in order to widen the investor base for SMEs;

• creating a regulatory framework for sustainable, high quality securitisation;

• boosting long-term investment, in particular by supporting take up of European Long Term Investment Funds; and

• supporting industry led initiatives to develop a pan-EU private placement market.

17.8 Separate public consultations have been launched for reviewing the regulatory framework around securitisation and reviewing the Prospectus Directive.

17.9 Section four seeks views on a range of obstacles to cross border capital flows and is organised around three themes:

• improving access to finance, focusing on addressing information problems and standardisation in areas such as covered, corporate, and green bonds;

• developing and diversifying the supply of funding, exploring ways to bring institutional, retail and international investors to market and how to develop private equity and venture capital as alternative sources of finance; and
• improving market effectiveness, seeking comments on the single rulebook, enforcement of EU rules, the role of the European Supervisory Authorities, issues on reporting standards, market infrastructure and securities law, possible obstacles to market integration via company law, insolvency and taxation and supporting new technology.

17.10 The Commission:
• says that it will decide on appropriate follow-up measures on the basis of the consultation to put in place the building blocks for a CMU by 2019;
• comments that this may include legislative measures, though it is clear that regulatory changes will only be sought where they are necessary;
• invites responses to the questions posed by the Green Paper by 13 May; and
• notes that it will then consider what actions should be taken, with an action plan expected in the summer.

The Government’s view
17.11 In her Explanatory Memorandum of 11 March 2015 the Economic Secretary to the Treasury (Andrea Leadsom) says that the Government welcomes the publication of the Commission’s Green Paper and the opportunity to consider the options for developing a CMU. She comments further that:
• overall, the Government strongly supports the vision of a well-regulated and integrated CMU of all 28 Member States, which maximises the benefits of capital markets and non-bank financing for the real economy;
• it is encouraged by the open nature of this consultation, which should provide the Commission with a firm evidence base on which to base policy responses, and agrees with the five areas prioritised for action in the near term;
• the Government supports the Commission’s suggestion that EU legislation should only be used where it is necessary and agrees that non-legislative steps, and the effective enforcement of competition and single market laws, should be utilised to achieve the objectives of CMU;
• the Commission should also seek to share best practice among Member States;
• in its response, the Government will consider the impact and feasibility of each of the measures proposed and their implications for growth;
• in particular, it remains alive to subsidiarity concerns and will urge the Commission to avoid undertaking actions or making legislative proposals that concern matters most appropriately addressed at Member State level;
• where legislative action is taken, the Government will urge the Commission, the Council, and the European Parliament to subject any legislative proposals to a
rigorous impact assessment to ensure that the proposed legislation is proportionate; and

- the Government will engage in a dialogue with relevant industry stakeholders and Member States as appropriate, and intends to respond to the Commission’s consultation before the period immediately preceding the General Election begins.

Previous Committee Reports

None.

18 Regulation of new psychoactive substances

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

(a) Draft Regulation on new psychoactive substances; (b) Draft Directive amending Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking as regards the definition of drug

Legal base

(a) Article 114 TFEU; co-decision; QMV
(b) Article 83(1) TFEU; co-decision; QMV

Department

Home Office

Document numbers

(a) (35324), 13857/13 + ADDs 1–2, COM(13) 619
(b) (35325), 13865/13 + ADDs 1–2, COM(13) 618

Summary and Committee’s conclusions

18.1 A Council Decision adopted in 2005 (“the 2005 Council Decision”) established a mechanism for the exchange of information on new psychoactive substances, risk assessments, and the introduction of EU-wide control measures and criminal penalties. Document (a) — the draft Regulation — would repeal and replace the 2005 Council Decision and establish a new framework for EU-wide regulation of new psychoactive substances which present moderate or severe health, social and safety risks, whilst providing for the free circulation of those which present low, or no, risks. Document (b) — the draft Directive — is the instrument through which Member States would implement criminal sanctions for the highest risk substances.

18.2 The draft Directive is a Title V (EU criminal law) measure and is subject to the UK’s Title V opt-in Protocol. By contrast, the draft Regulation cites an internal market legal base,
largely on the strength of the Commission’s assertion that there is a significant legitimate trade in new psychoactive substances for commercial, medicinal or research purposes. The Government disputes this, describing the trade as "overwhelmingly illicit". It considers that the draft Regulation (like the draft Directive) should cite a Title V criminal law legal base. It also argues that both proposals build on provisions of the 1990 Schengen Implementing Convention and are therefore subject to the UK’s Schengen opt-out Protocol. The Government confirmed in January 2014 that it had notified the Council of its decision to opt out of the draft Regulation and the draft Directive.\textsuperscript{44}

18.3 In our earlier Reports, we reviewed the draft Regulation and Directive for compliance with the principle of subsidiarity and concluded that the regulatory framework proposed by the Commission would fetter Member State action to an unacceptable degree. Our draft Reasoned Opinion was debated and agreed to by the House of Commons on 11 November 2013. We have also sought further information from the Government on a number of issues, including the appropriate legal base for the draft Regulation and the application of the Schengen Protocol which, if accepted by the Commission and other Member States, would allow the UK to opt out of both proposals.

18.4 In April 2014, the European Parliament agreed its first reading position on the draft Regulation. The Government considered that the changes proposed to the draft Regulation were "helpful, but not sufficient to mitigate our concerns that these proposals fetter the UK’s legislative freedom to respond to the complex challenges posed by new psychoactive substances. This is because the UK would still need to effectively seek approval from the EU to control such substances unilaterally".\textsuperscript{45}

18.5 Negotiations continue within the Council. We have asked the Government to seek a legal opinion from the Council Legal Service to inform discussions on the legal base for the draft Regulation.

18.6 In her latest letter, the Minister for Crime Prevention (Lynne Featherstone), noting (wrongly) that we have cleared both proposals from scrutiny, provides an update on negotiations, describes the Government’s reservations about some aspects of the changes proposed by the European Parliament, and explains the “helpful” contribution made by the Council Legal Service.

18.7 We remind the Minister that these proposals remain under scrutiny. As our earlier Reports have consistently made clear, the choice of legal base has particular significance since it will determine whether the draft Regulation is essentially an internal market or a criminal law measure, and whether the UK’s Title V (justice and home affairs) opt-in Protocol applies. We are unlikely to clear the proposals from scrutiny until a satisfactory outcome on the legal base has been achieved within the Council and the Government is able to tell us which of the UK’s Title V opt-in or Schengen opt-out Protocols apply and how this will be reflected in the recitals to the draft Regulation and the draft Directive.

\textsuperscript{44} See letter of 13 January 2014 from the then Minister for Crime Prevention (Norman Baker) to the Chair of the European Scrutiny Committee and his Written Ministerial Statement of the same date (HC Deb, col. 22WS).

\textsuperscript{45} Letter of 3 June 2014 from the then Minister for Crime Prevention (Norman Lamb) to the Chair of the European Scrutiny Committee.
18.8 We note that the Government appears to have made some headway in securing support within the Council for a Title V legal base. We ask the Minister to ensure that we have sight of any alternative compromise text being prepared by the Latvian Presidency so that it can be considered by our successor Committee before the Council is invited to agree a general approach. Meanwhile, the draft Regulation and draft Directive remain under scrutiny and we look forward to receiving further progress reports.

**Full details of the documents:**  (a) Draft Regulation on new psychoactive substances: (35324), 13857/13 + ADDs 1–2, COM(13) 619; (b) Draft Directive amending Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking as regards the definition of drug: (35325), 13865/13 + ADDs 1–2, COM(13) 618.

**Background and previous scrutiny**

18.9 Psychoactive substances — often referred to as “legal highs” — affect the central nervous system and functioning of the brain, inducing changes in mood, perception and behaviour similar to those associated with the consumption of illicit drugs. Whilst their composition and effects are often unclear, they can be toxic, addictive, damaging to health and carry longer-term social risks, not least because of the involvement of organised crime groups in their distribution. The market in new psychoactive substances is highly adaptable, responding rapidly to the imposition of new drug controls.

18.10 The Commission considers that the 2005 Council Decision establishing the existing EU regulatory framework for new psychoactive substances is inadequate on the grounds that: it is too reactive, following rather than anticipating developments in the market; it lacks the flexibility to respond quickly to changes in the chemical composition of new psychoactive substances; and it only provides for criminal sanctions even though lighter risk management options might be beneficial in some cases. The Commission also highlights the risk that divergent national approaches to new psychoactive substances may impede their legitimate use (for example, for commercial, industrial or scientific research and development purposes) or divert trade in harmful substances from one Member State to another, thereby fragmenting the internal market.

18.11 The Government argues that the draft Regulation, like the draft Directive, should cite a Title V (criminal law) legal base on the grounds that trade in new psychoactive substances is “overwhelmingly illicit” and that the aim and content of the proposal falls within the scope of Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) because it concerns an area of “particularly serious crime with a cross-border dimension”. It also considers that both measures build on the Schengen acquis and are therefore subject to the UK’s Schengen opt-out Protocol. We have questioned the basis for this assertion and noted that the UK appears to be alone in regarding the proposals as Schengen-building measures. The Government nevertheless notified its decision to opt out of both proposals in January 2014. Although the Council and Commission do not accept that the draft Regulation is a Schengen-building measure and, as a result, have not followed
the procedures set out in the Schengen Protocol following notification of the UK’s opt-out, the Government told us:

“Nevertheless, we do not consider the Schengen Protocol to be deprived of effect simply by virtue of the draft Regulation’s failure to recognise that it builds upon the Schengen acquis. Other Member States do, of course, share many of our concerns about the scope of the measure, legal basis, and its impact on national ability to control harmful drugs, and we expect the measure to evolve significantly before adoption.”

18.12 We have questioned the practical utility and effect of the Schengen Protocol in this case since, if its application is not accepted by the Commission and other Member States, the UK will be automatically bound by the draft Regulation unless it is amended to cite a Title V legal base, thereby bringing the UK’s Title V opt-in into play, or the UK is able to establish in legal proceedings before the Court of Justice that the Regulation is a Schengen-building measure.

The Minister’s letter of 10 March 2015

18.13 The Minister (Lynne Featherstone) notes that negotiations are continuing within the Council and that “the final form and legal base of the draft measure has yet to be agreed”. She adds:

“We continue to press for all elements of the measure to have an appropriate Justice and Home Affairs legal base and for proportionate EU level action that enhances information sharing while protecting Member States’ national competence.

“I have previously highlighted our work with a group of like-minded partners to challenge the core objectives and legal base of the measure. This is delivering results, and last month fifteen Member States (including the United Kingdom) delivered a coordinated message that we could not support action under an internal market legal base. In response, the Latvian Presidency are drafting an alternative measure based on a Justice and Home Affairs legal base. This is a significant milestone.”

18.14 We asked the Minister to clarify how changes proposed by the European Parliament, which are intended to enable Member States to introduce or maintain stricter rules on new psychoactive substances domestically, would apply in practice. The Minister explains that the mechanism suggested by the European Parliament (which requires Member States to communicate the relevant domestic measures to the Commission and other Member States) has not yet been discussed by the Council, and adds that “there has been no agreement on its form or necessity”. She expresses concern that the European Parliament’s proposals would require Member States to notify the Commission of their intention to control an illicit substance under the Technical Standards Directive, adding:

“This would potentially require Member States to impose a stand still period in order to allow the Commission and Member States to challenge potential impediments to
free trade. This is clearly inappropriate for illicit substances, and we are working with European partners to advocate an alternative mechanism. One that enhances Member States’ collective understanding of the rapidly changing market in new psychoactive substances, but which removes any stand still period or de facto legislative veto.”

18.15 The Minister notes that the Council Legal Service has not produced a written legal opinion on the proposals, but continues:

“However, they have provided a series of verbal opinions on the potential harmonisation risk to Member States’ national competence posed by an internal market legal base, and on the relative benefits of an alternative Justice and Home Affairs legal base. This has been a helpful development, and has supported the Government in advocating for a change in legal base.”

**Previous Committee Reports**

19 Statistics

Committee’s assessment
(a)-(b) and (d) Legally and politically important
(c) and (e) Politically important

Committee’s decision
(a) Cleared from scrutiny (by Resolution of the House on 20 January 2014)
(b)-(e) Not cleared from scrutiny; further information requested

Document details
(a) Draft Regulation to amend the European Statistical Law,
(b) Draft Regulation on statistics for the macroeconomic imbalances procedure,
(c) Draft Regulation about Commission powers in relation to EU external trade statistics,
(d) European Central Bank Opinion on document (b),
(e) Draft Regulation concerning harmonised indices of consumer prices

Legal base
(a)-(c) and (e) Article 338 TFEU; co-decision; QMV
(d) —

Department
Office for National Statistics

Document numbers
(a) (33844), 9122/12, COM(12) 167,
(b) (35070), 11177/13, COM(13) 342,
(c) (35303), 13517/13, COM(13) 579,
(d) (35415), 14224/13, —,
(e) (36570), 16612/14 + ADD 1, COM(14) 724

Summary and Committee’s conclusions

19.1 At present we have under scrutiny three draft Regulations and an associated European Central Bank Opinion concerned with the EU statistical system. We have also had occasion recently to report again on another draft Regulation, which was cleared from scrutiny in January 2014.

19.2 The Government gives us now, in anticipation of the Dissolution of Parliament, an update on the situation in relation to these five documents.

19.3 We are grateful to the Government for this information. We note that the Government may vote in favour of two of the draft Regulations, even if they have not been cleared from scrutiny. We remind the Government that if this occurs our successor Committee will have to have the circumstances explained to it.

Full details of the documents: (a) Draft Regulation amending Regulation (EC) No. 223/2009 on European statistics: (33844), 9122/12, COM(12) 167; (b) Draft Regulation on the provision and quality of statistics for the macroeconomic imbalances procedure: (35070), 11177/13, COM(13) 342; (c) Draft Regulation amending Regulation (EC) No. 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures: (35303), 13517/13, COM(13) 579; (d) European Central Bank Opinion on a draft Regulation on the provision and quality of statistics for the macroeconomic imbalances procedure (CONC/2013/72): (35415), 14224/13, —; (e) Draft
Regulation on harmonised indices of consumer prices and repealing Council Regulation (EC) No. 2494/95: (36570), 16612/14 + ADD 1, COM(14) 724.

**Background**

19.4 We consider a fairly steady stream of documents concerned with the EU statistical system. At present we have under scrutiny three draft Regulations, documents (b), (c) and (e) and an associated European Central Bank Opinion, document (d). We have also had occasion recently to report again on another draft Regulation, document (a), which was cleared from scrutiny in January 2014.

**The Ministers’ letters of 9 February and 9 March 2015**

19.5 In their separate letters the Minister for the Cabinet Office and Paymaster General (Mr Francis Maude) and the Minister for Civil Society, Cabinet Office (Mr Rob Wilson), update us on these five documents. In the following paragraphs we conflate their comments.

*Draft Regulation to amend the European Statistical Law, document (a)*

19.6 Regulation (EC) 223/2009 is the framework legislation for the European Statistical System. All other legislation under which EU statistics are produced must be made in accordance with that Regulation. In April 2012, the Commission proposed, in this draft Regulation, which was cleared from scrutiny after debate in January 2014, amendments to four key features of the framework Regulation.

19.7 The Government reminds us that:

- it told us recently about unwelcome developments with the text, which introduces provisions for sanctions regimes in future statistical Regulations;
- the Government believes these provisions would be illegal and it could not support them; and
- in February the Government confirmed to us that it does not intend to challenge immediately the provisions in the European Court of Justice.

19.8 We are told now that:

- following consideration of legal-linguist revisions to the text, the draft Regulation was approved by Coreper on 4 March and final adoption was agreed by the Energy Council on 5 March;
- the Government voted against the proposal and laid a minute statement to the effect that Article 338(1) TFEU does not constitute an appropriate legal basis for Article 12.3(b) of the proposed Regulation; and
- the Presidency then transmitted the Council position to the European Parliament for its approval during its March plenary.
Draft Regulation on statistics for the macroeconomic imbalances procedure and a European Central Bank Opinion on the draft Regulation, documents (b) and (d)

19.9 The macroeconomic imbalances procedure (MIP) is a mechanism designed to identify and, if necessary, correct harmful macroeconomic imbalances across the EU. Each Member State is assessed against a “scoreboard” comprised of 11 macroeconomic indicators that monitor the potential development of problematic external and internal imbalances. The information in the scoreboard informs crucial administrative and policy actions so its indicators need to be reliable and of high quality. So the Commission has presented this draft Regulation to introduce a wide range of new procedures and obligations based on statistical provisions in the current Excessive Deficit Procedure and Gross National Income procedures, including Commission inspections of statistical production processes in Member States, peer reviews by EU partners, obligations to produce detailed inventory documentation (descriptions of sources and methods used), methodological visits, production of extensive quality reports by Member States and potential sanctions for negligence or deliberately misrepresenting data.

19.10 Reminding us that the Government’s aims are to secure either a substantial re-draft of the proposed Regulation or its removal altogether, a position we have supported, we are told now that:

- the proposal is still under negotiation at Council working party level, where most Member States are currently overwhelmingly opposed to the Commission’s proposals, and there has been no substantive progress at the committee stage in the European Parliament;

- related to this matter, late in 2014, the Economic and Finance Committee called for stakeholders to evaluate whether the Commission’s proposal was the best means of achieving the objectives;

- the Committee on Monetary, Finance and Balance of Payments (CMFB), has produced a firm proposal for an alternative, less burdensome, approach to achieve the aims of the Commission’s proposal, which would not necessarily require legislation at all;

- this proposal is now being further refined by the CMFB, with good progress made;

- it is, however, still not clear how the Commission will respond to these developments; and

- the Latvian Presidency has stated that discussions are currently on hold.

Draft Regulation about Commission powers in relation to EU external trade statistics, document (c)

19.11 Regulation (EC) 471/2009 concerning statistics on EU trade with non-Member States, contains pre-Lisbon Treaty provisions about the comitology powers of the Commission. This draft Regulation would replace the remaining pre-Lisbon comitology provisions in Regulation (EC) 471/2009 with powers allowing the Commission to adopt
delegated and implementing acts. The Government is generally supportive of the proposal, but intends to secure improvements in the text in order to properly circumscribe the Commission’s use of delegated acts.

19.12 We heard recently that there had been rapid progress on this proposal under the Italian Presidency but that it was not yet known what priority the Latvian Presidency would give it. We are told now that:

- there have been no further significant developments, although the Presidency has indicated that it will consider holding a technical meeting with the European Parliament to clarify the available options for a final compromise text;
- it is possible that negotiations will be completed and the proposal brought to Council before our successor Committee first meets in the next Parliament; and
- in that event the Government would be inclined to vote in favour of the proposal, if the final text is brought into line with similar Regulations, by including an obligation on the Commission to consult Member States’ experts, which should adequately minimise the risks associated with the Commission’s use of delegated acts.

*Draft Regulation concerning harmonised indices of consumer prices, document (e)*

19.13 The Harmonised Index of Consumer Prices (HICP), otherwise known as the Consumer Prices Index, provides a measure of inflation used for effective economic policy-making, and particularly in the area of monetary policy. The aim of this draft Regulation is to rationalise the existing legal framework and implement some new provisions to reflect developments in consumer prices statistics and the EU legal framework over the last 20 years. Whilst acknowledging the Government’s favourable view of the proposal, we have noted its concern about delegated acts aspects of the draft Regulation.

19.14 We are told now that:

- given that this is a new proposal, there have been no significant developments so far;
- initial consideration of the proposal at Council working party level began on 18 February and is scheduled to continue at the next meeting on 17 March;
- it is possible that discussions will be completed and the proposal brought to Council before our successor Committee first meets in the next Parliament; and
- in that event the Government would be inclined to vote in favour of the proposal if the final text adequately minimises the risks associated with the Commission’s use of delegated acts and fully retains measures which provide for improved efficiencies and quality in price statistics.
New business

19.15 We are also told that:

- no further new business is expected to arise from the Presidency plans;
- in February the European Statistical System Committee considered two draft delegated acts — a delegated Regulation amending the methodology for the classification of products by activity and a delegated Regulation setting out the format in which national accounts research and development expenditure data shall be transmitted by Member States to the Commission;
- the Government is satisfied that the delegated acts do not go beyond what is provided for by the basic act and does not foresee any difficulty or significant costs; and
- our staff will be consulted in the usual way when the delegated acts have been published as to whether they need to be deposited for scrutiny.

Previous Committee Reports

20 Reforms to the EU’s trade mark regime

Committee’s assessment  Legally important
Committee’s decision  Cleared from scrutiny subject to conditions

Document details
(a) Draft Regulation amending Regulation 207/2009 on the Community trade mark
(b) Draft Directive to approximate the laws of the Member States relating to trade marks (recast)

Legal base
(a) Article 118 TFEU; ordinary legislative procedure
(b) Article 114 TFEU: ordinary legislative procedure.

Department  Business, Innovation and Skills.

Document numbers
(a) (34807), 8065/13 + ADDs 1–2, COM(13) 161
(b) (34813), 8066/13 + ADDs 1–2, COM(13) 162

Summary and Committee’s conclusions

20.1 A trade mark is a sign which can distinguish the goods and services of one undertaking from those of its competitors. European trade mark law is currently enshrined in Directive 2008/95/EC approximating the laws of the Member States relating to trade marks, and in Regulation 207/2009 on the Community Trade Mark (CTM).

20.2 The Regulation provides for an EU wide trade mark, administered by the Office for Harmonisation in the Internal Market (OHIM), a self-financing executive and regulatory agency of the EU. A CTM provides protection in all Member States. Alongside this, national trade marks, providing protection in the Member State of registration, are available from Member States’ own registries (with the exception of the Benelux countries which offer a combined regional trade mark). This dual system allows businesses to decide how they wish to protect their trade marks to meet their business strategy — in one Member State, in several Member States or across the entire EU. According to the Government, business users are broadly happy with the current regime.

20.3 These proposals make extensive, albeit largely technical, changes to the two trade mark regimes, by aligning them more extensively, improving co-operation between national intellectual property offices (IPOs) and OHIM, and updating the governance of OHIM. Our Third Report of 21 May 2013 sets out the details.

20.4 The Government, whilst supportive of the outcome of negotiations in the Council, did not vote in favour of its General Approach in the Council because it retained provision for OHIM’s surplus to be paid into the EU general budget. When we last considered this matter we had one outstanding question: namely how the percentage re-imbursement of OHIM’s income to member States would be calculated and whether the sums involved would match the amounts currently made available.

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47 Currently called a “Community trade mark” but to be renamed a “European trade mark”.
48 To be renamed the European Union Trade Marks and designs Agency.
20.5 The Minister for Intellectual Property (Baroness Neville-Rolfe) now provides an update on the progress of trilogue negotiations with the European Parliament and reports that the Latvian presidency remains determined to secure an agreement, which she thinks is a reasonable expectation.

20.6 The negotiations with the European Parliament have so far resulted in a number of technical changes beneficial to the UK. There remains under negotiation an overall deal on financing, including: the level of OHIM fees; the redistribution of a percentage of OHIM revenue to Member States; some possible redistribution to the benefit of the Court of Justice and the European School in Alicante; and the transfer of OHIM surpluses to the EU budget. She indicates that the UK red line of not transferring OHIM surpluses to the EU general budget is unlikely to be achieved.

20.7 The Minister’s reply does not deal with the specific question we raised in our previous report concerning the calculation of the percentage of the redistribution of OHIM revenue to Member States and whether the resultant amount will match the amounts currently available.

20.8 We thank the Minister for the further update. Although the UK is unlikely to vote in favour of the text likely to emerge from first reading negotiations with the European Parliament, the Minister asks for clearance of these documents. We are prepared to grant this subject to conditions that (a) the text to be agreed makes no provision for the transfer of OHIM surpluses to the EU general budget; and (b) the percentage of OHIM revenue to be redistributed to Member States results in no decrease of such money being redistributed to the UK.

20.9 We ask that our successor Committee be updated early in the new Parliament, and that it be provided with any text that may have been agreed. Should the UK have voted in favour of any text we ask for an explanation of how the conditions attached to our scrutiny clearance have been met.

Full details of the documents: (a) Draft Regulation amending Council Regulation (EC) No. 207/2009 on the Community trade mark: (34807), 8065/13 + ADDs 1–2, COM(13) 161; (b) Draft Directive to approximate the laws of the Member States relating to trade marks (Recast): (34813), 8066/13 + ADDs 1–2, COM(13) 162.

The Minister’s letter of 10 March 2015

20.10 The Minister gives this overall assessment of progress to date:

“As I outlined in my previous letter we are broadly happy with the reform package as a whole: the modernisations and further harmonisation will bring real benefits for UK businesses. The European trade mark system is considered an enormous success, a view backed up by research, and is well used by UK businesses.”

20.11 She outlines the remaining areas of negotiation:

“It now looks increasingly likely that the co-legislators will try to reach an overall deal on financing including the level of OHIM fees, the redistribution of a percentage of OHIM revenue and, as outlined above, the issue of transfer.
“The Commission has been working to explore ways to address the outstanding concerns, and is promoting a bundle approach. The bundle includes:

- The proposal to use part of OHIM’s revenue to compensate member states for costs related to the trade mark system, which I detailed in my previous update.

- A new proposal to support the Court of Justice of the EU (CJEU) by providing it with a fixed percentage of OHIM’s revenue. As there is a close link between OHIM’s decisions and the percentage of trade mark cases lodged before the Court, the Commission’s case for funding may have some merit. This idea has not met with much support.

- Funding for the EU school in Alicante where the OHIM is based, as the employees of the OHIM are exempt from paying the usual fees for their children’s attendance.

- The possibility of the transfer newly accumulated surpluses to the EU budget.

“The Commission is asserting that all aspects are required for an acceptable solution. The reticence toward the idea providing some funding to the CJEU, may be overridden by the importance the majority of member states put on securing compensation for the extra costs of the trade mark system. However, as outlined above, we will not be able to support any compromise solution which includes the provision on transfer to the EU budget.

“Another remaining contentious issue is Delegated Acts since the Council and the European Parliament continue to hold opposite views, with the Council’s proposing the removal of nearly all the Delegated Acts and the European Parliament aiming to preserve the majority of them. Whilst we support the reduction of the number of delegations, it is likely that the Council will be forced to accept the reinstatement of some of them in an effort to reach a compromise with the European Parliament. The UK position is that, if appropriately framed, some Delegated Acts may be acceptable as part of the negotiating package.”

20.12 The more technical improvements achieved during the trialogue negotiations are described as follows. “Relative grounds” refers to objections to a trade mark based on the existence of an earlier mark, as compared to an objection based on the fact that the mark does not have the necessary characteristics to qualify for registration:

“Goods in transit

The European Parliament has agreed to support the compromise text agreed by the Council, which introduces a defence allowing the owner of the goods to prove that the trade mark is not protected in the country of destination. This is something for which we negotiated hard and we welcome the shift in the European Parliament’s position.

“Small consignments

The Council and the European Parliament agreed to remove the provision allowing trade mark proprietors to prevent the importation of small packages containing
counterfeit goods. We had raised concerns during negotiations that the clause could not be defined clearly enough, meaning that it would not achieve the intended policy goal. Further we believed it could have a negative impact on legitimate goods and private buyers. We are pleased that it has now been recognised that the provision was defective and so deleted.

“Relative grounds

The original provision preventing national offices from refusing applications ex officio on the base of early rights (relative grounds) has been removed. As outlined in a previous update we had concerns about the impact of this provision on our ability to maintain the current UK system, whereby examination based on earlier rights is not conducted ex officio, but upon request through opposition proceedings and we provide searches and notification to assist this process. A compromise amendment agreed on this article allayed some of our concerns, as it made clear that member states could retain their notification systems.

“Technical provisions

During Working Party discussions, the UK was successful in achieving the removal and amendment of a number of technical provisions that would require changes to the UK trade mark law. Some further technical improvements have been agreed at triilogue, including the removal from the Directive of the requirement that request for assignment must be made in writing, that contract must be signed from both parties and that the concerned trade mark cannot be enforced until assignment is recorded. We did not support these provisions during negotiations, considering them overly bureaucratic and unnecessary.”

20.13 The Minister sums up her approach to these negotiations as follows:

“research has indicated how important intellectual property, and in particular trade marks, are to competitiveness and productivity in the EU. Our view remains that the reform of the trade mark system is a positive step that will undoubtedly improve the functioning of a system that already delivers real benefits for UK businesses and our single market partners. It is on this basis that we have long supported the reforms. However, our support must be consistent with our broader principles, and it is unfortunate that the co-legislators continue to support the inclusion of the controversial and unnecessary proposal which will enable a transfer of OHIM surplus income away from intellectual property and into the general budget of the EU, leaving us no choice but to reject the package.”

**Previous Committee Reports**

21 Accession of Ecuador to the EU Trade Agreement with Colombia and Peru

Committee’s assessment
Legally important

Committee’s decision
Cleared from scrutiny; further information requested

Document details
Draft Council Decision on the accession of Ecuador to the Trade Agreement between the EU and Colombia and Peru

Legal base
Articles 91, 100(2) and 207, in conjunction with Article 218(5) and (6) TFEU; QMV

Department
Business, Innovation and Skills

Document number
(36702),—

Summary and Committee’s conclusions

21.1 In April 2007, the Commission was authorised to open negotiations with Colombia, Bolivia, Peru and Ecuador with a view to concluding a Free Trade Agreement (FTA), but Ecuador and Bolivia discontinued their participation, leaving Colombia and Peru to sign a comprehensive agreement with the EU in 2012. However, following negotiations in 2014, it has been agreed that Ecuador would accede to the Agreement with Colombia and Peru, subject to a limited number of adjustments being made to the text.

21.2 This proposal would enable the EU to accede to the revised Agreement.

21.3 The Minister of State for Trade and Investment (Lord Livingston of Parkhead) notes that the Commission had originally sought to treat the original Columbia and Peru Trade Agreement as falling within exclusive EU competence. However, in the event, it was treated as a “mixed” agreement i.e. there are parts for which the EU is exercising competence and other parts for which Member States are exercising their competence. It is expected that the terms of any Decision will be consistent with the new Agreement being mixed; and that if the Commission proposes that the Agreement is entirely within EU competence, the UK will challenge this, as elements within the competence of Member States are included.

21.4 The Government also notes that, whilst trade in services falls within the EU’s exclusive competence post-Lisbon, its position is that Mode 4 provisions in the Agreement engage the UK opt-in because they involve the right of third country nationals to enter the UK to provide services. This is not reflected in the expected legal bases of the Decision.

21.5 The revision of the Columbia and Peru Free Trade Agreement to enable Ecuador to accede raises no new policy issues.

21.6 This exercise does however illustrate the importance of transparency concerning the exercise of competence in respect of “mixed” agreements. Competence creep can arise where the Commission either seeks to extend the scope of the EU’s exclusive external competence or where uncertainty as to whether the EU or Member States are acting in an area of shared competence gives the Commission the opportunity to claim
that the EU is, in fact, exercising shared competence. With this in mind we ask the Minister to provide a copy of any Decision adopted before a successor to this Committee is appointed, identifying the provisions which make it clear that the EU is only acting where it has exclusive competence; and also explaining what steps he has taken to make it clear which are the provisions of the Agreement for which the EU is exercising competence and which are those for which Member States are exercising competence.

21.7 As we have indicated on many previous occasions this Committee does not accept that the UK opt-in is engaged in these circumstances and therefore the Decision applies automatically to the UK unless and until this Decision includes a legal basis from Title V of Part Three of the TFEU. However, in this case, this difference of legal view is not of practical significance as the Government will likely be seeking to opt-in.

21.8 In the meantime we clear this matter from scrutiny to enable the matter to proceed in the period before a successor Committee is appointed in the new Parliament. However should this matter not progress during this period we ask the Minister to deposit any draft Decision for scrutiny by the new Committee.

**Full details of the documents:** Draft Council Decision on the signing of the Accession of Ecuador to the trade Agreement between the European Union and Colombia and Peru: (36528),—.

**Background**

21.9 On 23 April 2007, the Council authorised the Commission to open negotiations with the Andean Community (Colombia, Bolivia, Peru and Ecuador) with a view to concluding a Free Trade Agreement (FTA). However, Ecuador and Bolivia decided to withdraw, leaving Colombia and Peru to continue negotiations. The resulting agreement was initialled by the parties in March 2011, and was then the subject of draft Council Decisions in October 2011 authorising its signature and conclusion by the EU. However, contacts were maintained with Ecuador, as a result of which negotiations were held in 2014, resulting in agreement that Ecuador would accede to the Trade Agreement between the EU and Colombia and Peru, subject to a limited number of adjustments being made to the text.

21.10 Although an official text is not yet available, the Government says that a draft Council Decision on the accession is expected in April, with signature taking place in early June 2015: it also expects the Decision to be similar to that involving Colombia and Peru, and hence consistent with the Agreement being “mixed” i.e. allowing for a separate accession by the Member States. However, it says that, if the Commission proposes that the Agreement is entirely within EU competence, the UK will challenge this, as elements which are within the competence of Member States are included.

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49 Where competence is shared it may be exercised by either the EU or by the Member States individually.
The Government’s view

21.11 In his Explanatory Memorandum of 4 March 2015, the Minister points out that the accession of Ecuador to the Agreement will give UK firms full tariff liberalisation on wines/spirits, as well as significant boosts to market access for automotive, dairy and pork products, and for machinery and chemicals. He also says that the agreement is consistent with the UK’s trade policy objectives and relevant wider policy goals. Accordingly, the Government supports the agreement, which it regards as well balanced and ambitious, with substantial gains for all parties on market access and rules.

21.12 However, the Government also notes that, whilst trade in services falls within the EU’s exclusive competence post-Lisbon, its position is that Mode 4 provisions on the temporary movement of skilled personnel (which concern the admission of third country nationals onto the territory of the United Kingdom) fall within the scope of the United Kingdom’s Title V opt-in; the UK’s JHA opt-in will be engaged. It says that it is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process, and that it will consider the following issues in relation to this measure, when taking an opt-in decision:

- whether there is any impact on immigration to the UK from these provisions; and
- whether they are in line with commitments the UK has already given within the WTO.

21.13 The Minister says that the Mode IV commitments in this agreement go no further than the EU’s offer in the 2006 Doha Development Round, are subject to safeguards, including restricted sectoral coverage and minimum skills thresholds, and that the UK’s implementation of the equivalent provisions in respect of Colombia and Peru have not given rise to any increase in the admission of personnel employed by service suppliers located in those countries. It does not believe that these provisions are any more likely to give rise to an impact on immigration, and it confirms that it considers the Mode IV provisions in the agreement to be incidental to the predominant purpose of the agreement. On that basis, it is minded to opt in to the proposed Council Decision.

21.14 The Government goes on to observe that the Commission originally proposed that the EU-Colombia and Peru Free Trade Agreement was wholly within EU competence, and that Member States could not ratify it in their national parliaments or be parties to it. However, the UK challenged the Commission’s view, with support from other Member States and the agreement was successfully changed to a mixed competence agreement before signature. It says that, if the Commission proposes that the accession of Ecuador to the Agreement is within EU competence, the UK will challenge this, as it believes the Agreement is of mixed competence since it includes elements which are within the competence of Member States. As the agreement contains Mode 4 provisions on the movement of personnel the Government’s view is that the Title V opt-in applies to the Council Decisions on signature and conclusion.
Previous Committee Reports


22 Transport of radioactive material

Committee’s assessment
Politically important

Committee’s decision
 Cleared from scrutiny

Document details
Draft Council Regulation establishing a Community system for registering carriers of radioactive materials

Legal base
Articles 31 and 32 Euratom; consultation; QMV

Department
Energy and Climate Change

Document numbers
(a) (33111), 13684/11 + ADDs 1–2, COM(11) 518
(b) (34289), 14398/12 + ADDs 1–2, COM(12) 561

Summary and Committee’s conclusions

22.1 Although the EU has long had in place arrangements to regulate the safe transport of radioactive goods, the Commission had expressed concern that these could result in carriers engaged in cross-border activities having to follow reporting and authorisation procedures in several Member States. In order to reduce this burden, it put forward in August 2011 a draft Regulation (document (a)), which would require carriers to register on a central Electronic System for Carrier Registration.

22.2 We noted on 19 October 2011 that there were a number of issues which the Government wished to explore further, and we therefore decided to report the proposal to the House, but to hold it under scrutiny, pending further information. We have since had a number of exchanges of correspondence with the Government, which have established that the original proposal had been withdrawn by the Commission, and replaced by another proposal (document (b)) which was very similar. It has also become clear that significant differences of view exist between the various Member States, and we have recently been told by the Government that the replacement proposal has been withdrawn as well.

22.3 These two proposals appear to have generated a significant amount of activity with little to show for it, but, given the strong reservations expressed by the UK on their content, that may be no bad thing. In any event, as both these documents have now been withdrawn, we are releasing them from scrutiny.
Full details of the documents: Draft Council Regulations establishing a Community system for registering carriers of radioactive materials: (33111), 13684/11 + ADDs 1–2, COM(11) (518) and (34289), 14398/12 + ADDs 1–2, COM(12) 561.

Background

22.4 Council Directive 96/2/9/Euratom lays down basic standards for the safety of workers and the general public through maximum permissible doses, maximum permissible exposures to radiation and contamination levels, and fundamental health surveillance principles. At the same time, Directive 2008/68/EC regulates the safe inland transport of dangerous goods generally, to which carriers of radioactive goods are also subject. However, as we noted in our Report of 19 October 2011, the Commission had expressed concern that the arrangements could result in carriers engaged in cross-border activities having to follow reporting and authorisation procedures in several Member States, which may have adopted different procedures.

22.5 In order to reduce the burden on carriers, and require only a single registration, it put forward in August 2011 a draft Regulation (document (a)), which would have required carriers of radioactive material using national and international road, rail and inland waterways transport50 to register their intent to do so on a central Electronic System for Carrier Registration, and to be authorised by the Competent Authority of the Member State of the carrier’s head office (or, if the applicant is not established in a Member State, by the Competent Authority of the territory where the applicant intends to enter the EU).

22.6 In our Report of 19 October 2011, we noted that the Government did not believe that the perceived problems with the current arrangements had been properly defined by the Commission, and that it wished to explore these further. Also, although there had been some assessment of the need to simplify the legislation concerning radioactive material transport and of the proposed requirement for all carriers to be registered, the Government believed that further work was required to fully evaluate all the options. In view of this, we decided to report the proposal to the House, but to hold it under scrutiny, pending further information from the Government.

Subsequent developments

22.7 We subsequently received a letter of 11 October 2012 from the Parliamentary Under Secretary of State at the Department for Energy and Climate Change (Baroness Verma), saying that, although the Government had concluded that the Commission had not made a persuasive case for the proposal, it had not managed to get it withdrawn, but that the Commission had replaced it with a further proposal (document (b)), which contained no material changes. She also said that the Government would now let us have an Impact Assessment.

22.8 In answer to a query raised by our Chairman, the Minister confirmed in a letter of 14 January 2013 that the original proposal had in fact now been withdrawn by the Commission, and she also enclosed the promised Impact Assessment, which suggested that

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50 Different arrangements already exist for air and sea transport.
the cost of the new proposal to UK businesses would be minimal. Our Chairman replied on 6 February 2013, thanking the Minister for this update and saying that we proposed to report these developments to the House in due course, once we had received further information on the Government’s discussions with the Commission and other Member States on the various concerns which the UK had raised.

22.9 The Minister wrote again on 5 June 2013, saying that the then Presidency had established that Member States held very different views, with some favouring no regulation at all, whilst others favoured the proposed registration system, and some had reservations about the proposed legal base. She added that an ad hoc working group had been set up to explore ways to resolve the remaining issues, the UK’s hope still being that this would recommend that the proposal should be dropped. This was followed by a further letter of 17 December 2013, saying that, in the light of the working group discussions, the Presidency did not intend to pursue the dossier at that level, as it believed the Commission needed to reflect further on the comments made by Member States. The Minister added that she thought it unlikely the Commission would bring forward a revised proposal quickly, but would write again if there was anything further to report.

**Minister’s letter of 19 February 2015**

22.10 We have now received from the Minister a letter of 19 February 2015, saying that the proposal has been withdrawn.

**Previous Committee Reports**


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23 **Greenhouse gas emissions from EU institutions and buildings**

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**Document details**

- **Legal base**: —
- **Department**: Energy and Climate Change
- **Document number**: (36417), —

**Summary and Committee’s conclusions**

23.1 The European Court of Auditors says that the European institutions should lead by example in support of EU climate policy, and this Special Report assesses how the larger
institutions calculate, reduce and offset their greenhouse gas emissions. It identifies a number of key findings which are accompanied by a series of recommendations, and it sets out the various responses, the most significant of these being from the Commission, given in particular its power of legislative initiative. After some considerable delay, we have also now established the Government’s views, which broadly support the Court’s recommendations.

23.2 This report provides an essentially factual account, has no policy implications, and does not raise any issues requiring further consideration. Nevertheless, we believe its subject and findings are of interest, not least in identifying the variability (and, in many cases, the inadequacy) of the measures taken by the different institutions. We are therefore drawing it to the attention of the House.

Full details of the document: European Court of Auditors Special Report No. 14/2014: How do the EU institutions and bodies calculate, reduce and offset their greenhouse gas emissions? (36417), —.

Background

23.3 According to the European Court of Auditors, if EU climate policy to be credible, the European institutions must lead by example, and this Special Report assesses how the European Environment Agency and all EU institutions with more than 500 staff in 2012, have calculated, reduced and offset their greenhouse gas emissions. In particular, it examines the extent to which they have made use of the environmental management tools promoted by the Commission, notably the voluntary Eco-Management and Audit Scheme (EMAS) and green procurement.

23.4 The report’s key findings are that:

- the full carbon footprint of the EU institutions and bodies is not known, as six of those assessed do not report their emissions, whilst those doing so do not report either consistently or comprehensively;
- emissions from the EU institutions as a whole are falling, but only in relation to the energy consumption of buildings; emissions from ‘mobility’ have increased in some institutions, but decreased in others;
- over half of the assessed institutions had not set any quantified emission reduction targets, and only two (the European Parliament and the European Investment Bank) had quantified targets for 2020;
- offsetting is used to a limited extent, and there is no common approach;

51 Offsetting involves paying for emissions to be reduced business as usual levels in another part of the world in order to compensate for emissions elsewhere.

52 The 15 bodies are the European Commission; European Parliament; European Council / Council of the European Union (treated as one because of their co-location); European Investment Bank; Court of Justice of the European Union; European External Action Service; European Central Bank; European Economic and Social Committee / Committee of the Regions (treated as one because of their co-location); European Court of Auditors; Office for Harmonization of the Internal Market; European Aviation Safety Agency; European Medicines Agency; European Environment Agency.
progress in introducing the eco-management and EMAS has been slow;

- green procurement is currently an option, not an obligation, and, whilst all of the institutions assessed (except for the European External Action Service) used it to some degree, only the European Environment Agency and the European Central Bank did so across the board;

- green building standards for energy performance are not used systematically for new buildings and renovation projects.

23.5 The report goes on to recommend:

- that the Commission should propose a common policy to reduce the emissions of the European institutions, including a quantified overall target for 2030, and an absolute reduction target in relation to a baseline year;

- harmonised calculating and reporting of emissions;

- a common approach to voluntary offsetting, including requirements that all offsets are high quality and provide eco-benefits (such as local sustainable development);

- full implementation of EMAS and green procurement across all EU institutions.

23.6 Of the institutions assessed in the report, all but the European Parliament provided replies, the most significant being that of the European Commission (because it is the most detailed and holds the power of legislative initiative). It agrees that there should be a common policy, but does not believe there should be quantified overall targets in relation to a base year; agrees with the recommendation on calculation and reporting, subject to the successful development of the relevant methodology; agrees that there should be a common approach of voluntary offsetting; and agrees as regards green procurement.

**The Government’s view**

23.7 The Explanatory Memorandum provided by the Secretary of State for Energy and Climate Change (Mr Edward Davey) on 30 October 2014 merely provided a factual account of the document and suggested that there were no policy implications. However, we felt it would be helpful to know how the Government viewed the key findings, and whether it agreed with the Court’s recommendation. Our Chairman therefore wrote on 5 November asking for this information.

23.8 We have now received — very belatedly — a letter of 10 March 2015 from the Parliamentary Under Secretary of State (Amber Rudd), which says that:

- the UK supports the recommendation that the Commission and other EU institutions should reduce the carbon footprint of their administrative operations;

- the Energy Efficiency Directive places obligations on Member States to renovate 3% of the total floor area of premises owned and occupied by central government each year or take alternative measures;
the UK has adopted the latter approach under its Greening Growth Commitments which are a set of sustainability commitments, including a 25% greenhouse gas reduction target by 2014/15 on 2009/10 levels for central government estates and operations, which should ensure that the UK is fully compliant with this requirement\textsuperscript{53}; and would encourage the Commission and other EU institutions to make similar commitments;

supports the recommendation that EU institutions and bodies should introduce a harmonised approach for calculating and reporting their direct and indirect greenhouse gas emissions, taking account of international best practice and methods for national greenhouse gas inventory compilation;

similarly supports the recommendation that EU institutions develop a common approach to offsetting their emissions on a voluntary basis; and

endorses the development and use of the EU Data Centre Code of Conduct and is broadly supportive of the EU Green Public Procurement criteria for voluntary use by Member States, many of which are used in the UK, and encourages EU bodies and institutions to utilise these tools in their own procurement processes.

Previous Committee Reports
None.

24 Consumption of primary sources of energy

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<td>Draft Council Decision repealing the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of supply difficulties</td>
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Summary and Committee’s conclusions

24.1 The Commission says that the mitigation of disruptions to the supply of crude oil and petroleum products can be achieved either by increasing supply or reducing demand, with

\textsuperscript{53} Ministers have recently agreed a one-year extension of this target so that departments and their bodies which have not yet met the 25% target will continue to aim towards this goal in 2015/16. Further longer-term targets will be considered following the General Election.
the release of emergency oil stocks being a key tool. In particular, Directive 2009/119/EC requires Member States to hold such stocks and to release them in a co-ordinated fashion in the event of a major supply disruption, and a similar obligation applies to members of the International Energy Agency (IEA). At the same time, Council Decision 77/706/EEC allows the Commission to require EU Member States to reduce their consumption of petroleum products by up to 10%, and to take all necessary steps to do this, this too being broadly aligned with an IEA requirement.

24.2 However, the Commission says that the release of emergency stocks is now seen as the main response tool, also that it has never taken steps to enforce demand reduction under Decision 77/706/EEC. It also notes that Directive 2009/119/EC requires Member States to have in place procedures to impose demand restraint measures if needed, and it considers this requirement to be sufficient, making it unnecessary to maintain the overlapping demand restraint measures set out in Decision 77/706/EEC. This draft Council Decision would therefore repeal that earlier Decision.

24.3 The Government says that the repeal of Council Decision 77/706/EEC will not impact on UK policy in this area, since the Energy Act 1976 and Civil Contingencies Act 2004 provide statutory powers for emergency situations, which operate independently of these Decisions. It also notes that the UK approach to fuel resilience focuses primarily on supply side measures.

24.4 This repeal appears to be a logical step, and welcome insofar as it introduces a degree of legislative simplification into this area. Consequently, although we are drawing it to the attention of the House, we are content to clear it.


Background

24.5 According to the Commission, there are two broad options available to mitigate a disruption to the supply of crude oil and petroleum products — to increase supply or reduce demand — and it notes that a key tool for increasing supply temporarily is the release of emergency oil stocks. In particular, Directive 2009/119/EC requires Member States to hold such stocks that could be released in a co-ordinated fashion in the event of a major supply disruption, and a similar obligation applies to those Member States, including the UK, which are also members of the International Energy Agency (IEA).

24.6 As regards demand reduction, Council Decision 77/706/EEC allows the Commission to require EU Member States to reduce their consumption of petroleum products by up to 10%, and to take all necessary steps to do this. This too was broadly aligned with the IEA’s requirement at the time that its members should have sufficient measures in place to reduce consumption by 7% or 10% in the event of a reduction of oil supplies. However, the Commission says that the release of emergency stocks has since come to be considered the main response tool in the event of an emergency, both within the EU and the IEA. In
particular, this approach enables a bridge to be built swiftly until the market is able to find alternative sources, without disturbing economic activity or public life, in contrast to demand restraint measures, which arequire a level of public acceptance difficult to obtain.

24.7 The Commission also notes that it has never taken steps to enforce demand reduction under Decision 77/706/EEC, whereas there have been three co-ordinated releases of emergency oil stocks\(^{54}\) to respond to global supply disruptions. It adds that the shift towards addressing disruptions through supply rather than demand measures, in particular through the use of oil stocks, was reinforced through the revisions to Directive 2009/119/EC. This came into force from 2013, and strengthened the framework for the maintenance and availability of emergency stocks, and set new requirements including the need to hold at least one-third of the oil stocking obligation as the most used finished oil products (petrol, diesel and jet), to enhance the ability of the EU to respond effectively to supply disruptions.

**The current document**

24.8 As the Directive also requires Member States to have in place procedures to impose demand restraint measures if needed, the Commission considers this to be sufficient, and that it is unnecessary to maintain the overlapping demand restraint measure set out in Decision 77/706/EEC. This draft Council Decision would therefore repeal that Decision (and Commission Decision 79/639/EEC, which laid down detailed rules on how the demand reduction target would be set).

**The Government’s view**

24.9 In his Explanatory Memorandum of 10 March 2015, the Minister of State for Energy (Matthew Hancock) says that the repeal of Council Decision 77/706/EEC and Commission Decision 79/639/EEC will not impact on UK policy regarding the disruption of crude oil and petroleum products, since the Energy Act 1976 and Civil Contingencies Act 2004 provide statutory powers for emergency situations, which operate independently of these Decisions.

24.10 He also notes that the UK approach to fuel resilience focuses primarily on supply side measures; that emergency oil stocks are seen as a key method of responding to a substantial disruption; that it holds such stocks as required through its membership of the IEA and the EU; and that the Energy Act 1976 empowers the Government to direct companies to hold stocks of oil which could be released to the market if needed, and to regulate or prohibit the production, supply, acquisition or use of fuel. Also, the National Emergency Plan for Fuel sets out the measures which the Government could take to avoid disruption to essential services during a period of shortage and how these would be implemented, placing the initial responsibility on suppliers.

\(^{54}\) A release of oil stocks by IEA member countries in the build up to the Gulf War in 1991; after Hurricanes Katrina and Rita in 2005; and following disruption of oil supplies from Libya in 2011.
Previous Committee Reports
None.

25 EU legislation on waste

Committee’s assessment  Legally and politically important
Committee’s decision  Cleared from scrutiny; recommendation for debate in European Committee rescinded

Document details  Amendments to EU legislation on waste
Legal base  Articles 114 and 191(2) TFEU; co-decision; QMV
Department  Environment, Food and Rural Affairs and Business, Innovation and Skills
Document numbers  (36209), 11598/14 + ADDs 1–10, COM(14) 397

Summary and Committee’s conclusions

25.1 In July 2014, the Commission put forward, as part of a wider zero waste programme for Europe, this draft Directive proposing a number of changes to a range of existing EU Directives on waste, and, in our Report of 3 September 2014, we concluded that it raised a number of important issues, and should therefore be debated in European Committee A.

25.2 We have now been informed by the Government that the Commission has formally withdrawn this proposal, with a view to replacing it with broader and more ambitious proposals. We are therefore releasing it from scrutiny (and thus rescinding our earlier debate recommendation).


Background

25.3 In its Communication on the development of a zero waste programme for Europe, the Commission identified a number of ways in which amendments might be made to various EU legislative measures relating to waste, and this draft Directive accordingly proposes a number of changes — including more stringent recycling targets and restricting the quantity of waste sent for landfill — to Directive 2008/98 on waste; Directive 94/62/EC on packaging and packaging waste; Directive 1999/31/EC on the landfill of waste; Directive


25.4 In our Report of 3 September 2014, we observed that this was clearly a wide-ranging and significant piece of legislation, which sought to give effect to the proposals set out in the Commission’s wider Communication, but we noted the Government’s comment that many of the Commission’s key assumptions were simplistic, that it had underestimated the true costs of implementing the proposals, and that a proposal setting out for the first time stringent criteria regarding the extension of producer responsibility did not comply with the principle of subsidiarity.

25.5 Although we took the view that this last concern did not justifiy recommending that the House should issue a Reasoned Opinion under Protocol 2 to the Treaty on Functioning of the European Union (TFEU), we did say that, as the proposal raised a number of other important issues, it should be debated in European Committee A, alongside the Commission’s Communication on the development of a zero waste programme.

25.6 We have now received a letter of 11 March 2015 from the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs (Dan Rogerson) pointing out that the Commission has formally withdrawn this proposal, with a view to replacing it with broader and more ambitious proposals on the whole circular economy.

Previous Committee Reports


26 EU humanitarian assistance

Committee’s assessment

Politically important

Committee’s decision

Cleared from scrutiny; drawn to the attention of the International Development Committee

Document details

Commission Staff Working Document: General Guidelines for Operational Priorities on Humanitarian Aid in 2015

Legal base
—

Department
International Development

Document numbers
(36609), 16902/14 + ADD 1, SWD(14) 345

Summary and Committee’s conclusions

26.1 The general guidelines for operational priorities on humanitarian aid in 2015 examines the humanitarian aid operations for 2015 of the European Commission
Directorate for Humanitarian Aid and Civil Protection (ECHO), sets out an indicative budget allocation and frames the Commission humanitarian policy focus.

26.2 It outlines commitments in a number of key policy areas: Resilience; Development and Protracted Displacement; Disaster Risk Reduction; Innovation; Aid effectiveness; Gender and Age; Education; and Food assistance (see our previous Report for full details56).

26.3 The 2015 EU budget for humanitarian aid, food assistance and disaster preparedness is €909 million, to be allocated thus:

— 50% for Africa;
— 24% for the Middle East and European Neighbourhood;
— 14% for Asia and Pacific;
— 6% for Central & South America and Caribbean;
— 3% for Worldwide disasters (small scale disasters facility, epidemics); and
— 3% for Complementary operations (Response capacity building, information and communication, training, Children in Peace education initiative, operational guidance development).

26.4 In her Explanatory Memorandum of 4 February 2015, the Parliamentary Under-Secretary of State at the Department for International Development (Baroness Northover) said that, as the world’s second largest humanitarian donor with a strong field expert network, ECHO’s humanitarian programming “has a huge impact on global humanitarian outcomes”, and that she will continue to work with ECHO and other Member States to ensure greater complementarity of approaches. She underlined her department’s close working relationship with ECHO and its strong involvement in many of these policy areas, noting that:

“Work on building disaster resilience, enhancing global humanitarian response capacity, promoting respect for international humanitarian law and principles and engaging with the UN and other humanitarian actors on pushing for reform through the 'Transformative Agenda'57 remain mutual priorities. The UK is supportive of the Commission’s engagement in these priority areas.”

57 Recent large-scale humanitarian crises, like the Haiti earthquake and floods in Pakistan, were judged to have revealed major weaknesses and inefficiencies in the global relief response, which led to a decision to address the problem through the UN Inter-Agency Standing Committee (IASC), which brings together the main operational relief agencies of the UN, the Red Cross and Red Crescent movement, and international NGOs. IASC consulted host governments, affected communities, relief partners and contributing governments and to the requests from the general assembly for more efficient and well-coordinated international response to major disasters, and produced what is known as the Transformative Agenda, focusing on three key areas:

- Leadership of the international humanitarian response to support a country’s own relief efforts;
- Accountability to all our stakeholders;
- Coordination structures, needs assessments, planning and monitoring.
26.5 The Minister also supported the 2015 budget allocation, which she described as rational, based on a comprehensive needs and risk analysis and as respecting commonly agreed humanitarian principles (see our previous Report for full details58).

26.6 When the Minister’s predecessor (Lynne Featherstone) submitted the 2014 counterpart, she referred to another key component in this area of endeavour — the European Consensus on Humanitarian Aid, which is all about putting in place the foundations for the Commission and Member States working more closely together to ensure the most effective implementation of EU humanitarian aid. The then Minister outlined the findings of an evaluation of its effectiveness; and further outlined her objectives in the discussions that were to take place under the Italian Presidency concerning the nine recommendations in the evaluation (see paragraphs 26.16–26.19 below for full details). The Committee accordingly asked her, when submitting the 2015 operational guidelines for scrutiny, to outline how these negotiations had developed, and to report on the extent to which the Commission had been able to follow and implement the 2014 priorities and approach, particularly with regard to the gender and resilience components.59

26.7 The Minister did not do so. We therefore asked her to provide this further information and, in the meantime, retained the document under scrutiny.

26.8 The Minister now:

— reports that limited and inconclusive discussions were held under the Italian Presidency on the European Consensus on Humanitarian Aid, meaning that the previous action plan has been extended and discussions will continue during the Latvian Presidency;

— says that the next EU annual report on its commitments on Resilience (as set out in the 2012 Resilience Communication Commission and the June 2013 Action Plan) is due out in the next few weeks; in the meantime, she illustrates ways in which Resilience is also now more systematically integrated into European Development Fund programming; and;

— on Gender in Humanitarian Assistance, recalls that the Commission’s objective is to improve the quality of humanitarian assistance, through actions that effectively respond to the specific needs of women, girls, boys, men and elderly women and men, who will have different needs during a crisis; and that it has thus introduced a Gender-Age Marker in January 2014, which uses clear criteria to assess how strongly all ECHO-funded humanitarian projects integrate gender and age: given this, and that the last DFID MAR update60 noted progress both on resilience and gender, the Minister is assured that “ECHO is taking these issues seriously”, but will nonetheless “continue to monitor progress and hold them to account accordingly”.

60 Multilateral Aid Review Update 2013;
26.9 We look forward to receiving the next EU annual report on its commitments on Resilience in due course.

26.10 In the meantime, the Minister having now provided the information that was lacking in the first instance, we now clear the document.

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

**Full details of the document:** Commission Staff Working Document: *General Guidelines for Operational Priorities on Humanitarian Aid in 2015*; (36609), 16902/14 + ADD 1, SWD(14) 345.

**Background**

26.12 Humanitarian aid provided by the EU is a competence exercisable by both the Member States and the European Union. Between them, the EU and its Member States are the largest humanitarian donors in the world.

26.13 The European Commission’s Humanitarian Aid and Civil Protection department (ECHO, or DG ECHO) aims to save and preserve life, prevent and alleviate human suffering and safeguard the integrity and dignity of populations affected by natural disasters and man-made crises. Headquartered in Brussels with a global network of field offices, ECHO aims to ensure rapid and effective delivery of EU relief assistance through its two main instruments: humanitarian aid and civil protection. By bringing together the two under one roof in 2010, the Commission has sought to build up a more robust and effective European mechanism for disaster response both inside and outside the EU. Since 2010, ECHO has operated under the mandate of the EU Commissioner for Humanitarian Aid and Crisis Management.

26.14 Based on international humanitarian principles\(^{61}\) and as set out in the European Consensus on Humanitarian Aid\(^{62}\), the EU provides needs-based humanitarian assistance with particular attention to the most vulnerable victims. Aid is channelled impartially to the affected populations, regardless of their race, ethnic group, religion, gender, age, nationality or political affiliation.

26.15 The EU provides needs-based humanitarian assistance to all major crises zones around the world including Syria, South Sudan, and the Central African Republic, as well

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\(^{61}\) The principles of humanity, neutrality, impartiality, and independence are grounded in International Humanitarian Law. All Member States have committed themselves to them by ratifying the Geneva Conventions of 1949. **Humanity** means that human suffering must be addressed wherever it is found, with particular attention to the most vulnerable; **Neutrality** means that humanitarian aid must not favour any side in an armed conflict or other dispute; **Impartiality** means that humanitarian aid must be provided solely on the basis of need, without discrimination; and **Independence** means the autonomy of humanitarian objectives from political, economic, military or other objectives; see [http://ec.europa.eu/echo/en/who/humanitarian-aid-and-civil-protection/humanitarian-principles](http://ec.europa.eu/echo/en/who/humanitarian-aid-and-civil-protection/humanitarian-principles) for full information.

\(^{62}\) The European Consensus on Humanitarian Aid was jointly agreed by the Council, the European Parliament and the European Commission in 2008, with the aim of confirming their collective commitment to the principles underpinning EU humanitarian aid, to enhance existing commitments for good donor practice across the EU, in partnership with other humanitarian stakeholders, and to put in place the foundations for working more closely together to ensure the most effective implementation of EU humanitarian aid in the years to come; see [http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/consensus_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/consensus_en.pdf) for full information.
as countries facing post-conflict instability, such as Côte d'Ivoire. The EU also plays a similar role in assisting and raising awareness of “forgotten crises” — often protracted crises that no longer capture the media and international community's attention. EU humanitarian aid covers areas such as: food and nutrition, shelter, healthcare, water and sanitation, and others. Aid, funded by the EU, is carried out in partnerships with international organisations and humanitarian NGOs.63

26.16 When the Committee considered the 2014 “Strategy for Humanitarian Aid: General Guidelines on Operational Priorities” at its meeting on 8 January 2014, it noted that it was keen to hear from the then Minister (Lynne Featherstone) about whether she and her Department continued to consider ECHO (as she had put it on the previous such occasion) “very good value for money”, and whether ECHO had made progress in those areas in which DFID’s 2011 Multilateral Aid Review (MAR) had said that there was still room for improvement.

26.17 We accordingly found it gratifying that the Minister was able to report favourably on the areas in which DFID had wanted to see further progress, including adopting a new gender and gender-based violence policy.

26.18 The Minister noted the centrality in the process of the European Consensus on Humanitarian Aid, and that an evaluation was to be assessed in mid-2014. We asked her to write before the summer recess about the findings and of the assessment thereof.

26.19 In her letter of 17 July 2014, the then Minister noted that the evaluation report included a range of conclusions grouped under three headings:

— harmonisation, complementarities and the role of ECHO;

— quality of aid; and

— coherence with other forms of aid.

26.20 She said that the evaluation’s general findings were that although the Consensus and, to a lesser extent, the Action Plan that flowed from it, were well known at headquarters level amongst EU institutions and EU Member States, this did not typically extend to the field level, or to non-humanitarian headquarters departments. Most Member States cited the Consensus as one of the determining factors in the evolution of humanitarian aid policy and practice over the period evaluated, but most agreed that increased cooperation between EU Member States and EU institutions had primarily happened through information exchange in the Council Working Group on Humanitarian Aid and Food Aid (COHAF). DG ECHO’s primary added value was promoting humanitarian principles and good practice through its global presence, critical mass of funding and the technical expertise of its staff on the ground. Overall, the evaluation found that the amount of funding for EU humanitarian aid remained stable over the evaluation period, despite growing global humanitarian needs.

63 See http://ec.europa.eu/echo/en/who/about-echo for full information about ECHO.
26.21 The Minister expected the evaluation’s nine recommendations to be discussed amongst EU Member States and with DG ECHO, through COHAFÁ, during the Italian Presidency. The Government’s guiding principles in these discussions would be:

- “To avoid the duplication of existing and mandated humanitarian coordination mechanisms led by the UN;
- “To protect the valuable role of DG ECHO as a humanitarian donor and promoter of best practice within the EU and beyond; and
- “To ensure that any strategies, implementation plans or mechanisms have real impact on EU humanitarian aid effectiveness and do not detract from operational priorities.”

Our assessment

26.22 We drew the Minister’s timely and informative update to the attention of the International Development Committee.

26.23 We also looked forward to hearing from the Minister about how these negotiations had developed when she submitted the 2015 operational guidelines for scrutiny, as well as reporting on the extent to which the Commission had been able to follow and implement the 2014 priorities and approach, particularly with regard to the gender and resilience components.\(^{64}\)

The Minister’s letter of 24 February 2015

26.24 The Minister now deals with this request as follows:

**European Consensus on Humanitarian Aid**

“Limited discussions were held under the Italian Presidency and were inconclusive. As a result the previous action plan has been extended and discussions will continue during the Latvian Presidency. This status quo has limited implications on the three UK concerns:

1. “Avoiding duplication of existing and mandated humanitarian mechanisms led by the UN.
2. “Protecting the role of DG ECHO as a humanitarian donor and promoter of best practice within the EU and beyond.
3. “Strategies, implementation plans or mechanisms that have real impact on EU humanitarian aid effectiveness and do not detract from operational priorities.

“On 1, the current ECHO position remains that they do not assume a co-ordination role when UN mechanisms are in place; on 2, the roll out of the previous action plan ensures this; and on 3, the 2015 humanitarian aid staff working paper and proposed budget allocation ensure aid effectiveness and operation priorities are safeguarded.

Resilience

“EU commitments on Resilience are set out in the 2012 European Commission Resilience Communication and the resilience Action Plan agreed in June 2013. The EU is acting on its resilience commitments and reports annually on progress — its 2014 report is due out in the next few weeks. Both ECHO and DEVCO see resilience as a mechanism for improved aid effectiveness, risk-informed programming, flexibility, and for building accountability to populations at risk of disasters.

“ECHO has introduced a Resilience Marker which grant-holders are required to report against. It also requires all ECHO projects to consider opportunities to integrate resilience. Strategic assessments to determine how resilience is integrated into projects have been carried out in a number of risk-prone countries (Nepal, Bangladesh, Haiti, Zimbabwe Yemen, Mali and CAR). ECHO, DEVCO, and Member States have engaged on these processes in-country. The majority of ECHO 2014 Humanitarian Implementation Plans identify how ECHO can contribute to longer term resilience strategies. Resilience is also now more systematically integrated into European Development Fund programming.

Gender

“A Commission Staff Working Document on Gender in Humanitarian Assistance: Different Needs, Adapted Assistance, was adopted on 22 July 2013. It outlines the Commission’s approach to gender and gender-based violence in humanitarian aid. The objective is to improve the quality of humanitarian assistance, through actions that effectively respond to the specific needs of women, girls, boys, men and elderly women and men, who will have different needs during a crisis.

“To improve policy coherence, ECHO introduced a Gender-Age Marker in January 2014. This uses clear criteria to assess how strongly all ECHO-funded humanitarian projects integrate gender and age. ECHO is supporting projects that target women who are survivors of sexual and gender-based violence in various countries, including in Syria and the Democratic Republic of Congo.

“Given the above and that the last DFID MAR update noted progress both on resilience and gender, I am assured that ECHO is taking these issues seriously. We should however continue to monitor progress and hold them to account accordingly.”

Previous Committee Reports

27 Gender equality and women’s empowerment in development 2010–15

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; further information requested; drawn to the attention of the International Development Committee

Document details
Commission Staff Working Document on implementation of the EU Plan of Action on Gender Equality and Women’s Empowerment in Development 2010-2015

Legal base
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Department
International Development

Document numbers
(36645), 5732/15, SWD(15) 11

Summary and Committee’s conclusions

27.1 The antecedents of this report go back to a 2007 Commission Communication, the overarching aim of which was to promote progress in achieving equal rights (political, civil, economic, employment, social and cultural) for women and men, girls and boys; equal access to, and control over, resources for women and men; and equal opportunities to achieve political and economic influence for women and men. The strategy envisaged a twin-tracked approach: increasing the efficiency of gender mainstreaming and specific actions for women’s empowerment in partner countries. Priorities included ensuring that gender equality issues formed part of the regular political dialogue with partner countries; integrating gender equality analysis and objectives into country strategies and indicators for measuring performance and impact; and building institutional capacity both within the EU and partner countries. The strategy also noted the need to ensure that gender equality issues were adequately addressed in budget support arrangements.

27.2 This was followed by the EU 2010-2015 Plan of Action on Gender Equality and Women’s Empowerment in Development (GAP). The GAP contains nine objectives, 37 actions and 53 indicators which the European Commission, the European External Action Services (EEAS) and the 117 EU Delegations that have external cooperation activities EU Delegations, and EU Member States, are committed to implement and to report upon annually, to the deadlines agreed for each indicator for which they are responsible.

27.3 The GAP annual report covers the period July 2013–June 2014 and finds that “overall, this report shows some progress in areas such as political dialogue, coordination, partnerships and on the post-2015 agenda. Disappointingly progress remains very slow on issues such as gender analysis, monitoring (indicators) and financial tracking”. The authors say that reports from EU Delegations “clarify that where change is really occurring, it’s because of management and political leadership at the level of Delegation and Headquarters’ middle- and top-management”. The EU has “clear and strong commitments
on GEWE\textsuperscript{65}; however slow progress on the GAP in some countries, sectors or Member States “may reflect a lack of ownership and commitment at the middle management level, combined with a lack of understanding about its implications and know-how on its implementation”. Thus, the Commission says:

“Setting out a clear vision for GEWE and what is sought to be achieved concretely (e.g. through the results framework, post 2015 agenda, sector programmes, political dialogue) might help improve the incentives, understanding and leadership needed for institutional change in the longer term. The new GAP may wish to consider a narrative that clearly states this and consider high level leadership to raise its profile.”

27.4 The Minister (Baroness Northover) underlines the Government’s commitment to putting girls and women at the centre of international development, it being one of the six priorities specified in the 2011-2015 Department for International Development’s (DFID) Business Plan. The UK has been a key member of the EU Gender Experts Core Group since its inception, and is a member of the Task Force to guide the drafting of a new “robust and ambitious” successor to the GAP.

27.5 In the meantime, the Minister says that meeting the targets set out in the current GAP and in its successor will require “stronger, more visible support from EU senior management, improved technical capacity, systematic use of robust gender analysis and gender-disaggregated data, a stronger focus on results, and greater and more consistent engagement with women and girls (beneficiaries) at all stages of the programming cycle”. Action needs to be taken “both in Brussels and in EU Delegations to improve coordination and commitment to delivering results on gender”. The Minister wants to see “faster and deeper progress than has been evident so far” and has “made this clear to the Commission including through Ministerial and senior DFID staff visits to Brussels over the last three months, as well as through active participation in the drafting of the successor to the GAP”.

27.6 The Minister is accordingly pleased that:

“both the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President (HRVP) of the European Commission (Federica Mogherini) and the European Commissioner for International Cooperation and Development (Neven Mimica) have indicated that they will make gender a top priority for their terms in office. This top level leadership is something the UK pushed hard for in our early interactions with the new Commission. We will continue to build on this through further Ministerial engagement, as well as technical inputs via the Task Force and bilateral engagement with Commission officials” (see paragraphs 27.26 below for the Minister’s detailed comments).

27.7 As we recall in the “Background” section of our Report, the general thrust of the report is all too familiar: slow progress in some countries, sectors or Member States, which reflects a lack of ownership and commitment at the middle management level, combined with a lack of understanding about its implications and know-how on its implementation. That is why we recommended a European Committee debate when we received the 2013 GAP report.

\textsuperscript{65} Gender Equality and Women’s Empowerment.
27.8 This 2014 GAP report assumes a particular importance because the position of the Union on the post-2015 agenda — which we consider elsewhere in this Report — gives a strong emphasis to gender equality as an objective in itself and as a crosscutting issue. This is recognised in the Council Conclusions of last May on the 2013 GAP report, which called upon the EU and its Member States to “develop an ambitious and robust successor to the current GAP, focused on results and taking into account the post 2015 agenda”.

27.9 The Council Conclusions on this 2014 GAP report that will be adopted later this year, presumably at the late-May “development” Foreign Affairs Council, likewise assume a particular importance. The story thus far is of the Commission/European External Action Service (EEAS) “talking the talk”, but failing to “walk the walk”. It would be surprising if the new HR and Development Commissioner did not make gender a top priority; it was no doubt such with their predecessors. A successor GAP should indeed focus on results. But before then the Commission and EEAS need to focus on implementation of what has been agreed thus far. We agree that top level leadership is vital. We expect to see this sine qua non reflected in the Council Conclusions. We accordingly ask the Minister to provide the Committee with a copy of them in due course, and her (or her successor’s) assessment of how they take the vital issue of GEWE forward in the right way and with genuine commitment.

27.10 In the meantime, we now clear this report from scrutiny.

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


**Background**

27.12 Gender equality is one of the eight Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015 — the others being to eradicate extreme poverty and hunger; achieve universal primary education; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.

27.13 Adopted by the Council in 2010, the GAP contains nine objectives, 37 actions and 53 indicators. All are time bound. European Commission services and the European External Action Services (EEAS) at Headquarters and Delegations level, as well as EU Member States, are all committed to its implementation and to report progress annually. Indicators are selected each year for reporting, their selection depends on factors such as their target

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67 For a full discussion of Gender Equality and Women Empowerment, see the April 2003 UN Millennium Project Background Paper of the Task Force on Education and Gender Equality Promises to Keep: Achieving Gender Equality and the Empowerment of Women.
date for completion. The indicators are all expected to track actions that in turn feed into the 9 objectives deemed necessary to strengthen the capacity of the European Union and EU Member States to improve gender equality mainstreaming in and contribute to women’s empowerment through development cooperation. The indicators deal with those areas considered essential ingredients of effective mainstreaming, including: political dialogue, programme and project design and implementation, measurement, peace and security etc.

27.14 A year ago, when submitting the third of these GAP annual reports for scrutiny, the then Minister (Lynne Featherstone) was pleased that, as in previous years, the report highlighted not only the achievements made in promoting gender equality through development cooperation, but also the persisting challenges and areas where more work needed to be done. She described the report’s conclusion that, overall, progress was “extremely slow” between July 2012 and June 2013 as very disappointing. Only nine of 45 EU Delegations achieved the target of 75% of all new project proposals scoring G-1 or G-2 on the OECD Gender Equality Policy Marker scale (which are assigned to projects that include gender equality as a “principal” or “significant” objective, respectively). The main tools for achieving and monitoring gender mainstreaming were not universally implemented by staff in EU Delegations, despite being compulsory; this largely stemmed from a lack of understanding of gender issues amongst EU Delegation staff. On the positive side, the report noted that gender equality were becoming a more established issue for dialogue with host governments and civil society. Twelve EU Delegations had produced Gender Country Profiles, which assessed the status of gender equality in a partner country as a baseline to inform programming, and 13 others planned to do so. Gender equality was being included in the assessment and monitoring of programmes in an increasing number of sectors. The Minister also noted that the EU institutions and a number of Member States remained highly committed to prioritising gender equality in global negotiations, including as part of the post 2015 development agenda: but also said that to “ensure the credibility of the EU’s position in these negotiations”, it was “very important that the EU delivers on its own commitments to integrate gender equality in its development programmes”.

27.15 The Minister went on to underline the Government’s commitment to putting girls and women at the centre of international development (one of the six priorities in the DFID Business Plan 2011–2015) and noted that the UK had lobbied hard for the Commission to create its GAP and been a key member of the EU Gender Experts Core Group. Nonetheless, DFID’s 2011 Multilateral Aid Review (MAR) identified the need to “strengthen gender mainstreaming in practice and measurement of impact of gender work” as a reform priority for the European Commission. She then said:

“Our recent update to the MAR, published in December 2013,68 finds that, while around 50% of the GAP targets have been met, ‘more attention is needed, particularly by senior management’. In our follow-up to this assessment, we will continue to press the EU to step up to the mark and meet the targets set in the GAP. This will require stronger, more visible support from EU senior management, and improved technical capacity at a working level, particularly producing and using gender-disaggregated data. Action needs to be taken both in Brussels and in EU

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68 Multilateral Aid Review Update 2013
Delegations to improve coordination and commitment to delivering results on gender. We want to see faster and deeper progress than has been evident so far, and we have made this clear to the Commission including through senior DFID staff visits to Brussels over the last three months. In particular, we will work with the EU institutions to strengthen action on the issue of violence against women and girls, an area in which the UK is a key player, including through my role as International Violence Against Women Champion.”

Our assessment

27.16 Three years on, this was, we felt, an unimpressive picture: unsurprisingly, a mid-term review was nowhere to be seen. We therefore recommended that, in order for the Minister’s hand to be strengthened, the Commission/EEAS performance thus far should be debated in European Committee.\(^69\) That debate took place on 6 March 2014, at the conclusion of which the European Committee resolved thus:

“"That the Committee takes note of European Union Document No. 17432/13, Commission Staff Working Paper: 2013 Report on the Implementation of the EU Plan of Action on Gender Equality and Women’s Empowerment in Development 2010-2015; welcomes the document as a frank assessment of the EU’s implementation of its Action Plan; and supports the Government’s efforts in encouraging the European Commission to address the weaknesses identified in the Report in order to ensure further integration of gender equality in EU development assistance."”\(^70\)

The 2014 GAP implementation report

27.17 This report covers the period July 2013 to June 2014, and assesses progress against those indicators due to be achieved in this period and/or whose progress was slow in previous periods. It is informed by 78 EU Delegation Reports, representing 82 countries, by 20 Member States Headquarter level reports and by contributions from Commission services and the EEAS.

27.18 The Commission says:

“"Overall, this report shows some progress in areas such political dialogue, coordination, partnerships and on the post 2015 agenda. Disappointingly progress remains very slow on issues such as gender analysis, monitoring (indicators) and financial tracking.”

27.19 The report summarises what the Commission sees as 2013-14’s achievements and challenges, and then looks at the prospects for a successor thus:

“"Acknowledging its limitations, the GAP remains an important tool to promote and track gender mainstreaming. A successor to the GAP has been requested by the Foreign Affairs Council in its Conclusions on the 2013 Report on the Implementation

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\(^70\) Gen Co Deb, European Committee B, 6 March 2015, cols. 3-24.
of the EU Plan of Action on Gender Equality and Women’s Empowerment 2010–15 (adopted in May 2014). The Council calls upon the EU and its Member States to ‘develop an ambitious and robust successor to the current GAP, focused on results and taking into account the post 2015 agenda’.

27.20 This fourth report, the Commission says, “comes at an important time in the process of developing a new instrument to improve gender equality and mainstreaming across EU development cooperation”. Its findings, combined with previous ones and the ongoing evaluation, “have raised a number of interesting and important issues to be considered in designing a new instrument”. The GAP successor could “potentially start on a sounder and more robust footing than its predecessor”. Reports from EU Delegations “clarify that where change is really occurring, it’s because of management and political leadership at the level of Delegation and Headquarters’ middle- and top-management”. The EU has “clear and strong commitments on GEWE”; however slow progress on the GAP in some countries, sectors or Member States “may reflect a lack of ownership and commitment at the middle management level, combined with a lack of understanding about its implications and know-how on its implementation”. Thus, the Commission says:

“Setting out a clear vision for GEWE and what is sought to be achieved concretely (e.g. through the results framework, post 2015 agenda, sector programmes, political dialogue) might help improve the incentives, understanding and leadership needed for institutional change in the longer term. The new GAP may wish to consider a narrative that clearly states this and consider high level leadership to raise its profile.”

27.21 In her Explanatory Memorandum of 25 February 2015, the Parliamentary Under-Secretary of State at the Department for International Development (Baroness Northover) welcomes the publication of this fourth report and professes herself pleased that, as in previous years, the report highlights not only the achievements made in promoting gender equality through development cooperation, but also the areas where more work needs to be done.

The Government’s view

27.22 The Minister comments as follows:

“It is clear from the fourth report that there needs to be significant improvement in the rate of implementation of GAP priorities and more consistent performance across all of the EU institutions. There are a number of areas where the UK would like to see progress: firstly, EU Delegations must ensure that 80% of all annual reviews include gender analysis — a target under the GAP; secondly, while the number of EU Delegations with a gender country profile has increased from 12 in 2013 to 22, it is imperative that all EU Delegations complete a gender country profile — a requirement under the current GAP.”

71 See full Council Conclusions.

72 The review of gender is to be included in the annual reviews carried out by EU Delegations, including, but not limited to, the Joint Annual Report, in the European Neighbourhood Policy Progress Reports, in the Human Rights report, in Mid-Term reviews, evaluations of cooperation, sectorial reviews (the Minister’s footnote).
27.23 She goes on to say that the Government believes that the challenges faced by women and girls should be addressed in all specific programming, including the new National Indicative Programmes and Multiannual Indicative Programmes, and that they should be underpinned by systematic and robust gender analysis:

“We believe that the EU must meet the targets it has set itself, including ensuring that 75% of all new project proposals scoring G-2 or G-1 on the Organisation for Economic Cooperation and Development’s (OECD) Gender Equality Policy Marker (G-Marker) scale (which are assigned to projects that include gender equality as a ‘principal’ or ‘significant’ objective, respectively); this will require an improvement on current performance. To this end, staff in EU Delegations should ensure that the main tools for achieving gender mainstreaming (the Gender Screening Checklist for appraising the gender-sensitivity of projects; and gender equality assessments in Results Oriented Monitoring (ROM)) are universally implemented.”

27.24 The Minister also highlights the fact that the report notes that the position of the Union on the post-2015 agenda gives a strong emphasis to gender equality as an objective in itself and as a crosscutting issue:

“This is welcome given the United Kingdom’s strong pressure for gender equality to be at the heart of the post-2015 framework. To ensure the credibility of the EU’s position in these negotiations, it is very important that the EU delivers on its own commitments to integrate gender equality across all of its instruments, programmes and projects.”

27.25 On the question of the call in the May 2014 Council Conclusions for the EU and its Member States to “develop an ambitious and robust successor to the current GAP, focused on results and taking into account the post-2015 agenda”, the Minister says:

“It identifies the need for greater political leadership, potentially including a focus around sectors where the EC is well placed to implement programmes that can have transformational effects on gender, such as violence against women and girls, female genital mutilation, and/or girls’ education. The report emphasises the need for ‘strong and robust’ analysis as a prerequisite for good programming that can really deliver results. EU Delegations have reiterated that whilst compliance at design stage is important, it is not enough and must go alongside good monitoring and evaluation. Therefore the GAP must not be seen in isolation, but be completed alongside other instruments such as the EC results framework, National Indicative Programmes (NIPs) and Multiannual Indicative Programmes (MIPs)”.

27.26 The Minister continues her comments as follows:

“The UK Government is committed to putting girls and women at the centre of international development, and has made this one of the six priorities specified in the Department for International Development’s (DFID) Business Plan 2011–2015. We believe that investing in girls and women has a transformative impact on growth,
poverty reduction and the MDGs. The UK lobbied hard for the Commission to create its GAP in 2010 and DFID has been a key member of the EU Gender Experts Core Group since its inception. Moreover the UK has successfully lobbied for the creation of a Task Force, including member states, to guide the drafting of a new ‘robust and ambitious’ successor to the GAP. The UK sits on this Task Force, and plays an active role in influencing its direction.

“The update to the Multilateral Aid Review (MAR), published in December 2013, found that, while around 50% of the GAP targets have been met, ‘more attention is needed, particularly by [Commission and EEAS] senior management’. In our follow-up to this assessment, we will continue to press the EU to ensure that it meets the targets set out in the current GAP and in its successor. This will require stronger, more visible support from EU senior management, improved technical capacity, systematic use of robust gender analysis and gender-disaggregated data, a stronger focus on results, and greater and more consistent engagement with women and girls (beneficiaries) at all stages of the programming cycle. Action needs to be taken both in Brussels and in EU Delegations to improve coordination and commitment to delivering results on gender.

“We want to see faster and deeper progress than has been evident so far, and we have made this clear to the Commission including through Ministerial and senior DFID staff visits to Brussels over the last three months, as well as through active participation in the drafting of the successor to the GAP. We are pleased that both the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President (HRVP) of the European Commission (Federica Mogherini) and the European Commissioner for International Cooperation and Development (Neven Mimica) have indicated that they will make gender a top priority for their terms in office. This top level leadership is something the UK pushed hard for in our early interactions with the new Commission. We will continue to build on this through further Ministerial engagement, as well as technical inputs via the Task Force and bilateral engagement with Commission officials.

“GAP reporting covers progress by Member States as well as in the EU institutions. 20 Member States provided information for the current report, including the UK. DFID’s Strategic Vision for Girls and Women aims to unlock the potential of girls and women, to stop poverty before it starts. It empowers girls and women, enabling them to have voice, choice and control. Achieving this requires an enabling environment of strong, open and inclusive economies, societies and political institutions. This includes addressing the social norms and relationships that underpin how girls and women are valued in society, and which influence the opportunities they can seize. Progress against four interlinked ‘game-changing’ outcomes is critical: (i) girls’ completion of primary and secondary education; (ii) economic empowerment; (iii) ability to live free from violence; and (iv) universal sexual and reproductive health and rights”.

27.27 Finally, the Minister says that discussions on the report in the Council working group on development (CODEV) are on-going, and that Council Conclusions will likely be drafted in March 2015, for subsequent adoption by the Council.
Previous Committee Reports


28 Common Security and Defence Policy: EULEX Kosovo: allegations of corruption

Committee’s assessment Politically important
Committee’s decision Cleared from scrutiny (decision reported on 3 September 2014); further information requested

Document details
Council Decision amending the budget of the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO) (36259)

Legal base Articles 28, 42(4) and 43(2) TEU; unanimity
Department Foreign and Commonwealth Office
Document number (36259), —

Summary and Committee’s conclusions

28.1 EULEX Kosovo was established in 2008 to provide support to Kosovo’s fledgling judiciary, police and customs institutions. It also has an executive mandate to investigate serious crime including high-level corruption and war crimes. The extension of its mandate until June 2016 reflected continued difficulties with the Rule of Law.

28.2 However, some progress having been made, EULEX is to become a smaller and more focused presence, concentrating on capacity building throughout Kosovo, security and the implementation of agreements reached in the Belgrade-Pristina dialogue in the north; and beginning to phase out its executive functions in the justice sector as part of a handover of responsibility to Kosovo, while completing its work on ongoing serious cases.74

28.3 In September 2014, the Minister for Europe (Mr David Lidington) confirmed that Kosovo had agreed, in principle, to create a special court regarding EULEX’s Special Investigative Taskforce.75 EULEX would have an important role in assisting Kosovo with the operation of this court, including discussions with a potential host state concerning the relocation of judicial proceedings, in order to prosecute and adjudicate criminal charges

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74 See (36004), —: Fiftieth Report HC 83-xlv (2013–14), chapter 15 (14 May 2014) for full details of the two-year mandate extension.
75 Special Investigative Task Force (SITF): a part of EULEX since 2011, which has been investigating the allegations in the 2010 Council of Europe Marty Report of organ trafficking and other serious crimes committed immediately after the 1999 conflict.
arising from SITF investigations. We had expected to hear from the Minister in the New Year about how these changes were working out.76

28.4 In the meantime, on 6 November, he wrote concerning recent allegations of corruption within EULEX’s ranks made by a UK national seconded to EULEX as a prosecutor, and “secondary allegations” relating to “EULEX’s handling of this issue and of the UK staff member concerned”. He noted that the UK, along with other Member States, had quickly made it clear to the European External Action Service (EEAS) that a thorough response was needed, which not only investigated the allegations but also ensured that public confidence was maintained in EULEX’s handling of such cases; that the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) had announced that an external investigation would take place into the matter; and that the issue was discussed by the European Parliament’s Foreign Affairs Committee on Monday 3 November. Further details are set out in our previous Report.

28.5 Subsequent to the Minister’s letter, the HR announced that she had appointed Mr. Jean Paul Jacqué as independent expert to review EULEX Kosovo mandate implementation with a focus on the handling of the corruption allegations, describing him as “a distinguished law professor with over 40 years of experience”, adding that “his tenure as Director of the Council Secretariat legal services offers him a unique expertise and perspective to review these allegations” and saying that she had asked Mr. Jacqué to “revert to me within 4 months with his report and his recommendations”.

28.6 The Minister undertook to “update the Committee in due course as the situation develops”. In the first instance, we asked:

- if he was satisfied with the steps announced by the High Representative: in particular, whether the appointment of someone with M. Jacqué’s background, and a four-month mandate, constituted the “thorough response” he was seeking, in terms of independence, timeliness and the requirement for “transparency and much-needed external scrutiny” that he rightly highlighted;
- what had transpired from the contacts made by his officials with EULEX and the EEAS, in view of the prosecutor making the allegations and some of the individuals named in secondary allegations being UK nationals seconded to EULEX by the FCO; and
- more generally, whether he in any way shared the reservations some seemingly had about the real effectiveness of this costly Mission.

28.7 We also asked what the state of play was on the establishment of a special court, in order to prosecute and adjudicate criminal charges arising from investigations by EULEX’s Special Investigative Taskforce.

28.8 The Minister said:

76 See Ninth Report HC 219-ix (2014–15), chapter 43 (3 September 2014) and its Annex for further background and the detailed budget; also the earlier Reports cited at the end of this chapter of our Report.
it was too soon to say how the investigation would proceed or what its conclusions would be. But it was being conducted by someone with no connection to EULEX. There were also likely to be complementary investigations by the European Ombudsman and the EU’s Anti-Fraud Office (OLAF). He was confident that, together, these investigations were an adequate response “for the time being”; he looked forward to their findings, and had asked officials to monitor developments closely;

in relation to matters affecting UK secondees, he and his officials had focused their efforts on ensuring that the welfare and rights of FCO staff are respected and that due process is followed on any disciplinary matters, with EULEX remaining in charge of pursuing any appropriate investigations. Once again, the various EU processes in train had yet to reach a conclusion, so it was too soon to say what the consequences for the UK might be; also, it would not be appropriate to comment in detail on individual cases. But officials were in regular contact with EULEX and with FCO staff seconded to the mission, and are prepared to provide assistance as appropriate;

EULEX had been in place for many years and had made significant progress on a number of issues, such as building up the Kosovo police, dealing with cases of serious crime, and facilitating implementation of the 19 April agreement between Serbia and Kosovo on matters concerning customs and border controls. As well as the €20 million cut to EULEX’s budget for its new mandate beginning in October, UK officials had also secured an agreement that the mission must work towards a handover of responsibilities to the Kosovan authorities as it headed towards its mandate end date of June 2016, which “sets us on the right track” for further downsizing if the appropriate conditions could be met. Depending on how these plans proceeded, they would “go some way” towards addressing concerns about ongoing cost-effectiveness;

there was no further progress to report at this stage in relation to the establishment of a special court: the prosecution’s work in building its case continues, but establishment of an out-of-country court, which relied on the Kosovo Assembly passing a number of laws, had been stymied by the political impasse following the June parliamentary elections; however, as there were “now signs that Kosovo will form a government shortly”, he expected progress would “resume in due course”.

Our assessment

28.9 Though the Minister was somewhat guarded in his response concerning the steps announced by the High Representative, we agreed that it was too soon to draw any conclusions. But a month had passed since the HR’s announcement. We therefore asked the Minister to write again in two months’ time on:

both the Jacqué investigation and the others that he anticipated, updating us on how matters stood and whether they had fulfilled his criteria, viz., a “thorough response” in terms of independence, timeliness, transparency and “much-needed external scrutiny”;
• the matters affecting UK secondees, including the UK national seconded to EULEX as a prosecutor who made the original allegations;

• the establishment of the special “out of country” court, which was central to the effective execution of the remainder of the mission’s mandate and indicative of the commitment of the Kosovar political establishment to its work.

28.10 In the meantime, we again drew these developments to the attention of the House because of the degree of interest in developments in Kosovo.77

28.11 The Minister now says about the corruption allegations:

• the Jacqué investigation report, initially planned for the end of January, is now not expected until March;

• he and his officials are “continuing to encourage the EEAS to release the report as soon as it is possible for a thorough investigation to be completed”;

• the European Ombudsman has concluded her own investigation, but has decided not to comment on the issue until after any criminal investigation and the Jacqué investigation have been completed;

• there have been no further complaints or concerns raised by UK secondees in relation to the corruption allegations;

• while he cannot comment on individual cases, he can assure the Committee that “my officials are in regular contact with EULEX and the FCO staff seconded to the mission and, where appropriate, with former staff facing ongoing issues as a result of the corruption allegations”.

28.12 With regard to the establishment of a special court, the Minister says:

“in early January the EEAS met with Kosovo Deputy Prime Minister and Minister of Justice Hajredin Kuçi to discuss the proposed constitutional and legislative amendments necessary to enable court relocation to a third state. These amendments have been agreed at a technical level. We understand the Minister will now be submitting them to the Kosovo Assembly and for consideration by the Constitutional Court, a process taking 30-60 days. By April, we anticipate that the EEAS will revert to the Political and Security Committee and propose a Council Decision to approve a new budget and any necessary modifications to the EULEX O Plan to allow EULEX to continue to play a supporting role in the arrangements between Kosovo and the third state (EULEX’s current budget expires in June). From there, the implementation and ratification of a formal host state agreement between Kosovo and a third state, which is essential for a trial to begin, could take twelve months to complete. We may, however, see early logistical steps for the establishment of the court to start to be taken in parallel to this process.”

28.13 We would like the Minister to write to us again, once the Jacqué investigation reports. We would like him to summarise its findings. We would like him then to say if he regards it as a “thorough response” in terms of independence, timeliness, transparency and “much-needed external scrutiny”; and if so, to illustrate how. We would like him to outline what further steps are then due to take place, what criminal investigations are under way or what might in other ways be reasonably holding up publication of the European Ombudsman’s own investigation. We would like his general views on the general satisfactoriness of the process overall.

28.14 We would also like to know what the position then is with regard to the UK national seconded to EULEX as a prosecutor who made the original allegations.

28.15 With regard to the proposed special out-of-country court, we look forward to hearing more about what happens between now and then when he submits the next Council Decision on EULEX Kosovo for scrutiny. At that time, we would like his assessment of the response of the Kosovar political establishment and what it means for the prospects for taking further forward Kosovo’s Stabilisation and Association Agreement.78

28.16 In the meantime, we again draw these developments to the attention of the House because of their importance to the development of the EU’s policy in the western Balkans.


Background

28.17 The draft Council Decision concerns an 8-month budget of €55,820,000, to cover the period 15 October 2014 to 14 June 2015, and thus fund the first year of the latest, two-year mandate.

28.18 Since then, as noted above, the mission has been enveloped in allegations of corruption within EULEX’s ranks made by a UK national seconded to EULEX as a prosecutor, and “secondary allegations” relating to “EULEX’s handling of this issue and of the UK staff member concerned”. The Minister was asked in our most recent Report to respond to a number of questions (also see above).79 His response is summarised above and detailed in our most recent previous Report.80

78 The Stabilisation and Association Agreement (SAA) constitutes the framework of relations between the European Union and the Western Balkan countries for implementation of the Stabilisation and Association Process. The agreements are adapted to the specific situation of each partner country and, while establishing a free trade area between the EU and the country concerned, they also identify common political and economic objectives and encourage regional co-operation*. In the context of accession to the European Union, the agreement serves as the basis for implementation of the accession process. In 2008 the EU repeated its willingness to assist the economic and political development of Kosovo “through a clear European perspective”. The EU and Kosovo chief negotiators initialled the SAA between the EU and Kosovo in Brussels on 25 July 2014.


The Minister’s letter of 26 February 2015

28.19 The Minister responds as follows:

“Firstly, in relation to the Jacqué investigation, the report initially planned for the end of January is now not expected until March. We are continuing to encourage the EEAS to release the report as soon as it is possible for a thorough investigation to be completed. The European Ombudsman has concluded her own investigation, but has decided not to comment on the issue until after any criminal investigation and the external investigation led by Mr Jacqué have been completed.

“In relation to matters affecting UK secondees, I can confirm that there have been no further complaints or concerns raised by UK secondees in relation to the corruption allegations. While I cannot comment on individual cases, I can assure the Committee that my officials are in regular contact with EULEX and the FCO staff seconded to the mission and, where appropriate, with former staff facing ongoing issues as a result of the corruption allegations.

“Finally, in relation to the establishment of a special court, in early January the EEAS met with Kosovo Deputy Prime Minister and Minister of Justice Hajredin Kuçi to discuss the proposed constitutional and legislative amendments necessary to enable court relocation to a third state. These amendments have been agreed at a technical level. We understand the Minister will now be submitting them to the Kosovo Assembly and for consideration by the Constitutional Court, a process taking 30-60 days. By April, we anticipate that the EEAS will revert to the Political and Security Committee and propose a Council Decision to approve a new budget and any necessary modifications to the EULEX O Plan to allow EULEX to continue to play a supporting role in the arrangements between Kosovo and the third state (EULEX’s current budget expires in June). From there, the implementation and ratification of a formal host state agreement between Kosovo and a third state, which is essential for a trial to begin, could take twelve months to complete. We may, however, see early logistical steps for the establishment of the court to start to be taken in parallel to this process.”

Previous Committee Reports

29 Restrictive measures against Syria

Committee’s assessment
Legally and politically important

Committee’s decision
Cleared from scrutiny (decision reported on 21 January 2015)

Document details
(a) Council Implementing Decision implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (b) Council Implementing Regulation implementing Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria

Legal base
(a) Article 29 TEU; unanimity; (b) Article 32(1) of Regulation 36/2012; QMV

Department
Foreign and Commonwealth Office

Document numbers
(a) (36603),— (b) (36604),—

Summary and Committee’s conclusions

29.1 These proposals will re-impose travel restrictions and asset freezes against three individuals associated with the Assad regime in Syria, Ayman Jabir, Khalid Qaddur and Mohamed Hamcho, and one entity, Hamcho International. The original restrictions were annulled by the General Court. It is apparent from the judgement in respect of Jabir that evidence relied on originally against him included Wikipedia. The re-listing is based on new statements of reason.

29.2 At our meeting of 21 January 2015 we cleared these documents but sought the confirmation from the Minister (Mr David Lidington) that he considers the reasons given for the restrictive measures are sufficiently robust to either deter or withstand further legal challenge. We also asked him to provide the open source evidence.

29.3 Consideration of this matter has been held back in order to report it in conjunction with the Iranian nuclear issues in chapter 14.

29.4 We note that the Minister confirms that these relistings are legally robust.

29.5 He sets out the same objections to disclosing to Parliament the open source evidence supporting the listings as for Iranian restrictive measures reported at chapter 14 i.e. it would be contrary to the Council Rules of Procedure preventing disclosure of the “deliberations of the Council”. We re-iterate that our request did not seek information as to which Member State proposed restricted measures, nor the deliberations of the Council in respect such information. It lacks credibility that information available to the public should become clothed in confidentiality simply because it is included in a document considered by the Council. We strongly doubt that the Council or the Government will be able to enforce the confidentiality of open source material or sustain it if challenged.
**Full details of the documents:** (a) Council Implementing Decision implementing Decision 2013/255/CFSP concerning restrictive measures against Syria: (36603), —; (b) Council Implementing Regulation implementing Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria: (36604), —.

**Background**

29.6 On 13 November 2014, the General Court of the European Union annulled the designations of Khalid Qaddur, Ayman Jabir, Mohamed Hamcho and Hamcho International under the EU Syria sanctions regime in Cases T-653/11 Ayman Jabir vs. Council, T-654/11 Khalid Qaddur vs. Council and T-43/12 Mohamed Hamcho and Hamcho International vs Council. The Court’s main reason for annulment in each case was that the EU Council was unable to provide the Court with sufficient evidence to back up the assertions made in the statement of reasons. The Court suspended the effects of the annulment until 28 January 2015.

**The Minister’s letter of 4 February 2015**

29.7 The Minister’s responds to the request for confirmation as to the robustness of these relistings:

“It is our view that the evidential basis of the Council’s decision to relist the three individuals and one entity is legally robust and that in the event of challenge, the Council should be in a position to successfully defend the cases.”

29.8 In respect of these disclosure of open source information to Parliament he indicates:

“The Committee further requested that the evidence supporting the listings of these individuals and entity be presented to them. It is with regret that I must decline this request. As I have explained to the Committees before, when an individual/entity is relisted, they are pre-notified by the EU Council of the listing decision and are given an opportunity to seek further detail on why they are being relisted and make observations to the Council.

“The Government adopts a consistent policy of declining to provide the evidence which supports listing, or relisting, proposals to the Parliamentary Scrutiny Committees. The reasons for this I set out below.

“The listing proposals which the Parliamentary Scrutiny Committees scrutinise may be put forward by the UK or one of the other EU Member States, or the EEAS. The underlying evidence is made available to the Council and held on file. Information that forms part of the Council’s internal decision making can be shared between Member States, however the Council decides collectively on the sharing of information externally.

“Member States are bound by a duty of professional secrecy with respect to Council documents unless they have been made publicly available, as set out in the Council’s Rules of Procedure. Article 6 (1) states ‘...the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council
decides otherwise’. Professional secrecy maintains non-disclosure of the identity of the proposing Member State, and limits the scope for third countries to play divide and rule with the EU’s sanctions policy.

“There are specific procedures for sharing information with the designated individual or entity. All open-source evidence is disclosed to them, upon their request, by the Council. They may share this information with their legal representatives in preparing their defence.

“The sharing of information externally with other actors is a collective decision for the Council. The Council Secretariat holds the responsibility to disclose such documents, or not, in accordance with applicable EU law.”

**Previous Committee Reports**


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**30 EU Special Representative for Kosovo**

**Committee’s assessment** Politically important

**Committee’s decision** Cleared from scrutiny

**Document details** Council Decision extending the mandate of the EU Special Representative in Kosovo

**Legal base** Articles 31(2) and 33 TEU; QMV

**Department** Foreign and Commonwealth Office

**Document number** (36626), —

**Summary and Committee’s conclusions**

30.1 This Council Decision seeks to renew the mandate and budget of Samuel Žbogar as EU Special Representative (EUSR) in Kosovo. He would also continue his role as acting as head of the EU Office in Pristina.

30.2 At the time of the last mandate renewal in June 2014, the Minister for Europe (Mr David Lidington), illustrated various ways in which Mr Žbogar (a former Slovene Foreign Minister) had continued to make a positive contribution in an extremely challenging situation, particularly with regard to the EU’s largest and most longstanding rule-of-law mission, EULEX Kosovo; this was especially important at this juncture because EULEX Kosovo faced a very difficult transition, in which Mr Žbogar would no doubt continue to play a leading role.

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81 EULEX Kosovo is focused on local ownership and capacity building, through mentoring, monitoring and advice; aimed at advancing the goal of a stable, viable, peaceful, democratic, multi-ethnic Kosovo, contributing to regional cooperation and stability, and committed to the rule of law and to the protection of minorities.
30.3 The proposals for EULEX over the next two years outlined in that Report emanated from a European Court of Auditors report and an EEAS Strategic Review: an unwieldy EULEX would be down-sized, specialising in the areas which would make the most impact in the next two years; its Executive division — covering policing and sensitive criminal cases — would remain in both the north and south of Kosovo, but in a smaller way, while most of EULEX’s current capacity-building activities would be taken on by Commission-funded project work (reflecting a key recommendation of the European Court of Auditors’ earlier report). EULEX would focus on implementation of agreements reached in the Belgrade-Pristina dialogue in the north; start to phase out its executive functions in the justice sector as part of a phased handover of responsibility to Kosovo; and complete its work on ongoing serious cases: Kosovo had agreed, in principle, to create a special court to hear any trials arising from EULEX’s Special Investigative Taskforce, which has been investigating the allegations against senior Kosovo political figures in the 2010 Marty Report, and EULEX would have an important role in assisting Kosovo with the operation of this court.

30.4 In his Explanatory Memorandum of 29 January 2015, the Minister said that the new High Representative, Federica Mogherini, had now proposed to extend the mandate; that he expected its length to be eight months, until 31 October 2015; and that he would update the Committee when this was confirmed.

Our assessment

30.5 The Minister also illustrated the continuing importance of the EUSR role and how well Mr Žbogar had continued to fulfil his brief — which we considered all to the good, given not only the inherent challenges (which, if mishandled were always capable of undercutting the welcome progress being made) but also those posed not only by the down-sizing and re-focussing of EULEX Kosovo, but also the corruption allegations that had arisen since the EUSR’s mandate was renewed (and about which we expected shortly to hear from the Minister).
30.6 The EUSR’s budget had also yet to be fully finalised. The Committee therefore continued to retain it under scrutiny, pending confirmation of the length of Mr Žbogar’s mandate and receipt of information about the budget.\(^{85}\)

30.7 The Minister now says that the proposed budget for the next eight months is €1,520,000, which represents an increase of 4.6% (€70,000) in gross terms on last year’s budget of €1,450,000 for the eight-month mandate.

30.8 Though the Minister does not say so directly, we infer from the length of the budget that (as with various other EUSR mandates that we have considered in recent weeks) the HR has now also confirmed that Mr Žbogar’s mandate will run until 31 October 2015.

30.9 On that basis, we now clear the draft Council Decision.

**Full details of the document:** Council Decision extending the mandate of the European Union Special Representative in Kosovo: (36626), —.

**Background**

30.10 The EU has had a central role in post-conflict Kosovo: firstly, as part of the UN Interim Administration Mission in Kosovo, or UNMIK; and latterly, through the EU Special Representative/Head of the EU Delegation and the EU’s largest and most longstanding civilian ESDP mission, EULEX Kosovo.

30.11 The EUSR’s mandate stems from the 14 December 2007 European Council underlining the EU’s readiness to play a leading role in strengthening stability in the Western Balkans, including by contributing to a European Security and Defence Policy mission and to an International Civilian Office as part of the international presence in Kosovo. Joint Action 2008/123/CFSP adopted on 4 February 2008 established an EU Special Representative for Kosovo. Kosovo declared independence on 17 February 2008.

30.12 As our earlier Reports detail, until May 2011 the EUSR mandate was combined with that of the International Civilian Representative (ICR; appointed by an International Steering Group, of which the UK is a member, and the ultimate supervisory authority over the implementation of the UN Special Envoy’s Comprehensive Settlement Proposal: Kosovo committed itself to that proposal as part of its declaration of independence). The ICR had no direct role in the day to day administration of Kosovo, but retained strong executive and corrective powers to ensure the successful overall implementation of the Settlement. The ICR’s mandate was to continue until the ISG determined that Kosovo had implemented the terms of the Settlement.

30.13 Previous Council Decisions cleared by the Committee:

— ended that arrangement, leaving the incumbent as the ICR;

- the establishment of the special “out of country” court, which is central to the effective execution of the remainder of the EULEX mandate and indicative of the commitment of the Kosovar political establishment to its work.

We report further on this at chapter 28 of this Report.

— set out a new mandate that combined the EUSR role with that of heading a new Liaison Office in Belgrade, which had been set up as part of the EU-sponsored (and UN-endorsed) Dialogue between Pristina and Belgrade;

— appointed Fernando Gentilini as EUSR (an Italian diplomat, now a member of the EEAS and closely involved with the Pristina/Belgrade Dialogue since its inception) until he became the EEAS Director for the Western Balkans; and

— as of 1 February 2012, appointed Samuel Žbogar for the position (and thus also as Head of the EU Office in Pristina).

**The draft Council Decision**

30.14 The Minister noted that:

— the policy objectives in the proposed mandate include:

  “playing a leading role in promoting a stable, viable, peaceful, democratic and multi-ethnic Kosovo; strengthening stability in the region and contributing to regional cooperation and good neighbourly relations in the Western Balkans; promoting a Kosovo that is committed to the rule of law and to the protection of minorities and of cultural and religious heritage; supporting Kosovo’s progress towards the EU in accordance with the European perspective of the region and in line with the relevant Council Conclusions”; and

— that this mandate calls for Mr Žbogar to continue to:

  • offer the EU’s advice and support the political process;
  • promote overall EU political coordination in Kosovo;
  • strengthen the presence of the EU in Kosovo and ensure its coherence and effectiveness;
  • provide local political guidance to the Head of EULEX, including on the political aspects of issues relating to executive responsibilities;
  • ensure consistency and coherence of EU action in Kosovo within the EU office/EUSR’s office, and guiding locally the EULEX transition;
  • support Kosovo’s progress towards the EU, in accordance with the European perspective of the region, through targeted public communication and Union outreach activities designed to ensure a broader understanding and support from the Kosovo public on issues related to the EU, including the work of EULEX;
  • monitor, assist and facilitate progress on political, economic and European priorities, in line with respective institutional competencies and responsibilities;
  • contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo, including with regard to women and children
and protection of minorities, in accordance with the EU’s human rights policy and EU Guidelines on Human Rights; and

- assist in the implementation of the Serbia-Kosovo Dialogue facilitated by the EU, working closely with local actors, and colleagues in Belgrade and Brussels to improve coordination and delivery.

30.15 With regard to the Financial Implications, the Minister says:

— he had yet to receive the draft budget [funded from Heading 4 of the EU budget, which covers the EU’s external spend], but will examine it in detail on receipt and forward it to the Committee; and

— in the meantime, with a scrutiny reserve in place, his officials had stressed the need for a budget to be circulated as soon as possible, given that the EUSR’s mandate expires on 28 February.

**The Minister’s letter of 13 March 2015**

30.16 The Minister says:

“The proposed budget for the next eight months is €1,520,000, which represents an increase of 4.6% (€70,000) in gross terms on last year’s budget of €1,450,000 for the eight month mandate. This increase is due to the progressive transfer, which began three and a half months into the last eight month mandate, of nine legislative experts from EULEX to the EUSR. These experts are embedded in the Ministry of Justice and Internal affairs and deal with legal cooperation and mutual legal assistance. These are critical aspects of the EUSR’s mandate.

“This year the staff will need to be budgeted for the full eight month mandate (to end on 31 October 2015) as opposed to only four and half months, hence the increase.

“We believe this continues to represent value for money, and despite this small increase in the budget of the EUSR there is a significant net reduction in the joint cost to the UK of the EUSR and EULEX of over £20m.”

**Previous Committee Reports**

31 EU-Ukraine: EU restrictive measures

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

Document details  Council Decision and Regulation on restrictive measures against the former Ukrainian leadership
Legal base  (a) Article 29 TEU; unanimity; (b) Article 215 TFEU; QMV
Department  Foreign and Commonwealth Office
Document numbers  (a) (36684), — (b) (36685), —

Summary and Committee’s conclusions

31.1 The Council first adopted a Decision on this issue on 5 March 2014, when 18 individuals (former President Yanukovich, two of his sons and 15 other former Ministers and members of his administration) were included on the annex of persons subjected to the restrictive measures. A further Council Decision adopted in 14 April 2014 added another four individuals to the annex, and also amended the identifying information for three listed individuals.

31.2 Then, in early February, the Council having been provided by the Ukrainian Prosecutor General with attestations setting out the progress of their investigations, the Council adopted a further Council Decision and Regulation, amending the existing criteria in order to take account of the full range of criminal activity being investigated by the Ukrainian Authorities that comes under the definition of misappropriation, so as to ensure the listings remained robust. The Committee cleared them from scrutiny on 11 February 2015 (see paras 31.13-31.16 below for details).

31.3 Now, as part of the annual renewal process, four individuals have been removed from the annex of listed persons; and a further four individuals became subject to a shorter “rollover” of three months.

31.4 The Minister’s Explanatory Memorandum and the Council Decision and Council Regulation were not received until 2 March, meaning that an over-ride of scrutiny has inevitably arisen in order to meet the 6 March deadline for renewal.

31.5 The Minister acknowledges that the brief comments in his Explanatory Memorandum are an insufficient explanation, saying “If an override of the usual scrutiny procedures is necessary to meet this deadline, I will write in full setting out the reasons for this.” (see paras 31.17 and 31.23 below).

31.6 He then did so, in a subsequent letter of 9 March, the essence of which is that lengthy discussions resulted in the first drafts of this Council Decision and Council Regulation,

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86 These measures do not affect the criteria set out for those responsible for human rights violations. These measures are also distinct from the measures taken in response to Russia’s ongoing destabilisation of Ukraine and the illegal annexation of Crimea.
covering this renewal and the amendments, were only circulated to EU Partners on 25 February (see paras 31.24-31.26 below for details).

31.7 Once again, the process has been found wanting. We fail to understand why, if the criteria could be amended on 29 January, it was not possible to agree on the limited subsequent changes to the listings before 25 February. Nor why it was then not possible for the Minister to have provided an Explanatory Memorandum in time for our 4 March meeting. Once again, he assures the Committee that “this is something I take seriously” and that he has “instructed my officials to continue to raise these concerns with colleagues in the EU”.

31.8 We reproduce at the Annex to this chapter of our Report a letter of 4 March 2015 from the Minister, on “Engaging with EU institutions on UK Parliamentary Scrutiny”. He recalls his letter of 9 December 2014 to the then new EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) concerning scrutiny, and professes himself encouraged that she has said that her services will work to provide legal acts at an earlier stage and, for annual renewal of sanctions measures, will begin the review and renewal process at an earlier stage to allow parliamentary scrutiny to take place.

31.9 The Minister also says that his officials and the UK Representation have had a “productive meeting” with senior EEAS officials — as well as others in the Council Secretariat, Latvian Presidency Team and Luxembourg Presidency Team — to ensure the UK parliamentary scrutiny process is better understood and “to strengthen our engagement”; that his officials have agreed to return to brief EEAS Working Group Chairs, “to ensure that all those involved with the process of document production have a good understanding of UK parliamentary scrutiny”; and that he and they “will continue to engage with the EEAS and other EU institutions to provide workshops on UK parliamentary scrutiny and meet with key EU officials on a regular basis to ensure that scrutiny timetables are taken into account wherever possible”.

31.10 All of this is welcome. But we have been here before; c.f. his earlier, similar representations to Ms Mogherini’s predecessor, Baroness Ashton, which, to the best of our knowledge, produced a similar “encouraging” response but no demonstrable improvement in performance. So, once again, the proof of the pudding will be in the eating. With that in mind, and on the assumption that the Minister and his officials have the necessary mechanisms in place, we should be grateful if the Minister would write in six months’ time with his assessment of how much the EEAS performance has improved.

31.11 Also, there is the question of the FCO’s own procedures. So far as this instance is concerned, see above: more generally, see the observations in our Reports on the recent renewal of the restrictive measures against the Mugabe regime in Zimbabwe and the mandate extension of the EU mission on the training of Somali security forces (EUTM Somalia) and our conclusions in respect of Iranian nuclear crisis at chapter 14.

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31.12 In the meantime, as no political or legal issues arise, we now clear this Council Decision and Council Regulation from scrutiny.


**Background**

31.13 With his Explanatory Memorandum of 2 February 2014, the Minister submitted for scrutiny a new Council Decision and Regulation amending the existing criteria and taking account of the full range of criminal activity being investigated by the Ukrainian Authorities that came within the definition of misappropriation. This resulted from the Ukrainian Prosecutor General having provided the Council with attestations setting out the progress of their investigations; and, following on from the submission of these attestations, the Council having sought clarification on the activities that constitute misappropriation of assets under Ukrainian law, to ensure the listings remain robust.

31.14 The listings in question relate to the ongoing asset freeze on 22 individuals associated with the former Ukrainian Government, and who were identified as being responsible for the misappropriation of Ukrainian State funds; this was instituted to help prevent further asset flight, thus protecting state funds for use by future governments, as well as supporting the rule of law in Ukraine. The documentary evidence provided to support these listings comprised letters from the Ukrainian Prosecutor General indicating an intention to prosecute for the misappropriation of state funds.

31.15 In a separate letter of the same date, the Minister said that, being in need of renewal before 5 March 2015, and to ensure that the listings of those targeted by these measures remained robust, all individuals who met the amended criteria would need to be re-listed, noting that:

“Because of the legal requirement that individuals are notified of their relisting ahead of the renewal of the measures, and to ensure they are provided adequate time to make any representations against their re-listing, it has been necessary to adopt this Council Decision and Council Regulation at short notice. If prompt action had not been taken, it might have been impossible to re-list any of the 22 individuals before the current measures expire, and any assets currently frozen under those measures would have been released.

“I therefore regret that I found myself in the position of having had to agree to the adoption of these Council Decisions and Council Regulations before your Committee had had an opportunity to scrutinise the documents.”
31.16 The Committee cleared the documents, and in the circumstances outlined by the Minister, did not take issue with his having over-ridden scrutiny.89

**The further draft Council Decision and Council Regulation**

31.17 In his Explanatory Memorandum of 2 March 2015, the Minister for Europe says that, as part of the current renewal, the Council has agreed the delisting of four individuals who no longer met the listing criteria:

“Andriy Portnov, former Adviser to the President of Ukraine; Ihor Kalinin, former Adviser to the President of Ukraine; Oleksii Azarov, the son of the former Prime Minister of Ukraine; and Oleksandr Yakymenko, former Head of the Security Service of Ukraine.”

31.18 In addition, the Minister explains:

“the listings of Olena Lukash, former Minister of Justice; Viktor Viktorovych Yanukovych, son of the former President; Serhii Kliuiev, businessman; and Dmytro Tabachnyk, former Minister of Education and Science, will be renewed for a shorter time period of 3 months in order for the Ukrainian Authorities to complete their ongoing criminal investigations. Amendments have also been made in an annex to the Council Decision and Council Regulation to some of the identifying information and the statements of reasons of the listed persons.”

31.19 With regard to the timing of his Explanatory Memorandum, the Minister says:

“Unfortunately, due to ongoing discussions between Members of the Council, the circulation of the Council Decision and Regulation were completed at too late a date to allow for the usual time to be provided for scrutiny procedures before the measures lapse on 6 March. The discussions have also been delayed because of the amendment made in January to one of the designating criteria, and the subsequent requirement to notify the listed individuals of this change.”

**The Government’s view**

31.20 The Minister again emphasises that these measures target those who were identified as being responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, and “are distinct from those taken in response to Russia’s ongoing destabilisation of Ukraine and illegal annexation of Crimea”.

31.21 The Minister also recalls that the documentary evidence provided to support these listings consisted of letters from the Ukrainian Prosecutor General indicating an intention to prosecute for the misappropriation of state funds — their inclusion on the sanctions list being “to help prevent further asset flight, thus protecting state funds for use by future governments, as well as supporting the rule of law in Ukraine”.

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31.22 The Minister then says that, following on from the provision by the Ukrainian Prosecutor General of attestations setting out the progress of their investigations:

“the Council has agreed the delisting of 4 individuals who are either no longer under investigation or whose activities no longer meet the designation criteria. The listings of 4 further individuals will be extended for 3 months in order to give time for the Ukrainian Authorities to complete their investigations. The remaining 14 listings have been renewed for a further 12 months. These decisions were taken as part of a regular process by which the EU reviews sanctions designations in light of currently available information to ensure that the list continues to be legally robust.”

31.23 Finally, the Minister says:

“The new documents will need to be adopted before 6 March 2015, to ensure that the measures remain in force. If an override of the usual scrutiny procedures is necessary to meet this deadline, I will write in full setting out the reasons for this.”

**The Minister’s letter of 9 March 2015**

31.24 The Minister begins by recalling his 2 February Explanatory Memorandum and the Council Decision and Council Regulation that sought to clarify the criteria to be met before an individual can be identified as being responsible for the misappropriation of Ukrainian state funds; and that this amendment to the criteria had to be adopted at short notice, so that the wider review of the whole measures could be concluded to allow adoption of new legal documents by the 6 March renewal date.

31.25 The Minister then continues as follows:

“There were lengthy discussions amongst EU Member States after 2 February on the review of these measures. As you will have seen from my Explanatory Memorandum dated 2nd March, these discussions led to a package of changes to the current listings: four individuals were removed from the annex of listed persons; and a further four individuals became subject to a shorter rollover of 3 months. Due to the length of these discussions, the first drafts of a Council Decision and Council Regulation covering this renewal and the amendments were only circulated to EU Partners on 25 February. I subsequently found myself in the position of having to agree to the adoption of these documents on 5 March, before your Committee had had an opportunity to complete your scrutiny of the documents. Any delay in adoption would have resulted in the entire package of measures, and the asset freezes set in place by them, falling away.”

31.26 Finally, recalling the Committee’ oft-expressed criticism that renewals of this type are not considered earlier in the EU, reducing the possibility of the documents being scrutinised, the Minister says:

“This is something I take seriously and I have instructed my officials to continue to raise these concerns with colleagues in the EU.”
Previous Committee Reports


Annex: Letter of 4 March 2014 from the Minister for Europe: “Engaging with EU institutions on UK Parliamentary Scrutiny”

“As I set out in my letter to you on 15 December 2014, I wrote to High Representative Federica Mogherini concerning scrutiny on 9 December 2014. I am writing to update you on the High Representative’s reply and our latest engagement with the EU institutions.

“In my letter to HRVP Mogherini, I emphasised the importance of providing documents well in advance to ensure sufficient time for UK parliamentary scrutiny. On documents where timetables are known, such as mission renewals, I set out the dates by which we would need to receive documents from the EU in order to allow for scrutiny. I also offered for my officials to brief EEAS officials on the UK parliamentary scrutiny process.

“I am encouraged by her reply, in which she has made clear that her services will work to provide legal acts at an earlier stage and, for annual renewal of sanctions measures, she will instruct her services to begin the review and renewal process at an earlier stage to allow parliamentary scrutiny to take place. There are of course challenges that she has highlighted, such as unpredictable developments in CFSP and CSDP, and in the case of sanctions, the time it takes to secure consensus amongst Member States before legal acts can be produced. However, I think this gives us a strong basis for working together and I am reassured that the EEAS will work harder to ensure that documents are produced early where possible.

“Since writing to HRVP Mogherini, my officials visited Brussels and, with the UK Representation, held a productive meeting with senior EEAS officials — as well as others in the Council Secretariat, Latvian Presidency Team and Luxembourg Presidency Team — to ensure the UK parliamentary scrutiny process is better understood and to strengthen our engagement. My officials have agreed to return to brief EEAS Working Group Chairs to ensure that all those involved with the process of document production have a good understanding of UK parliamentary scrutiny.

“We will continue to engage with the EEAS and other EU institutions to provide workshops on UK parliamentary scrutiny and meet with key EU officials on a regular basis to ensure that scrutiny timetables are taken into account wherever possible.”
32 The EU and Guinea-Bissau

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; further information requested

Document details
Council Decision repealing Decision 2011/492/EU concerning the conclusion of consultations with the Republic of Guinea-Bissau under Article 96 of the ACP-EU Partnership Agreement

Legal base
Article 9 and Article 96 of the Cotonou Agreement; QMV

Department
Foreign and Commonwealth Office

Document numbers
(36693), 6690/15 + ADD 1, COM(15) 75

Summary and Committee’s conclusions

32.1 Guinea-Bissau is a small West African state with a population of 1.6 million, a forecast nominal GDP of £526 million for 2014 and a ranking of 176 out of 186 countries on the UN Human Development Index (2014).

32.2 Guinea-Bissau has remained unstable since gaining independence from Portugal in 1974 with, most recently, two military coups in April 2010 and in April 2012. It is a key transit point for narcotics trafficking, principally cocaine, between South America and Europe; this poses a direct threat to the security of the United Kingdom and undermines civilian authority over the military, the rule of law and the effectiveness of development aid.

32.3 EU development aid provided directly to the authorities via the European Development Fund (EDF) was suspended in 2011, on the basis that the country had breached the Cotonou Agreement’s essential political elements (in Cotonou Agreement parlance, Article 96 “appropriate measures”). The EU opened “Article 96” consultations with Guinea-Bissau in March 2011, focusing on reforms in the areas of political, judicial and economic governance.

32.4 Last July, the Minister for Europe (Mr David Lidington) reported that no further progress had been made over the past year against the agreed Article 96 benchmarks and, on this basis, the Article 96 measures should be renewed for another 12 months to 19 July 2015; however, the legislative and presidential elections in April and May were judged by all international observers, including the EU Electoral Observation Mission, as free and credible, and a major step in restoring constitutional order. So, in order to engage with and to support the newly elected authorities to move the country towards a more stable democratic future, the Council and Commission had proposed:
• to extend for a further 12 months, to 19 July 2015, the appropriate measures set out in Decision 2011/492/EU, which had concluded formal consultations with the Republic of Guinea-Bissau under Article 96 of the Cotonou Agreement;90 and

• that the application of these appropriate measures be suspended in order to allow for engagement with the newly elected Government of Guinea-Bissau.

32.5 The Minister agreed with this proposal: despite positive signals from the new government, security sector reform (SSR) remained a priority and “replacing the military hierarchy is of the utmost importance as it continues to pose a threat to the democratic process”. Suspending application of the appropriate measures would allow financial support and help alleviate the currently strained economic situation: “the Commission has reported that the public treasury is empty and the State is unable to assume vital functions such as health, education, energy and water”. Should the Government of Guinea-Bissau not renew the previous undertakings and embark upon the necessary reforms, the suspension could be lifted. The Minister considered the Commission’s proposed way forward to be sensible.

Our assessment

32.6 We had no questions regarding the proposal, which we reported to the House because of the importance to UK and wider EU interests of endeavours to encourage and support good governance in the region and counteract authoritarian rule.

32.7 We were, however, concerned about the late submission of the proposal. We therefore asked the Minister to explain why — when the renewal date was known a year ago and there was no suggestion of any necessity for the last minute consideration of the appropriateness of the proposal — his Explanatory Memorandum was not submitted until, effectively, 8 July, only four working days before the Council meeting at which it was to be adopted. In his response, asked the Minister to remind us of how many times he had taken up the matter of late submission of proposals with the then EU High Representative for Foreign Affairs and Security Policy and Vice-President of the Commission (Baroness Ashton) and how she has responded — including whether she had responded at all to his most recent representations.

32.8 In the meantime, we cleared the draft Council Decision.

32.9 In so doing, we asked the Minister to write in six months’ time with details of the Commission’s progress review and his own assessment.91

32.10 The proposal now is that the arrangements outlined above be lifted, four months before the July 2015 expiry date.

90 The Cotonou Agreement is the principal instrument of the European Union’s development policy towards Africa and Caribbean and Pacific countries. It was established in 2000 and was revised in 2005 and 2010. Based on partnership, the Agreement aims to promote economic, cultural and social development. It provides for regular and wide-ranging political discourse with emphasis on human rights, democracy, the rule of law and good governance.

32.11 The Minister supports this proposal, as do all other EU Member States. He says that, following the April-May 2014 elections, the Commission put together an urgent €60 million recovery package, enabling the delivery of vital state functions and basic social services, and heading off the risk of illegitimate parties again taking control. In late January 2015, EU Heads of Mission accredited to Guinea-Bissau (including the British Ambassador based in Dakar) judged that the “strong political will of the new Authorities to move forward on necessary reforms” remained high, and that some concrete results had already been delivered, with “some showing political courage and resolve”. However, the report concluded that, “in order to reach a point of no return, full and coordinated international support is necessary; otherwise the unique chance to leave fragility behind might be lost”.

32.12 A contemporaneous European External Action Service (EEAS) report mirrored these conclusions, and recommended that “considering the overall political situation, the progress made so far and the political commitment of the new authorities”, the Article 96 appropriate measures should be lifted by mid-March and political engagement should be reinforced. This would not only allow the EU to finalise the 11th EDF programming and sign the seven-year National Indicative Programme with the new authorities of Guinea-Bissau, but also allow the EU to participate in the 25 March 2015 Guinea-Bissau donor roundtable (supported by the UNSC and ECOWAS); this round table “provides the opportunity for the international community to give strong support for Guinea-Bissau to consolidate its democracy, strengthen the rule of law, accelerate economic recovery, keep the peace, and improve the lives of its people”. This is “a crucial juncture for Guinea-Bissau. It needs to sustain the positive momentum”. The UK is one of a small number of EU Member States that have been actively engaged in Guinea-Bissau, and we would not want “the Bissau-Guinean authorities to conclude that we did not support the lifting of Article 96”, nor “to inadvertently set back their fragile progress”.

32.13 The proposal seems to be well-founded, and raises no questions in and of itself. We now clear it from scrutiny.

32.14 We should, however, be grateful if the Minister would remind the Committee of where matters presently stand on the EU restrictive measures initiated in 2012 following the military coup.92

32.15 We would also be grateful if he would clarify if and when he responded to our 9 July 2014 request for further information about his representations to the previous EU High Representative for Foreign Affairs and Security Policy (Baroness Ashton; c.f. paragraph 32.7 above).

**Full details of the documents:** Draft Council Decision repealing Decision 2011/492/EU concerning the conclusion of consultations with the Republic of Guinea-Bissau under Article 96 of the ACP-EU Partnership Agreement: (36693), 6690/15 + ADD 1, COM(15) 75

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Background

32.16 Guinea-Bissau has remained unstable since gaining independence from Portugal in 1974. Recent years have seen the murder of a serving President, one attempted coup d’État, and two actual coups in April 2010 and April 2012. Power has tended to lie with the overly-large military, which often acts with impunity and in its own interests. Divisions within the civilian leadership exacerbate matters, with rival politicians seeking to use the military leaders and their ambitions to shore up their own positions. It is a key transit point for narcotics trafficking, principally cocaine, between South America and Europe; this poses a direct threat to the security of the United Kingdom. The narcotics trade undermines civilian authority over the military, the rule of law and the effectiveness of development aid in Guinea-Bissau and across West Africa.

32.17 The genesis of the Article 96 measures on Guinea-Bissau began with a mutiny on 1 April 2010, and the appointment of its main instigators to high-ranking positions in the military hierarchy. This was seen as a serious and manifest breach of the Cotonou Agreement. Under the terms of Article 96 of the Agreement, consultations were opened with Guinea-Bissau in March 2011. The Government of Guinea-Bissau put forward undertakings which would ensure the primacy of civilian authority, improvements to democratic governance, guarantees safeguarding constitutional order and the rule of law, and measures to tackle impunity and organised crime. As a result, the EU Commission concluded the consultations in June 2011, and on 18 July 2011 the EU adopted Council Decision 2011/492/EU. The EU and UN imposed restrictive measures against named members of the military command and others who took part in the coup. These consist of travel bans and asset freezes.93

32.18 That Council Decision included benchmarks for the gradual resumption of EU cooperation. The Article 96 measures suspended development funding to the government authorities under the 9th and 10th cycles of the European Development Fund (EDF9 and EDF10). The resumption of funding is directly linked to progress against the commitments undertaken by Guinea-Bissau during the Article 96 consultations. The Commission proposed to monitor the situation for the following twelve months, to July 2012, reserving the right to amend the measures, depending on how the political situation developed.

32.19 A January 2012 EU evaluation mission concluded that insufficient implementation of the agreed commitments had been achieved and recommended that restrictions continued. In April 2012, a military coup d’état took place as campaigning for the second round of Presidential elections was about to start. The military junta set up a transitional government with the third-placed Presidential candidate from the first round as transitional President. The transitional authorities originally said both Presidential and legislative elections would be held within a year, though this slipped as those in power sought to extend the transition.

32.20 Continued lack of progress since the coup in 2012 has resulted in the suspension of financial aid being renewed three times; the most recent renewal will expire on 19 July 2015.

**The draft Council Decision**

32.21 In his Explanatory Memorandum of 11 March 2015, the Minister explains that this draft Council Decision seeks to repeal Council Decision 2011/492/EU four months early. He expects this decision to be discussed at COREPER on 11 March 2015,⁹⁴ and agreed at Council by written procedure on 24 March.

**The Government’s view**

32.22 The Minister says: “We support this proposal, as do all other EU Member States”.

32.23 The Minister recalls the April 2012 coup d’etat, the closure of the consultations in 2011, and the return to political talks under Article 8 of the Cotonou Agreement, as the best method to maintain pressure on Guinea-Bissau, and notes that the intention was “to engage in regular dialogue, focusing on reforms in the areas of political, judicial and economic governance and to influence Guinea-Bissau’s leaders into acting in the best interests of their citizens”: but also notes that “Article 8 talks have not taken place as the EU agreed a policy of non-engagement with the post-coup transitional authorities”.

32.24 He then says:

“A joint monitoring mission to Guinea-Bissau from the European External Action Service and the Commission took place in January 2015 in order to assess progress in addressing essential elements (democratic principles, rule of law, human rights, good governance) laid down in Article 9 of the Cotonou Agreement.

“On the basis of the mission’s findings, and on the recommendation of the non-resident EU Heads of Mission to Guinea-Bissau, it was decided that the Article 96 measures should be lifted four months early.

“The Commission argues that if the Appropriate Measures are not lifted early, the pledging part of the Guinea-Bissau Roundtable scheduled to take place on 25 March will be undermined. We support the Commission’s proposal. There is unanimous support by other Member States.”

**The Minister’s letter of 16 March 2015**

32.25 The Minister provides the following additional information:

“Following the free and credible Presidential and Legislative elections the Commission put together an urgent recovery package of €60m, with a Budget Support Programme of €20m as its centrepiece. This preliminary step toward engagement was to help establish stability by enabling the Government to ensure vital state functions and deliver basic social services. Without this, there was considerable concern that the nascent democratic government would fail, paving the way for illegitimate parties to take control once again.

⁹⁴ See COREPER.
“On 26 January the EU Heads of Mission accredited to Guinea-Bissau (including the British Ambassador based in Dakar) released their assessment of the Bissau-Guinean government. They noted that, ‘The strong political will of the new Authorities to move forward on necessary reforms remains high. Some concrete results have already been delivered, some showing political courage and resolve’. However, the report concluded that, ‘in order to reach a point of no return, full and coordinated international support is necessary; otherwise the unique chance to leave fragility behind might be lost’.

“On 27 January the European External Action Service (EEAS) released its own report on the situation, mirroring the conclusions of the EU Heads of Mission. It announced that “considering the overall political situation, the progress made so far and the political commitment of the new authorities, the Joint Monitoring Mission considers that the Article 96 appropriate measures should be lifted by mid-March and political engagement should be reinforced.

“On the basis of these two reports (discussed in Council 28 January) it was decided that the Article 96 measures should be lifted early. This would not only allow the EU to finalise the 11th EDF programming and sign the seven-year National Indicative Programme with the new authorities of Guinea-Bissau, but also allow the EU to participate in the Guinea-Bissau donor roundtable (supported by the UNSC and ECOWAS) organised for 25 March 2015.

“This round table provides the opportunity for the international community to give strong support for Guinea-Bissau to consolidate its democracy, strengthen the rule of law, accelerate economic recovery, keep the peace, and improve the lives of its people. This is a crucial juncture for Guinea-Bissau. It needs to sustain the positive momentum.

“Despite pressure from the Prime Minister of Guinea-Bissau, the Commission and EEAS argued to delay the Donor Conference to March to allow Member States and the EU to participate to the fullest level. The Commission only released its draft Council Decision calling for the conclusion of consultations with the Republic of Guinea-Bissau under Article 96 on 2 March.”

32.26 On the timing of his Explanatory Memorandum, the Minister says:

“Although the late timing of this draft Decision by the Commission has been far from ideal, I hope you will agree with me that it will be to the UK’s advantage to support the proposal in Brussels. The UK is one of a small number of EU Member States that have been actively engaged in Guinea-Bissau, and we would not want the Bissau-Guinean authorities to conclude that we did not support the lifting of Article 96. Nor would we want inadvertently to set back their fragile progress.”

**Previous Committee Reports**

33 Bosnia and Herzegovina: EU restrictive measures

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

Document details Restrictive measures against those who may seek to undermine political reform and stability in Bosnia and Herzegovina (BiH)
Legal base Article 29 TEU; unanimity
Department Foreign and Commonwealth Office
Document number (36729), —

Summary and Committee’s conclusions

33.1 The EU’s restrictive measures consist of a freezing of funds and economic resources, and a travel ban on, those persons listed in the annex to the CFSP Decision. This Council Decision renews them for a further 12 months, until 31 March 2016.

33.2 The Decision provides for the extension of restrictive measures against “persons whose activities undermine the sovereignty, territorial integrity, constitutional order and international personality of Bosnia and Herzegovina, seriously threaten the security situation in Bosnia and Herzegovina or undermine the Dayton/Paris General Framework Agreement for Peace and the Annexes thereto”. No persons are currently listed under these measures.

33.3 They are thus a contingency measure, which the EU has had in place since 2011, as part of its “tool kit” in seeking to help BiH to create a unified, multi-ethnic, democratic, law-based and stable polity. That process is itself based on the political framework in BiH that emerged from the 1995 Dayton Agreement, which ended a bitter three-and-a-half-year war. The longstanding goal has always been for BiH to work its way towards European accession.

33.4 But, come last autumn, the EU accession process had not worked thus far; the country was mired in political and economic stagnation, with a 60% youth unemployment. Member States decided to regard last October’s elections as an opportunity to generate new, more positive momentum. Last November, the British and German foreign ministers met their eight western Balkan counterparts and then proposed a new joint initiative; come the end of February, all 14 BiH party leaders and the national parliament had now signed up to an irrevocable Written Commitment, and thus to BiH’s territorial integrity, political independence and sovereignty as well as a wide-reaching and politically very challenging reform agenda. The BiH authorities having thus delivered what was requested of them by the December 2014 Foreign Affairs Council, the Council adopted a Council and Commission Decision on the conclusion of the Stabilisation and Association Agreement (one of the cornerstones of the post-Dayton process).

33.5 The Council has agreed nonetheless to continue with these contingency measures. The Minister for Europe (Mr David Lidington) says that the new EU initiative will be “a challenging journey and the first test of the collective commitment to fighting corruption
and overcoming narrow personal, factional and party interests”, and will require BiH’s leaders “to work together with a unified voice, showing determination and vision to agree and sign the Written Commitment and subsequently work on defining and implementing a substantive reform agenda at multiple levels of government”. The ability to impose restrictive measures remains “important in ensuring that BiH is faced with the right balance between incentives and deterrents”. Although not currently deployed, “widespread knowledge of the existence of restrictive measures can be seen to be important in encouraging Bosnian leaders to stimulate reforms and make progress towards EU and NATO integration, whilst serving as a deterrent to those who may wish to undermine BiH stability and territorial integrity”. These measures are “in place to respond swiftly to developments”; the existence of the regime “enables our ability to move swiftly and flexibly to mitigate risks to peace and security”. The Government would “generally have concerns about the renewing year-on-year of restrictive measures that do not target any individuals”; however, in this case:

“if we were to remove the ability to impose EU sanctions on individuals now by letting the current measures lapse, then attempting to reintroduce the measures at a later date would be problematic because of the need for the EU to act with unanimity.”

33.6 The Minister also recalls that, when this exercise was conducted a year ago, Member States agreed that the continued role of sanctions measures within the EU’s wider BiH strategy should be assessed before this year’s “rollover”; and says of the European External Action Service (EEAS) have, “by their admission”, not yet conducted this review:

“The EEAS accepted this was a mistake and that the assessment should have been carried out prior to the expiration date. My officials will stay in close touch with the EEAS to hold them to account and to ensure that the review takes place prior to a renewal in 2016. I will keep the Committee informed of progress.”

33.7 The Minister also notes that, although the current measures expire on 22 March 2015 and the new Council Decision will need to be adopted before that date, the EEAS did not circulate the revised Council Decision until 11 March; and says:

“I appreciate that their delay leaves little time for the measures to be reviewed, for which I am sorry. My officials have again called for the EEAS and Commission to supply draft Council Decisions and Regulations in good time.”

33.8 In all the circumstances outlined above and below, and in our previous relevant Reports, the case for maintaining these measures is convincing. We therefore now clear the draft Council Decision.

33.9 However, we cannot help but note, once again, the continuing failure of the European External Action Service to make any sort of reality of the commitments given to the Minister by both the present HR and her predecessor, Baroness Ashton, in response to his written representations to them. Yet again, were there to have been any questions that did arise, there would have been no time for them to have been dealt with before the measures were due to be adopted. This is, as we have said on many previous occasions, simply not good enough.
33.10 We therefore again ask that the Minister (or his successor) reports to the new Committee in six months’ time what actual improvements have been made in the timeliness of submission by the EEAS of all CSDP/ESDP documents.

33.11 Also, if not before, then at the same time, we ask the Minister (or his successor) to provide an update on the now well-overdue review of these measures.

**Full details of the documents:** Council Decision amending Council Decision 2011/173/CFSP concerning restrictive measures in view of the situation in Bosnia and Herzegovina: (36729), —.

**Background**

33.12 The internationally brokered Dayton Agreement ended the 1992–1995 war in BiH. It established BiH as a state comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation (FBiH). It also designated the Office of the High Representative (OHR) to oversee implementation of the civilian aspects of the Agreement on behalf of the international community and coordinate the activities of the civilian organisations operating in BiH. A Peace Implementation Council (PIC) — 55 countries and international organisations that sponsor and direct the peace implementation process — oversees all this. On a day-to-day basis, a Board of Principals, chaired by the HR, serves as the main coordinating body. Permanent members are OHR, EUFOR,95 NATO HQ Sarajevo, OSCE, UNHCR, EUPM (EU police mission) and the Commission. The World Bank, the IMF and the UNDP are also regular participants. The International Civilian Representative (or ICR) is Valentian Inzko (previously also EU Special Representative).96

33.13 The longstanding goal has been for BiH to work its way towards European accession. The BiH authorities need to: deliver five objectives (well established, approved by the PIC SB and all previously recognized by BiH authorities as obligations) revolving around creating a sustainable, multi-ethnic, democratic, law-based State; and fulfil two conditions — signing a Stabilisation and Association Agreement (part of the normal accession process, achieved in 2008) and a positive PIC SB assessment based on full compliance with the Dayton Agreement.

33.14 But things have not gone according to plan. In 2011, incentives provided by the EU accession process (IPA funding, the Stabilisation and Association Agreement) were reinforced by the possibility of imposing restrictive measures, such as travel restrictions and asset or funding freezes, against local political troublemakers.

33.15 A year ago, the Minister continued to advocate “the strongest possible ‘EU toolbox’ in BiH”, and therefore to support renewal of these restrictive measures as part of the broader EU strategy and as an important lever alongside other EU instruments and the monitoring and support provided by EUFOR Operation Althea. He argued that recent protests across BiH, some of which had turned violent, demonstrated that the BiH public was dissatisfied with the inaction of BiH’s political leaders to implement the reforms

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95 See Operation EUFOR ALTHEA.
96 See OHR for full information.
necessary to advance BiH on its Euro-integrationist path; restrictive measures would be an important asset as “part of an EU response to leaders who might attempt to use the protests to incite further unrest and ethnic tensions, rather than address the demands of the population for reform”. Against this background, he saw the ability to impose restrictive measures as important in ensuring that “BiH is faced with the right balance between incentives and deterrents”. Although the EU did not currently deploy them, the Minister said:

“widespread knowledge of the existence of restrictive measures can be seen to be important in encouraging Bosnian leaders to stimulate reforms and make progress towards EU and NATO integration, whilst serving as a deterrent to those who may wish to undermine BiH stability and territorial integrity.”

33.16 EU partners had agreed that the continued role of sanctions measures within the EU’s wider BiH strategy should be assessed before next year’s rollover. In the meantime, general elections in BiH were scheduled for October, and campaigning before previous elections had featured “a rise in secessionist rhetoric from some politicians, who seek to shore up their voting base through undermining the credibility of BiH”; it would therefore be “important for the EU to maintain an effective deterrent against this as the elections draw near”.

33.17 The Committee cleared the draft Council Decision and reported it to the House because of the degree of interest in developments in the western Balkans.97

33.18 Last autumn, nineteen years after Dayton, a country of four million inhabitants remained divided by mistrust between the various ethnic groups, the upshot of which has been political stagnation, a lack of badly needed reform and the consequential stagnation of the Bosnian EU accession process.

33.19 Against this background, on 6 November 2014, the British and German foreign ministers met their eight western Balkan counterparts and then proposed a new joint initiative, the key points of which the two Foreign Ministers set out in a joint article in the German daily newspaper Frankfurter Rundschau98 and in an “open letter” in Bosnia and Herzegovina and neighbouring countries. After visits by the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) and the Enlargement Commissioner in December, and again by the HR on 27 February 2015, all 14 BiH party leaders and the national Parliament have now signed up to an irrevocable Written Commitment, and thus to BiH’s territorial integrity, political independence and sovereignty as well as a wide-reaching and politically very challenging reform agenda. The BiH authorities having thus delivered what was requested of them by the December 2014 Foreign Affairs Council, the Council adopted a Council and Commission Decision on the conclusion of the Stabilisation and Association Agreement.99

33.20 In his Explanatory Memorandum of 11 March 2015, the Minister for Europe says that the Government continues to support these restrictive measures as part of a broader comprehensive EU strategy. The new EU initiative to advance BiH on its EU accession path:

“will be a challenging journey and the first test of the collective commitment to fighting corruption and overcoming narrow personal, factional and party interests. The Initiative requires BiH’s leaders to work together with a unified voice, showing determination and vision to agree and sign the Written Commitment and subsequently work on defining and implementing a substantive reform agenda at multiple levels of government.”

33.21 Though the measures continue not to be applied to any individuals, the Minister reiterates his previous position, viz:

“The ability to impose restrictive measures is important in ensuring that BiH is faced with the right balance between incentives and deterrents. Although we do not currently deploy them, widespread knowledge of the existence of restrictive measures can be seen to be important in encouraging Bosnian leaders to stimulate reforms and make progress towards EU and NATO integration, whilst serving as a deterrent to those who may wish to undermine BiH stability and territorial integrity.

“These measures are in place to respond swiftly to developments: the existence of the regime enables our ability to move swiftly and flexibly to mitigate risks to peace and security. We would generally have concerns about the renewing year-on-year of restrictive measures that do not target any individuals. However, in this case, if we were to remove the ability to impose EU sanctions on individuals now by letting the current measures lapse, then attempting to reintroduce the measures at a later date would be problematic because of the need for the EU to act with unanimity.”

**Previous Committee Reports**

34 The EU and the Central African Republic

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

Document details Draft council decision and regulation concerning restrictive measures against certain persons engaging in, or providing support for, acts that undermine the peace, stability or security of the Central African Republic (CAR)

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

Department Foreign and Commonwealth Office

Document numbers (a) (36730), — (b) (36731), —

Summary and Committee’s conclusions

34.1 Council Decision 2013/798/CFSP imposed a year-long arms embargo on the direct or indirect supply, sale or transfer to the Central African Republic (CAR) of arms and related materiel, including weapons and ammunition, military vehicles, paramilitary equipment and spare parts related to military activities, in line with UNSCR 2127 (2013) of 5 December 2013, which the United Nations Security Council (UNSC) adopted in response to the deteriorating situation in the CAR, which centred on fighting between predominantly Muslim militants, known as the ex-Séléka,

100 and bands of Christian vigilantes, the Anti-balaka.

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34.2 On 28 January 2014, the UNSC adopted Resolution 2134 (2014), which extended and clarified the arms embargo imposed by UNSCR 2127 (2013) and introduced a travel ban on, and provided for the freezing of funds and economic resources of, certain persons engaging in, or providing support for, acts that undermine the peace, stability or security of the Central African Republic.

34.3 Council Decision 2014/125/CFSP of 10 March 2014 amended Council Decision 2013/798/CFSP, to reflect the changes that UNSCR 2134 (2014) introduced; the Regulation accompanying it enabled the embargo, travel ban and asset freeze measures in the UNSCR and Council Decision to be implemented.

34.4 France was playing a prominent role in this process, having deployed 1,600 French troops in early December 2013 on a mission to stem the fighting: the focus was on specific individuals with Séléka or anti-balaka links, although no specific listings had yet been proposed.

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

101 The term used to refer to the Christian militias formed after the rise to power of the Séleka, who had been linked to atrocities against Muslim communities; Anti-balaka means “anti-machete” or “anti-sword” in the local Sango and Mandja languages.
34.5 The Committee cleared the draft Council Decision from scrutiny on 26 February 2014. But the Minister for Europe (Mr David Lidington) noted that France was “aware that for the UK to agree any names for listing, there is a need for strong underlying evidence that can be defended in a UK court of law”; the UK had the right to veto any nominations at the UN sanctions committee stage, and would do so if evidence was lacking he expected France to “propose listings and share supporting evidence with us in the coming weeks”.

34.6 The Committee therefore retained the Council Regulation under scrutiny until the Minister was able to provide the key components: the names of those to be listed and the justification.

34.7 The draft Council Implementing Decision and Council Implementing Regulation subsequently presented for scrutiny, which included “populating” the Annex to the earlier Council Regulation with the names of the three individuals concerned and why they have been “listed”, completed the process begun in February 2014.

34.8 The Minister also confirmed that the Council Decisions, Council Regulations, Council Implementing Decisions and Council Implementing Regulations became legally binding in all Member States at the point of adoption at Council — in this case, the Foreign Affairs Council on 23 June 2014 — and not, as he had originally suggested, when adopted by COREPER\(^{102}\) — ditto, in the week commencing 3 March 2014.

34.9 The Committee therefore cleared the Council Regulation, Council Implementing Decision and Council Implementing Regulation from scrutiny (see paras 34.22 to 34.27 below for details).

34.10 The Minister now explains that this new Council Decision and Council Regulation:

— update the various UN and African Union-led entities named in the documents;

— add language to the travel ban and asset freeze criteria to include those illicitly trading in wildlife products and gold (this being principally aimed at former Séléka forces who are collecting approximately US$150,000 in taxes per year from local gold production which in turn funds their continuing operations).

34.11 More generally, the Minister says that the situation in CAR remains dire: a spike in violence in October 2014 included an attack on a UN convoy, and the population as a whole continues to suffer from extrajudicial killings, arbitrary arrests and detention, torture, recruitment and use of child soldiers and sexual violence against women and children (as well as the exploitation of natural resources and wildlife and wildlife products). He notes that a sustainable recovery will depend on improved security and increased stability, and that the UK’s immediate priorities for CAR at this critical time are to ensure that a safe and secure environment is established and maintained through the MINUSCA,\(^{103}\) which will enable the right conditions for a sustainable political process. Amending EU restrictive measures in line with those implemented by the UN “will increase pressure on those who have been designated to cease their destabilising activities

\(^{102}\) COREPER.

\(^{103}\) MINUSCA.
by restricting their finances and ability to travel internationally”, and also send “a political message to allies and UN Member States that the situation in the CAR must be addressed”.

34.12 The EU is also heavily engaged in enabling the safe and secure environment that would provide the right conditions for a sustainable political process via its two ESDP missions: the EU military stabilisation force, EUFOR CAR, which was launched on 1 April 2014, operates under a UN Security Council mandate (UNSCR 2134 (2014)) and will end on 15 March 2015, handing over to the EU Military Advisory Mission to the Central African Republic, EUMAM CAR, which was established via the Council Decision that the Committee cleared on 14 January 2015.\(^\text{104}\) They will be working with MINUSCA 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.

34.13 At present, three individuals are “listed”: two senior figures associated with the anti-balaka militias and one associated with the Séléka. If there is subsequently a further Council Regulation of some sort, with additional names in the light of the language added to the travel ban and asset freeze criteria, we look forward to the Minister depositing it for scrutiny.

34.14 In the meantime, we now clear the draft Council Decision and Council Regulation from scrutiny.


**Background**

34.15 On 23 December 2013, the EU Council adopted Decision 2013/798/CFSP concerning restrictive measures against the Central African Republic (CAR) providing for an arms embargo, in accordance with UNSCR 2127 (2013) of 5 December 2013. The Committee cleared this Council Decision and reported the background and the government’s views to the House on 8 January 2014.\(^\text{105}\)

34.16 On 28 January 2014, the UN Security Council:

— extended the mandate of the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) for one year;

— reinforced and updated BINUCA’s mandate to assist in the transitional political process, and to help with conflict prevention, humanitarian assistance, extension of State authority, stabilization of the security situation, and the promotion and protection of human rights;


\(^\text{105}\) (35672), —: HC 83-xxvi (2013–14), chapter 18 (8 January 2014).
— authorized the European Union to deploy an operation in the Central African Republic, and authorized that operation to take all necessary measures, within the limits of its capacities and areas of deployment from its initial deployment and for a period of six months from the declaration of its full operational capacity,\(^\text{106}\)

— decided that, for an initial period of one year, all UN Member States would take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the relevant UN Sanctions Committee, provided that nothing would oblige a State to refuse its own nationals entry into its territory; and

— decided that all Member States would freeze without delay all funds, other financial assets and economic resources within their territories that were either owned or controlled, directly or indirectly, by individuals or entities designated by the Sanctions Committee, by others acting on their behalf or by entities owned or controlled by them.\(^\text{107}\)

34.17 With his Explanatory Memorandum of 19 February 2014, the Minister for Europe submitted for scrutiny:

— a draft Council Decision to amend Decision 2013/798/CFSP, to reflect the changes that UNSCR 2134 (2014) introduced; and

— a draft Regulation, enabling the embargo, travel ban and asset freeze measures set out in the Council Decision to be put in place.

34.18 The Minister said that:

— the arms embargo, introduced under UNSCR 2127 (2013), therefore played a logical step in reducing access to weapons that had undoubtedly played a negative role in the situation in the CAR, with violence occurring across much of the country; however, policing of the lengthy and porous CAR borders was minimal, and tightening the embargo under the new Council Decision, and the supporting Regulation in question, thus sought to mitigate further the risk of arms entering the country;

— a successful political process, leading to an inclusive, constitutional, and effective government, was vital to the medium and long term future of the CAR; the introduction of asset freeze and travel ban measures would therefore be used to target individuals who engage in, or provide support for, acts that undermined the peace, stability or security of the CAR;

— France was looking to target specific individuals with Séléka (the mainly Muslim rebel coalition that took power by force in March 2013) or anti-balaka (i.e., anti-machete; mainly Christian armed groups who had been linked to atrocities against Muslim communities) links, although no specific listings had yet been proposed;

\(^{106}\) For the Committee’s consideration of the Council Decision establishing this mission, see (35747), —: HC 83-xxxi (2013–14), chapter 14 (5 February 2014).

\(^{107}\) See full text of the press notice, and of UNSCR.
France was “aware that for the UK to agree any names for listing, there is a need for strong underlying evidence that can be defended in a UK court of law. The UK has the right to veto any nominations at the UN sanctions committee stage, and will do so if evidence is lacking”;

— he expected France to “propose listings and share supporting evidence with us in the coming weeks”; and

— in the meantime, it was “worth noting that the threat of restrictive measures that UNSCR 2134 (2014), and ultimately this regulation, impose already sends a powerful and timely political signal; which we hope will work somewhat to deter further violence and instability in the country”.

34.19 The Minister concluded by saying that Council Decision and Regulation were due to be adopted by COREPER in the week commencing 3 March 2014; at which point, the Council Decision and Regulation would be implemented into EU law and be legally binding in all Member States.

34.20 No questions arose on the draft Council Decision, which we therefore cleared from scrutiny.

34.21 We were, however, concerned that we are being asked to clear a Council Regulation that was incomplete, in that precisely who was to be subject to it was yet to be decided — which, as the Minister noted, was crucial. The Council Regulation could not be properly adopted until the UN Sanctions Committee had agreed to whom it should apply. We therefore continued to retain it under scrutiny until the Minister was able to provide a draft that contained those names.

34.22 On a point of detail, pace COREPER, our understanding was that no draft legislation was finalised until it had been adopted by the Council; we therefore asked the Minister to confirm that this was his understanding also.

34.23 In his Explanatory Memorandum of 6 June 2014, the Minister recalled that the asset freeze and travel ban measures were designed to target individuals who engaged in, or provided support for, acts that undermined the peace, stability or security of the CAR, by restricting their freedom of movement and limiting their financial capability to fund further violence or acts that contribute to instability; and said that three individuals, who met these criteria and had been listed with restrictive measures under UNSCR 2134 (2014), were now due to be listed by the EU via the attached Council Decision and supporting Regulation.

34.24 He continued as follows:

“The first individual is Francois Yangouvanda BOZIZE, who is being targeted for providing financial and material support to militiamen who work to destabilize the ongoing transition in the CAR and bring him back to power. François Bozizé, in liaison with his supporters, encouraged the attack of 5 December 2013 on Bangui by anti-Balaka forces, which left over 700 people dead. Since then, he has continued to run destabilization operations and to federate the anti-balakas militias, in order to maintain tensions in the capital of CAR. Bozizé also tried to reorganise many
elements from the Central African Armed Forces, who dispersed into the countryside after the coup d'état, and has called on his militia to pursue atrocities against the current regime and CAR Islamists.

“The second individual is Nourredine ADAM, who is being targeted due to his role as both a General and the President of the Central PJCC, one of the armed rebel groups of the Séléka; he was also the military coordinator of the ex-Séléka during offensives in the former rebellion in the CAR between early December 2012 and March 2013. Without Noureddine’s involvement, the Séléka would likely have been unable to wrest power from former CAR President François Bozizé. He now clearly urges his forces to resist injunctions of the transitional government and of the military leaders of the African-led International Support Mission in the Central African Republic (MISCA) and directs operations against Christian neighbourhoods, with significant provisions of support and direction to the ex-Séléka operating in CAR. ADAM also used the now-defunct CAR intelligence service as his personal political police, carrying out many arbitrary arrests, acts of torture and summary executions. Lastly, in early 2013, he played an important role in the ex-Séléka’s financing networks, travelling to Saudi Arabia, Qatar and the United Arab Emirates to collect funds for the former rebellion and operated as a facilitator for a Chadian diamond-trafficking ring operating between the CAR and Chad.

“The third individual is Levy YAKETE, who, on 17 December 2013, became the political coordinator of the newly formed People’s Resistance Movement for Reforming of the Central African Republic anti-Balaka rebel group and has been directly involved in decisions that have undermined peace, stability and security in the CAR. Yakete is accused of ordering the arrest of people connected to the Séléka, calling for attacks on people who do not support President Bozizé and recruiting young militiamen to attack those hostile to the regime with machetes. Having remained in the entourage of François Bozizé after March 2013, he joined the Front for the Return to Constitutional Order in CAR, which aimed to return the deposed president to power by whatever means necessary. In late summer 2013, he travelled to Cameroon and Benin, where he attempted to recruit people to fight against the Séléka. In September 2013, he tried to regain control over operations led by pro-Bozizé fighters in towns and villages near to Bossangoa. Yakete is also suspected of promoting the distribution of machetes to young unemployed Christians to facilitate their attacks on Muslims.”

34.25 With regard to the question of when Council Decisions, Council Regulations, Council Implementing Decisions and Council Implementing Regulations were implemented into EU law and thus legally binding in all Member States, the Minister said:

“this happens at the point of adoption at Council; in this case adoption is planned for the Foreign Affairs Council on 23 June 2014.”

**The draft Council Decision and Council Regulation**

34.26 In his Explanatory Memorandum of 11 March 2015, the Minister says that, on 22 January 2015, the UN Security Council adopted Resolution 2196 (2015), which renewed the sanctions measures on the CAR to 29 January 2016, and provided for certain
amendments to the criteria for restrictions on admission and the freezing of funds and economic resources for persons or entities designated by the Committee established pursuant to paragraph 57 of UNSCR 2127 (2013).

34.27 The Minister explains that the draft Council Decision and Regulation detail the changes and allow for the transposition of these amendments from the UN to the EU accordingly; in short, these amendments include:

“the removal of references to: the Mission for the Consolidation of Peace in Central African Republic (MICOPAX); African-led International Support Mission to the Central African Republic (MISCA); United Nations Integrated Peacebuilding Office in Central African Republic (BINUCA) and its guard unit. The mandates for MICOPAX and BINUCA have expired. MISCA was the African-led International Support Mission to the Central African Republic which transitioned into the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) on 15 September 2014; and

“the addition of language to the travel ban and asset freeze criteria to include those illicitly trading in wildlife products and gold. These amendments were made by the Security Council following the findings of the Panel of Experts Established Pursuant to Security Council Resolution 2127 (2013) in their Final Report (S/2014/762) that provided information that former Séléka forces collect approximately US$150,000 in taxes per year from local gold production which in turn funds their continuing operations. It also noted that armed groups and criminal networks exploited natural resources and supply routes.”

The Government’s view

34.28 The Minister recalls the circumstances in which the UN sanctions measures were imposed on CAR, when it judged that there was a high risk of genocide.

34.29 He continues as follows:

“Numerous human rights abuses have been reported and sanctions seek to minimise the ability of rebel groups to commit further acts of violence.

“The situation in CAR remains dire. A period of relative calm in Bangui was shattered in October 2014 with a spike in violence which included an attack on a UN convoy. The population continues to suffer from extrajudicial killings, arbitrary arrests and detention, torture, recruitment and use of child soldiers, sexual violence against women and children and exploitation of natural resources including diamonds and wildlife and wildlife products in the CAR.

“A sustainable recovery from crisis will depend on improved security and increased stability. The UK’s immediate priorities for CAR at this critical time are to ensure that a safe and secure environment is established and maintained through the MINUSCA which will enable the right conditions for a sustainable political process. Amending EU restrictive measures in line with those implemented by the UN will increase pressure on those who have been designated to cease their destabilising activities by restricting their finances and ability to travel internationally. This also
sends a political message to allies and UN Member States that the situation in the CAR must be addressed.”

Previous Committee Reports

None, but see (35672), —, (36064), — and (36065), —: Second Report HC 219-ii (2014–15), chapter 9 (11 June 2014); also see (35812), — and (35671), 6282/14: HC 83-xxxiv (2013–14), chapter 8 (26 February 2014); and (35672), —: HC 83-xxvi (2013–14), chapter 18 (8 January 2014).

35 Stability and Growth Pact

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny

Document details
(a) Draft Council Recommendation on ending an excessive deficit in France (b)-(d) Commission Reports about Belgium, Italy and Finland avoiding an excessive deficit

Legal base
(a) Article 126(7) TFEU; —; QMV of eurozone Member states, excluding the country in question (b)-(d) —

Department
HM Treasury

Document numbers
(a) (36698), 6644/15 + ADD 1, COM(15) 115 (b) (36701), 6733/15, COM(15) 112 (c) (36706), 6734/15, COM(15) 113 (d) (36707), 6736/15, COM(15) 114

Summary and Committee’s conclusions

35.1 The Stability and Growth Pact requires the Commission to initiate the Excessive Deficit Procedure whenever a Member State might or does exceed the Treaty deficit or debt reference values.

35.2 With a draft Council Recommendation for France the Commission follows on from its assessment of the progress made in implementing the Council Recommendation of June 2013 on taking effective action to remedy the excessive deficit. It suggests that the Council recommend that France should put an end to the present excessive deficit situation by 2017 at the latest.

35.3 In three Reports the Commission assesses that the deficit and debt positions of Belgium, Italy and Finland do not presently require Excessive Deficit Procedure Council Recommendations.
35.4 The Government notes that these documents have no direct implications for non-eurozone Member States, such as the UK.

35.5 Whilst clearing these documents from scrutiny, we draw them to the attention of the House because of the information they give about the economic situation of some Member States.

Full details of the documents: (a) Draft Council Recommendation with a view to bringing an end to the excessive government deficit in France: (36698), 6644/15 + ADD 1, COM(15) 115; (b) Commission Report: Belgium Report prepared in accordance with Article 126(3) of the Treaty: (36701), 6733/15, COM(15) 112; (c) Commission Report: Italy Report prepared in accordance with Article 126(3) of the Treaty: (36706), 6734/15, COM(15) 113; (d) Commission Report: Finland Report prepared in accordance with Article 126(3) of the Treaty: (36707), 6736/15, COM(15) 114.

Background

35.6 The Stability and Growth Pact (SGP) requires the Commission to initiate the Excessive Deficit Procedure (EDP) whenever the deficit of a Member State might or does exceed the 3% of GDP deficit reference value or the 60% of GDP debt reference value.

35.7 Depending on their timing Commission EDP Reports or draft Recommendations may be included in its draft Country Specific Recommendations for the annual European Semesters.

The documents

35.8 With its draft Council Recommendation for France, document (a), based on its 2015 winter economic forecast the Commission follows on from its assessment of the progress made in implementing the Council Recommendation of June 2013 on taking effective action to remedy the excessive deficit.108

35.9 The Commission suggests that the Council recommend that France should put an end to the present excessive deficit situation by 2017 at the latest. Its 2015 winter forecast expects France’s deficit to be 4.1% this year and 4.1% next. So the Commission recommends to the Council that efforts should be made so that France runs a headline deficit of 4.0% in 2015, 3.4% in 2016, and 2.8% in 2017 — this would require additional measures of 0.2% of GDP in 2015, 1.2% of GDP in 2016 and 1.3% of GDP in 2017 (based on the Commission’s winter forecast). The Commission recommends to the Council that a deadline of 10 June 2015 should be set for France to take effective action and report in detail a consolidation strategy to achieve its targets — it would then be required to submit a reports on progress every six months starting in December 2015. The Commission stipulates that the December 2015 report should detail the French authorities’ response to the Commission’s opinion on the coming year’s draft budgetary plan and the June 2016 report should update and further specify the consolidation efforts undertaken to meet the structural balance targets.

35.10 A Commission Staff Working Document accompanying the draft Council Recommendation contains the analysis and forecasts that underpin the draft.

35.11 The Commission Reports concerning Belgium, Italy and Finland, documents (b)-(d), provide an assessment of developments in each country with regards to meeting the debt and deficit targets under the SGP, also based on its 2015 winter economic forecast.

35.12 Belgium’s general government deficit is estimated by the Commission’s 2015 winter forecast to be 3.2% of GDP in 2014, above but close to the 3% of GDP SGP reference value. However, the Commission considers the breach of the reference value to be exceptional and temporary because it is due to unexpected revenue shortfalls and lower than expected inflation. Therefore, it suggests that Belgium should currently be considered as complying with the deficit criterion.

35.13 Belgium’s general government debt reached 104.5% of GDP in 2013, above the 60% of GDP SGP reference value. Based on the Commission 2015 winter forecast, Belgium is not projected to make sufficient consolidation efforts, suggesting that the debt criterion is not being fulfilled. However the Commission takes the following factors into account to explain the deviation: unfavourable economic conditions, the fact that Belgium is not expected to deviate significantly from its path towards its Medium Term Objective (MTO) in 2014 and 2015 and the government’s announcement of an ambitious growth enhancing structural reform plan. Given these factors, the Commission suggests that Belgium should currently be considered as complying with the debt criterion.

35.14 The Commission’s 2015 winter forecast indicates that Italy’s general government balance is expected to be 2.6% in 2015, below the 3% SGP reference value. Therefore, the Commission suggests that Italy should currently be considered as complying with the deficit criterion. The debt level is forecast to have increased from 131.9% of GDP in 2014 to 133% of GDP in 2015, above the 60% of GDP SGP reference value. This would initially suggest that the debt criterion is not being fulfilled, however the Commission has taken the following factors into account: unfavourable economic conditions, the additional structural adjustment needed to meet the targets would have negative growth implications given current economic circumstances, Italy is expected to comply with the required adjustment towards its MTO in 2014 and 2015 and the government has committed to implementing an ambitious structural reform agenda. Given these factors, the Commission suggests that Italy should currently be considered as complying with the debt criterion.

35.15 Finland’s general government debt is expected to reach 61.2% of GDP in 2015, above the 60% of GDP SGP reference value. However, the Commission considers that the planned increase in debt is fully explained by Finland’s financial support to Member States to safeguard wider financial stability, without which government debt would be below 60% of GDP. Therefore, the Commission suggests that Finland should currently be considered as complying with the debt criterion.

The Government’s view

35.16 In his Explanatory Memorandum of 16 March 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that:
• under the rules of the SGP, the UK and other non-eurozone Member States do not participate in voting on the EDP of eurozone countries;

• an assessment of the UK’s compliance with the SGP will be conducted later this year as part of the European Semester; and

• there are no direct financial implications to the UK arising from these documents.

Previous Committee Reports

None.

36 Financing European Union operations having military or defence implications

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny

Document details
Council Decision on establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)

Legal base
Articles 26(2) and 41(2) TEU; unanimity

Department
Ministry of Defence

Document number
(36732), —

Summary and Committee’s conclusions

36.1 Common Security and Defence Policy (CSDP) operations with military implications or defence operations cannot be financed from EU funds. For the common costs, the Council established a special mechanism (ATHENA) in 2004. The first part of the “Background” section below describes the history and operation of ATHENA thus far. Currently there are five active EU military operations that benefit from ATHENA financing, which is provided by 27 Member States (Denmark has opted out of the “military” CSDP).

36.2 Common costs are financed on the basis of a GNI-based indicator. The UK share is presently 14.82% of eligible common costs. The total UK cost share for 2014 is €8.8m. Funding is drawn from the Peacekeeping budget which is managed by the FCO.

36.3 The remainder of the expenditure is financed directly by Member States on the basis of the “costs lie where they fall” principle.

36.4 The draft Council Decision that the Committee cleared last November was the outcome of the latest triennial review. The Minister for Reserves at the Ministry of Defence
(Mr Julian Brazier) said that, from the UK perspective, it had been a success. As in 2011, the review had largely focussed on modifications of a technical nature as a result of lessons learned from operations, as well as proposals from some Member states to expand the eligibility of common funded costs of EU Military operations: as in 2011, the latter had been resisted (see our most recent relevant Report for full details109).

36.5 What the Minister described as “the one key area in which we have continued to accepted limited expansion on a temporary basis” was on strategic airlift; this, he said, was “a separate Declaration and not part of this decision and thus outside the scope of this EM”. He explained it thus:

“We have agreed to the extension of the current arrangements for deploying EU Battle-Groups110 up to the end of 2016, in line with arrangements for NATO, in order to allow time for Member States to bring into service planned capability such as the A400M. We have supported the expansion of this arrangement to include common costs for land and sea strategic lift on the grounds that the use of sea and land may be cheaper, quicker and in certain circumstances more operationally effective than the use of air. Such costs would only be incurred if a Battle-Group were to deploy, in which case a separate Council decision would be required over which the UK would have a potential veto.”

Our assessment

36.6 The Committee noted its wariness of Declarations generally since, though they may give comfort, they were by definition not legally-binding. However, on this occasion, we noted that there was the in-built safeguard of needing a fresh Council Decision, were implementation to be proposed.

36.7 The Minister also said that he and his officials were “working to secure an unclassified version of the Council Decision but hope that you are able to conduct scrutiny on the basis of this Explanatory Memorandum”. This suggested a misunderstanding about the nature of the document submitted, which (as with most CFSP/CSDP Council Decisions) was still an “unofficial” text, i.e., not yet fully finalised, and therefore lacking a Council number, rather than one that was “classified” (in EU parlance, i.e., limite or restreint). The Committee noted that it was well-used to clearing such “unofficial” texts, on the basis that no substantive changes were subsequently made prior to adoption by the Council (in which, very rare, case, the Minister concerned was expected to submit the revised text for scrutiny in the normal way).

36.8 On that basis, we cleared the draft Council Decision.111

36.9 The Minister has now submitted a further Council Decision, which again focuses on the mechanics of funding and the rules of eligibility on what can be common funded, and

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109 The key elements of EU Battlegroups are: Stand-alone Battlegroup-sized forces (around 1500 strong, including Combat Support and Combat Service Support); deployable within 15 days; sustainable for 30 days (but extendable up to 120 days); designed for compatibility with typical UN Chapter VII mandates to restore international peace and security; composed of contributions from one or more Member States, and open to participation by third parties.
110 Ditto.
which contains some amendments that he has been willing to accept. All of these, he says, are consistent with the Government’s position on common funding, which “is at odds with the majority of Member States”; the Government has nonetheless “engaged positively with the review at each stage” and “been constructive where proposals did not cross our own red lines and could improve the efficiency and cost effectiveness of missions on the ground” (see paragraphs 36.23 – 36.25 below for details).

36.10 We commend the Minister’s approach, and are content with the outcome.

36.11 We remain wary of Declarations for the reasons set out above, but again note the in-built safeguard of needing a fresh Council Decision, were implementation to be proposed.

36.12 The Council Decision has again been submitted (as with most CFSP/CSDP Council Decisions) as an OTNYR text (Official Text Not Yet Received), i.e., not yet fully finalised, and therefore lacking a Council number, rather than one that was “classified” (in EU parlance, i.e., limité or restreint). As noted previously, the Committee is well-used to clearing such OTNYR texts, on the basis that no substantive changes are subsequently made prior to adoption by the Council (if this is the case, which is very rare, the Minister concerned is expected to submit the revised text for scrutiny in the normal way).

36.13 On that basis, we now clear this Council Decision.

**Full details of the documents:** Council Decision establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena): (36732), —.

**Background**

36.14 ATHENA is a mechanism that administers the financing of common costs of EU operations having military or defence implications on behalf of Member States contributing to the financing of EU military operations. ATHENA was set up by the Council on 1st March 2004. ATHENA’s legal basis was amended most recently in December 2008.112

36.15 Currently there are five active EU military operations benefiting from ATHENA financing, which is provided by 27 Member States (Denmark has opted out of the EU Common Security and Defence policy on military matters):

— EUFOR ALTHEA113

— EUNAVFOR ATALANTA114

— EUTM SOMALIA115


113 EUFOR ALTHEA operation was launched on 2 December 2004.

114 EUNAVFOR operation ATALANTA was launched in December 2008 in response to the continuing impact of piracy and armed robbery at sea off the coast of Somalia on international maritime security and on the economic activities and security of countries in the region.
36.16 ATHENA manages the financing of common costs for these operations, which can include transport, infrastructure, and medical services, as well as the Nation Borne Costs, which include lodging, fuel, and similar costs linked to the national contingents.

36.17 In the past, ATHENA has also financed the following operations/support actions:

- AMIS 2 (Sudan) (June 2005–December 2007)
- EUFOR RD CONGO (June–November 2006)
- EUFOR TCHAD RCA (January 2008–March 2009)
- EUFOR Libya (April–November 2011)

36.18 ATHENA is managed by an administrator and under the authority of a Special Committee composed of representatives of the Member States contributing to the financing of each operation.

36.19 ATHENA can finance, for EU military operations, so-called “common costs”, which are spelled out in the annexes appended to the Council Decision establishing ATHENA:

- In all cases:
  - HQ implementation and running costs, including travel, computer information systems, administration, public information, locally hired personnel, Force Headquarters (FHQ) deployment and lodging;
  - for forces as a whole, infrastructure, medical services (in theatre), medical evacuation, identification, acquisition of information (satellite images); and
  - reimbursements to/from NATO or other organisations (e.g. UN).

- if the Council so decides: transport and lodging of forces, Multinational Headquarters below FHQ level.

- when requested by the Operation Commander and approved by the Special Committee:
  - barracks and lodging/Infrastructure, essential additional equipment, medical services, acquisition of information (theatre level intelligence, reconnaissance and surveillance, including Air to Ground Surveillance & Reconnaissance, human intelligence); and

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115 In April 2010, the EU launched a military training mission in order to contribute to strengthening the Transitional Federal Government and the institutions of Somalia. This support takes place within the framework of EU’s comprehensive engagement in Somalia, with a view to responding to the priority needs of the Somali people and stabilising Somalia.

116 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, EUTM Mali.

117 On 10 February 2014 the Council established an EU military operation to contribute to a secure environment in the Central African Republic, as authorised by the UN Security Council in resolution 2134 (2014). See EUFOR RCA.
36.20 ATHENA has set out specific financial rules applicable to all expenditure financed through its mechanism.

36.21 In accordance with the article 41.2 TEU, Member States’ contributions to ATHENA are based on the Gross National Income scale.118

The Council Decision

36.22 The Minister says that this further Council Decision focuses on the mechanics of funding and the rules of eligibility on what can be common funded.

The Government’s view

36.23 The Minister says that:

“UK officials have resisted further expansion of common funding in contrast to many other Member States which have supported an expansion of the costs eligible for common funding. We maintain that Member States are ultimately responsible for deploying their troops, and increased common funding would both duplicate investment already made by many Member States and risks encouraging others to view common funding as an effective and acceptable substitute for adequate national investment in defence capability.”

36.24 He then says:

“The UK has protected its position in the latest negotiations. In particular firmly rejecting proposals that would unnecessarily expand agreed eligibility on common funding. We have blocked proposals to expand common funding for: Battlegroup Transport Cost; Barracks and lodging for the whole force and Exercise costs. We see these costs as Nation Borne Costs that should not have to be covered by common funding.”

36.25 The Minister goes on to say that, “whilst recognising that our position on common funding is at odds with the majority of Member States”, the Government has “engaged positively with the review at each stage”, had “been constructive where proposals did not cross our own red lines and could improve the efficiency and cost effectiveness of missions on the ground”, and, as such, has agreed to a number of amendments to the Council Decision, viz:

— “Article 13(4). The additional text in Article 13 ensures that funds transferred to Athena in relation to Article 29 (Management by Athena of third party contributions) or Article 28 (Management by Athena of expenditure not included in common costs) are each kept in separate banks accounts and not mixed with other funds. This represents sound financial management;

118 See ATHENA. Also EU CSDP (Common Security and Defence Policy) missions.
— "Article 28bis. This new article allows for Athena to manage pre-financing and expenditure of certain nation borne costs in order to facilitate the initial deployment of forces. The UK supported the addition of this clause. We see it as a sensible way of facilitating deployment, whilst not expanding common funding. Should this article be used, Athena would use its own funds to facilitate some initial deployment costs before the participating Member States were confirmed. These costs would then be charged back to those Member States who deploy on the mission. The UK pushed to ensure that the management of these costs would be assured within existing means and resources and that the outlay could not exceed 20% of the total estimated cost of the mission. Pre-financing can only be approved by the Special Committee under unanimity so the UK still holds a veto should it so wish;

— "Article 29. CSDP operations are able to run discrete projects should agreement be given by Member States. This new article allows for Athena to manage the financial contribution of a third party or Member States towards the delivery of these projects. This proposal was made following Member States experience in EUTM Mali where a Canadian financial contribution towards a project in the mission was not able to be handled through the Athena mechanism. We see this as a useful amendment that ensures sound financial management of project funds. Article 29 also allows for financial contributions from Member states or third parties towards the broader costs of missions and operations to be managed by Athena. This has the potential to reduce the costs of CSDP operations for the UK. All administrative costs arising from these contributions have to be covered by the contribution itself;

— "Article 34. The amendment to Article 34 allows the Operational Commander to propose to the Special Committee a revised depreciation rate as a result of operational circumstances. This is a relatively minor practical amendment that improves the flexibility of the mechanism to take account of the improved understanding on the ground that develops throughout the course of an operation;

— "Article 40. This article extends the potential employment term for internal auditors from 6 to 8 years;

— "Article 44/46. These additional miscellaneous provisions ensure that Athena is following correct procedures with regards to security classifications and the protection of personal data;

— "Annex I (5). This addition allows for the overhead costs related to administrative arrangements and Framework contracts (Article 11) to be common funded. These costs cannot readily be attributed to a Member State and as such we consider them eligible for common funding, particularly as these agreements seek to ensure cost effective procurement and mutual support between missions and other organisations;

— "Council Declaration on Battlegroup Transport. We have continued to accept a temporary expansion of common funding on strategic lift for the deployment of the EU Battle Groups pending the delivery and entry into service of the A400M aircraft. This is agreed under a temporary Council Declaration separate to Athena which we have
agreed to extend to the end of 2016 in line with arrangements for the NATO Response Force. Costs would only be incurred if a Battle Group were to deploy.”

Previous Committee Reports
37 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Cabinet Office


Department for Culture, Media and Sport


Department for Environment, Food and Rural Affairs


Food Standards Agency


HM Treasury

(36647) 5923/15 COM(15) 39 Commission Report under Article 85(2) of Regulation (EU) No. 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, assessing the progress and effort made by CCPs in developing technical solutions for the transfer by pension scheme arrangements of non cash collateral as variation margins, as well as the need for any measures to facilitate such solution.

Home Office

(36696) 6624/15 COM(15) 58
Commission Fifth Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010.

Office for National Statistics

(36733) 6586/15 COM(15) 88
Formal minutes

Wednesday 18 March 2015

Members present:

Sir William Cash, in the Chair

Andrew Bingham          Kelvin Hopkins
Nia Griffith            Chris Kelly
Chris Heaton-Harris     Henry Smith

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

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

Paragraphs 1.1 to 37 read and agreed to.

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

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

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[Adjourned till Tuesday 24 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, Sleaford and North Hykeham)
Jacob Rees-Mogg MP (Conservative, North East Somerset)
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (Conservative, Crawley)
Mr Michael Thornton MP (Liberal Democrat, Eastleigh)

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

Mr Joe Benton MP (Labour, Bootle)
Jim Dobbin MP (Labour/Co-op, Heywood and Middleton)
Tim Farron MP (Liberal Democrat, Westmorland and Lonsdale)
Penny Mordaunt MP (Conservative, Portsmouth North)
Sandra Osborne MP (Labour, Ayr, Carrick and Cumnock)
Ian Swales MP (Liberal Democrat, Redcar)