House of Commons
European Scrutiny Committee

Thirty-ninth Report of Session 2014–15

Documents considered by the Committee on 24 March 2015, including the following recommendations for debate:

International cooperation to combat match-fixing
Employment guidelines
Rule of Law in the EU
Female genital mutilation
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Female genital mutilation

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website: http://europeanmemoranda.cabinetoffice.gov.uk/.

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (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).

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# Contents

## Report

<table>
<thead>
<tr>
<th>Meeting Summary</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
</tr>
</tbody>
</table>

## Documents for debate

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DCMS</td>
<td>(36704) (36705) International cooperation to combat match-fixing</td>
</tr>
<tr>
<td>2</td>
<td>DWP</td>
<td>(36703) Employment guidelines</td>
</tr>
<tr>
<td>3</td>
<td>FCO/MOJ</td>
<td>(35878) Rule of Law in the EU</td>
</tr>
<tr>
<td>4</td>
<td>HO</td>
<td>(35614) Female genital mutilation</td>
</tr>
</tbody>
</table>

## Documents not cleared

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>DECC</td>
<td>(36687) (36688) Energy Union Package</td>
</tr>
<tr>
<td>6</td>
<td>DFT</td>
<td>(34777) Civil aviation: passenger protection</td>
</tr>
<tr>
<td>7</td>
<td>DFT</td>
<td>(35295) (35932) (36582) Safety standards for fishermen, maritime safety and inland waterways: freight</td>
</tr>
<tr>
<td>8</td>
<td>DWP</td>
<td>(35746) Integrating labour markets</td>
</tr>
<tr>
<td>9</td>
<td>FSA</td>
<td>(34922) Food law: official controls</td>
</tr>
<tr>
<td>10</td>
<td>FCO</td>
<td>(34890) Free movement and public documents</td>
</tr>
<tr>
<td>11</td>
<td>FCO</td>
<td>(35879) (35908) Minerals originating in conflict-affected and high-risk areas: an integrated EU approach</td>
</tr>
<tr>
<td>12</td>
<td>FCO</td>
<td>(36624) The EU and Central Asia</td>
</tr>
<tr>
<td>13</td>
<td>FCO</td>
<td>(36714) Towards a new European Neighbourhood Policy</td>
</tr>
<tr>
<td>14</td>
<td>HMT</td>
<td>(36764) (36763) Taxation</td>
</tr>
<tr>
<td>15</td>
<td>MOJ</td>
<td>(35652) (35646) (35642) (32865) Procedural rights</td>
</tr>
</tbody>
</table>

## Documents cleared

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>DEFRA</td>
<td>(34930) Plant reproductive material</td>
</tr>
<tr>
<td>17</td>
<td>DWP</td>
<td>(36240) European aid to the most deprived</td>
</tr>
<tr>
<td>18</td>
<td>DWP</td>
<td>(36457) (36461) Trans-boundary effects of industrial pollution</td>
</tr>
<tr>
<td>19</td>
<td>FCO</td>
<td>(35696) European security and defence: preparing for the June 2015 European Defence Council</td>
</tr>
</tbody>
</table>

20 FCO (36115) (36161) Common Security and Defence Policy (CSDP) Missions in the Occupied Palestinian Territories: EUBAM Rafah and EUPOL COPPS

21 FCO (36749) (36750) Ukraine and Russia: EU restrictive measures

22 MOJ (35179) Comitology — adaptation of the regulatory procedure with scrutiny

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

23 List of documents

Formal minutes

Standing Order and membership
Meeting Summary

The Committee considered the following documents:

**Employment guidelines**

Last week we recommended that the draft Council Recommendation establishing four broad guidelines for Member States’ economic policies be debated in European Committee B. This week we consider four further guidelines for Member States’ employment policies. These two sets of guidelines are “intrinsically interconnected”, and together they constitute new “integrated guidelines” which are intended to provide a framework for policy coordination within the annual European Semester and to underpin the remaining years of the EU’s Europe 2020 Strategy for jobs and growth. We recommend that these guidelines be debated alongside the guidelines for economic policies, and urge the Government to ensure that this debate takes place before the June Employment and Social Policy Council and the European Council.

**Female genital mutilation**

In November 2013, the Commission published a Communication which described the action already taken by the EU to combat female genital mutilation (FGM) and proposed a series of further (non-legislative) actions to: ensure a better understanding of the prevalence of FGM within the EU; promote sustainable change to prevent FGM; support more effective prosecution of FGM; provide protection for girls or women at risk of FGM; and contribute to the worldwide elimination of FGM. The Government’s view was that many of the objectives and actions set out by the Commission could be sufficiently achieved by Member States alone, but it acknowledged that action to encourage more effective sharing of best practice, as well as EU funding initiatives and better monitoring of the transposition of relevant EU legislation, could add more value when taken at EU level. When we last considered this Communication, more than a year ago, we noted that the Justice and Home Affairs Council was expected to agree Conclusions on violence against women and girls in June 2014. We asked the Government to tell us what type of EU action on FGM it expected to be included in the draft Conclusions and, once a draft became available, to indicate whether it considered the action proposed to be appropriate and proportionate. Meanwhile, we retained the Communication under scrutiny. The Minister belatedly now assures us that the Conclusions that were adopted are “appropriate and proportionate”. The focus now will be on implementation of both the Communication and the Council Conclusions, which we consider will be of wider interest to the House. Accordingly, we recommend a debate in European Committee B which should concentrate on the respective roles of the Commission and Member States and the “added value” of EU action.

**International cooperation to prevent match-fixing**

We consider two Council decisions which would authorise the EU to sign the Council of Europe Convention on the Manipulation of Sports Competitions. The purpose of this Convention is to protect the integrity of sport and sports ethics by establishing a range of measures to prevent, detect and sanction match-fixing which apply, variously, to public
authorities, sports governing organisations, competition organisers, and those providing sports betting services. The Minister for Sport and Tourism (Mrs Helen Grant) accepts that the EU may have a role to play in combating match-fixing but questions whether the Commission has established any areas of exclusive EU external competence and how action at EU level to implement the Convention would add value to Member States’ efforts. We make a number of observations concerning competence, and in light of these concerns, and the wide interest in the subject matter of the Convention, we consider that the draft Decisions should be debated in European Committee C.

**Energy Union Package**

We consider two Communications put forward as part of a new Energy Union Package. The first of these sets out a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, and is structured around five mutually reinforcing dimensions — energy security, solidarity and trust; a fully integrated European energy market; energy efficiency; decarbonising the economy; and research, innovation and competitiveness – which together are designed to deliver greater energy security, sustainability and competitiveness. The second communication sets out a strategy for achieving the agreed 10% interconnection target for Europe’s electricity grid by 2020. Both documents are undoubtedly important, and we therefore hold them under scrutiny.
1 International cooperation to combat match-fixing

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; for debate in European Committee C

Document details
(a) Draft Council Decision on the signing of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to substantive criminal law and judicial cooperation in criminal matters;
(b) Draft Council Decision on the signing of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters

Legal base
(a) Articles 114, 165 and 218(5) TFEU; QMV
(b) Articles 82(1), 83(1) and 218(5) TFEU; QMV

Department
Culture, Media and Sport

Document numbers
(a) (36704), 6720/15 + ADD 1, COM(15) 84
(b) (36705), 6721/15 + ADD 1, COM(15) 86

Summary and Committee’s conclusions

1.1 The Council of Europe Convention on the Manipulation of Sports Competitions ("the Convention") was agreed in July 2014 and opened for signature shortly afterwards, in September 2014. Its purpose is to protect the integrity of sport and sports ethics by establishing a range of measures to prevent, detect and sanction match-fixing which apply, variously, to public authorities, sports governing organisations, competition organisers, and those providing sports betting services.

1.2 The Convention is open for signature by member States of the Council of Europe, the EU and certain third countries. So far, eight EU Member States (not including the UK) have signed the Convention. The purpose of the draft Council Decisions is to authorise the EU to sign the Convention. Two Decisions are required to reflect the different areas of EU competence covered by the Convention and the different procedures to be followed for their adoption. The first, document (a), covers those elements of the Convention which fall within the powers conferred on the EU by Article 114 (the internal market) and Article 165 (sport) of the Treaty on the Functioning of the European Union (TFEU). The second, document (b), covers those elements dealing with criminal law, judicial cooperation and law enforcement which fall within the scope of Articles 82(1) and 83(1) TFEU (judicial cooperation in criminal matters). These Articles are subject to the UK’s Title V (justice and home affairs) opt-in, meaning that the UK is not bound to participate in the second Decision unless it chooses to opt in, but will be bound by the first Decision if it is adopted. The full text of the Convention is annexed to both draft Council Decisions.
1.3 The Minister for Sport and Tourism (Mrs Helen Grant) accepts that the EU may have a role to play in combating match-fixing but questions whether the Commission has established any areas of exclusive EU external competence and how action at EU level to implement the Convention would add value to Member States’ efforts.

1.4 We welcome the Minister’s comprehensive and informative Explanatory Memorandum. We agree with her that the UK should resist further EU encroachment in areas of shared1 or supporting2 competences. There is little evidence to suggest that EU action in these areas would produce clear “added value”. Indeed, the Commission’s reticence to use its existing internal market powers to harmonise gambling laws and practices across the EU suggests that a degree of caution is warranted.

1.5 We welcome the fact that the Commission and Government have given early consideration to the complex issues of competence associated with EU accession to the Convention. Whilst both reach different conclusions, there is a commendable degree of transparency in the recitals to the draft Decisions which facilitates scrutiny. We make the following initial observations concerning competence:

- If the Commission is able to establish that there are areas of exclusive EU competence, then the EU must participate in the Convention and Decisions enabling it do so in some form are inevitable. The Commission claims that only relatively minor areas of the Convention are matters of exclusive competence, namely the provisions on data protection and those intended to combat illegal sports betting, to the extent that they affect trade in betting services with third countries. Whilst the Government is not convinced that these are matters of exclusive EU competence, we consider that the Commission has a realistic prospect of establishing that they are. A more detailed analysis of our reasons is set out in paragraphs 1.39-1.41 below.

- In principle, we object to competence creep in the form of the EU acting in relation to agreements with third countries where competence is shared. The draft Decisions, at recital (5) of each, make clear that in this case the EU would be acting in matters of shared competence. As indicated above, we see no policy imperative to justify any deviation from this principle. Therefore we consider that the draft Decisions should be amended to make clear that the EU is only acting in respect of matters for which it has exclusive competence.

- To the extent that EU competence to act is based on Article 165 TFEU (Education, Vocational Training, Youth and Sport), the risk of competence creep is not as acute as this Article only gives the EU a supporting competence. Nevertheless, permitting the EU to exercise this competence in relation to the Convention creates the risk of political momentum in favour of EU harmonising legislation in the area of gambling.

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1 In matters of shared competence it remains open for either the EU or the Member States to act.
2 The EU may only carry out actions to support, co-ordinate or supplement actions by the Member States in areas of supporting competence. Harmonisation is excluded.
1.6 In light of these concerns, and the wide interest in the subject matter of the Convention, we consider that the draft Decisions should be debated in European Committee C. We expect the debate to focus on the efforts made by the Government to eliminate or limit EU involvement in the Convention. We ask the Minister to update our successor Committee, ahead of the debate, on progress made during negotiations within the relevant Council working party in further clarifying areas of exclusive, shared and supporting competences.

1.7 Meanwhile, we note that the second draft Council Decision — document (b) — cites Title V (justice and home affairs) legal bases but does not include a recital making clear that the UK’s Title V opt-in Protocol applies. Nor does the Minister set out the factors which the Government will take into account in determining whether or not to opt into the proposal. We ask the Minister to write to us before the debate takes place to confirm that an appropriate recital will be added to the draft Decision and to provide some indication of the factors influencing the Government’s opt-in decision. We would also like her to confirm the deadline by which the UK must notify its opt-in decision (if it decides to opt in) at the earliest opportunity, and to explain the legal and practical implications for the UK of being bound by the first draft Decision, but not the second one.

1.8 We look forward to receiving further details on the Opinion which Malta has sought from the Court of Justice on the compatibility of the Convention with the EU Treaties as soon as it is available. We ask the Minister whether she expects the Court hearing to delay the progress of negotiations within the Council.

1.9 Finally, we note that eight Member States have already signed the Convention, yet the Minister indicates that the UK is not able to do so until the question of EU participation in the Convention has been resolved. We ask her to explain the impediments to UK signature.

1.10 Pending the debate, both draft Council Decisions remain under scrutiny.

**Full details of the documents:** (a) Draft Council Decision on the signing of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to substantive criminal law and judicial cooperation in criminal matters: (36704), 6720/15 + ADD 1, COM(15) 84; (b) Draft Council Decision on the signing of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters: (36705), 6721/15 + ADD 1, COM(15) 86.

**Background**

1.11 The Explanatory Report accompanying the Convention explains the reasons for establishing an international agreement to tackle match-fixing. It notes that “greater commercialisation of sport and the extensive media coverage given to it have led to an increase in the economic stakes involved in achieving certain sport results”. The incidence

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3 Explanatory Report accompanying the Convention.
European Scrutiny Committee, Thirty-ninth Report, Session 2014–15

of match-fixing has risen significantly since the early 2000s, prompted in part by a proliferation of different types of betting which are easier to manipulate and harder to detect by supervisory authorities, as well as the development of a large illegal market and the involvement of organised crime.

1.12 The Convention establishes a set of commonly agreed standards and principles to prevent, detect and punish match-fixing. It includes provisions on:

- the prevention of match-fixing (Chapter II);
- enhanced information exchange (Chapter III);
- the availability of criminal sanctions for match-fixing involving coercion, corruption or fraud (Chapter IV);
- jurisdiction, preservation of electronic evidence and protection measures (Chapter V);
- criminal, administrative and disciplinary sanctions (Chapter VI); and
- international cooperation (Chapter VII).

1.13 Council Decisions agreed in 2013 authorised the Commission (alongside Member States) to take part in the negotiations leading to the conclusion of the Convention, but only on those matters falling within EU competence, as set out in accompanying negotiating directives. A recital to both Decisions provided:

“In the case that the EU decides to join the future Convention, the legal nature of the Convention and distribution of the powers between the Member States and the Union will be determined separately at the end of the negotiations on the basis of an analysis of the precise scope of the coverage of the individual provisions.”

1.14 The UK did not opt into the Decision establishing the Commission’s negotiating mandate for those elements of the Convention concerning judicial cooperation in criminal matters and police cooperation.

1.15 In July 2014, Malta submitted a request for an opinion from the Court of Justice on the compatibility of certain provisions of the Convention concerning illegal sports betting with EU Treaty provisions on freedom of establishment, the provision of cross-border services and the prohibition of discrimination on grounds of nationality. Under Article 3(5)(a) of the Convention, sports betting is illegal if either the service provider or the type of betting is not allowed under the law applicable in the jurisdiction in which the consumer is located. Malta has expressed concern that this definition of illegal sports betting may pre-empt discussions within the EU on the appropriate form of regulation for the gaming industry.

The draft Decisions

1.16 In its explanatory memorandum accompanying the draft Decisions, the Commission describes match-fixing as “a priority for public authorities, the sport movement and law enforcement agencies worldwide” and considers that the Convention can be “an effective
instrument in the fight against match-fixing”. The Commission sets out its analysis of the nature and scope of EU competence for matters covered by the Convention. It identifies six legal bases in the EU Treaties which may be relevant:

- Article 16 TFEU on the protection of personal data;
- Article 82(1) and (2) TFEU on judicial cooperation in criminal matters;
- Article 83(1) TFEU on substantive criminal law;
- Article 114 TFEU on the internal market;
- Article 165 TFEU on sport, with a particular focus on “promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports”, protecting “the physical and moral integrity of sportsmen and sportswomen”, and fostering cooperation with relevant international organisations, notably the Council of Europe; and
- Article 207 TFEU concerning the EU’s common commercial policy, to the extent that Convention provisions affect services provided from a third (non-EU) country.

1.17 The Commission notes that the principal objective of the Convention — protecting the integrity of sports and sports ethics — falls squarely within Article 165 TFEU, but that EU competence is limited in scope, excluding any harmonisation of Member States’ laws and regulations, and supplementing rather than superseding Member State action. It suggests that measures relating to betting services “may touch upon the internal market freedoms concerning the right of establishment and the freedom to provide services” and that a number of Convention provisions concerning betting operators may (if they are exercising an economic activity) provide a basis for the harmonisation of laws under Article 114 TFEU.

1.18 The Commission recognises that the provisions of the Convention concerning substantive criminal law are broader than the relevant EU acquis based on Article 83(1) TFEU. It notes that some elements relating to money laundering fall within the scope of Article 114 TFEU and that provisions on investigative and protection measures and on seizure and confiscation may be covered by Article 82(2)(a) and (b) which concern the admissibility of evidence and criminal procedure.

1.19 The Commission concludes its analysis of EU competence:

“Certain offences are currently not covered by Article 83(1) TFEU. The Union has competence over the rest, but is exclusive only over two provisions — Article 11 (to the extent that it applies to services from and to third countries) and Article 14 on data protection (in part). The remainder is shared or ‘supportive’ competence.”

1.20 The Commission sets out the legal test applied by the Court of Justice to determine the appropriate legal base for EU measures, based on the identification of the main or predominant purpose. It concludes that the main legal bases for the criminal law elements of the Convention are Articles 82(1) and 83(1) TFEU, and that the remaining elements of the Convention are covered by Articles 114 and 165 TFEU. The Commission considers
that Articles 16 and 207 TFEU are relevant but ancillary, and so need not be cited as legal bases. In addition to these substantive legal bases, both draft Decisions also cite a procedural legal base — Article 218(5) TFEU — which determines how both instruments are to be adopted by the Council.

1.21 The Commission recognises that the Convention straddles areas of EU and Member State competence, noting:

“It follows from the intertwined nature of the Convention, and the fact that it involves competences which may be exclusive [to] the EU and competences not granted to the EU, that it is not possible for the Union or the Member States to conclude the Convention in isolation.”

1.22 The outcome of the Commission’s legal analysis is two draft Decisions, the first — document (a) — citing Articles 114 and 165 TFEU as the legal bases for elements of the Convention not involving criminal law and judicial cooperation, the second — document (b) — citing Articles 82(1) and 83(1) TFEU.

1.23 The recitals to each draft Decision seek to clarify which provisions of the Convention fall within EU competence. The first draft Decision indicates that:

- the provisions on prevention in Chapters II and III “may potentially be covered, in full or to a large extent, by Article 165 TFEU”;
- Articles 9, 10(1) and (3), and 11 concerning the regulation of sports betting are within the scope of Article 114 TFEU;
- Article 11 may also be covered by the EU’s common commercial policy under Article 207 TFEU, for which the EU has exclusive competence; and
- Article 14 on data protection falls within the EU’s exclusive competence under Article 16 TFEU.

1.24 The recitals to the second draft Decision indicate that:

- Article 15 of the Convention establishing criminal sanctions for certain types of match-fixing is partly covered by Article 83(1) TFEU;
- Article 16 of the Convention concerning money laundering offences also falls within Article 83(1) TFEU and the EU has already regulated in this area;
- various other Convention provisions are linked to these areas of EU competence (notably, Articles 17, 18, 22 and 23);
- provisions in Chapters V and VI on jurisdiction, criminal procedure, enforcement measures and sanctions are relevant to EU competence; and
- the Convention is underpinned by a comprehensive set of existing EU instruments in the field of mutual assistance in criminal matters and extradition (these are listed in a footnote).
1.25 The second draft Decision does not include a recital establishing that the UK’s Title V (justice and home affairs) opt-in applies.

The Minister’s Explanatory Memorandum of 18 March 2015

1.26 The Minister (Mrs Helen Grant) explains that the UK is already “broadly compliant” with the Convention and is “broadly content” with its provisions which she describes as “primarily risk-based and which also respects the differences of each territory’s gambling market and methods of regulation”. She describes the Convention as “a potentially powerful tool in combating match-fixing”, given its cross-border nature, and does not expect it to “impose any new unwelcome measures on the UK”, although some changes may be required to UK criminal law.4 She notes that the UK participated in the negotiation of the Convention but is unable to consider signing it in its own right until discussions concerning EU participation in the Convention have concluded. This decision will therefore fall to the next Government.

1.27 The Minister agrees with the Commission that match-fixing and the manipulation of sports competitions present a “significant threat” to the integrity of global sport. She highlights the UK’s leading role in combating match-fixing and the importance of sharing expertise and raising standards in other countries, adding:

“Combating match-fixing effectively requires a co-ordinated multi-agency approach — involving the sports movement, governments, betting operators, law enforcement authorities and international organisations — and the scope of the Convention is therefore wide-ranging, incorporating areas such as data protection as well as JHA [justice and home affairs] — as reflected in these two Council Decision proposals.”5

1.28 She notes that the UK has already established an independent Sports Betting Integrity Forum which brings together all the key actors in the UK (such as sports bodies, betting operators, the Gambling Commission and law enforcement representatives). Whilst the Government recognises that the EU could have a role to play in combating match-fixing, the Minister questions “what value it would add over and above Member States’ efforts”. She also questions whether EU participation in the Convention is necessary simply to establish a platform for the exchange of best practice.6

1.29 The Minister expands on her reservations as to the necessity of EU participation in the Convention. She accepts that the draft Decisions proposed by the Commission are “arguably within the boundaries of the legal bases cited”, but considers that the Commission “has not explained why any of the obligations in the Convention (other than those where it considers the EU has exclusive competence) need to be carried out at EU level and not at Member State level.”7 In relation to competence based on Article 165 TFEU, she notes:

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4 See paras 28 and 31 of the Minister’s Explanatory Memorandum, as well as para (iv) under the heading Legal and Procedural Issues.
5 See para 30 of the Minister’s Explanatory Memorandum.
6 See para 35 of the Minister’s Explanatory Memorandum.
7 See para (i) under the heading Legal and Procedural Issues.
“Article 165 TFEU only provides the EU with a supporting, co-ordinating and supplementing competence for sport. Harmonisation of Member States’ regulations or legislation on sport is explicitly excluded by the terms of the Article and so the EU’s competence does not supersede that in this area.”

1.30 The Minister disputes the Commission’s assertion that the EU has any exclusive competence under the Convention, adding that the Convention does not “adversely affect or otherwise require any changes to be made to internal EU rules on data protection”, nor does it have “any effects on international trade”. She considers that the Commission has failed to provide “the required detailed analysis to establish exclusive external EU competence”.

1.31 The Minister notes that the Convention is predominantly about sport and sports betting. The EU only has a supporting competence for sport, and has not so far exercised its shared competence for internal market matters relating to betting. She continues:

“The EU legislature has made a deliberate choice to leave the Member States a wide discretion for adopting measures in the field of gambling. The field is excluded from the scope of Directive 2006/123/EC on the provision of services and Directive 2011/83/EU on consumer protection. It is also excluded from Directive 2014/23/EU on the award of concession contracts, which explains in recital 35:

“That exclusion is justified by the granting of an exclusive right to an economic operator, making a competitive procedure inapplicable, as well as by the need to retain the possibility for Member States to regulate the gambling sector at national level in view of their obligations in terms of protecting public and social order.”

1.32 The Minister highlights the “large variation in approaches to regulation of sport and gambling” across the EU, with sports betting treated differently from other forms of gambling in some Member States. She notes that the Convention takes account of these differences by allowing “substantial flexibility to parties in implementing it”.

1.33 The Minister concludes that there is no need for the EU to exercise competence under Treaty provisions relating to sport and to the internal market.

1.34 Turning to the criminal law and data protection aspects of the Convention, the Minister suggests that these are simply the means for achieving the wider goals relating to sporting integrity and sports betting. She highlights a particular concern with Article 19 of the Convention which includes provision for extra-territorial jurisdiction for offences committed by nationals of participating States. She explains that this would require changes to UK law “save for the inclusion of a provision that allows a State party to declare that it reserves the right not to apply the criminal law provisions extraterritorially”. She anticipates that, if the EU were to become a party to the Convention, it would be unlikely
to make use of this reservation. The UK could, as a result, find itself bound to extraterritorial jurisdiction unless it decided to opt out of the Council Decision authorising EU participation in the Convention.12

1.35 The Minister’s overall assessment is that the Commission has not provided “a clear rationale” for the EU to participate in the Convention. She says that the Government will listen to the arguments advanced by the Commission and other Member States during negotiations, as well as pressing for further discussion of the application of the subsidiarity principle.

1.36 The Minister notes that the second draft Decision — document (b) — cites Title V (justice and home affairs) legal bases and is subject to the UK’s Title V opt-in Protocol. She undertakes to inform us of the deadline for notifying the Government’s opt-in decision to the Council Presidency, once the final language version of the proposal has been published.13

1.37 The Minister tells us that the EU Commissioner for Sport, Tibor Navracsics, has stated that signing the Convention is a priority for him. Negotiations will take place within a Council working party and, once concluded, the draft Decisions will be brought to the Council for formal adoption, possibly as early as May if sufficient progress is made. Although, formally, adoption is by a qualified majority, the Minister explains that “mixed Agreements” covering areas of EU and Member State competence are in practice agreed by consensus.

1.38 Finally, the Minister says that the Government will monitor the outcome of the request submitted by Malta for an Opinion from the Court of Justice on the compatibility of the Convention with the EU Treaties. She expects the Opinion to be published in the coming months.

Our analysis of areas of exclusive EU competence

1.39 The Commission’s claim for exclusive competence in respect of the data protection provisions in the Convention (Article 14) are based on the fact that these provisions may affect the EU’s internal rules on data protection.14 The Minister’s Explanatory Memorandum sets out the Government’s view that the Convention does not “adversely affect or otherwise require any changes to be made to EU internal rules on data protection.”15 However the Court of Justice has made it clear that internal rules can be “affected”, even if they are consistent with the relevant international agreement. Moreover, EU exclusive competence can arise if the subject matter of the international agreement is “largely covered” by EU internal legislation, as is, arguably, the case with existing EU data protection legislation.

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12 See para (iv) under the heading Legal and Procedural Issues.
13 The three-month opt-in period starts to run from the date of publication of the last language version of the proposal.
14 Article 3(2) TFEU.
15 See para 18 of the Minister’s Explanatory Memorandum.
1.40 The Commission claims that the incidence of the Convention on trade with third countries falls within the scope of the EU’s common commercial policy which, in itself, is a matter of EU exclusive competence. The Minister asserts that the relevant provisions of the Convention (in Article 11) requiring closure of remote sports betting operations if their activity is illegal where the consumer is located (even if not illegal where the operator is located), the blocking of financial flows and the prohibition of advertising, do not have any effect on international trade. However some effect on international trade in betting appears likely, albeit one tainted with illegality.

1.41 The matter is potentially the subject of litigation before the Court of Justice. However that Court often takes what may be regarded as an expansive view of EU exclusive competence.  

**Previous Committee Reports**

None.

**2 Employment guidelines**

<table>
<thead>
<tr>
<th>Committee’s assessment</th>
<th>Politically important</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Committee’s decision</strong></td>
<td>Not cleared from scrutiny; recommended for debate in European Committee B along with the draft Council Recommendation on broad guidelines for economic policies of Member States and the EU (Council document 6813/15 + ADD 1)</td>
</tr>
</tbody>
</table>

**Document details**

Draft Council Decision on guidelines for the employment policies of the Member States

**Legal base**

Article 148(2) TFEU; —; QMV

**Department**

Work and Pensions

**Document numbers**

(36703), 6144/15 + ADD 1, COM(15) 98

**Summary and Committee’s conclusions**

2.1 The EU Treaties provide that Member States are to regard their economic policies and the promotion of employment as “a matter of common concern”. At our meeting on 18 March 2015, we considered a draft Council Recommendation establishing four broad guidelines for Member States’ economic policies. In this chapter, we consider four further guidelines for Member States’ employment policies. As each set of guidelines has a distinct legal base in the EU Treaties, they have been proposed as separate legal instruments which

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16 For a recent example see Opinion 1/13.
17 Articles 121 and 146(2) TFEU.
18 See our Thirty-seventh Report listed at the end of this chapter for further details.
are, however, “intrinsically interconnected”. Together, they constitute the new “integrated guidelines” which are intended to provide the framework for policy coordination within the annual European Semester and to underpin the remaining years of the EU’s Europe 2020 Strategy for jobs and growth. The guidelines will be considered by the European Council in June.

2.2 The Government notes that the guidelines are not legally binding and considers their content to be broadly acceptable, whilst highlighting concerns about the use of “inappropriately prescriptive language on labour taxation and Member States’ social policies”.

2.3 We have already recommended that part one of the integrated guidelines, concerning economic policies, should be debated in European Committee B. We consider that the second part of the guidelines, dealing with Member States’ employment policies, should be debated at the same time. We urge the Government to ensure that the debate takes place before the June Employment and Social Policy (EPSCO) Council and the European Council.

2.4 We suggest that Members may wish to invite the Government to amplify its concerns regarding the references in the employment guidelines to labour taxation and Member States’ social policies during the course of the debate.

Full details of the documents: Draft Council Decision on guidelines for the employment policies of the Member States: (36703), 6144/15 + ADD 1, COM(15) 98.

Background

2.5 The employment guidelines have to be agreed each year by a Decision of the Council and must remain consistent with the broad economic guidelines. They form an important part of the Europe 2020 Strategy, agreed by the European Council in March 2010, and the European Semester, an EU-level framework for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances.

2.6 The Europe 2020 Strategy seeks to establish a comprehensive policy framework to address the challenges facing the EU during the period to 2020, with a specific focus in the remaining years on investment, structural reform and fiscal responsibility. The policy orientations contained in the integrated guidelines, along with the associated reporting and monitoring processes, are intended to help transform the EU into “a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion” by 2020. The Strategy sets out five “headline targets” which the EU should aim to achieve by then. They include one on employment which seeks to raise the employment rate amongst those aged between 20 and 64 to 75% and to encourage labour market participation amongst young people, older workers, low-skilled workers, as well as better labour market integration of legal migrants.

2.7 The integrated guidelines also form an integral part of Member States’ National Reform Programmes which determine how the objectives of the Europe 2020 Strategy are to be

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19 See p.2 of the Commission’s explanatory memorandum accompanying the draft Decision.
achieved. Member States are required to produce an annual report describing the principal measures taken at national level to implement the employment guidelines. These reports form the basis of a Joint Employment Report prepared annually by the Commission and Council for submission to the European Council along with the Commission’s Annual Growth Survey.

2.8 The current employment guidelines, which have been rolled over each year from 2010 to 2014, are designed to:

- increase labour market participation, reduce structural unemployment and promote job quality;
- develop a skilled workforce and promote lifelong learning;
- improve the quality and performance of education and training systems and increase participation in higher education; and
- promote social inclusion and combat poverty.

**The draft Council Decision**

2.9 Although the employment guidelines have to be renewed annually, they have remained stable during the five years from 2010 to 2014 to allow sufficient time for effective implementation. The new guidelines proposed by the Commission are set out in an Annex to the draft Council Decision. The recitals to the draft Decision make clear that “moving the Union to a state of strong, sustainable and inclusive growth and job creation is the key challenge faced today”. They also place particular emphasis on addressing the social impact of the economic and financial crisis through the effective functioning of labour markets and social welfare systems. Although addressed to the Member States, the guidelines are intended to be implemented “in partnership with all national, regional and local authorities, closely associating parliaments, as well as social partners and representatives of civil society”.

2.10 The employment guidelines form the second part of the integrated guidelines and are numbered accordingly from five to eight. Each guideline has a headline title, followed by descriptive paragraphs setting out some common objectives to be pursued by Member States.

**Guideline 5: Boosting demand for labour**

2.11 This guideline encourages Member States to:

- facilitate job creation by reducing barriers to employment, promoting entrepreneurship, and supporting the creation of small businesses;
- take active measures to promote the social economy and foster social innovation;
shift the tax burden from labour while protecting revenue necessary for the provision of adequate social protection and other growth-enhancing expenditure;
remove barriers and disincentives to labour market participation;
encourage wage-setting mechanisms (together with social partners) so that wages keep pace with productivity, taking into account differences in skills and local labour market conditions as well as in economic performance across regions, sectors and companies; and
ensure, when setting minimum wages, that the impact on in-work poverty, job creation and competitiveness is considered.

Guideline 6: Enhancing labour supply and skills

2.12 This guideline urges Member States to:

promote productivity and employability by ensuring an appropriate supply of relevant knowledge and skills;
invest in education and vocational training systems to improve skills levels within the workforce;
improve access to quality adult learning and implement active ageing strategies to extend working lives;
reduce the number of long-term unemployed and the level of youth unemployment through strategies supporting a return to the labour market and implementation of youth employment guarantees;
improve education and training systems to ensure good quality learning outcomes and reduce early school leaving;
consider dual learning systems, as well as increased opportunities for recognising skills acquired outside the formal education system;
reduce barriers to labour market participation, especially for women, older workers, people with disabilities, and legal migrants;
ensure gender equality and equal pay in the labour market, as well as access to affordable and good quality early childhood education and care; and
make full use of the European Social Fund and other EU funds to improve employment, social inclusion, education and public administration.

Guideline 7: Enhancing the functioning of labour markets

2.13 This guideline recommends that Member States should:

reduce labour market segmentation, ensuring that employment protection rules encourage recruitment while also providing adequate protection for those in work, seeking work, or employed on temporary contracts;
• ensure close involvement of national parliaments and social partners in designing and implementing labour market reforms and policies;
• strengthen active labour market policies;
• ensure that social protection systems are effective in activating those able to participate in the labour market whilst protecting those who cannot, as well as preparing individuals to manage risk;
• promote inclusive labour markets and put in place effective anti-discrimination measures; and
• support the mobility of workers through measures to enhance the portability of pensions and recognition of qualifications, whilst guarding against abuse of existing free movement rules.

Guideline 8: Ensuring fairness, combating poverty and promoting equal opportunities

2.14 This guideline encourages Member States to:
• modernise their social protection systems to ensure fair, effective, efficient and adequate protection;
• ensure that social policies are better targeted and complemented by affordable, good quality childcare and education, training and employment support, housing support, accessible health care, and access to basic services (such as bank accounts and the Internet);
• take action to reduce levels of early school leaving and tackle social exclusion;
• support investment in human capital and help prevent, reduce and protect against poverty;
• reform pension systems to ensure their sustainability and adequacy in light of increasing longevity and demographic change; and
• improve the accessibility, efficiency and effectiveness of healthcare and long-term care systems, while safeguarding fiscal sustainability.

The Minister’s Explanatory Memorandum of 17 March 2015

2.15 The Minister for Employment (Esther McVey), noting the different legal bases in the EU Treaties for the two sets of guidelines, explains that the broad economic guidelines fall within the remit of the Economic and Financial Affairs Council (ECOFIN) whereas the employment guidelines are agreed by the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council.

2.16 The Minister describes how the employment guidelines fit within the annual reporting framework established as part of the European Semester:
“The Employment Guidelines provide the context against which the Government prepares a report on implementation of national employment policy, the National Reform Programme, and which will be examined in the form of a peer review by other Member States’ officials in the advisory Employment Committee. On the basis of this examination the Council may, on a recommendation from the Commission, make recommendations to individual Member States (the Country Specific Recommendations published in June). These would be agreed bilaterally by EPSCO. It would primarily be for the Government to decide how to report on any national policy it considered relevant to any recommendation made to the UK.”

2.17 The Minister notes that the guidelines are not legally binding and are intended to “frame the scope” of Member States’ national employment policies. Turning to their substance, she continues:

“The proposed language is in keeping with the current Employment Guidelines and it is broadly acceptable to the Government. However, there are some concerns about the use of inappropriately prescriptive language on labour taxation and Member States’ social policies, on which we already have some support. Nevertheless, the proposal here is in the early stages of negotiation, and there is ample opportunity to address our concerns.”

2.18 Following consideration by the Employment and Social Protection Committees, and any other relevant Committees, the Minister expects the Latvian Presidency to seek agreement to a general approach at the EPSCO Council in June.

**Previous Committee Reports**

3 Rule of Law in the EU

Committee’s assessment

Legally and politically important

Committee’s decision

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

Document details

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

Legal base

—

Departments

Foreign and Commonwealth Office and Ministry of Justice

Document numbers

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

Summary and Committee’s conclusions

3.1 In response to calls from some Member States and the European Parliament, the Commission published this Rule of Law framework in March 2014. It was intended to better protect the rule of law in Member States from systemic threats. These, the Commission considered, could not be effectively tackled through Article 258 TFEU infringement proceedings which target specific breaches nor through Article 7 TEU mechanisms which involve high “last resort” thresholds for action.

3.2 The framework seeks to resolve such future threats to the rule of law before conditions are met for activating the procedures in Article 7 TEU. It is only intended to be used where national mechanisms are no longer capable of addressing the difficulties. It gives some indication of the threshold for action under the mechanism: “the political, institutional and/or legal order of a Member State as such, its constitutional structure, separation of powers, the independence or impartiality of the judiciary, or its system of judicial review including constitutional justice where it exists, must be threatened — for example, as a result of the adoption of new measures or of widespread administrative practices of public authorities and lack of domestic redress”.

3.3 The framework consists of a three stage process: the Commission would send a confidential reasoned opinion to the Member State concerned; if the matter remained unresolved, the Commission would set out a timetable for recommended action; if this was not complied with, the Commission would consider activating one of the Article 7 procedures.

3.4 The Government has been concerned about: the scope for duplication of existing mechanisms; the undermining of the role of the Member States within the Council; uncertainty about the threshold for activating the framework; the Commission’s competence to issue the framework and a widening of the remit of the Fundamental Rights Agency. We have also had concerns about the potentially wide scope of the concept of the
rule of law envisaged, the lack of oversight of the Commission and the possibility of the framework’s extension in future to wider Article 2 TEU values. We thought that if the threshold in Article 7 was set too high, it was a matter for Treaty change and the collective political will of the Member States. We also recommended the document for debate on the floor of the House.

3.5 We have previously reported on the joint letter from the Secretary of State for Justice (Chris Grayling) and the Minister for Europe (Mr David Lidington) of 2 March. They informed us that the current document had not been endorsed by the Council in December and that the Council had opted instead to hold annual dialogues on the rule of law. The Government was also unable to commit to organising the recommended debate. However, it did respond to the concerns we had initially raised on the document in May 2014.

3.6 In response, in our most recent Report on this Communication, we urged the Government to hold the debate before the dissolution of Parliament, noting that the Government had conceded that that it would be “complacent to imagine that the Commission will not try to take further action in relation to the rule of law in future”. We also asked the Government to comment on the publicly available opinion of the Council Legal Service (CLS) that the Commission had no competence to issue the current document. The Ministers now write in response to that last Report, reiterating their position on our debate recommendation and declining to comment on the CLS opinion.

3.7 We thank the Ministers for their prompt response to our last Report. We regret that the Government’s position remains unchanged on our debate recommendation. We hope that our successor Committee will see fit to continue to pursue this outstanding matter with the next Government in the new Parliament. We ask Ministers to continue to provide updates on developments, including any rule of law dialogues.

3.8 In the meantime, the document remains under scrutiny.

**Full details of the documents:** Commission Communication: A *new EU Framework to strengthen the Rule of Law* (35878), 7632/14 + ADD 1, COM(14) 158.

**Background**

3.9 A full background to and account of the current document, together with the Government’s view, are set out in our Report of 7 May 2014.22

**The Ministers’ letter of 19 March 2015**

3.10 The Ministers say on the question of the debate recommendation:

“We note your further comments on the recommendation for a debate but regret that as matters stand we are not in a position to add anything to what we said in our letter of 2 March.”

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3.11 The Ministers then comment on the issue of the publicly-accessible Council Legal Service opinion:

“Thank you for drawing our attention to the fact that the opinion of the Council Legal Service (CLS) had been placed in the public domain, which we understand to be highly unusual. As you know, it is not the government’s practice to comment on, or, normally, even refer to, CLS opinions, which are usually covered by the Council Rules of Procedure — Article 6 on professional secrecy and disclosure of documents, prohibiting their disclosure. We can say, however, that the government naturally takes appropriate account of such opinions when formulating our policy positions.”

3.12 Referring to their previous letter of 2 March, the Ministers recall they considered the Council Conclusions, adopted at the General Affairs Council of 16 December, were “a good result for the UK”. They also recall that the Council Conclusions did not endorse the current document “including the questionable proposal the Commission might make recommendations to Member States”, but instead “emphasised the principle of conferred competences”. The Ministers note that:

“The CLS opinion states that the Commission’s communication was not compatible with that principle which governs the competences of the institutions of the Union.”

Previous Committee Reports


4 Female genital mutilation

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

Document details Commission Communication: Towards the elimination of female genital mutilation
Legal base —
Department Home Office
Document numbers (35614); 17228/13; COM(13) 833

Summary and Committee’s conclusions

4.1 The Commission Communication, published in November 2013, describes the action already taken by the EU to combat female genital mutilation (FGM) and proposes a series of further (non-legislative) actions to:

• ensure a better understanding of the prevalence of FGM within the EU;
• promote sustainable change to prevent FGM;
• support more effective prosecution of FGM;
• provide protection for girls or women at risk of FGM; and
• contribute to the worldwide elimination of FGM.

4.2 The Communication draws on the findings of a report published in 2013 by the European Institute for Gender Equality (EIGE) which highlighted the absence of reliable and comparable data on the prevalence of FGM within the EU, as well as inadequate monitoring and evaluation of the effectiveness of legislative and policy measures to tackle FGM, and called for better specialist support services and professional training, multi-agency cooperation, sustainable funding, and enforcement of existing laws to avoid impunity.23

4.3 The Government set out in some detail the action being taken domestically to eliminate FGM as part of a broader UK Action Plan to end violence against women and girls and indicated that many of the objectives and actions proposed in the Communication could be sufficiently achieved by Member States alone. The Government acknowledged, however, that action to encourage more effective sharing of best practice, as well as EU funding initiatives and better monitoring of the transposition of relevant EU legislation, could add more value when taken at EU level “due to the scale and effects achieved”.24

4.4 We noted the synergies between many of the actions proposed in the Communication and measures being taken domestically to combat FGM — in some cases supported by EU funding. We agreed with the Government that, in tackling FGM within the EU, the Commission should focus its efforts on facilitating the exchange of information on the most effective policy approaches and legal frameworks to prevent FGM, protect those at risk, and prosecute the perpetrators.

4.5 We last considered the Communication more than a year ago, at our meeting on 26 February 2014. We noted that the Justice and Home Affairs Council was expected to agree Conclusions on violence against women and girls in June 2014. We asked the Government to tell us what type of EU action on FGM it expected to be included in the draft Conclusions and, once a draft became available, to indicate whether it considered the action proposed to be appropriate and proportionate. Meanwhile, we retained the Communication under scrutiny.

4.6 It is disappointing that we have had to wait so long for a Government response and frustrating that it contains so little information on the content of the Conclusions agreed by the Justice and Home Affairs Council nearly a year ago, in June 2014.25 We do not question the value of the work undertaken by the Government domestically to combat FGM. The purpose of our scrutiny has been to ensure that action at EU level is appropriate and proportionate.

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23 See the EIGE Report.
24 Letter of 20 February 2014 from the then Minister for Crime Prevention (Norman Baker) to the Chair of the European Scrutiny Committee.
4.7 We remind the Minister that we sought information on the content of the proposed Council Conclusions well in advance of the June 2014 Council meeting, in order to consider whether there was an appropriate balance between action to be taken at national and EU level and to ensure that any EU level action was proportionate. The Minister’s delayed response, as well as her focus on domestic achievements rather than developments at EU level, has frustrated our ability to consider how the Government proposed to secure its objectives before agreeing to the Conclusions and whether it has, in fact, done so. Such delay also undermines the principle of accountability to Parliament, which is best achieved by the provision of timely information before, not after, agreement has been reached in Brussels.

4.8 We note the Minister’s belated assurance that the Conclusions are “appropriate and proportionate”. The focus now will be on implementation of both the Communication and the Council Conclusions, which we consider will be of wider interest to the House. Accordingly, we recommend a debate in European Committee B which should concentrate on the respective roles of the Commission and Member States and the “added value” of EU action.

**Full details of the documents:** Commission Communication: *Towards the elimination of female genital mutilation*: (35614), 17228/13, COM(13) 833.

**Background**

4.9 Our earlier Reports, listed at the end of this chapter, provide a more detailed overview of the problems identified in tackling FGM within the EU and the actions proposed by the Commission. They include:

- the development of a common methodology and indicators to measure the prevalence of FGM;
- better use of EU funding to support professional training;
- an analysis of existing criminal laws relating to FGM (prosecutions for FGM are rare, and until recently, there had been none in the UK, despite the introduction of specific legislation in 1985);
- the exchange of best practice;
- the inclusion of references to FGM in country of origin information produced by the European Asylum Support Office; and
- incorporating FGM in political and human rights dialogues with third countries and supporting initiatives within the UN and regionally to eliminate FGM.

**The Minister’s letter of 23 March 2015**

4.10 The Minister for Crime Prevention (Lynne Featherstone) apologises for the delay in responding to the questions raised in our earlier Reports. She notes the Coalition Government’s commitment to tackling FGM and the significant amount of work undertaken since we last heard from her Department in February 2014. She continues:
“As you may be aware, in July 2014 the Coalition Government held the first, groundbreaking Girl Summit. The Summit brought together a range of stakeholders to accelerate momentum in tackling child, early and forced marriage and FGM and rally a global movement to end the practices everywhere within a generation. Since the Summit, the Coalition Government has delivered a comprehensive package of actions to tackle FGM, including:

- The introduction of new legislation via the Serious Crime Act 2015 to:
  - introduce a new mandatory requirement for health and social care professionals and teachers to report cases of FGM to the police;
  - extend the reach of the extra-territorial offences in the Female Genital Mutilation Act 2003;
  - confer anonymity on victims of FGM;
  - make the law clearer on parents’ or guardians’ liability for failing to prevent their child being subjected to FGM; and
  - create new civil protection orders.

- Improved information sharing between midwives, health visitors and social workers.

- The launch of a new function as part of GOV.UK to signpost local FGM services, improved multi agency guidelines, an e-learning package and an updated prevalence study.

- The launch of a £1.4m FGM prevention programme with NHS England.

- Mandatory recording of FGM data across the NHS.

- Increased community engagement funding for projects to raise awareness of FGM including with girls in at-risk communities.

- The launch of a network of community champions/ambassadors to tackle FGM.

- The launch of a declaration of religious leaders and faith community leaders against FGM.

- The roll out of a communications campaign to raise awareness of FGM amongst professionals and practising communities.

- The launch of a specialist FGM unit which is providing outreach support to local areas, coordinating policy across Government, and working closely with professionals, community organisations and survivors to develop policies and share best practice.”
4.11 The Minister reminds us of the areas of activity which the Government considers can best be achieved at Member State level without the need for action at EU level (these are set out fully in our Thirty-seventh Report of Session 2013-14 listed at the end of this chapter). She describes the progress made in these areas:

“The multi-agency guidelines on FGM for professionals were updated in 2014, and the Serious Crime Act includes provision for statutory guidance on FGM which professionals must have regard to. A Home Office-funded e-learning course for professionals is now freely available, and a series of e-learning modules for healthcare professionals have also been developed. This guidance and training will further support information sharing between relevant agencies.

“The Coalition Government is also working to support the strengthening of the police response to FGM; the College of Policing are launching a new Authorised Professional Practice on FGM, and Her Majesty’s Inspectorate of Constabulary are this year carrying out a force level inspection of the police’s response to honour based crime, including FGM.

“As stated previously, we are fully committed to sharing effective practice, where skills and knowledge can be transferred across Member States, and we will continue to seek opportunities to do this. For example, in February this year we hosted an event to share effective practice and learning to support colleagues across the EU in improving their own response to tackling FGM.”

4.12 Turning to the specific questions we raised about the content of the Justice and Home Affairs Council Conclusions on preventing and combating all forms of violence against women and girls, including FGM, the Minister tells us that she considers them to be “appropriate and proportionate”, adding:

“As you may be aware, the Coalition Government agreed with the Council’s Conclusions and considers that the UK’s work on FGM is consistent with the actions that the Council calls on Member States to undertake.”

4.13 The Minister draws our attention to a Report on FGM published by the Home Affairs Select Committee in July 2014, as well as the Government’s response, published in December 2014, explaining how the Government intends to meet each of the Committee’s recommendations.

**Previous Committee Reports**

5 Energy Union Package

Committee’s assessment
Politically important

Committee’s decision
Not cleared from scrutiny

Document details
Commission Communication — setting out an Energy Union package

Legal base
—

Department
Energy and Climate Change

Document numbers
(a) (36687), 6594/15 + ADD 1, COM(15) 80
(b) (36688), 6595/15 + ADD 1, COM(15) 82

Summary and Committee’s conclusions

5.1 The Commission says that an Energy Union with an ambitious climate policy at its core must seek to give EU consumers secure, sustainable, competitive and affordable energy, and, as it believes this will require a fundamental transformation of Europe’s energy system, it has put forward two Communications as part of a new Energy Union Package.

5.2 The first of these sets out a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, and is structured around five mutually reinforcing dimensions — energy security, solidarity and trust; a fully integrated European energy market; energy efficiency; decarbonising the economy; and research, innovation and competitiveness — which together are designed to deliver greater energy security, sustainability and competitiveness. The second Communication sets out a strategy for achieving the agreed 10% interconnection target for Europe’s electricity grid by 2020.

5.3 Although the Government has flagged up a number of points which it will wish to pursue, it has given both Communications a broad welcome.

5.4 These two Communications are the latest in a series of documents produced by the Commission on energy and climate change over a period of years, and, not surprisingly, they cover ground which has been well trodden, not least in a 2014 Communication26 setting a policy framework for climate and energy from 2020 to 2030, which was debated in European Committee on 8 April 2014. Given their undoubted importance we hold them under scrutiny.

Full details of the documents: (a) Commission Communication: A Framework Strategy for a resilient Energy Union with a Forward-Looking Climate Change Policy. (36687), 6594/15 + ADD 1, COM(15) 80; (b) Commission Communication: Achieving the 10% electricity interconnection target — Making Europe’s electricity grid fit for 2020: (36688), 6595/15 + ADD 1, COM(15) 82.

Background

5.5 According to the Commission, the goal of an Energy Union with an ambitious climate policy at its core is to give EU consumers secure, sustainable, competitive and affordable energy, which will require a fundamental transformation of Europe’s energy system. It has therefore put forward two Communications as part of a new Energy Union Package — one (document (a)) setting out a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, and the other (document (b)) indicating how a 10% interconnection target for Europe’s electricity grid can be achieved.

The current documents

Document (a)

5.6 This Communication is structured around the following five mutually reinforcing “dimensions” which together are designed to deliver greater energy security, sustainability and competitiveness.

Energy security, solidarity and trust

5.7 The Commission observes that recent political challenges have re-emphasized the importance of supply diversification, and it proposes that a resilience and diversification package should be developed for gas by revising the existing Security of Gas Supply Regulation, together with a comprehensive EU liquefied natural gas strategy. This would be accompanied by a strengthening of the Energy Community, and by a programme to strengthen bilateral energy partnerships with increasingly important producing or transit countries (such as Algeria, Turkey, those in Central Asia, and, particularly, Ukraine), as well as with Norway and countries such as the United States and Canada, and — when the conditions are right — by reframing the energy relationship with Russia. It proposes that Decision No. 994/2012/EU on intergovernmental agreements between Member States and third countries should be revised to ensure that those agreements involve effective transparency, co-operation and compliance with EU law, and to require that it should be informed about their negotiation at an earlier stage.

5.8 The Commission also refers to the need to reduce consumption, and to make the most of nuclear energy and indigenous sources, including (for those Member States which choose to exploit it) unconventional gas, and it highlights the need for Member States, transmission system operators, the energy industry and stakeholders to work closely together to ensure a high level of energy security, with a particular need for Member States to cooperate closely when supplies are tight.

5.9 The Commission stresses the importance of constructing the required infrastructure, and says that it will ensure that EU funding mechanisms, in particular the future European Fund for Strategic Investments, promote the investment needed to allow energy to flow across the EU. In addition, it will assess options for voluntary demand aggregation mechanisms for collective gas purchasing in emergency situations, provided these are fully compliant with competition law, and it proposes a review of the Electricity Security of Supply Directive, since it considers that this is outdated, given developments in market design.
A fully integrated European Energy Market

5.10 The Communication highlights the central role which the implementation and enforcement of the internal energy market must play within the Energy Union, but notes that European electricity and gas cross-border transmission systems are currently not sufficient. It says that the Commission will come forward with legislative proposals focussing on market design, adapting the market better for new renewable producers, and enabling participation of consumers through demand response. It will also work with Member States to ensure that divergent national energy market interventions (such as capacity mechanisms and uncoordinated renewables support schemes) are in line with existing rules, and do not distort the internal market.

5.11 The Commission highlights the need to remove regulated tariffs which undermine price signals, and says that it will seek the phasing out of below-cost regulated prices and encourage Member States to establish road maps for phasing out all regulated prices. It also says that it will propose legislation to improve the effectiveness of the European energy regulatory framework, covering greater coordination of transmission system operators at regional level, and enhanced powers for ACER27, and will continue efforts to extend the application of internal energy market rules beyond the EU’s borders through strengthening the Energy Community and the full integration of Norway in the internal market.

5.12 The Commission says that it will continue to take stock of the implementation of major infrastructure projects, particularly agreed Projects of Common Interest (PCI). As part of this exercise, it will make an annual report on progress towards the EU’s 10% electricity interconnection target, and convene an Energy Infrastructure Platform to discuss progress with Member States, the EU institutions and regional co-operation groups. The Communication also seeks to empower consumers, making it easier for them to switch between suppliers, and ensuring that they have understandable, readily-accessible information, tools and incentives to save energy. In that context, it will continue to support the national roll-out of smart meters, and promote the further development of smart appliances and smart grids.

Energy Efficiency

5.13 The Commission proposes new legislation to help meet the agreement at the October 2014 European Council that the EU should have an indicative target of improving energy efficiency in 2030 by at least 27%. This will encompass reviews of the Energy Efficiency Directive, Energy Performance of Buildings Directive, and Eco-Design and Labelling Directives, and it also proposes a financing initiative for the retrofitting of existing buildings, facilitating access to EU energy funding instruments, and a new heating and cooling strategy. Energy efficiency in the transport sector (which accounts for more than 30% of final energy consumption in Europe) is another key focus, with proposals for a comprehensive road transport package (including tightening emissions standards for cars and vans, measures to reduce emissions from heavy duty vehicles and buses, traffic management, and the creation of a single European transport area). This would be accompanied by the promotion of road charging schemes, increased efforts to create a

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single European transport area, and removing barriers to methods of transport, such as rail, maritime transport and inland waterways, with a lower greenhouse gas intensity, and the further decarbonisation of the sector.

**Decarbonising the economy**

5.14 The Communication highlights the central role of a reformed EU Emissions Trading System as a technology-neutral, cost-effective driver for low-carbon investments, and it seeks to position the EU as the world leader in renewable energy and as a global hub for the development of next-generation renewables. It also notes the need, within the context of the EU’s renewable energy target for 2030, both to fully implement existing legislation and new market rules to integrate renewables into the market, as well as facilitating cooperation between Member States and the convergence of support schemes to promote cross-border opening of markets.

**Research innovation and competitiveness**

5.15 The Communication proposes four key priorities for a new EU strategy for research and innovation aimed at accelerating energy system transformation, and building on the Horizon 2020 programme. These are to become the world leader in developing next-generation renewables (including biomass, biofuels and energy storage); facilitating consumer participation through smart grids and appliances and home automation systems; harnessing technology to make the building stock energy-neutral; and developing more sustainable transport systems. In addition, it highlights two other priorities — carbon capture and storage and nuclear power — meriting greater collaboration between those Member States which choose to use them, as well as highlighting the need for integrated governance and monitoring to ensure that energy-related actions at the EU, regional, national and local levels all contribute to the objectives of the Energy Union.

**Document (b)**

5.16 This Communication stresses the importance of a EU grid to achieve the goals of the Energy Union, and sets out a strategy for achieving the agreed interconnection target of at least 10% of installed production capacity in each Member State by 2020. It notes that, whilst interconnection capacities have increased, 12 Member States (including the UK) remain below the target, but it points out that the European Energy Programme for Recovery has helped realise several interconnection projects, and that the Trans-European Energy Networks (TEN-E) Regulation will enable PCIs to be identified and built, specifically those which help Member States to meet the 10% target.

5.17 The Communication also states that €35 billion will be required to build the PCIs needed to meet the 10% target, so that full use should be made of the financial instruments available, notably the Connecting Europe Facility (CEF), the European Structural and Investment Funds (ESIF) and the European Fund for Strategic Investment (EFSI), which it says can only meet a small percentage of the necessary funding, but can help to mobilise private and public investment. It adds that strong regional cooperation is needed to realise the critical PCIs as these are complex and large-scale projects, and that enhancement of the existing TEN-E Regional Groups may be necessary in some cases. The Communication
notes that further interconnection will be required to complete the internal electricity market, and that, although there is an agreed objective of achieving a 15% target by 2030, there will be differing optimum levels of interconnection for Member States, depending on their circumstances.

The Government’s view

5.18 In her Explanatory Memorandum of 12 March 2015, the Parliamentary Under-Secretary of State at the Department for Energy and Climate Change (Amber Rudd) says the Government welcomes these Communications, and agrees with the Commission’s broad approach. She particularly welcomes the fact that this encompasses a forward looking climate policy, the centrality of completing the internal energy market, and initiatives to strengthen the EU’s bargaining power and reduce dependency on Russian gas in order to enhance energy security.

5.19 The Minister has the following comments on the different elements of the package:

Energy Security

The Government broadly welcomes the proposals, subject to the proviso that any revision of the Decision on Inter-Governmental Agreements should not extend its scope to commercial contracts, and it would also like the Commission to work with Member States to draw up a list of abusive clauses which should not be present in gas contracts. It is willing to consider options for common gas purchasing, but agrees with the Commission that any such mechanism would have to be voluntary, and consistent with WTO and EU competition laws and with the internal market.

Internal energy market

The Government welcomes the strong focus on the implementation and enforcement of the existing internal energy market legislation, and sees a case for greater cooperation in market design at EU level in order to minimise market distortions, provided any proposals are consistent with the electricity market reform recently introduced in the UK. Also, it suggests that these proposals could include Member States opening their capacity mechanisms and renewables support schemes to foreign participation in domestic electricity markets, as the UK is doing, although this should not involve the harmonisation of capacity mechanisms or renewable support measures; and, whilst the Government believes that strengthening the powers of ACER could be a sensible step, this should not transform it into a European regulator. It also welcomes the Commission’s continuing efforts to strengthen the Energy Community.

Energy Efficiency

Although the Commission has provided few details about the proposals which might emerge from the reviews of existing energy efficiency legislation, the Government believes that there should no attempt to increase the binding energy saving targets in the Energy Efficiency Directive, and nor should these be extended beyond 2020 in
conflict with the European Council agreement on the climate and energy framework for 2030. However, the Government welcomes the Commission’s intention to launch a financing initiative for the retrofitting of existing buildings, to co-ordinate and facilitate access to existing EU energy funding instruments, and to bring forward a heating and cooling strategy.

**Decarbonisation**

The Government is disappointed that the Commission has focussed almost exclusively on the role of renewable energy at the expense of other low carbon technologies (notably nuclear power and carbon capture and storage), which it believes will have an important role to play for those Member States which choose to use them, since, without utilising the full range of relevant technologies, the climate objectives for 2030 and 2050 are unlikely to be realised. In particular, although renewable energy and energy efficiency will have key roles to play and their deployment should be boosted, the scale of the challenge requires wider ambition and flexibility involving the full range of low carbon technologies, and the Energy Union should provide supportive frameworks for all the technologies which will be needed.

**Research and Innovation**

The Government welcomes the Commission’s intention to develop a new EU strategy to accelerate energy system transformation, and broadly agrees with the four key priorities on which this will be based. Also, it welcomes the clear identification of carbon capture and storage and nuclear power as a focus of research and innovation under the Energy Union (in contrast to the lack of any corresponding reference in the discussion of decarbonisation).

**Interconnection**

The Government agrees with the Commission’s approach, and says that identifying and facilitating PCIs under the TEN-E Regulation is the best way of increasing the levels of interconnection, as it enables projects to be identified and promoted, based on specific Member State need. It agrees on the importance of regional cooperation to realise complex and large scale interconnection projects, and accepts that this may need to be enhanced if there are significant delays in realising beneficial projects. It is also pleased to see that the Commission recognises that differences between Member States in terms of geographic location and structure of energy mix and supply mean that the optimum level of interconnection should be considered on a case-by-case basis, rather than by applying a common target.

**Previous Committee Reports**

None.

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28 If all the PCIs in the UK are completed, its 10% target will be met by 2020.
6 Civil aviation: passenger protection

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

Document details  Draft Regulation concerning denied boarding, cancellation or long delay of flights and baggage problems
Legal base  Article 100(2) TFEU; co-decision; QMV
Department  Transport
Document numbers  (34777), 7615/13 + ADDs 1–2, COM(13) 130

Summary and Committee’s conclusions

6.1 In March 2013 the Commission presented a draft Regulation to introduce a range of changes to airline passenger protection legislation to reinforce enforcement policies and procedures, improve passenger rights and re-address the financial obligations, in some circumstances, imposed on airlines.

6.2 We have been holding this proposal under scrutiny, one very important reason being Spain’s attempts to exclude Gibraltar from the scope of the legislation.

6.3 The Government updates us now on resumed technical negotiations and the Latvian Presidency’s determination not to seek a general approach without an agreement on the Gibraltar issue.

6.4 We are grateful to the Government for this information and commend again its robust stance on the Gibraltar issue. We also note approvingly the Latvian Presidency’s determination, despite contrary pressure, not to attempt to seek agreement on a general approach without resolution of the Gibraltar issue. We hope to hear in due course of success in the Government’s efforts to improve the draft Regulation, particularly in regard to safeguarding Gibraltar’s interests. Meanwhile the document remains under scrutiny.

Full details of the documents:  Draft Regulation amending Regulation (EC) No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No. 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air: (34777), 7615/13 + ADDs 1–2, COM(13) 130.

Background

6.5 With this draft Regulation, the Commission proposed, in March 2013, a range of changes to airline passenger protection legislation to reinforce enforcement policies and procedures, improve passenger rights and re-address the financial obligations, in some circumstances, imposed on airlines.
6.6 When we first considered this proposal, in April 2013, we heard that, whilst the Government welcomed some aspects of the proposal as they related to airline costs, it was carefully considering the range of other passenger focussed proposals, recognising that these might provide benefits and protection to the consumer, but might also lead to increased costs for UK airlines. We heard subsequently about efforts, in accordance with the 2006 Cordoba Agreement, to remove a clause suspending application of the legislation to Gibraltar’s Airport, (in the legislation to be amended by this proposal, as was normal practice when it was adopted).

6.7 When we considered the matter again, in July 2014, we heard that the outgoing Greek Presidency failed to achieve any form of agreement on the proposal and that it had not been identified as a priority by the incoming Italian Presidency. Earlier this month we heard that the present Latvian Presidency has given the Government assurances that it will not seek to reach more than a progress report on this draft Regulation by the June Transport Council if the Gibraltar issue remains unresolved.

6.8 We have kept this document under scrutiny pending a report of further developments.

**The Minister’s letter of 18 March 2015**

6.9 The Parliamentary Under-Secretary of State, Department for Transport (Mr Robert Goodwill) tells us now that the Latvian Presidency has reopened discussions on the draft Regulation, when it took over the Presidency in January, developing on a Progress Report submitted by the Greek Presidency to the Transport Council in June 2014. He says that so far the Presidency has concentrated on four specific issues:

- the trigger points for when flight delay compensation is due;  
- compensation for connecting flights;
- extraordinary circumstances; and
- cabin baggage.

6.10 The Minister continues that:

- progress during working groups has continued to be slow and limited, with Member States taking firm and opposing positions on a number of issues;
- in particular, discussions about trigger points for compensation have been difficult, where the Presidency went from a starting position of 5/9/12 hour trigger points, to 3/9/12 and then back to 5/9/12;
- the Government’s position has remained strongly in favour of a distance based 5/9/12 hour compensation regime;

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29 The Commission text would amend the existing provision allowing claims for compensation for delayed flights after three hours to three separate trigger points — five hours for journeys of 3,500 km or less (and for all intra-EU flights), nine hours for journeys between 3,500 and 6,000 km and 12 hours for journeys of 6,000 km or more.
it is taking this position to prevent airlines being incentivised to cancel flights (which would not be in the interest of the passenger), to isolate delays and maintain the integrity of their future schedule, and to prevent significant and disproportionate costs being placed upon UK industry; and

- the Government is also seeking to amend the text on connecting flights to avoid impacts, amongst other things, on regional connectivity and transit times.

6.11 The Minister encloses with his letter the updated version of the Checklist for Analysis, showing costs and benefits, which was submitted with the Government’s original Explanatory Memorandum. The cost/benefit analysis is summarised thus:

“It is possible that the CAA [Civil Aviation Authority] will experience additional cost due to being designated the complaint handler for mis-handled baggage, having increased reporting responsibilities and through an increase in awareness of the Regulation (which may prompt more complaints from passengers). The Commission has indicated that the increased cost to all NEBs [National Enforcement Bodies — in the UK the CCA] in the EU would be around €2 million (£1.7 million). The CAA has estimated that the proposed changes relating to enforcement are likely to increase costs by around £750,000 per annum (mainly associated with the need to employ additional staff).

Conversely, the proposed amendments could make the Regulation clearer and easier to enforce (e.g. by providing a clearer definition of what constitutes an exceptional circumstance). The proposed changes also consolidate the Regulation to take into account numerous ECJ judgements — making it easier for Regulators and consumers to interpret the Regulation consistently across the EU.”

6.12 Importantly, the Minister tells us that:

- the issue over Gibraltar’s suspension from the present Regulations remains unresolved, which is stalling the progress of several aviation files, including air passenger rights;

- the Government is keen to make progress on these aviation dossiers, not least because of the key economic gains that this would bring for aviation industry across the EU;

- these improvements must, however, be consistent with the EU treaties;

- the treaties are clear — Gibraltar is included in aviation measures;

- EU citizens using Gibraltar Airport should not be denied EU rights because Spain chooses to pursue a sovereignty dispute; and

- as we know, this is of the utmost importance to the UK.

6.13 Finally the Minister says that:
• the Latvian Presidency’s intention is to submit a Progress Report to the Transport Council in June, unless discussions on Gibraltar are resolved in time for it to seek a general approach;

• it has consistently taken the position that it will not progress aviation files without full agreement and that it will instead focus on resolving technical issues; and

• the Presidency is maintaining this position, although it is coming under increasing pressure from the Commission, the European Parliament and some Member States.

Previous Committee Reports


7 Safety standards for fishermen, maritime safety and inland waterways: freight

Committee’s assessment
Legally and politically important

Committee’s decision
(a) Cleared from scrutiny (decision reported on 26 November 2014); (b) Cleared from scrutiny (decision reported on 30 April 2014); (c) Not cleared from scrutiny; further information requested

Document details
(a) Draft Council Decision concerning a convention relating to the safety of fishermen; (b) Draft Council Decision concerning amendments to a convention relating maritime safety; (c) Draft Council Decision to allow Austria, Belgium and Poland to participate in a convention about contract law for inland waterways freight

Legal base
(a) Articles 46, 53(1), 62 and 218(6)(a)(v) TFEU; consent; QMV; (b) Articles 100(2) and 218(9) TFEU; —; QMV; (c) Articles 2(1), 81(2) and 218(6), point (a) TFEU; consent; QMV

Department
Transport

Document numbers
(a) (35295), 13350/13, COM(13) 595; (b) (35932), 8463/14, COM(14) 208; (c) (36582), 17025/14 + ADD 1, COM(14) 721
Summary and Committee's conclusions

7.1 The Committee has been considering three draft Council Decisions concerning Member State membership of international conventions and the connection to EU competence. Although two of the proposals have been cleared from scrutiny we have outstanding questions as to the use of Article 218 TFEU as a legal base.

7.2 The third case concerns the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) and we have questions outstanding not only in relation to the legal base for a draft Council Decision authorising three Member States to become contracting partners to the Convention, but also about a potential UK opt-in to the proposal.

7.3 The Government now gives us an explanation of its views on the use of Article 218(6) TFEU in the light of a recent Court of Justice judgement.

7.4 As for the Budapest Convention draft Council Decision the Government tells us that the UK has opted in to the proposal, that recitals need to be amended to reflect this, that an unnecessary legal base has been removed and that the Government accepts Article 218 (6) TFEU as an appropriate legal base.

7.5 These matters all raise the issue of the appropriate legal basis (and hence the appropriate legislative procedure) for the EU to take formal decisions directing the Member States to act on its behalf, for matters falling within EU exclusive competence, in respect of multilateral international agreements to which the EU is not a party in its own right.

7.6 In Case C-399/12 the Court of Justice decided that Article 218(9) was the appropriate legal basis where the Member States were acting on behalf of the EU in a body set up under a multilateral international agreement. This is the case with document (b).

7.7 However in respect of documents (a) and (c) the situation is different as the Member States are being asked to conclude the international agreement itself on behalf of the EU using Article 218(6) TFEU as the procedural legal basis. This distinction is important because, as we pointed out in our Report of 14 January 2015, the Court strongly implied that its approach in such cases may not be the same as in cases that fell under Article 218(9) TFEU. It is disappointing that the Minister’s responses do not address this distinction, and in respect of the Budapest Convention he asserts, erroneously, that the effect of the judgment in case C-399/12 “was that Article 218 extends to any agreement which falls within an area of EU competence. The use of Article 218(6) as a legal basis for this Decision appears to be consistent with that judgment”.

7.8 Therefore, with regards to the Budapest Convention, we ask the Minister whether any other Member State has questioned the procedural legal basis of Article 218(6) TFEU and the prospects of the Court upholding it, if challenged, in the light of paragraphs 53 and 54 of its judgment in Case C-322/12. We also ask the Minister to provide an update on the negotiation of recitals recognising the UK’s opt-in.
7.9 In the meantime this matter remains under scrutiny.

Full details of the documents: (a) Draft Council Decision concerning Member State ratification of an International Maritime Organisation convention relating to the safety of fishermen: (35295), 13350/13, COM(13) 595; (b) Draft Council Decision on the position to be adopted at the International Maritime Organization during the 93rd session of the Maritime Safety Committee on the adoption of amendments to SOLAS Regulations II-2/1, 2/3, 2/9.7, 2/13.4, 2/18, 2/20-1, 2/29, chapter III, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code: (35932), 8463/14, COM(14) 208; (c) Draft Council Decision authorising Austria, Belgium and Poland to ratify, or to accede to, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI): (36582), 17025/14 + ADD 1, COM(14) 721.

Background

7.10 Transport is an area of shared competence between the EU and the Member States. Where the International Maritime Organization (IMO) remit, through its founding Convention, relates to maritime transport, safety of shipping and prevention of marine pollution, the EU has exclusive competence only to the extent that the relevant provisions of the IMO Convention or legal instruments affect EU common rules or alter their scope. When EU rules exist but are not affected, in particular in cases of establishing only minimum standards, the Member States have competence, without prejudice to the competence of the EU, to act in this field.

7.11 Whilst the EU is not a member of the IMO and is not party to IMO instruments that are to be adopted or amended, Member States are not allowed to assume obligations likely to affect EU rules unless they are authorised to do so by means of a Council Decision.

7.12 The IMO’s International Convention for the Safety of Life at Sea, 1974, (the SOLAS Convention), is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The 1974 version includes a tacit acceptance procedure, which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties. As a result the 1974 Convention has been updated and amended on numerous occasions. The Convention in force today is sometimes referred to as SOLAS, 1974, as amended.

7.13 In April 2014 the Commission presented a draft Council Decision, document (b), on the position to be adopted, on behalf of the EU, with respect to various amendments to SOLAS to be adopted at a session of the IMO Maritime Safety Committee in May 2014. When we considered this proposal we heard that:

- the Government supported the adoption of all the IMO amendments being put forward, which were relatively minor and would have no significant impacts on the UK;
- the Government accepted that adding “to the extent that they fall under the exclusive competence of the Union” to Article 2 of the proposal acknowledged that
there was some extent to which the amendments did not fall under the exclusive competence of the EU; and

- it was, however, concerned that the recitals had not been updated, so creating a precedent that the Commission would try to propose Council Decisions in cases where an action at the IMO did not have direct effect on EU Law.

7.14 We noted that the Government had secured improvements to the substantive part of the draft Council Decision, so negating the scope for competence creep. However, given the continuing issue of the unacceptable recitals, we only cleared the proposal from scrutiny on the understanding that the Government would abstain if this issue was not resolved. We also ask the Government to inform us whether the challenge by Germany to the use of Article 218(9) TFEU as a legal basis in pending case C-399/12 of the Court of Justice was relevant to this proposal.\(^{30}\)

7.15 The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F) came into force in October 2012. The Convention introduces, for the first time, an international standard for the training and qualifications of fishermen. The UK has not ratified the Convention. In August 2013 the Commission presented a draft Council Decision, document (a) which:

- acknowledges the development of the Convention;
- encourages Member States to ratify it; and
- is intended to authorise Member States, in respect of those parts of the Convention in which the EU has exclusive competence, to ratify the Convention.

7.16 When we first considered this matter, in October 2013, we heard from the Government that, although the draft Council Decision is permissive in nature and therefore would impose no legal obligation on the UK to ratify the Convention, there were a number of issues with the text which needed attention during negotiation of the proposal. In September 2014 we learnt that all issues bar one had been resolved. We said we were not prepared to clear the document from scrutiny while that matter, a proposed reservation against the Convention to be submitted to the IMO by Member States upon ratification, remained in the text. We asked for the Government’s assessment of the implications of Case C-399/12 on the use of Article 218 TFEU as a legal basis.

7.17 In November 2014 the Government told us that the Presidency intended to seek agreement on the proposal at the Transport Council on 3 December 2014 and that a satisfactory compromise on the reservation issue had been found. Given that the Presidency text now met all the Government’s concerns we cleared the draft Council Decision from scrutiny.

7.18 However, we understood that the Government had not yet concluded its assessment of the implications of Case C-399/12, on which the Court of Justice delivered its judgement

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\(^{30}\) In this case Germany was arguing that this Article could not be applied in relation to the representation of the Member States in bodies of international organisations in which only the Member States participate by virtue of separate international treaties.
on 7 October 2014, on the use of Article 218 TFEU as a legal basis. In addition to wishing to hear about this assessment once concluded, we asked also that the Government clarify an apparent discrepancy in the Government’s approaches in relation to decisions, such as this, authorising Member States to act on behalf of the EU in an international organisation. As we had reported in 19 November 2014, the Government had indicated to us that similar decisions arising in the context of the International Labour Organisation impose, in practice, an obligation upon Member States as failure to comply would be regarded by the Commission as a breach of EU law.

7.19 The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) is intended to harmonize contractual and navigational standards on inland waterways in European countries. Article 29 of the Convention contains provisions on the choice of law by the parties to a contract for carriage falling under the Convention. Those provisions affect the rules laid down in Regulation 593/2008 on the law applicable to contractual obligations (Rome I), thus Member States cannot now lawfully ratify or accede to it without an EU authorization.

7.20 Ten Member States became Contracting Parties to the CMNI before Rome I came into force. A draft Council Decision, document (c), would authorise three further Member States: Austria, Belgium and Poland, to become Contracting Parties.

7.21 Since the UK is not a party to the CMNI, the provisions do not have any impact on UK businesses or operations involving contracts for the carriage of goods by inland waterways nor in relation to the three Member States seeking authorisation.

7.22 As the proposal has a legal basis found in Title V TFEU (Justice and Home Affairs), the Government asserts that the UK opt-in applies. This is contested by the Commission and the Council Legal Service on the grounds that the UK has already opted in to the Rome I Regulation, and the EU’s exclusive competence to enter into the choice of law provisions of the CMNI derives from that Regulation. Recital (11) of the draft Decision reflects the Commission’s legal view.

7.23 When we first considered this matter, in January, we asked for the Government’s view as to the choice of legal bases for the draft Council Decision, particularly whether Article 2(1) TFEU needed to be cited. When we considered the proposal again, in February, we

- supported the Government’s assertion that the UK opt-in applies;
- said that it followed from this and from the principle of legal certainty that the text of the Council Decision should properly reflect the fact that the UK opt-in was engaged, as well as whether or not it had been exercised;
- urged the Government, therefore, to press for recital (11) (the relevant provision) to be amended to reflect this;

• asked, in the event that this did not prove possible to achieve, for the Government’s analysis of whether a Council Decision adopted with recital (11) in its current terms should be treated as invalid and, if so, the prospects and value of a legal challenge;

• noted, on the question of whether the UK should opt-in, that the Government considered that the relevant factors were: the limited effect of the Budapest Convention on the UK, the desirability of the proposal in general and the legal principle at stake; and

• said we did not consider that the opt-in decision in this case merited a recommendation for a specific debate.

7.24 We retained the document under scrutiny and looked forward to a further update which should address: whether or not the Government has decided to opt-in, its efforts to amend recital (11), its view on the legal basis for the proposal and the general progress of the negotiations.

The Minister’s two letters of 19 March 2015

7.25 In his first letter the Minister of State, Department for Transport (Mr John Hayes), says in relation to the STCW(F) draft Council Decision, document (a), that:

• the measure was adopted, with the improvements he had outlined to us previously, at the December 2014 Transport Council;

• it is now awaiting the consent of the European Parliament before it is formally published in the Official Journal; and

• no further changes will be made to the Council Decision during this process.

7.26 The Minister then turns to the questions we had asked about the use of Article 218 TFEU in relation to both the STCW-F draft Council Decision and the SOLAS draft Council Decision, document (b), saying that:

• the Government has now had the opportunity to consider the implications of the Court of Justice ruling on Case C-399/12;

• it is of the view that the ruling is consistent with its existing approach to proposed Council Decisions such as the STCW-F and SOLAS cases;

• the Court’s ruling reaffirmed the principle that where the adoption of an international agreement, or amendments to such an agreement, has legal effect on the content of existing EU law then those aspects of the agreement (or amendments) fall under EU competence;

• as such there is a need for a Council Decision to authorise the Member States to consent to be bound by the agreement (or amendments) to the extent that it falls under EU competence;
while accepting the principle of such Council Decisions the Government remains committed to ensuring that there is clarity about their scope;
	herefore in the negotiations the Government will push for explicit identification within a Council Decision and/or its recitals of those aspects of the agreement (or amendments) which are deemed to have an effect on EU law, and also the provisions of EU law that will thus be effected;

this is what the Government achieved in the case of the STCW-F and SOLAS Council Decisions, where the original proposals made only general references to EU competence;

during the negotiations the Government secured the addition of references to the exact articles of the SOLAS amendments and the STCW-F Convention, respectively, along with corresponding references to the relevant provisions within EU law; and

this firmly grounds the Council Decisions in existing EU competence and removes the risk that future interpretations of them might be used to extend the scope of EU competence.

7.27 As for the apparent discrepancy between the approach on the STCW-F proposal and International Labour Organisation issues, the Minister:

says that it would appear that this is the result of a different emphasis in the negotiations, as the Government’s view is that the proposals covered by the International Labour Organisation case are not supported by EU competence and therefore require a much more robust strategy as it pushes back on the notion of there being a Council Decision at all; and

refers us to the further correspondence to us about that case.

7.28 In his second letter the Minister tells us that the UK has opted in to the CMNI draft Council Decision, document (c). He says that although the Commission has external competence in this matter the Government maintains that the UK is still entitled to use its opt-in under Protocol 21 of the Treaty and in negotiations it is seeking amendments to the wording of Recital 11 of the proposed Council Decision to reflect this.

7.29 The Minister also says that:

Article 2(1) TEFU has now been removed from the text because it sets out general principles and does not constitute a legal basis in itself; and

the use of Article 218(6) TFEU as a legal base for this draft Council Decision appears to be consistent with the Court of Justice’s judgement in Case C-399/12.

Previous Committee Reports

8 Integrating labour markets

**Committee’s assessment**  Politically important

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

**Document details**  Draft Regulation on a European network of Employment Services, workers’ access to mobility services and the further integration of labour markets

**Legal base**  Article 46 TFEU; co-decision; QMV

**Department**  Work and Pensions

**Document numbers**  (35746), 5567/14 + ADDs 1–4, COM(14) 6

**Summary and Committee’s conclusions**

8.1 EURES is a network of public employment services — Jobcentre Plus in the UK — encompassing EU Member States, Norway, Iceland, Liechtenstein and Switzerland. It was launched in 1993 and comprises an internet portal on which job vacancies, applications and CVs are loaded, and a network of specialist employment advisers. The number of job-seekers registered on the EURES portal has grown significantly in recent years, but there has been no corresponding increase in labour mobility. The draft Regulation proposed by the Commission is intended to improve the operation of EURES and make it a more effective tool for job-seekers and employers interested in intra-EU labour mobility.

8.2 The Government told us that the draft Regulation would have minimal policy implications and compliance costs for the UK, but expressed concern that UK job vacancies accounted for more than 60% of the job vacancies on the EURES portal as the UK, unlike some other Member States, made all vacancies held by Jobcentre Plus available to EURES. The Minister for Employment (Esther McVey) anticipated that a stronger obligation on all Member States to advertise vacancies on the EURES portal would help to rectify this imbalance, and added that during negotiations on the draft Regulation, the Government would seek to achieve “a commonly agreed definition of the EURES requirement for Public Employment Services (PES) to share vacancies” which would increase the number of job vacancies in other Member States and reduce the overall proportion of UK vacancies.33

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33 Letter of 15 April 2014 from the Minister for Employment to the Chair of the European Scrutiny Committee.
8.3 As negotiations have progressed, the Government’s position has evolved. Whilst continuing to express support for the Commission’s proposal to require all Member States to share their job vacancies through the EURES portal, the Minister added that the UK would seek to ensure that “the vacancies the UK posts on EURES are appropriate for cross-border recruitment and that employers have a choice over whether they advertise their vacancy in the UK or EU-wide”. She indicated that a compromise text was under discussion which would enable employers to choose “not to advertise their vacancies on EURES if they believe that they can find the right candidates in the local area”. The Government had introduced a similar provision at national level, ensuring that job vacancies advertised on the UK’s Universal Jobmatch service are no longer automatically advertised on EURES. Instead, recruiting employers are invited to consider “whether they can find a candidate locally with the right skills and competence requirements for their vacancy before choosing to advertise on EURES”.

8.4 Last November, we agreed to grant a scrutiny waiver to enable the Government to support a General Approach at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 1 December. The Minister subsequently provided a copy of the General Approach which includes new provisions allowing employers to limit the number of job vacancies they advertise on EURES, as well as two new (discretionary) exceptions to the requirement to advertise job vacancies on EURES, the first relating to certain categories of traineeships and apprenticeships, the second to job vacancies forming part of a Member State’s active labour market policies.

8.5 We sought further information on these new provisions and on the scale of reduction in the number of UK job vacancies made available to the EURES portal, following the Prime Minister’s announcement last July that he would seek to “cut back the number of vacancies posted on this portal by more than 500,000”.

8.6 We note the reduction already achieved in the number of UK job vacancies advertised on the EURES job portal. The inclusion of new provisions on employer flexibility in Article 14(1)(a) of the Council’s General Approach is likely to reinforce this trend. The Minister tells us that it will be for employers to decide whether or not they wish to advertise their job vacancies on the EURES portal and that they “will not have to document the reason” behind their decision. We are not convinced that the flexibility given to employers under Article 14(1)(a) is as great as the Minister appears to suggest. The requirement that a decision not to advertise on EURES should be “duly justified on the basis of the skills and competence requirements related to the job” implies that there has to be some formal objective assessment underpinning the decision. We urge the Minister to ensure that the obligations imposed on employers by Article 14, and how they are to be discharged, are made clear in the final text.

8.7 The Minister indicates that the UK is unlikely to make use of the two new (discretionary) exceptions to the requirement to advertise job vacancies on EURES. We ask her to inform us if she considers there to be any prospect of this changing.

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34 Letter of 21 November 2014 from the Minister for Employment to the Chair of the European Scrutiny Committee.
8.8 We look forward to receiving regular updates on developments within the European Parliament and on trilogue negotiations, once underway, as well as further details of the scale of the reduction in the number of UK job vacancies made available to the EURES portal once the Government has carried out a more in-depth analysis of the figures. Meanwhile, the draft Regulation remains under scrutiny.

Full details of the documents: Draft Regulation on a European network of Employment Services, workers’ access to mobility services and the further integration of labour markets: (35746), 5567/14 + ADDs 1–4, COM(14) 6.

Background

8.9 The draft Regulation would:

- expand the EURES network to include a broader range of providers of employment services (EURES Partners);
- increase the number of job vacancies and CVs made available to the EURES portal, include information on apprenticeships and traineeships, and provide for the development of an automated job matching service;
- specify the employment and mobility support services that should be made available to employers and job-seekers; and
- strengthen the requirement to exchange information on labour shortages and surpluses across the EU, living and working conditions, and other employment-related matters.

8.10 Until recently, all Jobcentre Plus job vacancies have been made available to the EURES portal. One of the Government’s negotiating objectives has been to achieve a more equitable share of job vacancies advertised by Member States on the EURES portal, thereby reducing the disproportionate number of UK vacancies. Article 14 of the Commission’s original proposal sought to address this concern by requiring Member States’ public employment services and their EURES Partners to make all of their job vacancies available to the EURES portal without making “any distinction according to the nature and duration of contracts nor the recruitment intentions of employers”. A limited exception was made for job vacancies “which due to their nature or to national rules are only open to citizens of a specific country”.

8.11 We understood that the Government supported the thrust of Article 14, not least because it would require all Member States to advertise their job vacancies as extensively as the UK whilst also increasing opportunities for UK jobseekers to obtain employment in another Member State. However, an article by the Prime Minister (David Cameron) published in the Daily Telegraph on 28 July 2014 appeared to herald a shift in the Government’s policy:

35 Article 14(2) of the draft Regulation.
“In the past, all vacancies advertised via Jobcentre Plus were automatically put on an EU-wide job portal, too: this meant advertising more than a million vacancies across the EU. We are going to massively restrict this, aiming to cut back the number of vacancies posted on this portal by more than 500,000. Again, this is quite simply about putting British residents first.”

8.12 In February, the Minister provided us with a copy of the General Approach agreed by the Council in December 2014. Article 14 (1)(a) requires Member States to make available to the EURES jobs portal all job vacancies made publicly available to their public employment services, but adds:

“Member States may introduce a mechanism allowing employers to have the option not to have a vacancy published on the EURES portal if the request is duly justified on the basis of the skills and competence requirements related to the job.”

8.13 A related recital — (18a) — provides:

“In order to promote the freedom of movement of workers, the EURES portal should include all job vacancies made publicly available, in accordance with national practices, with the PES. However, under specific circumstances and with the objective of ensuring that the EURES portal contains only information relevant for mobility within the Union, Member States should be allowed to provide employers with the possibility not to have a job vacancy published on the EURES portal following an objective assessment by the employer of the requirements related to the job in question, namely specific skills and competences required in order to adequately perform the job duties, on the basis of which the employer justifies not publishing the vacancy for these reasons alone.”

8.14 We noted that Article 14(1)(a) of the Council’s General Approach appeared substantially to dilute the obligation contained in the Commission’s original proposal requiring Member States to advertise on EURES all job vacancies available through their public employment services (in the UK, JobCentre Plus and Universal Jobmatch). We asked the Minister whether she was satisfied that the new provisions on employer flexibility in Article 14(1)(a) — which largely appear to reflect current practice in the UK — were sufficiently robust to withstand a challenge based on the prohibition of discrimination on grounds of nationality contained in Article 18 of the Treaty on the Functioning of the European Union (TFEU). We also asked the Minister to provide an example illustrating how an employer may “duly justify” a decision not to advertise a job vacancy on EURES by reference to particular skills and competence requirements related to that job.

8.15 The General Approach also introduced two new (discretionary) exceptions to the requirement to advertise job vacancies on EURES, the first relating to certain categories of traineeships and apprenticeships, the second to job vacancies forming part of a Member State’s active labour market policies. We asked the Minister whether she expected the UK to make use of these exceptions and, if so, to provide examples of the type of job vacancies in the UK that would be excluded on the grounds that they form part of active labour market policies. We also sought further information on the progress made by the

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Article entitled David Cameron: We’re building an immigration system that puts Britain first.
Government in reaching the target set by the Prime Minister of “cutting back the number of vacancies posted on [the EURES] portal by more than 500,000”.

The Minister’s letter of 22 March 2015

8.16 The Minister first addresses our question concerning the compatibility of the new provisions on employer flexibility in Article 14(1)(a) of the Council’s General Approach with the Treaty prohibition of discrimination on grounds of nationality:

“In our opinion, whilst Article 14.1.a in the Council compromise text does alter the original proposal for vacancy sharing, it does not dilute the EURES Regulation, but in fact strengthens EURES as a labour mobility tool. EURES will become more effective and targeted because its vacancies will be more suitable for people wishing to work in other Member States. The amendment is important because of the way our system is set up compared to the systems of many other Member States. They have internal systems to allow them to prioritise jobs for local recruitment, whereas our digital by default system means that practically all our jobs were available online and therefore were eligible to be advertised on EURES. Article 14.1.a and the accompanying Recital 18(a) recognise that the UK needed to introduce a mechanism that essentially brings us in line with other Member States, promoting to employers that they should try to fill vacancies with local jobseekers, but giving them the option to recruit abroad as well.

“The draft Regulation intends to implement the requirement in Article 46 of the Treaty on the Functioning of the European Union to adopt measures designed to facilitate the free movement of workers by bringing together offers of employment with applications for employment. The existing Regulation and Commission Decision\(^{37}\), and the new draft aim to fulfil that positive obligation. The UK does not believe that targeting the right jobs at the right people engages Article 18 of the Treaty.”

8.17 The Minister explains how the provisions on employer flexibility — which require Member States to introduce a mechanism allowing employers to have the option not to advertise on EURES “if the request is duly justified on the basis of the skills and competence requirements related to the job” — would operate in practice:

“The objective assessment that should be carried out by employers is expanded upon in Recital 18(a) of the General Approach. It describes how employers should base their decision on where they advertise their vacancies on whether they think they can find the candidates with the right skills and competencies to perform the job duties in the local area. This encourages employers to recruit local jobseekers, but equally gives them the opportunity to cast their net wider if they think they need to do so in order to find qualified candidates. For example, if there is a surplus of jobseekers with the right skills and experience in the hospitality sector, we might expect that

\(^{37}\) The Minister’s letter refers to Regulation 492/2011 which provides for the exchange of information on job vacancies and job applications, and to Commission Decision 2012/733/EU concerning the operation of the EURES network. The draft Regulation, if adopted, would repeal the relevant provisions of the 2011 Regulation and the Commission Decision.
employers try to recruit from this pool before advertising abroad. This decision is up to the employer, who will not have to document the reason behind where they chose to advertise. They will also, of course, be bound by their obligations under the Equality Act 2010 not to discriminate against people due to their nationality, ethnic or national origins.”

8.18 Turning to the two new discretionary exceptions included in the Council’s General Approach, one relating to certain categories of traineeships and apprenticeships, the other to job vacancies forming part of Member States’ active labour market policies, the Minister tells us that neither will be used by the UK as “we do not currently have policies or job vacancies that meet their scope”.

8.19 Finally, the Minister says that the UK has already reached the Prime Minister’s target of cutting back the number of vacancies posted on the EURES portal by more than 500,000.

8.20 The Minister undertakes to provide further updates on developments within the European Parliament and on trilogue negotiations, once underway.

**Previous Committee Reports**


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### 9 Food law: official controls

<table>
<thead>
<tr>
<th>Committee’s assessment</th>
<th>Legally and politically important</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Committee’s decision</strong></td>
<td>Not cleared from scrutiny; further information awaited</td>
</tr>
</tbody>
</table>

**Document details**

Draft Regulation on official controls to ensure the application of food and feed law

**Legal base**

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

**Department**

Food Standards Agency

**Document numbers**

(34922), 9464/13 + ADDs 1–2, COM(13) 265

**Summary and Committee’s conclusions**

9.1 In order to ensure implementation along the food chain of EU legislation addressing health risks, Regulation (EC) No. 882/2004 establishes a framework for official controls, and in May 2013 the Commission put forward this proposal to simplify that framework, and integrate the rules currently applicable in specific areas.
9.2 We noted in our Report of 10 July 2013 that the Government regarded the proposal as in line with key UK policy objectives in this area, the most significant issue being a substantial increase in the number of controls to which fees would apply, and in the number for which these would be mandatory. However, whilst the Government supported the simplification of current legislation and a more uniform approach, it believed that the main implications should be explored further during public consultation, when an impact assessment would be developed. It also said that it would be necessary to ensure that the provisions on penalties would not involve the imposition of criminal sanctions (as this would require a Title V legal base engaging the UK opt-in under Protocol 21 of the TFEU), and it also wished to consider whether the significant number of both delegated acts and implementing acts proposed were justified, and in line with the EU competence and the principles of subsidiarity.

9.3 We subsequently received updates from the Parliamentary Under-Secretary of State at the Department for Health (Jane Ellison) in February and July 2014, and she has now written to say that the Italian Presidency had achieved significant progress in a number of areas, but had failed to reach consensus on mandatory full cost recovery, and on an extension of the role of veterinarians in supervising border controls for products of non-animal origin. She also set out the latest position on tertiary legislation and the scope of the Regulation, as well as that in the European Parliament and the Council, where trilogue discussions are expected to start before the end of the Latvian Presidency. She says that she will write again in June with a further update, unless developments necessitate otherwise.

9.4 We are grateful to the Minister for this update, and we have noted the current position. We also note that she expects to provide a further update in three months’ time, and we hope that, when this is provided, it will address the issues of criminal sanctions and the use of delegated and implementing legislation, and fulfil her promise to let our successor Committee have the Government’s Impact Assessment.

**Full details of the document:** Draft Regulation on official controls and other official activities performed to ensure the application of food and feed law, rules of animal health and welfare, plant health and plant reproductive products: (34922), 9464/13 + ADDs 1–2, COM(13) 265.

**Background**

9.5 In order to ensure implementation along the food chain of EU legislation addressing health risks, a framework for official controls has been established through Regulation (EC) No. 882/2004. This obliges Member States to ensure that controls are carried out regularly; requires them to designate relevant competent authorities; specifies the basis on which sampling and analysis should take place by accredited laboratories; sets out provisions governing crisis management; details the controls to be applied to feed and food from third countries; and requires Member States to ensure that adequate financial provisions are available, if necessary by imposing fees and charges (with mandatory fees being required for certain purposes38).

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38 These include the approval of feed establishments, meat inspection, milk production, the production and placing on the market of fishery and aquaculture products, and import controls.
9.6 Following an extensive review, the Commission put forward in May 2013 this proposal to simplify the current framework, and integrate the rules currently applicable in specific areas. Among other things, it would:

- extend them to controls on plant health and plant reproductive material;
- increase the effectiveness of cooperation among Member States to deal with cross-border non-compliance;
- introduce a uniform set of rules for controls carried out at EU borders on animals and goods from third countries, including the introduction of Border Control Posts and a Common Health Entry Document for prior notification of arrivals;
- increase transparency by establishing what information should be made available to the public;
- amend the current system of fees to ensure that sufficient resources are available and to reduce the dependency on national budgets: in particular, there would be an increase in the number of controls for which mandatory fees would apply (but with an exemption for micro-businesses39); and
- require Member States to enforce the Regulation by way of effective, proportionate and dissuasive penalties.

9.7 As we noted in our Report of 10 July 2013, the Government regards the proposal as in line with key UK policy objectives in this area, the most significant change relating to the substantial increase in the number of controls to which fees would apply. In particular, it noted that these will be imposed on significant numbers of farmers, processors, manufacturers, distributors, retailers and caterers, and will seek to recover the full cost of delivery, making it important to have full transparency; and it also pointed out that a mandatory exemption for micro-businesses was not in line with the Commission’s original intention to give Member States the option to exempt such businesses.

9.8 The Government went on to say that, whilst it supports the simplification of current legislation and a more uniform approach to official controls, careful analysis of the proposals was needed, notably as regards the increase in the number of controls subject to mandatory charging and the proposed exemption of micro-businesses. It added that the main financial implications would be for industry, and would be explored further during the public consultation, when an Impact Assessment would be developed. Finally, it said that it would be necessary to ensure that the requirement on Member States as regards penalties would not involve the imposition of criminal sanctions (which would mean that a Title V legal base should be cited which would engage the UK opt-in under Protocol 21 of the TFEU): and it also noted that the Commission had proposed a significant number of both delegated acts and implementing acts, and would carefully consider whether their use is justified, and in line with the EU competence and the principles of subsidiarity.

9.9 Given the importance of food law being applied effectively, we drew the draft Regulation to the attention of the House, noting at the same time the areas on which the

39 Employing fewer than ten people, and whose annual turnover or annual balance sheet does not exceed €2 million.
Government had commented, and that it would be developing an Impact Assessment during its forthcoming public consultation. In particular, we noted its concerns about the question of criminal sanctions, and, whilst we welcomed its view that the UK’s JHA opt-in under Protocol 21 to the EU Treaties would only be engaged on the citation of a Title V legal base, we urged that this issue should be resolved as early as possible in view of its impact on the Parliamentary scrutiny of the proposal, and asked to be kept fully informed of progress on this point.

Subsequent developments

9.10 We subsequently received updates from the Parliamentary Under-Secretary of State at the Department for Health (Jane Ellison) in February and July 2014. These noted that progress in the Council had been slow, but that there had been discussion on certain areas of interest to the UK, such as the use of delegated and implementing acts by the Commission and the financial implications of the proposal. Also, some Member States had pressed for a mandatory extension of the role of veterinarians in supervising border controls for products of non-animal origin (which the UK considered to be largely an inappropriate and burdensome use of resources, given that technical staff with more focused knowledge can be used). The Minister said that, once the Government’s Impact Assessment had been amended to reflect its consultation on the proposal, this would be sent to us.

Minister’s letter of 17 March 2015

9.11 We have now received from the Minister a letter of 17 March 2015, providing a further update. The Minister says that the Italian Presidency achieved significant progress in a number of areas, but failed to reach consensus on two important aspects. First, although the Commission had continued to strongly promote mandatory full cost recovery, there was a broad spectrum of national positions, with very few Member States agreeing completely. In particular, the UK had been active in opposing mandatory full cost recovery on the basis that Member States were best placed to determine how the controls should be funded. It had therefore tabled a position paper which, whilst retaining the concept of using fees to ensure sufficient resources are available to carry out controls in a sustainable manner, provided for greater flexibility and Member State discretion. She says that this prevented the Commission and Italian Presidency from obtaining a position in the Council favouring mandatory full cost recovery, and that a new text is expected shortly under the Latvian Presidency.

9.12 Secondly, the Italian Presidency had given very strong backing for a flexible approach to the use of Official Veterinarians in slaughterhouses and at import checks, and had support from the UK and a number of other Member States (although another group of countries led by Poland and Spain were pushing for greater restriction than at present). However, as with charging, consensus had not been possible, and the Latvian Presidency was expected to table the current rules as a compromise, in the hope of garnering sufficient support, rather than pushing for greater or less flexibility — which should enable the Council to oppose the first reading position of the European Parliament, which favours a more restrictive and burdensome set of rules.
9.13 The Minister also comments on the following points:

**Tertiary legislation**

Whilst the proposal to leave detailed technical rules for delegated and implementing acts allows flexibility, it makes the impact of the Regulation difficult to assess in advance of their adoption. The Government has therefore, in line with Better Regulation principles, assessed whether legislation is required to achieve the relevant policy objectives, and several unnecessarily empowerments will be removed from the proposal in areas where guidance is sufficient. Also, the broad and open nature of empowerments for rules in individual sectors will be restricted by tightening the language and introducing elements to be taken into account, whilst each instance of empowerment will be assessed on a case by case basis. Consideration is also being given to adopting tertiary legislation provisions similar to those agreed in the negotiations on the proposal on animal health.

**Scope of the official controls Regulation**

The Commission has announced the withdrawal of the proposed Regulation on Plant Reproductive Material, but it remains to be seen whether such materials will be removed from the scope of the current proposal or remain in scope so that specific rules can be included at a future date. However, she says that the negotiations have brought into the scope of the proposal two areas not specifically included in the original version — pesticides where controls are aimed at finished formulated products, and marketing standards under Regulation (EC) No. 1308/2013 (the Common Marketing Organisation Regulation).

9.14 Finally, the Minister says that the first reading position by the European Parliament contains some provisions helpful to the UK in opposing mandatory full cost recovery for all official controls, and that it is working to ensure that this is maintained during trilogues, although the Parliament will not return to the subject until the Council is nearer a first reading position. She adds that the Latvian Presidency aims to begin trilogues before handing over the Presidency to Luxembourg, and that UK and Latvian officials have met on several occasions recently to explore where acceptable solutions might be found. She says that she will write again in June with a further update, unless developments require otherwise.

**Previous Committee Reports**


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40 Such as experience of competent authorities, risk, consumer expectations and small businesses.
10 Free movement and public documents

Committee’s assessment
Legally and politically important

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

Document details
Draft Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No. 1024/2012

Legal base
Articles 21(2) and 114(1) TFEU; co-decision; QMV

Department
Foreign and Commonwealth Office

Document numbers
(34890), 9037/13 + ADDs 1–2, COM(13) 228

Summary and Committee’s conclusions

10.1 The draft Regulation seeks to make it easier for EU citizens and businesses to exercise free movement rights by establishing a clear legal framework for the circulation of official (“public”) documents within the EU, reducing costs and bureaucracy, and strengthening administrative cooperation between Member States to prevent and detect fraud or forgery. It does so by exempting certain categories of public documents from any requirement for legalisation, meaning that they would automatically be accepted as authentic in another Member State, and by simplifying formalities relating to their use.

10.2 The draft Regulation would also establish a set of multilingual standard forms for birth, death, marriage, registered partnerships and the legal status of companies which would have the same evidentiary value as the equivalent national documents and would have to be made available by the competent national authorities upon request, for the same fee and under the same conditions.

10.3 Whilst welcoming the removal of unnecessary bureaucratic procedures, and recognising the potential benefits for EU citizens and businesses living, working or trading in another Member State, the Government has expressed concern about the cost implications of the draft Regulation, as well as the possibility of “mission creep” if common format documents were eventually to replace national documents.

10.4 The Minister for Europe (Mr David Lidington) has provided frequent updates on the progress of negotiations on the draft Regulation. At our meeting on 4 March 2015, we agreed to grant a scrutiny waiver to enable the Government to support “a partial general approach” at the March Justice and Home Affairs (JHA) Council. In his latest letter, the Minister provides further details on what was agreed at the Council and responds to questions raised in our earlier Reports.

10.5 We thank the Minister for reporting back to us so quickly on the outcome of the Justice and Home Affairs Council and confirming that agreement was reached on a partial general approach.
10.6 As our earlier Reports have indicated, it is important that the Government remains vigilant to the risk of competence creep if, as in this case, the adoption of EU internal legislation may provide the basis for the EU to assert exclusive external competence in relation to relevant international bodies and conventions. In principle, we agree with the Minister that the inclusion of specific language in the draft Regulation to protect against the acquisition by the EU of exclusive external competence is preferable to a simple political declaration by Member States. We understand that the specific wording on external competence to be included in the Council’s general approach remains subject to negotiation. We ask the Minister to ensure that there is an opportunity to consider the language proposed, as well as full details of the compromise reached on multilingual standard forms, before our successor Committee is invited to grant a further scrutiny waiver or to clear the draft Regulation from scrutiny.

10.7 We note the difficulty in providing an accurate assessment of the costs likely to be involved in establishing multilingual standard forms, as well as the wider costs and benefits of the draft Regulation, while uncertainty remains as to the categories of documents within its scope and the administrative formalities relating to their use. We ask the Minister for an updated assessment once the Council has agreed its general approach. Meanwhile, the draft Regulation remains under scrutiny and we look to the Government to provide further reports on the progress of negotiations.

**Full details of the documents:** Draft Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No. 1024/2012: (34890), 9037/13 + ADDs 1–2, COM(13) 228.

**Background**

10.8 Our earlier Reports, listed at the end of this chapter, set out in greater detail the content of the draft Regulation and the Government’s position.

10.9 The draft Regulation cites a dual legal base to reflect its dual purpose of facilitating the exercise of free movement rights by EU citizens (under Article 21(2) of the Treaty on the Functioning of the European Union (TFEU) concerning the free movement rights of EU citizens) and by businesses (under Article 114(1) on the internal market). We have asked to be kept informed of any changes to the scope of the draft Regulation which might affect the choice of legal base.

10.10 The Government does not expect the draft Regulation to have a significant impact on UK law as the UK does not require the legalisation of documents for use in the UK. There would, however, be administrative costs involved in establishing a UK Central Authority to handle requests from other Member States for information or verification of the authenticity of public documents in case of doubt, in making available multilingual standard forms for certain categories of public document, and in upgrading IT systems. The Government has made clear that, during the course of negotiations, it will seek to minimise the financial and administrative impact of the draft Regulation (a concern which also emerged from scrutiny of the proposal by the Scottish Parliament and the Northern Ireland Assembly), ensure adequate safeguards (including the right to insist on the
production of original documents in certain circumstances), and guard against the possibility of “mission creep”.

The Government has provided a preliminary assessment of the potential costs and benefits of the draft Regulation — these are set out in our Forty-seventh Report of Session 2013–14 — and a revised assessment (in our Twenty-second Report agreed on 26 November 2014), whilst noting that the figures will need to be reviewed in light of any changes in scope. We also await further details of the cost and practical implications associated with the introduction of multilingual standard forms.

10.12 The updates provided by the Minister on the progress of negotiations indicated that the Council intended to make significant changes to the original proposal. In particular:

- the multilingual standard forms proposed by the Commission would no longer have the same evidentiary value as the equivalent national documents, but would operate merely as a translation aid; and
- the draft Regulation would no longer encompass certain categories of documents concerning, for example, the legal status and representation of a company or intellectual property rights, which would be of particular interest to businesses trading in another Member State.

10.13 The Minister informed us before the March Justice and Home Affairs Council that the partial general approach being proposed by the Presidency would exclude the provisions of the draft Regulation concerning EU multilingual standard forms.

10.14 The European Parliament (EP) agreed its First Reading position on the draft Regulation at its plenary session in February 2014.42 It said that the categories of documents included within the scope of the draft Regulation should be expanded (for example, to include documents relating to immigration status, educational qualifications, and disability) and that there should be much wider acceptance of uncertified copies and translations of public documents. The EP also proposed increasing the categories of documents for which Member States would be required to make available multilingual standard forms. The Government considers the inclusion of a considerably larger category of documents to be “unacceptable”.43

**The Minister’s letter of 18 March 2015**

10.15 In his latest letter, the Minister confirms that the Government was in “a clear majority of Member States” supporting the partial general approach at the March Justice and Home Affairs Council. He adds that the Latvian Presidency hopes to achieve a full general approach in June covering multilingual standard forms and a number of other related provisions.

10.16 The Minister had previously indicated that Member States would be invited to agree a political declaration making clear that both Member States and the Commission do not

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42 EP First Reading.
43 See letter of 23 April 2014 from the Minister for Europe (Mr David Lidington) to the Chair of the European Scrutiny Committee.
intend the draft Regulation to give rise to exclusive external competence for the EU in the areas it covers. He now explains that, instead of a political declaration, some additional text was included in the partial general approach. He continues:

“For us and other Member States it is preferable to have the wording in the text where it will carry more weight. This article will be subject to further discussion at working level on 23 March and is likely to say that this Regulation shall not preclude Member States negotiating other international instruments, or accessions to them, which relate to areas falling under this Regulation. Whilst it is never possible entirely to prevent either a case coming before the CJEU or the Court subsequently finding exclusive competence I am satisfied that, whilst it is still being discussed, this wording would manage the exclusive external competence issue as far as is reasonably possible.”

10.17 Regarding the proposed exclusion from the Council’s partial general approach of business documents, we asked the Minister whether any representations had been made to the Government by stakeholders on the impact and costs of this exclusion for businesses involved in cross-border economic activity. He explains:

“There was some consultation when the original proposal issued. Feedback indicated that smaller UK companies would welcome the change, provided that speed of process could be guaranteed whilst keeping the apostille system in case there were risks of delay. There have been no further representations made to the Department for Business, Innovation and Skills on the matter. We judge there will be an attempt to widen the scope again to include company status documents in the European Parliament’s second reading and the UK could support their inclusion. The Regulation also provides for regular reviews with a remit to consider widening the scope. A proposed safeguard included in the text allowing citizens or businesses to opt for an apostille would largely eliminate concerns about the time taken to verify doubtful documents through the online system. In the UK processing times for apostilles vary between 24-48 hours depending on the service chosen by the customer.”

10.18 The Minister notes that the final scope of the draft Regulation will be agreed during trilogue negotiations with the European Parliament, at which stage it will be possible to confirm the legal base/s. He undertakes to report any substantive developments in negotiations, adding that the next stage of discussions will focus on multilingual standard forms. He continues:

“[These] are now to be used as translation aids attached to national documents and thus have less risk of future competence fears over national civil status documents. We will continue to negotiate to improve the design and reduce EU production costs for these forms; however it will be difficult as most Member States seem content with the current proposal.

“The Home Office considers that estimating the precise cost of producing multilingual forms is not currently appropriate given that discussions on the format

An apostille is an official certificate confirming the authenticity of a document.
and scope of these are ongoing. However, based on the current direction of travel we do not expect the proposal to have a major financial impact on the General Register Office (and devolved equivalents).”

10.19 The Minister expects the Presidency to seek a general approach in June, but adds that the Government will “ask for sufficient time to allow full scrutiny consideration”.

### Previous Committee Reports


### 11 Minerals originating in conflict-affected and high-risk areas: an integrated EU approach

<table>
<thead>
<tr>
<th>Committee’s assessment</th>
<th>Legally and politically important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee’s decision</td>
<td>Not cleared from scrutiny; further information requested; drawn to the attention of the International Development, Foreign Affairs and Business, Innovation and Skills Committees</td>
</tr>
<tr>
<td>Document details</td>
<td>(a) Draft Regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas</td>
</tr>
<tr>
<td></td>
<td>(b) Joint Communication: Responsible sourcing of minerals originating in conflict-affected and high-risk areas: Towards an integrated EU approach</td>
</tr>
<tr>
<td>Legal base</td>
<td>(a) Article 207 TFEU; QMV; ordinary legislative procedure; (b) —</td>
</tr>
<tr>
<td>Department</td>
<td>Foreign and Commonwealth Office</td>
</tr>
<tr>
<td>Document numbers</td>
<td>(a) (35879), 7701/14 + ADDs 1–9, COM(14) 111</td>
</tr>
</tbody>
</table>
<pre><code>                   | (b) (35908), 7704/14, JOIN(14) 8 |
</code></pre>
Summary and Committee’s conclusions

11.1 The draft Regulation covers tin, tantalum, tungsten, their ores, and gold, whose supply chains have been identified as contributing to armed conflict, particularly in the eastern Democratic Republic of Congo. This is part of the Commission’s response to the 2011 OECD Due Diligence Guidance and section 1502 of the 2010 US “Dodd-Frank” Act. The 2011 OECD Due Diligence Guidance is not country or region-specific and sets out a process to be followed by countries interested in developing responsible sourcing capabilities: while primarily at the disposal of companies in OECD jurisdictions, the Due Diligence Guidance describes itself as a source of inspiration attracting the participation of companies performing significant transformative or trading functions in mineral supply chains for gold, tin, tantalum and tungsten. In 2011, the EU took a political commitment in the OECD framework to support the further uptake of the Guidance.

11.2 The Commission is proposing a voluntary scheme, but one that would be binding on companies once they had volunteered. Companies would be required annually to present to the competent authority of a Member State evidence from a third-party auditor that they had carried out due diligence in line with the OECD guidance on the smelters or refiners in their supply chain. Member States would report annually to the Commission on implementation, and provide information on self-certified responsible importers. The Commission would use the information to develop a list of responsible smelters and refiners. The Regulation would be global in scope. The scheme would be evaluated after three years, and the results used for determining the ongoing EU approach — including amendments to the regulatory framework, making it mandatory, if appropriate, on the basis of a further impact assessment.

11.3 The accompanying Commission-EEAS Communication (7704/14) sets out an overall integrated approach to the responsible sourcing of minerals originating in conflict-affected and high-risk areas, of which this Regulation is a part. Other elements of the proposed integrated approach include financial support for implementation of the OECD Due Diligence Guidance, and for future uptake by SMEs of the “responsible importer” scheme in the Regulation; the use of public procurement by the Commission and Member States to provide incentives for uptake of the scheme; policy dialogues with governments at different stages of the mineral supply chain; and the use of development assistance to support due diligence efforts.

11.4 The Committee’s questions thus far have revolved around why the Minister for Europe (Mr David Lidington) felt the need to question the use of Article 207 TFEU as the appropriate legal base; how well the OECD Due Diligence Guidance had been implemented, and its effectiveness, thus far; why the Minister did not favour a mandatory due diligence scheme covering all imports, addressing all the relevant metals, and also targeting finished products; and what he meant by “a reputational incentive”, which he believed would be sufficient to make the scheme work effectively. The Committee reported his responses last July.

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45 The US Dodd-Frank Act defines ‘conflict minerals’ as columbite-tantalite or coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives that are financing conflict in the DRC, Angola, Burundi, the Central African Republic, the Republic of Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia.
11.5 The Minister now reports that:

— after relatively slow deliberations on the technical issues, discussions are now beginning to pick up in the Council, and that the European Parliament is moving ahead with its consideration of the dossier and is aiming to reach a common position in June 2015;

— he has concluded that Article 207 TFEU is an appropriate legal base, stating that it “can be construed very broadly”, and noting that “this proposal clearly supports trade measures and similar proposals have been based on Article 207 TFEU”

— how oversight and implementation would work at the Member State level is still under discussion in the Working Party on Trade Questions; he will “continue to play an active role in negotiations”; he has asked the Commission to investigate the benefits of hosting one competent authority in the Commission, rather than the 28 Member States hosting one separate authority each, to ensure a level playing field; and is also considering proposals put forward by other Member States that the Commission could produce a “conformity assessment framework”; in any event, it is, he says, “vital to avoid duplicating expensive audits”.

11.6 We look forward to hearing again from the Minister when there is more progress. We note that, if not sooner, we expect that update to be in good time to obtain answers to any questions that may then arise, before any text is put to the Council for adoption as a Partial or General Approach, and the beginning of negotiations with the European Parliament.

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

11.8 We again draw these developments to the attention of the International Development, Foreign Affairs and Business, Innovation and Skills Committees.

**Full details of the documents:** (a) Draft Regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas: (35879), 7701/14 + ADDs 1–9, COM(14) 111; (b) Joint Communication: Responsible sourcing of minerals originating in conflict-affected and high-risk areas: Towards an integrated EU approach: (35908), 7704/14, JOIN(14) 8.

**Background**

11.9 When he submitted these documents for scrutiny, the Minister welcomed what he described as the Commission’s intention to provide political support to implementation of the OECD Due Diligence Guidance — it being in line both with wider international efforts and the June 2013 G8 Lough Erne communiqué (which agreed to continue to support responsible, conflict-free sourcing of minerals from conflict-affected regions). The Minister outlined what mechanisms were already in place in the UK, and some aspects of the proposal upon which he would be seeking greater clarity during the negotiations that are about to begin in the relevant Council Working Party, and undertook to update the Committee in due course.
Further background, including a summary of subsequent scrutiny, is set out in our previous Reports.

The Minister’s letter of 5 March 2015

The Minister states that he has not written until now as deliberations on technical issues around this dossier have been relatively slow.

He then continues as follows:

“Discussion is now beginning to pick up in the Council. The European Parliament is moving ahead with its consideration of the dossier and is aiming to reach a common position in June of this year.”

Regarding the Committee’s question concerning the legal base, the Minister says:

“We asked the Commission to explain why it chose Article 207 TFEU as the sole legal base, and did not include Article 209 TFEU. The Commission explained that the scheme promotes, facilitates and governs trade and has direct and immediate effects on trade, that a number of precedents exist, and that ECJ case law clearly limits the number of possible legal bases for a legislative proposal to the most relevant one.

“We have concluded that Article 207 TFEU is an appropriate legal base. Article 207 TFEU can be construed very broadly, and this proposal clearly supports trade measures and similar proposals have been based on Article 207 TFEU. We have jointly proposed with other Member States that there should be a reference to Article 209 TFEU, as well as Article 208 TFEU, in the recital to the Regulation. This would highlight that development aid objectives are also a key aim of the Regulation.”

Finally, on the question of how oversight and implementation would work at the Member State level, the Minister says:

“These issues are still under discussion in the Working Party on Trade Questions. We have asked the Commission to investigate the benefits of hosting one competent authority in the Commission, rather than the 28 Member States hosting one separate authority each. This approach could help ensure uniformity of audit across the EU, helping ensure a level playing field for all participating companies. We are also considering proposals put forward by other Member States that the Commission could produce a ‘conformity assessment framework’. Companies could be certified to this by certification bodies accredited by national accreditation bodies as set out in Regulation 765/2008. This proposal would help ensure independence of a company’s certification, and could reduce the burden of implementation for Member States and the Commission. We will consider the merits of this approach. The Commission is investigating how this proposal could recognise existing industry responsible sourcing schemes. It is vital to avoid duplicating expensive audits.”

Looking ahead, the Minister says that he will “continue to play an active role in negotiations”, and will “update the Committee again when there is more progress”.
Previous Committee Reports


12 The EU and Central Asia

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Joint Staff Working Document on the implementation of the EU Central Asia Strategy

Legal base

—

Department

Foreign and Commonwealth Office

Document numbers

(36624), 5241/15, SWD(15) 2

Summary and Committee’s conclusions

12.1 The 2007 EU Central Asia strategy — embracing Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan — prioritised a number of areas for engagement and cooperation:

- good governance, rule of law, human rights and democratisation;
- education and training, economic development and trade and investment;
- transport and energy, environmental sustainability and water management; and
- common security threats and challenges (see paragraphs 12.6-12.7 below for details).

12.2 Although a formal review was envisaged in the Strategy, Member States and the Commission agreed in mid-2012 on a “lighter-touch implementation review” and “a future orientation to guide the EU in its engagement”, which was reinforced by Foreign Affairs Council Conclusions. The Minister for Europe (Mr David Lidington) produced his own assessment at the same time (see paragraphs 12.24–12.27 below for summary).

12.3 Then, in 2014, a European Court of Auditors’ Special Report, which examined how the Commission and the European External Action Service (EEAS) had planned and managed €674 million of development assistance to the Central Asian republics in the period 2007–12, concluded that, under challenging circumstances, planning and allocation had been generally satisfactory. But assistance covered too many sectors and involved too many small projects. The Commission/EEAS could not establish how much the EU had spent per sector and per country. Disbursement decisions were based on partner countries’ professed commitments to reform rather than on progress achieved. Implementation was
slow overall. The regional programmes did not achieve a genuine regional dimension. Commission reports focused on activity rather than results. At that time, the then Minister (Lynne Featherstone) said that these were general issues, which would be addressed via the EU’s new “Agenda for Change”, an updated Development Cooperation Instrument and the Commission’s work on an effective results framework, to measure impact and not just activities undertaken (see our previous Report for details).

12.4 In January 2015, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (HR; Federica Mogherini) issued this further report. It provides an overview of progress to date, identifies possible areas for change or additional focus and sets the scene for a further detailed policy review scheduled to take place over the coming months under the Latvian EU Presidency, with the aim of agreeing a revised EU Strategy at the June European Council.

12.5 Further details of the Report, and our assessment of it, are set out in our previous Report.

12.6 We are pleased that the related debate on a European Court of Auditors’ Special Report on EuropeAid’s evaluation and Results — Orientated Monitoring Systems has been held, and agree with all the points made by the Minister who led it (see paragraphs 12.15–12.16 below for details).

12.7 We are also pleased that there are, after all, to be Council Conclusions regarding the long-overdue EU Development and Cooperation Results Framework. But it is what those Council Conclusions say that will make the difference. It is plain from what the Minister (Mr Desmond Swayne) said in the debate that far from all Member States are as keen as the UK on putting the Commission/EEAS feet to the fire. We also note that the Minister for Europe says that this is “a key priority for the UK’s engagement with the EU on international development, and will be vital in order to demonstrate to EU taxpayers the value for money of its development programmes”. We therefore ask the Minister to provide the Committee with a copy of the Council Conclusions that are finally adopted and his views on how effectively they move this vital process forward.

12.8 More immediately, we look forward to receiving the Council Decision and the Minister for Europe’s EM on the new EUSR for Central Asia proposed by HR Mogherini — a move that we welcome not only because of the need for such an intermediary if this important EU Strategy is ever going to get properly off the ground, but also because the EUSR process is back where it belongs, under the control of the Member States.

12.9 Finally, we welcome the Minister for Europe’s assurance that the Committee will be kept fully in the picture on the upcoming work on the next iteration of this Strategy. Though he does not say so specifically, we presume that his assurance includes

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46 In 2011 the EU adopted two reforms that (according to its website) are “designed to make its development policy both more strategic and more targeted: the 12-points Agenda for Change and new policy and rules for budget support”; these changes would “make sure EU aid targets the countries in greatest need, where external support can really make a difference in terms of poverty reduction”, and “will be concentrated in two overall priority areas”: human rights, democracy and other aspects of good governance; and inclusive and sustainable growth.

depositing the final version of that next iteration for scrutiny before it is submitted to the June European Council for adoption (see paragraphs 12.17 and 12.18 below for details).

12.10 In the meantime, we shall continue to retain this present implementation review under scrutiny.

**Full details of the documents:** Joint Staff Working Document: *Progress Report on the implementation of the EU Central Asia Strategy* (36624), 5241/15, SWD(15) 2.

**Background**

12.11 The Common Strategy instrument was created by the Amsterdam Treaty, as the means of setting out the objectives, overall policy guidelines, organisation and duration of the EU’s external policies towards geographic or thematic areas.

12.12 The 2007 EU Strategy for Central Asia set out the EU’s approach to promoting democracy, human rights, good governance and sustainable development, counter-terrorism, counter-narcotics and energy security in Central Asia. It set out how it intended to work within existing instruments, such as the Partnership and Co-operation Agreements and other co-operation frameworks, to enhance co-operation. The then Minister for Europe (Mr Geoffrey Hoon) explained that it: would serve as the general framework for enhancing EU co-operation over the next five to 10 years; sat alongside the Commission’s 2007–13 Assistance Strategy for Central Asia, which provides the resources to support the strengthening of political dialogue with the Central Asian states; and was based on “a clear sense, both within the EU and the Central Asia region, that the EU’s profile in the region was low, and fell some way behind that of Russia, China and the United States”.

12.13 In its introduction, the paper noted that the Central Asian States lay at a strategically important intersection between the two continents; the time had come for a new partnership in a globalised world. The EU had a strong interest in a peaceful, democratic and economically prosperous Central Asia. The aim of the EU Strategy was therefore to cooperate actively with the Central Asian States in reaching these goals as well as to contribute to safeguarding peace and prosperity in neighbouring countries. The Strategy built on the progress that the Central Asian States had themselves made since attaining independence. It took account of their common aspects as well as specific national contexts and requirements. It also built on the results obtained under the implementation of the various Partnership and Co-operation Agreements, EU assistance programmes and EU other initiatives. It emphasised cooperation with other international and regional entities. Within the new external assistance instruments based on the EU budget for 2007–13, the Commission had allocated €750 million for Central Asia, which would be disbursed through the European Commission Assistance Strategy for Central Asia for 2007–13. The average annual allocation for the region would increase from €58 million in 2007 to €139m in 2013. It would be reviewed in mid-2008 and every two years thereafter.48

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12.14 Instead, Member States and the Commission agreed in mid-2012 on a “lighter-touch implementation review” and “a future orientation to guide the EU in its engagement”, which was reinforced by Foreign Affairs Council Conclusions.\(^49\) The Minister for Europe produced his own assessment at the same time (see our previous Report for details). In brief, he regarded the EU Central Asia Strategy as a useful framework in terms of building the regional stability, greater rule of law and economic growth he wished to see. While there was still clear room for improvement, the Strategy together with the active engagement of the EU Special Representative for Central Asia over the last five years, had helped the EU raise its profile and impact in a region of growing strategic importance, from what was a low base in 2007. His main concern was that EU assistance was spread too thinly. He was encouraging the EEAS to open (and fully staff) Delegation Offices in all Central Asian states as a key element of improving EU visibility, and had underlined the importance of personal high-level engagement with senior leaders in the five countries. It would be important, particularly in light of transition in Afghanistan, for the EU to focus on regional security issues in the mid-term, as well as remaining focussed on promoting rule of law/human rights, economic regional co-operation.

12.15 Subsequent developments have been outlined in our previous Reports. Since then, the European Committee debate referred to in our conclusions took place on 9 March 2015; at the end of which, the European Committee resolved thus:

“That the Committee takes note of unnumbered European Union Document, the European Court of Auditors’ Special Report No. 18/2014: EuropeAid’s evaluation and results-orientated monitoring systems; welcomes the report as an important assessment of the EU’s performance in this area; and supports the Government’s efforts to closely monitor the Commission’s progress in implementing the Court of Auditors’ recommendations, and in pressing the Commission to implement improvements in both evaluation and monitoring.”

12.16 During the debate,\(^50\) the relevant Department for International Development Minister (Mr Desmond Swayne) said that:

— unless an organisation can evaluate what it has done and work out what has worked, what has not and whether those lessons can be learned and applied to future projects, it will become increasingly inefficient: “It is necessary to ask not only whether the objectives were achieved, but whether they were the right objectives in the first place”;\(^51\)

— the key question is whether the European Union has been doing its homework as a result of those processes:

“I suggest, having read the report, that it has been panned by the auditors. That is the only way to describe it. One might even say that, given the report, our assessment of the European Union as an effective deliverer of aid — our multilateral aid review rated it highly on that score — was more a matter of luck than of judgment.”;\(^52\)

\(^49\) The 26 June 2012 Foreign Affairs Council Conclusions.

\(^50\) Gen Co Deb, European Committee B, 9 March 2015, cols. 3-16.

\(^51\) Col. 4.

\(^52\) Col. 5.
— even where “people and our partners” accept that matters need to be dealt with, the key question is:

“how high up the agenda they are and the political capital that one is prepared to expend on dealing with issues that some might say are for anoraks: the process below the surface. We take a radically different view. We regard such matters as vital, and we therefore have to maintain our partners’ focus on them. We have to work through allies, with respect to Nordic countries and others who think these are important issues and raise them up the agenda, but there is a barrier to overcome in that other people have different priorities.”

— the (long overdue) EU Development and Cooperation Results Framework was due to be published at the end of February, but had been delayed until the end of March:

“That is a good thing, because we have made significant progress on the things we were asked for. There will be some Council conclusions, and we are currently submitting our comments.”

— the Court of Auditors has done a sterling job; the relevant procedures are not adequate and are not being adequately carried out:

“We must get these things right to ensure that money is being effectively spent and aid effectively delivered. We are being told that EuropeAid does not know how many of its findings and evaluations — how many of the lessons learned — are being carried out and applied to new projects. That strikes me as a woeful situation, which we must get right.”

The Minister’s letter of 11 March 2015

12.17 The Minister responds as follows:

The European Court of Auditors’ (ECA) Special Report on EuropeAid’s evaluation and Results-Orientated Monitoring (ROM)

“During the 9 March scrutiny debate on this report, the Minister of State for International Development outlined the importance he placed on ensuring the EU responds to the Court’s findings by making real progress on evaluation and monitoring, and updated the committee on DFID’s programme of engagement to this end. In addition, the EU results framework is expected to be published by the end of March. This is a key priority for the UK’s engagement with the EU on international development, and will be vital in order to demonstrate to EU taxpayers the value for money of its development programmes. Results will be reported against this framework in the second half of 2015.”

53 Col. 6.
54 Col. 7.
55 Col. 8
Who represents the EU in relation to Central Asia

“As far as decision-making on EU policy relating to Central Asia is concerned, decision-making follows standard structures for EU Foreign and Security Policy and broader Development Aid policy."

“As far as the process of decision-making on EUSRs is concerned, as set out in the Guidelines on the Appointment, Mandate and Financing of EU Special Representatives, Article 33 of the Treaty on European Union (TEU) provides that the Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issue. The special representative shall carry out his/her mandate under the authority of the High Representative. In accordance with Article 31 (2), 4th indent TEU, the Council acts by qualified majority when appointing a special representative in accordance with Article 33 TEU. Therefore, in relation to Central Asia, when EUSR Patricia Flor resigned, the High Representative was able to propose a replacement. As the Committee notes, Baroness Ashton chose not to propose a new EUSR, but instead to appoint an interim Special Envoy to Central Asia. Upon appointment as High Representative, Federica Mogherini took an early decision to move to appoint new EUSRs for Central Asia and for the Middle East Peace Process. The UK and others have welcomed this decision. Recruitment processes are underway, and the Committee will be sent documents for scrutiny in accordance with usual procedures once a proposed candidate has been identified and a draft mandate prepared.”

How the forthcoming EU Central Asia Strategy Review is to be handled in terms of parliamentary scrutiny.

“the current progress report only sets the scene for further detailed policy review, scheduled to take place in the months leading up to the June European Council. As soon as policy review papers are issued with specific policy proposals, they will be passed for scrutiny to the Committee in accordance with standard scrutiny procedures. Should papers be issued during the dissolution period, Explanatory Memoranda will continue to be submitted in accordance with agreed procedures and we will continue to work with the Clerks to keep them well informed.”

12.18 On 16 March, HR Federica Mogherini announced that she had proposed the appointment of new Special Representatives to support the work of the European Union on two important foreign policy files — the Middle East Peace Process and for Central Asia — and that the candidates had been endorsed by EU Member States in the Political and Security Committee, pending a final decision by the Council. In the case of the EUSR Central Asia, Mr Peter Burian’s appointment would be for an initial period of one year,
with the task of ensuring continued EU high-level engagement in the region. Mr Burian is currently State Secretary of the Ministry of Foreign and European Affairs of the Slovak Republic, and a former ambassador of the Slovak Republic to NATO, to the United States and to the United Nations.

57 HRVP Federica Mogherini said:

"The appointment of Peter Burian will show the EU’s continued cooperation with Central Asia, ensuring strong presence in our engagement on key issues of mutual interest including the rule of law, security, energy, water, education and human rights. Central Asia is a strategic area. The EU also intends to continue to support the transition of neighbouring countries such as Afghanistan, where much remains to be done in securing the democratic path."

58 Press Release.

Previous Committee Reports


13 Towards a new European Neighbourhood Policy

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Joint Consultation Paper — Towards a new European Neighbourhood Policy

Legal base

—

Department

Foreign and Commonwealth Office

Document numbers

(36714), —, JOIN(15) 6

Summary and Committee’s conclusions

13.1 The European Neighbourhood Policy (ENP) was developed in 2004, with the objective of avoiding the emergence of new dividing lines between the enlarged EU and neighbouring countries, and instead strengthening their prosperity, stability and security. It presently involves the EU’s 16 closest neighbours — Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Occupied Palestinian Territories, Syria, Tunisia and Ukraine.

13.2 The ENP is chiefly a bilateral policy between the EU and each partner country, complemented by regional and multilateral co-operation initiatives: the Eastern Partnership (launched in Prague in May 2009), the Euro-Mediterranean Partnership (EUROMED): the Euro-Mediterranean Partnership, formerly known as the Barcelona
Process, re-launched in Paris in July 2008), and the Black Sea Synergy (launched in Kiev in February 2008).

13.3 The ENP offers the EU’s neighbours a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development). The level of ambition of the relationship depends on the extent to which these values are shared. The ENP includes political association and deeper economic integration, increased mobility and more people-to-people contacts. ENP sector policies cover a broad range of issues, including employment and social policy, trade, industrial and competition policy, agriculture and rural development, climate change and environment, energy security, transport, research and innovation, as well as support to health, education, culture and youth.

13.4 The last ENP review was in 2011, which produced a stronger focus on the promotion of deep and sustainable democracy, economic development, and conditionality (the “more for more principle”). Each year, there is an overview, supplemented by an annual progress report on each partner country. The most recent one, entitled Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013, hinted at the broader, strategic questions that arose from developments over the preceding 12 months (see paragraphs 13.22–13.26 below for details, and the Committee’s thoughts thereon).

13.5 The Joint Consultation Paper was launched on 4 March 2015, via a joint press conference by the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) and Enlargement Commissioner Johannes Hahn. The HR noted that the region has changed greatly in the last 10 years, and particularly since 2011. The EU needed “to review our policy, our way of working, our partnership with the countries of our region”: to move from an approach based on the evaluation of progress to “a more political dialogue, to a more political partnership, to a more cooperation oriented approach between equal partners”. In particular:

“because as our region is in flames, both to the East and South, we have to use all the potential of our bilateral relations with partners in the region to have an effective impact on our region”.

13.6 She and her officials would continue to “work together in the next months, myself together with Commissioner Hahn, our offices in a perfect team”; the main purpose being:

“to have better and more effective instruments to work in our neighbourhood, in our region and we desperately need to find better instruments to be better effective.”

13.7 Enlargement Commissioner Johannes Hahn said that the consultation needed to look at four key points:

- *increase differentiation*: recognise that our partners are very diverse; some want closer integration, some want a different kind of relationship; consider how best to pursue the relationship, perhaps in new formats;
ownership: the new ENP must reflect the views and experience of the EU’s partners; not be condescending, patronising or preaching; develop a real partnership of equals on the basis of shared interests, while always promoting universal principles;

focus: need not cover every sector with every partner: for those that want, and who are able, Association Agreements and DCFTAs; for those who can’t, or do not currently want, to engage so deeply, focus on making partnerships more effective. Widen the traditional focus on trade and mobility with a new emphasis on energy security, threats to security from organised crime, the “frozen conflicts”;

greater flexibility: being able to react to changing circumstances, and crises when they arise.

13.8 The HR and Commissioner professed themselves determined to consult as widely as possible, particularly in the partner countries, between now and the end June —looking for “concrete ideas that will suit us and our partners, and that will deliver results the public can understand” (see paragraph 13.29 below for full details).

13.9 Against this background, the aim of the Joint Consultation Paper is to frame the discussion for a careful re-examination of the ENP. It sets out some preliminary findings in terms of lessons learned from the ENP to date; suggests some first elements of developing a stronger partnership; and identifies a number of key questions for discussion with key partners and stakeholders. The results of the consultation will contribute to a further Communication in the autumn of 2015, setting out concrete proposals for the future direction of the ENP (see paragraphs 13.28–13.31 below for details).

13.10 The Minister for Europe (Mr David Lidington) welcomes the publication of the Joint Communication, and considers this an important opportunity to refocus ENP. He favours “a more flexible, ambitious and effective policy for the region, that is capable of reacting to the problems arising from conflict, and dealing with the question of resilience and stability”. He sees the ENP as facing these key challenges:

- the “one-size-fits-all” approach: the ENP incorporates some differentiation but needs to tailor its objectives, aims and use of instruments for each region, as well as individual countries, even further;

- low levels of understanding/support: the ENP is complex and technocratic, based largely around binding countries to the EU through international agreements, such as Association Agreements, Strategic Modernisation Partnerships, etc., as a means to deliver change;

- how to incentivise reform: the EU quite rightly insists on substantive political and economic reforms in exchange for access to its markets; but there are questions as to whether the EU has been effective enough in incentivizing the necessary reforms

13.11 The Minister therefore broadly agrees with the Joint Consultation Paper’s key themes: Differentiation, Focus, Flexibility, Ownership and Visibility. In responding, the UK will focus on:
• improving differentiation to allow the ENP to adapt to the changing situation in the region;

• increased flexibility so that resources can be used more effectively;

• better response to crisis management;

• more effective strategic communications in the region; and

• greater bilateral involvement by Member States, to complement EU efforts (see paragraphs 13.32–13.37 below for details).

13.12 With “our region … in flames, both to the East and South”, this Joint Consultation Paper is plainly timely. But it would be thus even were that not so, for all the other reasons identified by both the HR/Commissioner and the Minister.

13.13 There are very large sums of money involved — the ENP draws its funding primarily from the European Neighbourhood Instrument (ENI), to which over €15 billion has been allocated in the 2014–2020 financial perspective. According to the Commission, in 2011, total trade between the EU and its ENP partners was worth €230 billion; the EU issued 3.2 million Schengen visas to ENP partners in 2012; and in 2007-2013, provided partners with over €12 billion in grant money for the implementation of the ENP. As we noted last year, it is inconceivable that the EU would not have some such policy: but, at the end of the day, no-one has any real idea of how effective this expenditure of over €12 billion has been.

13.14 The EU is also engaged in other analogous activities, such as the Central Asia Strategy and a prospective regional strategy for Syria and Iraq as well as the Da’esh threat. So what emerges from this consultation will have major implications for a wide range of other EU activity around the globe, particularly in terms of effectively relating objectives, approach, expenditure and outcomes.

13.15 And, prior to the publication of the results of this consultation exercise, EU leaders will return to that most basic of foreign policy issues: defence.

13.16 Under “Next Steps”, the Joint Consultation Paper says its aim is “to consult as widely as possible both with partners in the neighbouring countries and with stakeholders across the EU”, and that:

“We will consult with Member States and partners, but also with a wide range of actors from parliaments, including the European Parliament, civil society and think tanks, and from the social partners, business and academic communities. We will engage with key international organisations active in the neighbourhood, including notably the Council of Europe, the OSCE as well as the major international financing institutions.”


60 See (35696), 17859/13, JOIN(13) 30 at chapter 19 of this Report for the Committee’s latest consideration of the preparations for the June “defence” European Council.
13.17 We note the Enlargement Commissioner has already engaged in a debate with the European Parliament only five days after publication of the joint consultation paper. However, we understand that, beyond that, the reference to consultation with parliaments in the paper refers to parliaments in the partnership countries, including taking a “roadshow” to each one and visits to each country’s parliament; and that the Commission has no plans to reach out specifically to EU national parliaments for consultation on the ENP review. However, we further understand that the Commission would always welcome any proactive request from a national parliament to discuss the ENP review, be that an invitation to Westminster to give evidence or as part of a Committee’s visit to Brussels.

13.18 We welcome this; although Parliament is about to be dissolved, its successor will have been established before the end of the consultation period. Once our successor Committee has been established we recommend that it consider seeking the Opinion of the new Foreign Affairs Committee, should there be time to do so.

13.19 In the meantime, we shall retain the Joint Consultation Paper under scrutiny, pending receipt of further information from the Minister on the outcome of the consultation. If this is in the form of a further depositable document, then we shall await a timely Explanatory Memorandum in the usual way. However, if for whatever reason it is in another format, then we rely upon him to provide a full and timely summary, with his (or his successor’s) assessment and views thereon.

**Full details of the documents:** Joint Consultation Paper — Towards a new European Neighbourhood Policy: (36714), —, JOIN(15) 6

**Background**

13.20 In 2010–11, the EU reviewed the ENP and put a strong focus on the promotion of deep and sustainable democracy, accompanied by inclusive economic development. Deep and sustainable democracy includes in particular free and fair elections, freedom of expression, of assembly and of association, judicial independence, fighting corruption and democratic control over the armed forces. The new approach stresses the role of civil society, and incorporates the “more for more” principle, under which the EU will develop stronger partnerships with those neighbours that make more progress towards democratic reform.

13.21 The ENP remains distinct from the process of enlargement although it does not prejude, for European neighbours, how their relationship with the EU may develop in future, in accordance with Treaty provisions.61

13.22 Our previous relevant Report centred on a Joint Communication, Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013 — the third of the customary annual reports on ENP implementation since the major overhaul in 2011, in which the “Arab Spring” was a major factor. The main features of the 2011 update were political association, economic integration, the mobility of people, a stronger partnership
with civil society and better cooperation on specific sector policies. The Joint Communication reviewed progress by ENP partners against jointly agreed reform objectives.

13.23 In addition to the Communication, the progress of each ENP partner country in implementing reforms agreed with the EU and documented in their bilateral Action Plans was described in individual progress reports or memos. Country reports for Morocco and Tunisia were in French to increase their visibility in the partner countries themselves. For ENP partner countries where there was no Action Plan in place (Algeria, Belarus, Libya and Syria) the Commission issued a memorandum rather than a progress report. In addition, the Commission provided two regional reviews covering the Southern Neighbourhood and Eastern Partnership. There was also a Statistical Annex attached which provided selected political, economic, mobility and assistance related indicators, statistics and graphs. The key points of this mass of documentation were summarised in and commented upon (see sections in italics) by the Minister for Europe.62

13.24 More generally, the Minister noted that the UK continued to work with like-minded Member States to ensure that the ENP was “rooted in an incentive-based approach” and provided “a rigorous assessment of progress”. The Minister described the Joint Communication as “a fair analysis of progress, and a welcome progression from previous reports”. The analysis was “accurate and moderately robust in criticising partners for not fully delivering on their previous reform commitments”; the Minister would “continue to encourage EU institutions to continue this approach in the future”.

13.25 The individual country reports reflected, in more detail, the very mixed picture painted more broadly in the Joint Communication and the documents on the regional dimensions. The EU’s neighbours continued the struggle between an authoritarian past and associated ethnic conflicts, and a law-based, fully participatory, consensual and tolerant polity.

Our assessment

13.26 Though the Joint Communication was essentially narrative, and only prescriptive in the short-term, its title — Neighbourhood at the Crossroads — hinted at the broader, strategic questions that arose from developments over the preceding 12 months. In the south, “the neighbourhood” was, if anything, going backwards: Syria spoke for itself, Libya was divided and in many ways lawless, and it was difficult to see what EU values were shared by those governing Egypt. In the north, Russia was challenging the whole basis of the ENP: Ukraine was in crisis, and Belarus had already turned its back on the EU’s “offer”. With the crucial incentive of EU membership not part of that “offer”, the EU therefore had two choices: withdraw, or follow Churchill’s dictum — in more polite language, keep its shoulder to the wheel and look for incremental progress. Dealing with its neighbours in the east and the south remained nonetheless essential to both the EU and the UK’s security. The EU’s approach remained generally regarded as positive, and welcomed, by partner countries, and was thus able to take forward useful work in trade, transport, energy and

13.27 On 4 March 2015, the EU High Representative for Foreign Affairs and Security Policy and Commission Vice-President (HR; Federica Mogherini) and Enlargement Commissioner Johannes Hahn jointly hosted a press conference, which they introduced thus:

**HR Mogherini:**

“We have just decided in the college to formally launch the review of the European Neighbourhood Policy that as you know is already 10 years old, and last review was done in 2011, in the process of the so-called Arab Spring.

“Our region has changed a lot in these last years, for sure in the last 10 years but also from 2011 — both our region to the East and to the South, with dramatic developments, but also with encouraging steps that were registered even recently both to the East and to the South.

“We need to review our policy, our way of working, our partnership with the countries of our region, first of all because we feel we need to move from an approach that has been very much based on the judgement on the evaluation of the progress in our relationship to a more political dialogue, to a more political partnership, to a more cooperation oriented approach between equal partners. In particular because as our region is in flames, both to the East and South, we have to use all the potential of our bilateral relations with partners in the region to have an effective impact on our region.

“We have common challenges with our partners, be it security, be it the protection of basic rights and principles, be it migration (and this is dramatically evident also today with the news coming from the Mediterranean again), be it energy or be it the promotion of Human Rights and democracy, be it the economic development, trade. A full agenda of things on which it is useful to strengthen our capacity to work together with our partners in the region.

“So we will work together in the next months, myself together with Commissioner Hahn, our offices in a perfect team work I have to say that I am personally very proud of. We have started to work very well together in the Commission and I hope this will bring fruitful results in the coming months. We will work together in the next months, first of all with our partners listening and working together on what has had worth over these years, what has to be improved or changed, starting from listening process. We will do this both with the partners in the East and in the South.

“We will have a couple of meetings that will be important in this view. The Riga summit on the East, the Barcelona meeting in April to the South, to have open and frank discussions with our partners on what we need to change and in which way.
“We will also discuss this internally. The EU Foreign Ministers will start the discussion at our informal ministerial in Riga on Friday and Saturday this week.

“It will be a process, Commissioner Hahn will tell you more about this, where the main purpose is to have better and more effective instruments to work in our neighbourhood, in our region and we desperately need to find better instruments to be better effective.”

**Enlargement Commissioner Johannes Hahn**

“It is in the EU’s own interests to maintain close relations with its neighbours. From energy security to migration, from trade to terrorism: we need to work together on the big challenges we all face.

“What is the objective? We want to be a key partners for the countries on our doorstep, while defending their right to choose their own way forward. We prefer to work with democracies in open trading relationships, because we believe this is better for everyone. And, we want to have good working relationships on issues that affect us.

“As High Representative has said, there has been a lot of changes in the neighbourhood in recent years. The ENP has not always been able to offer adequate responses to the changing aspirations of our partners. And therefore, the EU’s own interests have not been fully served either.

“That is why President Juncker has asked me, in close co-operation with the High Representative/Vice-President to carry out a far-reaching review of this policy. Many Member States — and indeed our partners — have already signalled they also believe change is necessary.

“In the consultation, we need to look at four key points:

“First. What can we do increase differentiation in the way we work with our partners? We need to do more to recognise that our partners are very diverse. Not just different East and South, but different within the East and within the South. Some want closer integration with us, and in these cases we need to reflect on what further steps are possible. Some want a different kind of relationship, and for these we need to consider how best to pursue the relationship, perhaps in new formats

“Second. This brings me to ownership. The new ENP must reflect the views and experience of our partners. It must not be condescending, patronising or preaching. We must ensure that we develop a real partnership of equals on the basis of shared interests, while always promoting universal principles. The consultation will look at new ways of working, for example, potential changes to our annual reports.

“Third. My third point is therefore focus: We need not cover every sector with every partner. For those that want, and who are able, we should pursue the Association Agreements and DCFTAs. But, for those who can’t, or do not currently want to engage so deeply, let’s narrow the focus to make our partnerships more effective.
“Trade and mobility have been the traditional focus points: I want us to put a new emphasis on some that have not been fully used up to now: energy – both our energy security and that of our partners; and threats to security from organised crime to the frozen conflicts.

“Fourth. Lastly, we need to be more flexible: this means being able to react to changing circumstances, and crises when they arise.

“We are determined to consult as widely as possible, particularly in the partner countries and the consultation will last till end June. Then, we will come with a full proposal in the autumn.

“We are looking for concrete ideas that will suit us and our partners, and that will deliver results the public can understand. Many like to ask what the end destination of this policy is: I am more interested to see what advances we can make in the next five years.”

The Joint Consultation Paper

13.28 In its introduction, “A Special Relationship”, the HR says:

“We need a stronger Europe when it comes to foreign policy. With countries in our neighbourhood, we need to step up close cooperation, association and partnership to further strengthen our economic and political ties.”

13.29 She also notes that Article 8(1) TEU states that:

“the Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.”

13.30 After briefly reviewing developments over the past ten years, and noting that Commission President Juncker has stated that there will be no further enlargement over the next five years, the HR says the aim of the Joint Consultation Paper is “to frame the discussion for a thorough re-examination of the ENP”.

13.31 The Joint Consultation Paper sets out some preliminary findings in terms of lessons learned from the European Neighbourhood Policy to date, some suggested first elements of developing a stronger partnership and identifies a number of key questions for discussion with key partners and stakeholders. The results of the consultation will contribute to a further Communication in the autumn of 2015, setting out concrete proposals for the future direction of the ENP.

The Government’s Explanatory Memorandum

13.32 In his Explanatory Memorandum of 19 March 2015, the Minister for Europe recalls that the first review in 2010–2011 resulted in “a stronger focus on the promotion of deep
and sustainable democracy, economic development, and conditionality (the more for more principle)", and then says:

"However, since that review, the situation in the EU’s neighbourhood has become more volatile, with conflict in a number of countries, a reduction in democracy in others, and poor economic development. It has become clear to many, including the UK, that the ENP has not been as effective as we wished in delivering positive change in the region. Since early 2014, the UK has been calling for an ambitious and comprehensive review of the ENP, building on the outcomes of the 2011 review, in order to address these challenges.”

13.33 The Minister then helpfully summarises the Joint Consultation Paper’s four sections — a summary of the existing policy, lessons learned, key priorities, and next steps, each with a range of questions upon which the EEAS and Commission are seeking — as follows:

"Section I — Introduction. A Special Relationship sets out the situation in the neighbourhood and provides a broad overview of the challenges faced. It is a primarily factual record of events and the process that has led the EU to initiate this review.

“Section II — Lessons Learned identifies a number of shortcomings that need to be addressed, such as differing levels of engagement amongst partners, partner concerns over equal ownership, the impact of other countries in the region on partners and the ENP, and the need for the ENP to be more closely integrated into EU foreign policy. It asks questions about whether the EU’s overall approach is the right one, whether one policy for the whole region remains appropriate, and then detail questions about implementation and the effectiveness of Action Plans, Progress Reports and sector co-operation.

“Section III — Towards a partnership with clearer focus and more tailored co-operation identifies four priority areas for further consultation and reflection, and poses key questions for the future:

“Differentiation

“Should the EU gradually explore new relationship formats to satisfy the aspirations and choices of those who do not consider the Association Agreements as the final stage of political association and economic integration?

“Focus

“Which priorities do partners see in terms of their relations with the EU? Which sector or policy areas would they like to develop further? Which areas are less interesting for partners?

“Does the ENP currently have the right tools to address the priorities on which you consider it should focus? How could sectoral dialogues contribute?

“Flexibility
“How to streamline Action Plans to adapt them better to individual country needs and priorities?

“Is annual reporting needed for countries which do not choose to pursue closer political and economic integration?

“How should the EU structure relations with countries that do not currently have Action Plans?

“Ownership & Visibility

“What do partners seek in the ENP? How can it best accommodate their interests and aspirations?

“How can ways of working be developed that are seen as more respectful by partners and demonstrate a partnership of equals? How should this impact on annual reporting?

“How can EU Member States be involved more effectively in the design and implementation of the policy, including as concerns foreign policy and security related activities? How can the activities in EU Member States be better coordinated with the ENP?

“Section IV — Next Steps, sets out the EEAS and Commission’s plans to deliver the review, consult widely amongst Member States, stakeholders, civil society, business and parliaments, with a view to completing the consultation period at the end of June.”

The Government’s view

13.34 The Minister welcomes the publication of the Joint Consultation Paper, which he describes as:

“an important opportunity to refocus Neighbourhood Policy in light of the many challenges faced in both the East and the South.”

13.35 He continues his comments as follows:

“The UK wants a more flexible, ambitious and effective policy for the region, that is capable of reacting to the problems arising from conflict, and dealing with the question of resilience and stability. We see the ENP as facing a number of key challenges:

- “The one-size-fits-all approach, where there is a clear need for the ENP to tailor its objectives, aims and use of instruments for each region, as well as individual countries, even further. The ENP incorporates some differentiation already but the UK believes it could go further in its approach.

- “Low levels of understanding/support: The ENP is complex and technocratic in its approach, which is based largely around binding countries to the EU through international agreements, such as Association Agreements, Strategic Modernisation Partnerships, etc. as a means to deliver change.
• “How to incentivise reform. The EU quite rightly implements conditionality in its support, offering more for more, and insisting on substantive political and economic reforms in exchange for access to its markets. However, there are questions as to whether we have been effective enough in incentivising the reforms we need.

“The UK therefore broadly agrees with the key themes set out in the Joint Communication: Differentiation, Focus, Flexibility, Ownership and Visibility. In responding to the Review, the UK will focus on the following issues: improving differentiation to allow the ENP to adapt to the changing situation in the region; increased flexibility so that resources can be used more effectively; better response to crisis management; more effective strategic communications in the region, and greater bilateral involvement by Member States, to complement EU efforts.”

13.36 Turning to the Financial Implications, the Minister notes:


“Although the ENP Review is not envisaged to discuss specific allocations, it will almost certainly impact on how and where the EU spends ENI funding in the future. For example, when the ENI was launched, 75% of the funding went to the Southern neighbourhood. The gradual shift to the East has pushed this down to 65%. Following UK- led lobbying, some funds have been allocated on a reward for reform basis (more for more) e.g. Tunisia’s funding has significantly increased. Crises have also impacted and not all allocations on paper have been disbursed (e.g. Egypt), and unspent funding elsewhere has been reallocated to crisis areas e.g. Syria.

“Any outcome of this review will have a direct impact on the mid-term review of the ENI, which is due in 2017. The UK government will continue to use its influence, both during this Review, and the 2017 ENI Review, to ensure that any changes are met from within existing resources (i.e. no new money) and that the principles enshrined in the 2011 Review — accountability, monitoring, reporting, and value for money, are maintained and protected.”

13.37 Finally, on the Timetable, the Minister notes that the consultation period for this review will last until the end of June 2015, and that the EEAS and Commission then plan to submit their findings to the Council in the autumn of 2015.

Previous Committee Reports

14 Taxation

Committee’s assessment: Politically important

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

Document details:
(a) Commission Communication concerning tax transparency; (b) Draft Council Directive concerning exchanging information between tax authorities

Legal base:
(a) —; (b) Article 115 TFEU; consultation; unanimity

Department: HM Treasury

Document Numbers:
(a) (36764), —, COM(15) 136; (b) (36763), —, COM(15) 135

Summary and Committee’s conclusions

14.1 The Commission has published a Communication announcing a “Tax Transparency Package”, setting out EU action to be taken in the short-term with a view to increase tax transparency, minimise the opportunities for tax evasion and avoidance, ensure that profits are taxed where economic activity is undertaken and value is created, and encourage similar action at a global level. It has also published, as part of the package, a draft Council Directive to increase transparency on the issuance of tax rulings with a cross-border element by extending the mandatory automatic exchange of information between Member States to include advance cross-border rulings.

14.2 The Government tells us that it welcomes the Commission Communication and, with reservations as to proportionality, the draft Council Directive.

14.3 We note the very recent publication of these documents and the Government’s effort to inform us about them in advance of dissolution. Nevertheless, the information the Government has been able to give in the short time available is inevitably limited. So we ask that our successor Committee be informed more fully on the detail of the initiatives in the Tax Transparency Package that the Government is seeking and on its efforts to ensure that the proposed Council Directive is robust, proportionate and minimises administrative burdens. Meanwhile the documents remain under scrutiny.


Background

14.4 In recent months there has been increasing attention being paid to the tax rulings of various Member States, including by a European Parliament special committee.
14.5 Directive 2011/16/EU on Administrative Assistance and Mutual Cooperation (DAC) contains procedures for better cooperation between tax administrations in the EU, such as exchanges of information on request, spontaneous exchanges, automatic exchanges, participation in administrative enquiries, simultaneous controls and notifications to other Member States of tax decisions. It also provided for the necessary practical tools, such as a secure electronic system for the information exchange. The DAC was amended in 2014 to incorporate the new global standard for automatic exchange of information (the Common Reporting Standard) under which information will first be exchanged in 2017.

The documents

14.6 With this Communication, document (a), the Communication presents a “Tax Transparency Package”. It sets out EU action to be taken in the short-term with a view to increase tax transparency, minimise the opportunities for tax evasion and avoidance, ensure that profits are taxed where economic activity is undertaken and value is created, and encourage similar action at a global level. The package includes repeal of the Savings Tax Directive, following the incorporation of the new global standard on automatic exchange into EU law last year — a proposal for repeal appears to be awaiting conclusion of negotiations with EU third countries on automatic exchange of information. The rest of the package covers Commission work on a review of the Code of Conduct on Business Taxation, on the potential impact of the public disclosure of certain corporate tax information, on a better quantification of the tax gap, and on encouraging the global automatic exchange of information for tax rulings.

14.7 With this draft Council Directive, document (a), the Commission proposes amendment of the DAC, as part of its Tax Transparency Package. In November 2013, the Council's Code of Conduct Group for Business Taxation agreed a “Model Instruction”, which introduced a commitment to spontaneously exchange (that is, automatically, with no discretion on the part of the issuing tax authority) information on tax rulings with a cross-border impact to Member States that might be affected, in accordance with Article 9 of the DAC. The Model Instruction is not legally binding and there is limited information about the extent to which Member States exchange this information in practice.

14.8 The main purpose of the draft Council Directive is to increase transparency on the issuance of tax rulings with a cross-border element by extending the mandatory automatic exchange of information between Member States to include advance cross-border rulings, for example in relation to determining the extent a company has a taxable presence in a jurisdiction and Advance Pricing Agreements (APAs), which cover the tax treatment of transactions between related parties.

The Government’s view

14.9 In his Explanatory Memorandum of 20 March 2015 the Financial Secretary to the Treasury (Mr David Gauke) comments first, in relation to subsidiarity, that:

- the draft Council Directive relates to the efficient administrative cooperation between Member States;
the Government’s view is that legislation at EU level based on the Model Instruction of the Code of Conduct Group would be appropriate and proportionate, and would therefore meet the subsidiarity test;

this proposal would, however, require the disclosure of information on advance cross-border rulings and Advance Transfer Pricing Agreements to all Member States and the Commission, which goes beyond the recommendations of the Model Instruction; and

the Government has initial concerns that this aspect of the proposal would create unnecessary administrative burdens and compromise taxpayer confidentiality, and may not be proportionate.

14.10 Turning to policy implications the Minister says that:

the Government welcomes the Tax Transparency Package and looks forward to receiving more detail on the initiatives it contains; and

it fully supports proportionate action at the EU level to increase tax transparency, in order to provide tax authorities with relevant information that will enable them to apply the tax rules effectively, to ensure that profits are taxed where economic activity takes place and value is created.

14.11 As for the draft Council Directive, the Minister says that:

the Government welcomes this proposal, as it will give a legal underpinning to commitments already made by the Member States through the Code of Conduct Group for Business Taxation and will ensure that Member States receive information about tax rulings that could have an impact on their tax base;

while supporting increased transparency on cross-border tax rulings, the Government has initial reservations about the extent to which the proposal would require the disclosure of taxpayer specific information to all other Member States and the Commission without foreseeable relevance;

it is important to ensure that the proposal does not place unnecessary administrative burdens on national tax authorities and operates within the law protecting taxpayer confidentiality; and

the Government will work with the Commission and other Member States to ensure that the proposal is robust, proportionate and minimises administrative burdens.

Previous Committee Reports
None.
## 15 Procedural rights

<table>
<thead>
<tr>
<th>Committee’s assessment</th>
<th>Legally and politically important</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Committee’s decision</strong></td>
<td>(a)—(c) Not cleared from scrutiny; further information requested; (d) Cleared from scrutiny (decision reported on 23 May 2012); further information requested</td>
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### Document details

- **(a)** Draft Directive on provisional legal aid
- **(b)** Draft Directive on procedural safeguards for child defendants
- **(c)** Draft Directive on the presumption of innocence
- **(d)** Draft Directive on access to a lawyer

### Legal base

- Article 82(2)(b) TFEU; co-decision; QMV

### Department

- Ministry of Justice

### Document numbers

- (a) (35652), 17635/13 + ADDs 1–3, COM(13) 824
- (b) (35646), 17633/13 + ADDs 1–3, COM(13) 822
- (c) (35642), 17621/13 + ADDs 1–3, COM(13) 821
- (d) (32865), 11497/11+ ADDs 1–2, COM(11) 326

### Summary and Committee’s conclusions

15.1 To recap, documents (a)—(c) comprise three Directives in the 2013 procedural rights package which aims to implement commitments to strengthening the “fair trial” rights of EU citizens (set out in the Procedural Rights Roadmap and the Stockholm Programme for 2010-14). The UK’s JHA opt-in applies to all three Directives in the package but following the opt-in debate on 18 March 2014 the Government has not opted into any of them.

15.2 The Government has opted into two previous Directives which also implement those commitments — on the right to interpretation and translation and on the right to information in criminal proceedings. However, it did not opt into document (d) which has now been adopted: the Directive on access to a lawyer in criminal and European Arrest Warrant (EAW) proceedings.

15.3 In addition, on our recommendation, the House of Commons issued a subsidiarity Reasoned Opinion in respect of the draft Directive on the presumption of innocence (document (c)) on 10 February 2014, but no other Reasoned Opinions were issued by national parliaments.

15.4 The Government has been keeping us up-to-date with developments on all four documents and now provides a pre-dissolution update. On the question of possible UK future participation, it informs us that while post-adoption opt-ins are still possible on the draft Directive on Child Defendants and the adopted Directive on Access to a Lawyer, it still has no plans to consider participating in the draft Directives on legal aid and Presumption of Innocence.
15.5 We thank the Minister for his update on all of these proposals in the Procedural Rights Package. We note the position on possible future UK participation in the draft Directive on child defendants (document (b)) and the adopted Directive on access to a lawyer (document (d)). We look forward to the Government keeping our successor Committee up-to-date on all developments on these proposals, in particular on its deliberations over whether to opt-into the latter adopted Directive (document (d)).

15.6 In the meantime, documents (a)—(c) remain under scrutiny, document (d) having previously been cleared, but of continuing interest to the Committee.

Full details of the documents: (a) Draft Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings: (35652), 17635/13 + ADDs 1–3, COM(13) 824; (b) Draft Directive on procedural safeguards for children suspected or accused in criminal proceedings: (35646), 17633/13 + ADDs 1–3, COM(13) 822; (c) Draft Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings: (35642), 17621/13 + ADDs 1–3, COM(13) 821; (d) Draft Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest: (32865), 11497/11 + ADDs 1–2, COM(11) 326.

Background and previous scrutiny

15.7 The background to these documents, a detailed account of their provisions and the Government view on them and subsequent developments is provided in the previous Reports listed at the end of this chapter.

Minister’s letter of 18 March 2015

15.8 The Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara) provides an update on all four documents.

Document (a) — Legal Aid

15.9 The Minister first informs us that a General Approach was agreed and attaches the text. He adds that:

“Some Member States expressed disappointment that the General Approach text agreed is less ambitious than the Commission’s proposal. The UK did not intervene in the discussion, and did not have a vote as it has not opted in to this measure.”

15.10 He reminds the Committee that the UK did not opt in to this proposal and adds that “the Government does not expect to change that position”. He informs us that the UK “has monitored the negotiations, and where relevant sought to protect the UK’s interests in other areas, but it has not sought to achieve any a particular outcome”.

15.11 He revisits the nature of the Government’s concerns about the draft Directive on Legal Aid:
“As the Government has explained previously, the UK’s difficulty with the Commission’s proposal was not due to any particular concern about its provisions. Indeed we considered the UK was already largely compliant with the detailed requirements of the proposal. Our difficulty is one of principle: that rules on legal aid are more appropriately left to Member States to decide.”

15.12 The Minister next explains how the General Approach text has changed:

“One of our original concerns was that the proposal sought to establish a “dual defence” model in European Arrest Warrant cases, whereby the issuing Member State would be required to fund a lawyer as well as the executing Member State. This requirement has been removed from the General Approach text. The other key change is that the scope of the General Approach text does not cover “minor offences”, nor does it go beyond “provisional” legal aid (at the point of arrest). Some Member States have expressed disappointment that the scope of the Directive has been narrowed in the General Approach text.”

15.13 In terms of next steps, the Minister says that trilogues can only begin once the European Parliament (EP) has adopted its amendments on the proposal and that the Government will keep the Committee updated on this matter.

**Document (b) — Child Defendants**

15.14 The Minister updates us on developments in the EP on this proposal:

“The Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament held an orientation vote on its proposed amendments to the Child Defendants Directive, on 5 February 2015. 79 amendments were adopted, forming the mandate for the Committee’s Rapporteur in trilogue negotiations. The European Parliament’s text heavily supports the Commission’s initial proposal, going further in some places, and therefore does not reflect some of the hard-earned compromises that the General Approach represents.”

15.15 He reminds us of that although the UK has not opted in to this proposal, it continues to participate in negotiations because it “has committed to considering the possibility of a post-adoption opt-in, once the final measure has been agreed”.

15.16 The Minister then sets out some areas in which the EP has sought to extend the Commission’s proposal including:

- widening the scope of the Directive to include young adults up to the age of 21, where they were under 18 at the time of the offence (Article 3) — the UK would be concerned about a new category of defendant;

- requiring an individual assessment under Article 7 to be carried out before the deprivation of liberty, whereas the General Approach text requires that assessments should be carried out at the earliest appropriate stage of proceedings, and at the latest in time to be considered at sentencing — Member States had been concerned about the potential for such assessments delaying the early stages of proceedings;
• making a number of proposals for what the Article 7 assessments should include, and has sought to narrow the circumstances in which authorities may derogate from the requirements in the Directive;

• not providing for the possibility of declining to conduct medical assessments in some limited circumstances (Article 8), which was set out in the General Approach text; and

• proposing a new right for a suspect to “participate” in proceedings (see attendance at court hearings, Article 16) and an obligation for Member States to take all necessary steps to enable them to participate fully in the proceedings — the Government is concerned that sufficient account should be taken of judicial discretion to ensure fairness and the proper administration of justice, as well as the best interests of the defendant.

15.17 As for the next steps on this proposal, the Minister says that the Latvian Presidency held a Council Working Group on 16 February at which Member States considered the EP proposals in preparation for trilogues. He adds:

“The first trilogue meeting was held on 4 March, we understand it was reasonably constructive and the discussions covered a number of areas including the overall scope of the proposal as well as the provisions on individual assessments and medical examinations. There will be a further Council working group to consider the outcomes of that meeting on 9 April and the next trilogue meeting is scheduled for 22 April. We will provide a further update once trilogue negotiations have concluded.”

Document (c) — Presumption of Innocence

15.18 The Minister reminds us that a General Approach was agreed at the December JHA and the key changes in the text were set out in his letter of 19 December. In terms of next steps, he says that trilogues will begin as soon as the EP adopts its amendments although LIBE is expected to hold an orientation vote at the end of March. The Government commits to continuing to update us and says that the Government has no plans to consider a post-adoption opt-in.

“although we expect LIBE to hold an orientation vote at the end of this month. We will continue to monitor progress and update you as appropriate. As you are aware, the UK has not opted in to this measure, and the Government has no plans to consider a post-adoption opt-in.”

Document (d) — Access to a Lawyer

15.19 The Minister finishes his letter by turning to document (d) which has been already adopted (7 October 2013). He explains that the Government is in the process of reviewing a final version of the Directive with a view to a possible post-adoption opt-in. The Minister recalls that as there is no time limit for this process, the UK can opt in to the Directive at any time post adoption. He says that the Government will write again to the Committee with its conclusions and decisions, adding that:
“If there is any question of a post-adoption opt-in we will seek the Committee’s views in accordance with the approach described in the Code of Practice.”

Previous Committee Reports


16 Plant reproductive material

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

Document details: Draft Regulation on plant reproductive material
Legal base: Article 43(2) TFEU; co-decision; QMV
Department: Environment, Food and Rural Affairs
Document numbers: (34930), 9527/13, COM(13) 262

Summary and Committee’s conclusions

16.1 Plant reproductive material in the form of seeds and other types of material is an important first step in the agri-food chain, with farmers and growers needing assurance as to the identity of this material and its quality, with similar assurance also being needed by governments for food security purposes. Since the existing body of EU legislation had mostly been adopted between 1966 and 1971, the Commission took the view that, although it had been updated, it was quite diverse, not only in its technical background, but also in its approach, and that this had led to uncertainties and discrepancies in implementation between Member States. It therefore put forward in May this draft Regulation to update and simplify the legislation in question, and consolidate it into one instrument.

16.2 We drew this proposal to the attention of the House on 10 July 2013, but, as the Government had identified a number of issues on which further clarification was needed, we decided to hold it under scrutiny, pending further information. However, the Commission has now withdrawn the proposal, and we are therefore releasing it from scrutiny.

Full details of the document: Draft Regulation on the production and making available on the market of plant reproductive material (plant reproductive material law): (34930), 9527/13, COM(13) 262.
Previous Committee Reports


17 European aid to the most deprived

**Committee’s assessment**  
Legally important

**Committee’s decision**  
Cleared from scrutiny

**Document details**  
Commission delegated Regulation laying down the content of the annual and final implementation reports, including the list of common indicators

**Legal base**  
Article 13(6) of Regulation (EU) No. 223/2014 on the Fund for European Aid to the Most Deprived

**Department**  
Work and Pensions

**Document numbers**  
(36240), 11741/14 + ADD 1, C(14) 4988

**Summary and Committee’s conclusions**

17.1 A Regulation establishing a Fund for European Aid to the Most Deprived (“the Fund”) was adopted in March 2014. The Fund forms an integral part of EU Structural and Investment Funds for the period 2014–20 and is intended to contribute to the Europe 2020 poverty reduction target which seeks to lift at least 20 million people out of the risk of poverty and social exclusion by 2020. The objectives of the Fund are to alleviate poverty through the provision of food, clothing and other essential consumer goods and to support activities promoting the social integration of the most deprived. It is intended to complement action taken at national level to eradicate poverty and promote social inclusion.

17.2 The UK voted against the draft Regulation on the grounds that the proposed Fund was inconsistent with the principle of subsidiarity. In a subsequent Written Ministerial Statement to the House, the Government noted that both Houses had issued Reasoned Opinions and that the distribution of food and consumer goods to deprived people was “better and more efficiently delivered by individual Member States and their local authorities, rather than through EU programmes”.

17.3 Participation in the Fund is mandatory for all Member States, but the Government made clear that it would seek the minimum allocation possible — €3.5 million for the period 2014–20 — in order to mitigate the impact of the Fund on the remainder of the UK’s allocation of EU Structural and Investment Funds.

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65 *HC Deb*, 18 March 2014, §8WS.

66 The figure given is in 2011 prices.
17.4 Following repeated questioning, the Minister for Employment (Esther McVey) finally confirmed in February that the UK’s allocation from the Fund would be used to provide additional support for school breakfast clubs in England.

17.5 In July 2014, the Commission published a delegated Regulation establishing the information to be included by Member States in their annual reports on the implementation of the Fund, based on a list of common indicators. Although we do not routinely examine delegated legislation, we asked the Government to deposit this one for scrutiny as it provides a useful indication of the type of assistance that may be made available under the Fund and the categories of beneficiaries.

17.6 The EU Treaties specify that the delegation of powers to the Commission may only extend to measures supplementing or amending non-essential elements of the parent legislation, in this case the Regulation establishing the Fund. 67 We asked the Minister whether she was satisfied that the draft Commission delegated Regulation only concerned non-essential elements of the parent Regulation and whether she considered there were any grounds on which the Council or European Parliament might wish to raise an objection to prevent its entry into force. In her response, she told us that it “covers both essential and non-essential elements” of the parent Regulation and that the Government had raised “strong objections about the level of detail required and the administrative burden this would place on providers”. 68 We asked the Minister to identify the “essential elements” and, in light of her concerns, invited her to explain why the Government had not challenged the validity of the Commission delegated Regulation.

17.7 The Minister now tells us that the Commission delegated Regulation does not exceed the powers conferred by the parent Regulation, only contains non-essential elements, and apologises if her earlier letter was “open to misinterpretation”.

17.8 We do not accept that we misinterpreted the Minister’s earlier letter, which stated categorically that the Commission delegated Regulation “covers both essential and non-essential elements” of the parent Regulation. We nevertheless accept the Minister’s apology and now clear the delegated Regulation from scrutiny.

**Full details of the documents:** Commission Delegated Regulation supplementing Regulation (EU) No. 223/2014 on the Fund for European Aid to the Most Deprived by laying down the content of the annual and final implementation reports, including the list of common indicators: (36240), 11741/14 + ADD 1, C(14) 4988.

**Background**

17.9 Our earlier Reports, listed at the end of this chapter, provide a detailed overview of the Regulation establishing the Fund, as well as the common indicators for Member States’ annual implementation reports which are set out in the Commission delegated Regulation. The delegated Regulation entered into force on 26 November 2014, following the expiry of a two-month period in which either the European Parliament or the Council (by a qualified majority) were able to raise an objection.

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67 See Article 290 of the Treaty on the Functioning of the European Union (TFEU).
68 See the Minister’s letter of 9 February 2015 to the Chair of the European Scrutiny Committee.
The Minister’s letter of 17 March 2015

17.10 The Minister first explains the purpose of the Commission delegated Regulation:

“The delegated Regulation provides further legislative details that supplement the provisions of the parent Regulation; they detail the type of data to be maintained by managing authorities and to be included in their annual reports, rules regarding the use of such data, and provide audit trail rules to ensure that sufficient records are maintained. Such matters are non-essential elements, when using the term in the legal sense, and in the context of interpreting the relevant Treaty provision.”

17.11 The Minister makes clear that the delegated Regulation only supplements non-essential elements of the parent Regulation (referred to by the Minister as the FEAD Regulation):

“The delegated Regulation does not go beyond its enabling powers as it prescribes requirements that are within the scope of matters delegated in the FEAD Regulation i.e. non-essential elements. Further, the matters contained in the delegated Regulation are within the scope of Article 290 of the TFEU, given that they cover general measures supplementing or amending non-essential elements of the parent legislation. There was therefore no reason for me to challenge the validity of the Regulation when it was being discussed in draft.

“However, in my response to the Committee dated 9 February 2015 I referred to both essential and non-essential elements covered by the delegated Regulation; I should clarify that I did not intend to imply that the Regulation went beyond its enabling powers, but rather that some of the detail appeared to us to be more useful than other aspects.

“I am sorry that this part of my letter was open to misinterpretation.”

Previous Committee Reports

18 Trans-boundary effects of industrial pollution

Committee’s assessment
- Legally important

Committee’s decision
- Cleared from scrutiny (decision reported on 19 November 2014)

Document details
- Draft Council Decisions relating to amendments to the Convention on the Trans-boundary Effects of Industrial Accidents

Legal base
- Articles 218(3), (4) and (9) TFEU; QMV

Department
- Work and Pensions

Document numbers
- (a) (36457), 14733/14 + ADD 1, COM(14) 652
- (b) (36461), 14762/14 + ADD 1, COM(14) 651

Summary and Committee’s conclusions

18.1 The UNECE Helsinki Convention applies to industrial accidents at sites where activities capable of causing hazardous trans-boundary effects take place, and has been implemented within the EU, firstly by the so-called Seveso II Directive (96/82/EC), and latterly by the Seveso III Directive (2012/18/EU).

18.2 These two draft Council Decisions relate to areas of activity which were to be considered by the Parties to the Convention in December 2014. Document (a) recommends that the Council should agree to the EU supporting a proposal that Annex I of the Convention should be brought into line with the latest definitions in the Seveso III Directive, whilst document (b) recommends that the EU should agree to participate in discussions on four areas within the Convention on which a Working Group had made recommendations, as well as on a proposition that UN Member States which are not part of the UNECE region should nevertheless be considered for accession to the Convention.

18.3 As we noted in our Report of 19 November 2014, the Government supports both propositions, but said that, in addition to the procedural legal bases, the substantive legal base of Article 192(1) TFEU should also be cited. We said that we supported this view, and asked the Government to let us know what efforts it had made to secure that additional legal base.

18.4 The Government has now written to say that it was clear the UK did not have support from other Member States for such an addition, but that, notwithstanding this, it had decided to vote in favour of both Decisions in the Council, as being beneficial to British business.

18.5 The reason why it is important for EU legislation to cite its legal basis in full is to make it transparent that the EU is only acting within the limits of the competences conferred on it by the Treaties.69 Simply citing a procedural legal basis alone does not

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69 See Case C-370/07 at para 49.
fulfil this function and is not usual practice. We therefore deprecate the absence of a substantive legal basis for these Decisions.

**Full details of the documents:** (a) Draft Council Decision on the position to be adopted, at the Eight Conference of the Parties to the Helsinki Convention on the Trans-boundary Effects of Industrial Accidents with regard to the proposal for an amendment of Annex I:  (36457), 14733/14 + ADD 1, COM(14) 652 and (b) Draft Council Decision authorising the opening of negotiations on the amendment of the Convention on the Trans-boundary Effects of Industrial Accidents:  (36461), 14762/14 + ADD 1, COM(14) 651.

**Background**

18.6 The EU and its Member States are parties to the UNECE (Helsinki) Convention on the Trans-boundary Effects of Industrial Accidents, which has been implemented within the EU by the so-called Seveso II Directive (96/82/EC), and latterly by the Seveso III Directive (2012/18/EU), which must be implemented in all Member States by 1 June 2015.

18.7 These two draft Council Decisions relate to areas of activity mandated by the Parties to the Convention in 2012, and which were to be considered by them in December 2014. First, Annex I of the Convention sets out the categories and named substances for the purpose of defining hazardous activities, and it is proposed that this should be brought into line with the latest EU definitions in the Seveso III Directive. Document (a) recommends that the Council should agree to the EU supporting this course of action.

18.8 Secondly, a Working Group had been looking at four areas within the Convention, and had made recommendations to the Conference. Document (b) simply seeks Council agreement to the EU participating in discussion on these points (and on a proposition that UN member states which are not part of the UNECE region should nevertheless be considered for accession to the Convention). Any amendments resulting from the ensuing negotiations would require a further Council Decision.

18.9 We were told that the UK supported both propositions, which would have no material effect on the practical arrangements within the UK, but that it had suggested that, in addition to the procedural legal bases of Article 218 (9) in respect of document (a) and Article 218 (3) and (4) TFEU in respect of document (b), the legal base should include Article 192(1) TFEU. We supported this view as essential in demonstrating the basis and extent of the EU’s competence to act in these matters, and, although we decided to release the documents from scrutiny, we asked the Government to write to us in due course to let us know what efforts it had made to secure the citation of that additional legal base.

18.10 We have now received a letter of 17 March 2015 from the Minister for Welfare Reform at the Department for Work and Pensions (Lord Freud) saying that other Member States had not supported the UK on this point, and that, notwithstanding this, the

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70 A revision of definitions to achieve consistency with other UNECE Conventions, strengthened public participation, increasing the frequency of meeting from biannual to annual, and clarifying the application of the Convention to new Parties.
Government had voted in favour of both proposals in the Council, as their adoption would be beneficial to British business.

**Previous Committee Reports**


### 19 European security and defence: preparing for the June 2015 European Defence Council

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared from scrutiny (by Resolution of the House of 12 March 2014); drawn to the attention of the Defence and Foreign Affairs Committees

**Document details**

Joint Communication: *The EU’s comprehensive approach to external conflict and crises*

**Legal base**

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**Department**

Foreign and Commonwealth Office

**Council numbers**

(35696), 17859/13, JOIN(13) 30

**Summary and Committee’s conclusions**

19.1 This Joint Communication — on how the EU could take a more “Comprehensive Approach” in its external relations policies and actions — the High Representative’s review of the European External Action Service (EEAS) and a Commission Communication, *Towards A More Competitive and Efficient Defence and Security Sector*, were all prepared ahead of the December 2013 European Council — the first since 2007 to review that EU’s Common Foreign and Security Policy and defence activities.\footnote{European “Defence” Council Conclusions, pp. 1-11.}

19.2 The EEAS Report was subsequently debated in European Committee on 13 January 2014;\footnote{Gen Co Deb, European Committee B, 13 January 2014, cols. 3-24.} and the two Commission Communications were finally debated in European Committee on 12 March 2014 — the Government having rejected the Committee’s recommendation that such an infrequent and important process warranted debating on the floor of the House.\footnote{Gen Co Deb, European Committee B, 12 March 2014, cols. 3-24.}

19.3 As our previous Reports relate in detail, we have been corresponding with the Minister for Europe (Mr David Lidington) about scrutinising a number of “follow-up” documents — the *EU MSS (EU Maritime Security Strategy); the Defence Implementation Road Map; a proposed new EU Cyber Defence Policy Framework*; and new EDA projects...
and work on developing a Policy Framework for Defence Cooperation. The Minister had undertaken to “submit these in line with the usual procedures or provide as much information as possible once those documents have been finalised”.

19.4 We had also asked for, but not received, a report on the September 2014 “informal” Defence Ministers’ meeting and asked the Minister to confirm that these further “inputs” that we had not seen would also be deposited for scrutiny, and in good time for them, where appropriate, to be debated prior to the June 2015 European Council.

19.5 However, before any response was received, we noted that, in its Conclusions, the November 2014 “Defence” Foreign Affairs Council had adopted a new EU Cyber Defence Policy Framework, a Policy Framework for Systematic and Long-Term Defence Cooperation and a Progress Catalogue 2014 (assessing the critical military shortfalls resulting from the Headline Goal process and their impact on CSDP). Given that these Conclusions presumably reflected the September 2014 informal discussions by EU Defence Ministers, of which we had also heard nothing, we asked the Minister to explain why; and why, too, we were given no information prior to the event that such wide-ranging Council Conclusions were in prospect.

19.6 We also asked why the Minister had not either submitted the documents referred to above “in line with the usual procedures” or provided “as much information as possible once those documents have been finalised”, and asked him now to do one or the other. In either event, we asked him to explain how they were on the right side of any UK “red lines” and how they protected and promoted UK interests (see our 26 November 2014 Report for the full detail74).

19.7 The Ministers’ response to our further queries is set out below (see paragraph 19.34 and the Annex for details). The following are the main points:

Defence Informal: 18-19 February 2015

19.8 HR Mogherini saw five further potential areas of focus: higher levels of defence spending, improved co-operation in capability development, exploitation of “dual use” research, development of the “train and equip” concept, and improved EU-NATO co-operation.

19.9 The Minister (Mr Julian Brazier) welcomed her intention to produce a “stock take” on developments since “DEC13”; stressed the need for closer EU-NATO co-operation; and emphasised the importance of respecting divisions of competence between Commission and Member States in security and defence matters.

June 2015 European Council

19.10 The Government’s overall objective is “to continue to ensure that the EU’s plays a useful role in defence and security that is complementary to NATO”. It has been made clear to partners that “the timing of our General Election will make agreement to any new initiatives difficult in any case”.

19.11 Specifically:

- the Council meeting should be used to:
  
  — **Improve EU/CSDP’s contribution to “full spectrum” response to crisis and conflict management**: better coordination between the EU’s “unique range of civilian, military, economic, diplomatic and developmental tools” would improve its contribution to addressing security challenges that matter to the UK;

  — **Support implementation of NATO Summit commitments**: acknowledge the importance of European burden sharing on defence; reflect NATO Summit commitments where relevant to all EU partners; investigate opportunities for addressing defined EU capability targets which complement NATO shortfalls; encourage Member States to open up their defence markets further, pool procurement and support market-driven consolidation & specialisation;

  — **Improve NATO-EU cooperation and coordination to strengthen Europe’s full spectrum response and cost-effectiveness**: particularly in response to the hybrid warfare threat, capitalising on the collective NATO and EU appetite for better coordination engendered by the Ukraine crisis to secure agreement on more regular informal strategic dialogue on a wider set of issues, including strategic communications;

- **there would be no agreement to any expansionist measures** such as: increasing common funding for EU military missions; a network of EU Defence Attachés; a permanent operational headquarters; EU ownership of military assets or any measures that undermine an open, competitive defence industry;

- HR Mogherini was developing a **discussion document** composed of three elements: (1) global trends; (2) the foreign policy implications of internal EU trends; (3) an evaluation of the EU’s major foreign policy instruments. This will include a “refresh” of the 2003 *European Security Strategy* (ESS). But it needs to be strategic, high level, and developed by the HR. The Ministers would block any moves to change the position that any EU foreign policy strategy remains non-binding upon Member States;

- **“Train and Equip”**: The Ministers support the overall concept. A Joint Communication designed to set out details on its implementation is expected before June. It will be submitted for scrutiny when it is published;

- **Defence Industry**: a stock take of “DEC13” agreements; no major initiatives; Ministers will “continue to be supportive of a more competitive defence industry, whilst resisting any language or measures that could be seen as protectionist, lead to Commission ownership of military capabilities, or distort the market”.

19.12 Regarding the documents that we have been pressing to have deposited, the Ministers talk of “the difficulties that we face when negotiating EU policy” (document classification, the last minute release of EEAS documentation and, on some occasions, the speed of negotiations) but ask that the Committee “be reassured that, wherever possible, we
will continue to be proactive in sharing information with the Committees” and hope the overview contained in the annex to their letter will be helpful in this respect. In brief:

- the Progress Catalogue 2014 is “EU Restricted”; they are therefore unable to provide more information than that in their 10 December 2014 joint letter;

- the Policy Framework for Systematic and long-term Defence Cooperation; they will provide a more detailed commentary “in the coming weeks”;

- the EU Cyber Defence Policy Framework is not a legislative document and therefore non-binding on Member States; it does not cross any UK red lines; they therefore do not intend to provide an Explanatory Memorandum on this document;

- “EU Comprehensive Approach” Action Plan: currently short on practical detail; it must add “real value by suggesting ideas and incentives to improve comprehensive working practises”; a copy will be provided when it is published.

- EU Maritime Security Strategy Action Plan: adopted on 16 December 2014 without discussion and contrary to the original intention of including it in Council Conclusions; the final unclassified document has no amendments from the Limité version previously submitted. The five “work strands” correspond to the EU Maritime Security Strategy “action areas”: external action; maritime awareness, surveillance and information sharing; capability development; risk management, protection of critical maritime infrastructure and crisis response; and maritime security research and innovation, education and training. Implementation will be reviewed by each Presidency (the first being due in March 2015); the Minister for Europe will write with further details of the actions, implementation progress and monitoring process.

19.13 The Committee still seems to be being subjected to the same erratic process as in 2013 (see the “Background” section below and the Ministers’ December 2014 letters), when we were similarly endeavoursing to ensure thorough prior scrutiny of the preparations for a “Defence” European Council (then “DEC13”, now the June 2015 counterpart, “JEC 15”).

19.14 The Ministers say that they share the Committee’s concerns about the continuing scrutiny issues caused by EEAS timelines, and refer to the Minister for Europe’s 9 December 2014 letter to the new High Representative. The Minister for Europe subsequently wrote on 4 March 2015, on “Engaging with EU institutions on UK Parliamentary Scrutiny”. He professed 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. He reported that his officials had 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 was better understood, and would continue to work with EEAS Working Group Chairs and other with key EU officials on a regular

75 Reproduced at the annex to this chapter of our Report.
basis to ensure broaden this understanding and ensure that scrutiny timetables were “taken into account wherever possible”.

19.15 In our response, we noted that, while all of this was, welcome, we had been here before; c.f. his earlier, similar representations to Ms Mogherini’s predecessor, Baroness Ashton, which, to the best of our knowledge, had produced a similar “encouraging” response but no demonstrable improvement in performance. With that in mind, we have therefore asked the Minister to write in six months’ time with his assessment of how much the EEAS performance has improved.76

19.16 Within Whitehall, i.e., in the Foreign and Commonwealth Office and the Ministry of Defence, we are concerned that there is a continuing lack of consistency in this area of scrutiny.

19.17 As long ago as last October, the Defence Committee, at our request, produced its Opinion on a Commission Report: Defence Implementation Roadmap towards a more competitive and efficient defence and security sector. The Defence Committee said that this report outlined some areas for action that could deliver benefits to the European defence and security sector, but questioned what value the European Commission would add in a number of other areas outlined. Research and development into science and technologies applicable to defence in particular must remain free from unnecessary bureaucracy, especially where dual-use technologies were in development. Initiatives might arise from this roadmap that led to unnecessary legislation and duplication of effort with NATO; any Commission involvement in policy around country to country sales and third country exports could undermine European States’ relations with the US and with other strategic partners worldwide. The Defence Committee therefore strongly endorsed the Committee’s provisional view that this Report should be debated. The Committee accordingly recommended — on 5 November 2014 — a debate in European Committee.77 The Committee deplores the fact that this debate has yet to take place, and clearly will not before parliament is dissolved.

19.18 The Minister for Reserves says that he will provide a more detailed commentary “in the coming weeks” on the Policy Framework for Systematic and long-term Defence Cooperation. The Committee cannot understand why he could not have done so now; instead, it will not be subject to any form of parliamentary scrutiny until the new Committee is in place. Moreover, that it is “a non-binding framework” is immaterial as to whether or not it should be deposited with an Explanatory Memorandum. We therefore again ask the Minister to deposit this public document in the normal way, summarising its contents and giving his views on them.

19.19 The Minister for Europe advances the same spurious argument with regard to the EU Cyber Defence Policy Framework, seemingly taking the view that because it “is not a

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legislative document and is therefore non-binding on Member States … is intended to increase resilience of EU networks/institutions and promote the development of Member States’ cyber defence/resilience capabilities … describes the EU networks defences against unwanted intrusion rather than in a wider military sense” and “therefore does not cross any UK red lines”, it is appropriate for him to declare: “We therefore do not intend to provide an Explanatory Memorandum on this document”. The Committee does not accept this, and again asks him also to deposit this public document in the normal way, summarising its contents and giving his views on them.

19.20 The Minister for Europe notes that the final “EU Maritime Security Action Plan” is the Limité version previously submitted, and in fact does not attach it for the Committee’s information. But that, too, is immaterial. As we noted on that previous occasion, we have been in longstanding discussion with him about the limitations placed by the Commission/EEAS on documents such as this: caveated limité though deemed “unclassified”. That was one reason why the Committee therefore found it disappointing that he had nothing to say about its contents, e.g., what the “work strands” were, since it was not immediately apparent how this so-called Action Plan differed in terms of sensitivity from the Defence Implementation Road Map, which likewise emanated from an earlier and related Communication, and which we had recently recommended for debate in European Committee (see above). Once again, proper scrutiny was being circumscribed for no apparent good reason — the least bad being because of arrangements that reflected administrative convenience and custom, and that those in control of the information, in Brussels and in national capitals, either would not or could not take the trouble to review. Once adopted by the Council, we observed, any such justification fell away; that is why we put the Minister on notice (so that the necessary bureaucratic wheels could be put in motion) that we expected the limité caveat to be immediately lifted, and for any Presidency review of progress to be deposited with his views, in the normal way. The Minister now offers half of this request. We would prefer the full version: that the Action Plan be now deposited, along with an EM summarising its contents and giving the Government’s view on it. At the same time, he should also provide details of the first Presidency review (which he says is due this month).

19.21 We make these requests not only to sustain the scrutiny process, but because doing so now is all the more important in this context. As well as reviewing the ESS, the EU is also embarking on a major review of its European Neighbourhood Policy (ENP), against a background where much of that region is in politically unstable. The EU is also tackling Strategies for Central Asia and for Iraq/Syria/ISIL. At the same time, the US has been publicly questioning the commitment of its NATO allies, while the President of the EU Commission has called for the creation of an EU army. So, though it is unlikely that the new Committee will have been formed before the “JEC 15” takes place, we shall expect Ministers to deposit not only these and other preparatory documents — including the revised ESS and whatever document HR Mogherini prepares for the European Council — but also to provide the Committee with a copy of

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the “JEC 15” Council Conclusions and their analysis of how those Council Conclusions meet their objectives and safeguard and promote UK national interests in security and defence.

19.22 In the meantime, we draw these developments to the attention of the Defence and Foreign Affairs Committees.

Full details of the document: Joint Communication: The EU’s comprehensive approach to external conflict and crises: (35696), 17859/13, JOIN(13) 30.

Background

19.23 In two separate letters, the Minister for Europe and the Parliamentary Under-Secretary for Reserve Forces at the Ministry of Defence (Mr Julian Brazier) said that:

— the 18 November 2014 Foreign Affairs Council (Defence) conclusions were not received until 10 November, the day before the House rose for recess; they had not expected such a lengthy text, which largely repeated previous agreements from the December Council (DEC13), but other Member States wished to reaffirm the commitments therein; this was acceptable, provided the “carefully negotiated DEC13 language was adhered to without any unwelcome additions”; they had “negotiated hard to resist expansionist language (such as the EU as a “strategic global actor”), and also “ensured the language that mattered to us from DEC13” was inserted; overall, the Government was “content that the FAC (Defence) conclusions do not cross UK red lines and are largely a repeat of existing commitments from DEC13”;

— the 9–10 September 2014 EU Defence Ministers informal meeting discussed the EU Battlegroup; DEC13 follow up; the EDA and CSDP Operations; discussions were “wide ranging but … little progress was made”; where “decisions are made or issues are moved forward significantly”, they “will ensure we keep Parliament updated”;

— Progress Catalogue 2014 represented “a comprehensive picture of the prioritised capability shortfalls in the short-term and the operational risks such shortfalls present”: being “EU Restricted”, it could not be shared with the Committee; however, they supported the assessment of the 42 identified capability shortfalls, and noted that 12 out of the 14 critical shortfalls (which had an adverse impact on the ability to deploy to theatres and could lead to delays in the initial phase of an operation) were also reflected in the NATO shortfall list; and emphasised that they would “continue to insist that any EU work to address these shortfalls must be complementary, not duplicative, of NATO’s efforts”;

— Article 44 TEU theoretically allows a “coalition of the willing” from inside the EU to take on a crisis management task with EU political and logistical backing but without full participation of all Member States; however, it had never been used and negotiations to establish how it would work were currently in progress; whilst content in principle with the concept, they did not want common funding to automatically apply; and whilst the execution of a task could be delegated to a group of Member States, they could not agree to delegate responsibility for it when conducted in the EU’s
name, and therefore wanted the same standards of planning and organisation to apply as for any other mission;

— they supported exploring the scope for more cooperation between CSDP missions and other EU activities, such as EUROPOL and FRONTEX — for example, in EU civilian border management missions — and agreed that examining the scope for better information sharing and working practices between related areas was beneficial and supported the Comprehensive Approach;

— they supported the overall “Train and Equip” concept (which seeks to enable conflict affected states to manage crises and build capacity themselves through EU training and, where appropriate, the provision of equipment) but had some concerns about how it might be implemented; had “successfully lobbied to embed the UK vision to ensure that the ‘EU’ has no role in providing lethal equipment” but should “provide a useful coordination mechanism for Member States and third party equipment requests”; and had resisted calls for new structures to support it; the November FAC Conclusions agreement on a formal road map for implementation of train and equip, to be delivered by June 2015, “should be an important conclusion of the June European Council”.

19.24 The Ministers concluded by saying that they would:

“write again to update you on our thinking and objectives for the June European Council (JEC15) discussion on defence in the New Year. Leading up to JEC15 on 25/26 June, the main discussions will be a Defence Ministers informal meeting on 18/19 February and on 8 May FAC (Defence). Currently, our overall goal is for JEC15 to be a stock take of the progress made since the December European Council, as many of these existing commitments remain undelivered. We do not want to see a raft of new initiatives tabled that will distract from existing objectives and exceed the EU’s capacity to deliver them.”

Our assessment

19.25 We expressed concern about indications that the Minister for Europe’s letter of 8 December seemed to have taken no account of our most recent Report on these matters \(^79\) and that the joint letter of 10 December 2014 from him and the Parliamentary Under-Secretary for Reserve Forces was not received by the Committee until 6 January 2015.

19.26 Moreover, we were also concerned that:

• our letter of 8 January 2014 (annexed to our previous Report \(^80\)) had made it clear that the Committee expected him to do much more than “share” the Cyber Defence Policy Framework document — this being a document that was originally conceived as a Commission Communication and had been taken off the scrutiny radar screen without anyone letting us know, despite the Committee’s clear expectations;

\(^79\) Ditto.

• we had still received no update on the *EU Maritime Security Strategy* in response to our most recent Report on that matter; and

• ditto, the *Policy Framework for Defence Cooperation*, which we had been seeking to scrutinise prior to adoption, and had not seen, but which was adopted by the 19 November 2014 “Defence” FAC.

19.27 We again asked that the *Policy Framework for Defence Cooperation* and document 15585/14, the EU *Cyber Defence Policy Framework*, be deposited forthwith in the normal way: i.e., with a full Explanatory Memorandum, properly summarising the document in question and setting out the Government’s views in detail, explaining how they meet UK objectives and safeguard any relevant “red lines”. We regarded this as particularly important given the clear evidence (see our previous Report) that the UK continued to have to be a restraining force against those among the Member States and in the institutions who maintained their long-standing ambition to develop a full-blown, self-standing EU defence capability.

19.28 Looking ahead, and bearing in mind that Parliament would be dissolved at the end of March, prior to the 7 May General Election, that the main discussions are to take place at the 8 May 2015 Foreign Affairs (Defence) Council, and that the Committee might not have been established prior to the June 2015 European “Defence” Council, we asked the Ministers to provide their next update no later than 21 February, i.e., immediately after the 18–19 February 2015 Defence Ministers’ “informal meeting” to which they referred. This update should include information on how, in all the circumstances, UK interests were to be safeguarded.

19.29 We had already noted that an *Action Plan on the EU Comprehensive Approach* was to be developed before the end of the first quarter of 2015, and made it clear that we expected the Minister for Europe to provide information between now and then on what was being considered, and to deposit the final version for scrutiny.

19.30 The Ministers also mentioned the development of a *formal road map for implementation of “Train and Equip”*. Given the timing considerations referred to above, we asked for that update also to include a situation report on the development of these proposals, and how they envisaged their being scrutinised prior to adoption.

19.31 We also noted that, in future, when we asked for a “read-out” of “informal” Defence or Foreign Affairs Councils, we expected it to be provided in a timely fashion: it was for the Committee, not the Government, to decide whether “decisions” had been made or issues “moved forward significantly”.

19.32 We again drew the situation to the attention both of the House and of the Defence and Foreign Affairs Committees.

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The Ministers’ letter of 4 March 2015

19.33 As well as their promised further update on objectives for the June European “defence” Council, following the 18–19 February “informal Defence Ministers’ meeting, the Ministers (Mr David Lidington and Mr Julian Brazier) respond to the requests for additional information contained not only in the Committee’s report of 15 January 2015 but also in its 10 December 2014 on the European Defence Agency (EDA).83

19.34 They do so as follows:

Defence Informal – 18-19 February 2015

“EU Defence Ministers met in Riga on the 18th and 19th of February for an informal discussion on Defence. Minister for Reserves Mr Brazier represented the UK. The meeting began with a discussion on the June 2015 European Council on Defence. High Representative Mogherini said that she would report in April against the taskings from the December 2013 European Council and saw five further potential areas of focus, higher levels of defence spending, improved co-operation in capability development, exploitation of ‘dual use’ research, development of the ‘train and equip’ concept, and improved EU-NATO co-operation. The Minister welcomed the intention to take stock of progress on the decisions made at the December 2013 European Council and, along with others, stressed the need for closer EU-NATO co-operation. He also emphasised the importance of respecting divisions of competence between Commission and Member States in security and defence matters.

“A discussion on Hybrid Warfare was opened by the NATO Secretary General, whose presence was welcomed by several Member States including the Minister, who said that the EU had a constructive role to play, using its political, diplomatic and economic instruments to complement the military response that could be offered by NATO. On CSDP Operations, the Minister emphasised UK support for EUFOR ALTHEA in Bosnia-Herzegovina and for EUNAVFOR ATALANTA, the counter-piracy mission off Somalia. The next meeting of Defence Ministers will be alongside their Foreign Minister counterparts in the Foreign Affairs Council on 18 May.”

June 2015 European Council

“Our overall objective for the June European Council is to continue to ensure that the EU’s plays a useful role in defence and security that is complementary to NATO. The June Council is also an opportunity to boost delivery of the areas where the EU can make a difference within the parameters agreed by the Prime Minister at the December 2013 European Council. Specifically, we want to use the June Council to:

- “Improve EU/CSDP’s contribution to ‘full spectrum’ response to crisis and conflict management: the EU should focus on implementing the Comprehensive Approach to ensure better coordination between its unique range of civilian, military, economic, diplomatic and developmental tools. The

economic lever in particular is likely to remain one of our most powerful responses, as exemplified by the current Russia/Ukraine situation. This would improve the EU’s contribution to addressing security challenges that matter to the UK. We also want more progress on civilian CSDP delivery and smarter missions, including establishing the Shared Service Centre to deliver more value for money and operational impact.

- **“Support implementation of NATO Summit commitments:** As host of the Wales’ NATO Summit, we have a strong locus to encourage use of the June Council to support Summit legacy follow up. We want the European Council to again acknowledge the importance of European burden sharing on defence as it did at the last defence discussion in December 2013. We also want the Council to reflect NATO Summit commitments where relevant to all EU partners; and investigate opportunities for addressing defined EU capability targets which complement NATO shortfalls.

“The Council should also encourage Member States to open up their defence markets further, pool procurement to build economies of scale and support market-driven consolidation & specialisation. It should progress complementary Commission and EDA actions endorsed in December 2013, which promote a level playing field in the internal market, support SMEs, and support the private sector development of dual use technologies with market potential.

- **“Improve NATO-EU cooperation and coordination to strengthen Europe’s full spectrum response and cost-effectiveness:** The EU has a useful role to play in complementing the military response capacity offered by NATO and we should strengthen co-operation between the two in response to the hybrid warfare threat. As we saw at the Euro-Atlantic security event at the Wales Summit, Ukraine has increased the collective NATO and EU appetite for better coordination. We want to capitalise on this momentum and will advocate more regular informal strategic dialogue on a wider set of issues, including strategic communications.

“As ever, we will not agree any expansionist measures such as: increasing common funding for EU military missions; a network of EU Defence Attachés; a permanent operational headquarters; EU ownership of military assets or any measures that undermine an open, competitive defence industry.

“So far, we believe there is some degree of support from Member States on the need to focus efforts on delivering December 2013 agreements, but preparations are still at an early stage and others may suggest new initiatives over the coming months. We have already begun to make clear to partners that the timing of our General Election will make agreement to any new initiatives difficult in any case. Whilst detailed agendas have not yet been set, there are already a number of emerging themes:

- **“Tasking the High Representative with a refresh of the European Security Strategy:** Mogherini is developing a document designed to form the basis of a discussion in June. It will be composed of three elements: (1) global trends; (2)
the foreign policy implications of internal EU trends; (3) an evaluation of the EU’s major foreign policy instruments. We agree that the strategic environment has changed sufficiently to warrant an update, particularly given events in Ukraine. The ESS has not been refreshed since it was written in 2003 (although it was reviewed in 2008). However, we are concerned that any refresh could quickly become bogged down in detail and expose Member States’ divisions, leading to protracted negotiations which distract from frontline delivery. We will push for any review to be strategic, high level, and developed by the High Representative. We expect any EU foreign policy strategy to remain non-binding upon Member States and we would block any moves to change that position.

- **“Train and Equip”**: As outlined in previous updates, most recently 10th December, we support the overall concept behind the train and equip initiative. The EEAS and Commission are working on a Joint Communication designed to set out details on its implementation. We expect to see this before June. Details on the content are limited at this stage including on financial implications and methodology. Pilot studies have just been conducted in Mali and Somalia designed to explore the opportunities and challenges for implementation. The results of these pilots are yet to be shared with Member States. We will provide the Committee with a copy of the final Joint Communication with accompanying Explanatory Memorandum when it is published.

- **“Defence Industry”**: We do not expect any major new initiatives on the defence industry in June. We expect it to be largely a stock take of agreements from the December Council in 2013. We will continue to be supportive of a more competitive defence industry, whilst resisting any language or measures that could be seen as protectionist, lead to Commission ownership of military capabilities, or distort the market.

**ESC Reports**

“On a separate note, we are also grateful for your reports entitled *European security and defence: following up the December 2013 European Defence Council* of 15 January 2015 (35696) and *European Defence Agency* of 10 December 2014 (36526, 36527). The reports make a number of points and contain a number of requests for further information, which we have sought to provide in the attached annex.84

“You are already aware of the difficulties that we face when negotiating EU policy. Issues such as document classification, the last minute release of EEAS documentation and, on some occasions, the speed of negotiations, can all make it difficult to submit documents in good time or before the documents are agreed. However, please be reassured that, wherever possible, we will continue to be proactive in sharing information with the Committees and we hope the overview contained in the annex will be helpful in this respect.”

84 Which is reproduced at the annex to this chapter of our Report.
Previous Committee Reports


Policy Framework for Systematic and long term Defence Cooperation, the EU Cyber Defence Policy Framework and the Progress Catalogue for 2014

“The Reports request that the Government deposit with Explanatory Memoranda the Policy Framework for Systematic and long term Defence Cooperation, the EU Cyber Defence Policy Framework and the Progress Catalogue for 2014. We would like to clarify the Governments approach to scrutiny of these documents.

“Unfortunately, the Progress Catalogue is an EU Restricted document and therefore we are unable to provide an Explanatory Memorandum or deposit the document and share publicly more information than we already provided in our joint letter of 10 December.

“As the Policy Framework for Systematic and long-term Defence Cooperation is a non-binding framework, we would not normally deposit the document with an Explanatory Memorandum. However, the document is publicly available and given the interest of the Committee we are happy to provide you with a more detailed commentary on the framework which the MOD will send through in the coming weeks.

“The Committees will have received a detailed update letter dated 8 December on the EU Cyber Defence Policy Framework from the Minister for Europe setting out the details of the EU Cyber Defence Policy Framework including our views. Unfortunately the letter had already been agreed by the relevant Government departments by the time we saw your report of 27 November, which is why your report was not referenced in this response.

“Although the EU Cyber Defence Policy Framework was called for by the December 2013 European Council, it was one of seven action points from the CSDP section of the Council Conclusions on the EU Cyber Security Strategy adopted by the June 2013 General Affairs Council. The EU Cyber Security Strategy is not a legislative document and is therefore non-binding on Member States.

“The Council Conclusions of the June 2013 GAC clearly state that there was a need to ‘take forward the CSDP related cyber defence aspects of the Strategy’. The EU Cyber Defence Policy Framework is intended to increase resilience of EU networks/institutions and promote the development of Member States’ cyber defence/resilience capabilities. It
therefore describes the EU networks defences against unwanted intrusion rather than in a wider military sense and therefore does not cross any UK red lines. We therefore do not intend to provide an Explanatory Memorandum on this document, but we hope that the above overview is helpful to the Committee.

“Comprehensive Approach

“The EEAS and Commission have made some progress on producing an Action Plan. An experts meeting was convened in December 2014 where the EEAS and Commission issued a draft outline of the plan. We welcomed its focus on: providing better joint analysis; the nexus between training and equipping; the transition to other instruments, not least development cooperation; and the avoidance of new procedures and structures all of which are important parts of the comprehensive approach. The thread that ties everything together is better institutional cooperation.

“As it currently stands, the action plan is short on practical detail as to how such cooperation might be achieved. Whilst we have no formal remit in agreeing the contents of the plan, the UK has led lobbying efforts to the EEAS and Commission, to include more tangible ideas for implementation. Given the scale of the task of implementing the Comprehensive Approach, we do not expect a single action plan to have all the answers. But we want to make sure the plan adds real value by suggesting ideas and incentives to improve comprehensive working practises. We will write to the Committees and provide a copy of the final version of the Action Plan once published.

“EU Maritime Security Strategy Action Plan

“The EU Maritime Security Action Plan was adopted at the General Affairs Council on 16 December 2014 as an A point. This was a change from the originally stated intention of including the Action Plan in Council Conclusions. The final agreed unclassified document has no amendments from the Lmiite version previously submitted and is attached for your information.

“Your report outlines your interest in the five work strands of the action plan which correspond to the areas identified for action in the EU Maritime Security Strategy. These are external action; maritime awareness, surveillance and information sharing; capability development; risk management, protection of critical maritime infrastructure and crisis response; and maritime security research and innovation, education and training. The implementation of the action plan will be managed by existing commission working groups. The Friends of the Presidency Working Group have agreed that a review will be conducted by each Presidency. The first of these is due to occur in March 2015, following which the Minister for Europe will write to you with further details of the actions, implementation progress and monitoring process.

“European Defence Agency

“Your report raises a number of issues regarding Parliamentary Scrutiny of the EDA report and budgets. As you are aware, providing these documents in appropriate time for Parliamentary Scrutiny is made more difficult by EEAS timelines. However, we will provide you with an update before and after EDA steering boards. We will also provide you
with the headline figure for the EDA Budget ahead of its agreement and a supplementary Explanatory Memorandum with the final version of the budget to explain any updates.

“There has been no change to the Government’s approach to the EDA budget where we have secured a budgetary freeze over the past five years. We have consistently argued that the EDA should be realistic about its budget, given the ongoing decline in defence spending by all Member States. The Minister for International Security wrote to Baroness Ashton on 15 May 14, asking the Agency to amend the 2015 budget estimate to see zero ‘nominal’ growth. However, the EDA did not produce an alternative zero ‘nominal’ growth budget, choosing instead to present the draft zero real growth draft budget for consideration at the Foreign Affairs Council (FAC) on 18 November 2014. As such the UK could not agree to the draft budget as it did not meet our initial requirements, leading to the Council tasking the EDA to produce a ‘flat cash’ EDA 2015 Budget for consideration.

“This draft ‘flat cash’ budget was then published by the EDA as a *limite* document at which point it was submitted for scrutiny to the Committees, with an associated draft Explanatory Memorandum. Both Committees approved the draft budget by the 15 December 14, following which the EDA budget was approved with no amendments by the Council on the 17 December 14. The UK will continue to lobby the European External Action Service to provide key documents in a non *limite* format so as to enable their submission for scrutiny and clearance prior to Council meetings.

“As you are already aware, the Government is committed to regularly reviewing its membership of the EDA. An external review by the Defence Academy is due to be completed by mid-March 2015 and will result in a confidential report. The report will inform the internal debate going forward and as such the MOD will be unable to provide the review for scrutiny. However, we will inform the Committees of any Government decision on UK membership of the EDA.

“**EEAS**

“You also raise the continuing scrutiny issues caused by EEAS timelines. We share your concerns — as you will have seen from the Minister for Europe’s update on 15 December, he wrote on 9 December to the new High Representative outlining the Government’s concerns and setting out known scrutiny timelines. The Minister wrote again on the 10 February to set out timelines and scrutiny around dissolution, and will be writing to you shortly with a further update and response from the High Representative / Vice President.”
20 Common Security and Defence Policy (CSDP) Missions in the Occupied Palestinian Territories: EUBAM Rafah and EUPOL COPPS

Committee’s assessment

Politically important

Committee’s decision

Cleared from scrutiny; (decision reported on 18 June and 25 June 2014); drawn to the attention of the Foreign Affairs Committee

Document details

(a) Council Decision amending and extending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah) (36115);
(b) Council Decision on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS)

Legal base

Articles 28, 42(4) and 43(2) TEU; unanimity

Department

Foreign and Commonwealth Office

Document numbers

(a) (36115), — (b) (36161), —

Summary and Committee’s conclusions

**EUBAM Rafah**

20.1 Following the 15 November 2005 Agreement on Movement and Access for Gaza between Israel and the Palestinian Authority, the EU established a European Security and Defence Policy Border Assistance Mission at the Rafah crossing point between Gaza and Egypt. Whilst active, EUBAM Rafah facilitated the crossing of over 500,000 people and contributed to confidence building activity between the parties regarding border control and customs. However, following the Hamas takeover of the Gaza strip, the mission has not been opened since June 2007, and has been on standby ever since.

20.2 The draft Council Decision that we cleared on 18 June 2014 extended the mandate for 12 months to 30 June 2015. The Minister for Europe (Mr David Lidington) explained that his political agreement in April for a 12-month mandate extension took account of the broader political situation at the time, viz., US Secretary of State Kerry and his team’s efforts to secure agreement from Israel’s Prime Minister Netanyahu and Palestinian President Mahmoud Abbas to extend the talks beyond the original deadline of 29 April 2014, which meant there could be a renewed role for EUBAM Rafah in the coming months; whereas cutting the mission at that time could have been seen by the US, Israel and the Palestinians as a lack of confidence in the peace process.

20.3 Further background is set out in our previous Reports.
EUPOL COPPS

20.4 In 2006, the EU Co-ordinating Office for Palestinian Police Support (established in 2005, within the office of the EU Special Representative (EUSR) to the Middle East Peace Process, with financial support from Sweden, Denmark, the UK and Spain) was elevated to a full CSDP mission, EUPOL COPPS, with 33 staff and a three-year mandate.

20.5 It was intended to merge the two missions by June 2012: but Israel rejected this proposal. EUBAM Rafah’s operational element was relocated to Tel Aviv to reduce costs; and the overall number of staff was reduced from 19 to five.

20.6 The most recent EUPOL COPPS Council Decision extended its mandate for 12 months, to 30 June 2015. Proposed expenditure should not exceed €9 million, representing what the Minister for Europe described as a significant reduction on the current budget of €9.57 million for 2013/14 (the original budget proposed was €9.82 million). The Minister supported this 12-month extension because:

“i) it is a successful Mission that plays an important role in Palestinian state-building efforts; and ii) cutting the mission now could be seen by the US, Israel and the Palestinians as a change in the EU’s position on the importance of the Middle East Peace Process.”

The Minister’s letter of 11 March 2015

20.7 In his latest promised update, the Minister says that the EEAS Review will now cover both missions. Once published (which he expects to be “within the next few weeks”) his officials will “look to support” their continuation. Thereafter:

“Negotiations on the mandate renewals and budgets will take place during dissolution. However, we will continue to press for value for money, and will monitor mission performance carefully to ensure that the CSDP operation in the Palestinian Territories remains on track to achieve its objectives. We will lobby Member States to achieve UK objectives. Should EUBAM Rafah reactivation look unlikely in the longer term, I will reconsider whether closure should be considered a serious option. I will update the Committee on the outcome of the Strategic Review in due course.”

20.8 On EUBAM Rafah specifically, the Minister says that the Government’s view is that:

“should the necessary political and security conditions arise to enable reactivation to take place (agreement from Israel, the PA and Egypt, an enduring ceasefire and effective PA control of Gaza), EUBAM Rafah could make a significant contribution to improving the situation in Gaza and reducing the likelihood of a return to conflict.”

20.9 That is why, the Minister says, that on 20 October 2014 the Foreign Secretary, along with his French and German counterparts, wrote to the previous HR (Baroness Ashton) “to emphasise the important role of EUBAM Rafah”. Regrettably, the Minister says, “the necessary conditions for reactivation are not yet in place”, although the UK, along with EU partners, “continues to urge the parties to make progress”. All in all:
“In light of the potential usefulness of EUBAM Rafah and the very negative message about the EU’s commitment to the reconstruction of Gaza and its reintegration with the West Bank as part of a future Palestinian state that closure would bring, the UK’s view is that we should support an extension in the mission’s mandate.”

20.10 With regard to EUPOL COPPS, the Minister recalls the shift to a more strategic role in 2013-2015, leaving the mission with three core objectives — support reform of the Palestinian Civil Police (PCP); strengthen and support the criminal justice system; and improve prosecution-police interaction — and says that he believes that the Strategic Review is likely to assess that this work needs to continue and that the mandate should be extended:

“The UK supports EUPOL COPPS, as it is a key component of EU support to Palestinian state-building efforts. We want to see a sustainable and well managed policing operation, which is transparent and accountable and operating within a sound legal framework in accordance with international standards; an effective community policing operation; and a sustainable criminal justice sector, in full compliance with human rights. We believe the mandate should be extended to enable the mission to eventually drawdown and transition activities to other stakeholders.”

20.11 Turning to the wider context, the Minister reiterates the Government’s overall priority — achievement of a two-state solution, through negotiations — and hopes that it will be possible to resume direct talks after the Israeli elections in March. On the eve of those elections, the Government is “urging the parties to avoid taking any steps which will make the resumption of meaningful talks more difficult”.

20.12 The Minister also highlights the “urgent need to address the terrible situation in Gaza”, and says:

“We need a durable end to the cycle of violence and an agreement to address the underlying causes of the conflict and transform the situation in Gaza. There is no alternative that can deliver peace and security for both Israelis and Palestinians. An agreement should ensure that: Hamas and other militant groups permanently end rocket fire and other attacks against Israel and stop rebuilding the tunnel network; the Palestinian Authority (PA) resumes control of Gaza and restores effective and accountable governance; and that Israel lifts its restrictions in order to ease the suffering of ordinary Palestinians, and allow the Gazan economy to grow. The UK is continuing to urge the parties to prioritise progress towards reaching a durable solution for Gaza, and to take the necessary practical steps to ensure Gaza’s reconstruction and economic recovery.”

20.13 Prime Minister Benyamin Netanyahu has emerged as the victor of those elections. During campaigning, he said he would not allow the creation of a Palestinian state if re-elected. In the immediate aftermath, a US White House spokesman that the US would “re-evaluate our approach” in the wake of Mr Netanyahu’s comments. Palestinian President Mahmoud Abbas was also reported as having said peace negotiations stood “no chance” without Israeli government acceptance of the two-state solution. And HR Federica Mogherini, having congratulated Mr Netanyahu on his victory and reiterated
the EU’s commitment to working with the next Israeli government on a mutually beneficial relationship as well as on the re-launch of the peace, called for “bold leadership” from all to reach “a comprehensive, stable and viable settlement of a conflict that has already deprived too many generations of peace and security”.

20.14 It is accordingly impossible to know precisely how these long-running CSDP missions will be best able to contribute. But it makes sense not to prejudge that at this critical juncture, and instead to contemplate a further mandate extension (though no more than 12 months, we presume).

20.15 We thank the Minister for setting out his position prior to that process so frankly, and encourage him (or his successor) to do so more widely with regard to the many other such CSDP missions, in the decisive period before such mandate renewals (thus avoiding presenting the Committee with a fait accompli when the relevant Council Decisions are subsequently submitted for scrutiny).

20.16 In the meantime, we report these developments to the House because of the widespread interest in the situation in Israel and the OPTs and the response of the Government and the European Union to it.

20.17 We also again draw this chapter of our Report to the attention of the Foreign Affairs Committee.


**Background**

20.18 The background is detailed in our earlier relevant Reports (see below).

**The Minister’s letter of 11 March 2015**

20.19 The Minister provides the following update:

**“Situation on the Ground”**

“Our priority remains the achievement of a two-state solution. We continue to believe that the best way to achieve this in reality and on the ground is through negotiations. We hope that it will be possible to resume direct talks after the Israeli elections in March. At the current time we are urging the parties to avoid taking any steps which will make the resumption of meaningful talks more difficult.

“There is an urgent need to address the terrible situation in Gaza. At the Gaza reconstruction conference in Cairo on 12 October the UK pledged £20m to help kick start the recovery and help get the Gazan people back on their feet. We need a durable end to the cycle of violence and an agreement to address the underlying
causes of the conflict and transform the situation in Gaza. There is no alternative that can deliver peace and security for both Israelis and Palestinians. An agreement should ensure that: Hamas and other militant groups permanently end rocket fire and other attacks against Israel and stop rebuilding the tunnel network; the Palestinian Authority (PA) resumes control of Gaza and restores effective and accountable governance; and that Israel lifts its restrictions in order to ease the suffering of ordinary Palestinians, and allow the Gazan economy to grow. The UK is continuing to urge the parties to prioritise progress towards reaching a durable solution for Gaza, and to take the necessary practical steps to ensure Gaza’s reconstruction and economic recovery.

The Strategic Review of EUBAM Rafah and EUPOL COPPS

“In my letter to the Committee of 4 August I gave my views on the interim Strategic Review and on the implications for EUBAM Rafah’s future. I said that a full Strategic Review would be due for publication in February 2015, within which several potential options for the future of EUBAM Rafah would be considered, including closure. The Strategic Review, which will now cover both missions, has yet to be published. However, it is scheduled for discussion in Brussels later this month, and we should receive a draft within the next few weeks.

EUBAM RAFAH

“As the Committee is aware, EUBAM Rafah has not been in operation since 2007 when Hamas took control of the Gaza Strip. However, the mission has been taking steps to ensure that redeployment is swift and effective, should the right conditions be in place. We believe the Strategic Review is likely to recommend that the mandate should be extended.

“The UK’s view is that should the necessary political and security conditions arise to enable reactivation to take place (agreement from Israel, the PA and Egypt, an enduring ceasefire and effective PA control of Gaza), EUBAM Rafah could make a significant contribution to improving the situation in Gaza and reducing the likelihood of a return to conflict. It was for that reason that on 20 October 2014, the Foreign Secretary wrote to Baroness Ashton, along with the French and German Foreign Ministers, to emphasise the important role of EUBAM Rafah. Regrettably, the necessary conditions for reactivation are not yet in place, although the UK, along with EU partners, continues to urge the parties to make process. In light of the potential usefulness of EUBAM Rafah and the very negative message about the EU’s commitment to the reconstruction of Gaza and its reintegration with the West Bank as part of a future Palestinian state that closure would bring, the UK’s view is that we should support an extension in the mission’s mandate.

EUPOL COPPS

“Following a shift to a more strategic role in 2013-2015, the mission has three core objectives: support reform of the Palestinian Civil Police (PCP); strengthen and support the criminal justice system; and improve prosecution-police interaction.
We believe that the Strategic Review is likely to assess that this work needs to continue and that the mandate should be extended.

“The UK supports EUPOL COPPS, as it is a key component of EU support to Palestinian state-building efforts. We want to see a sustainable and well-managed policing operation, which is transparent and accountable and operating within a sound legal framework in accordance with international standards; an effective community policing operation; and a sustainable criminal justice sector, in full compliance with human rights. We believe the mandate should be extended to enable the mission to eventually drawdown and transition activities to other stakeholders.

**“Next Steps”**

“We await formal circulation of the draft Strategic Review. Once published, my officials will look to support the continuation of both missions. Negotiations on the mandate renewals and budgets will take place during dissolution. However, we will continue to press for value for money, and will monitor mission performance carefully to ensure that the CSDP operation in the Palestinian Territories remains on track to achieve its objectives. We will lobby Member States to achieve UK objectives. Should EUBAM Rafah reactivation look unlikely in the longer term, I will reconsider whether closure should be considered a serious option. I will update the Committee on the outcome of the Strategic Review in due course.”

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20.20 A general election was held in Israel on 17 March 2015, from which the incumbent Prime Minister Benyamin Netanyahu emerged as the victor. During campaigning, Mr Netanyahu said he would not allow the creation of a Palestinian state if re-elected. In the immediate aftermath, a US White House spokesman was reported as having said: “It has been the policy of the United States for more than 20 years that a two-state solution is the goal of resolving the conflict between the Israelis and Palestinians”, and that the US would “re-evaluate our approach” in the wake of Mr Netanyahu’s comments ruling out a Palestinian state. At the same time, Palestinian President Mahmoud Abbas was reported as having said that he would work with any Israeli government that accepts the two-state solution, without which peace negotiations stood “no chance”; while a spokesman for Hamas, which controls the Gaza Strip, was reported as having said that it was irrelevant who won the Israeli elections, and that Hamas did not differentiate between Israeli parties “because they are bound to deny our people’s rights and continue the aggression on us”.85

20.21 At the same time, on 18 March 2015, EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) issued the following statement:

“Yesterday, the Israeli people voted in general elections. I congratulate Benyamin Netanyahu for his victory. I look forward to the formation of a new government.

“The EU is committed to working with the incoming Israeli government on a mutually beneficial relationship as well as on the re-launch of the peace process.”

85 See News Middle East.
“We are at a crucial moment, with many threats all over the Middle East. The EU staunchly supports a peaceful resolution of the Israeli-Palestinian conflict, in the interest of the Israeli people, of the Palestinian people and of the whole region. We are at your side, you can count on us.

“More than ever, bold leadership is required from all to reach a comprehensive, stable and viable settlement of a conflict that has already deprived too many generations of peace and security. It’s time to turn this page and I’m confident that we can work together with the international community for a solution that will guarantee peace and security in the Middle East.”

**Previous Committee Reports**


**21 Ukraine and Russia: EU restrictive measures**

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared from scrutiny; drawn to the attention of the Foreign Affairs Committee

**Document details**

Council decision and regulation regarding further restrictive measures targeting separatists destabilising the situation in Ukraine

**Legal base**

(a) Article 29 TEU; unanimity, (b) Article 14 (1) and (3) of Regulation 269/2014; QMV

**Department**

Foreign and Commonwealth Office

**Document numbers**

(a) (36749), — (b) (36750), —

**Summary and Committee’s conclusions**

21.1 Council Decision 2014/145/CFSP of 17 March 2014 is concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

21.2 On 29 January 2015, at an extraordinary meeting, the Foreign Affairs Council agreed that these restrictive measures should be renewed for a further six months, until 15 September 2015.
21.3 On 9 February 2015 the EU Council agreed to list, under these existing Ukraine restrictive measures, via Council Decision 2015/241/CFSР and Council Implementing Regulation (EU) No.240/2015, a further 19 individuals, eight armed separatist groups and an entity named “Novorossiya”/“New Russia”. Their names are set out in our most recent relevant Report.86

21.4 Adoption of those additional measures was postponed until 16 February, to allow time for implementation of the agreement negotiated by the “Normandy Quartet” on 12 February 2015 (Ukraine, Russia, France and Germany, who negotiated the original 5 September 2015 “Minsk Agreement”, and who have met several times in this format in Minsk, the capital of Belarus).

21.5 In the first instance, the agreement called for an immediate and full bilateral ceasefire, to take effect in parts of Donetsk and Luhansk regions, from 00:00 local time on 15 February (22:00 GMT on 14 February) and the withdrawal of all heavy weapons by both sides to equal distances to create a buffer zone of at least 50km (Ukrainian troops to withdraw heavy weapons from the current frontline; separatist forces to withdraw theirs from the line of 19 September 2014); with heavy weapons withdrawal to start no later than day two of the ceasefire and be completed within two weeks; the OSCE would assist in the process.88

21.6 The additional measures were adopted on 16 February 2015. The Minister for Europe (Mr David Lidington) said then that:

“since the separatist capture of Debaltseve, in complete contravention to the ceasefire they had agreed beforehand, separatist-inspired ceasefire violations have dropped off; but they have not stopped. Most of the intensive fighting recently has been in Shyrokynye (to the east of Mariupol). This town was taken by Ukrainian forces shortly before the ceasefire came into effect, and the National Security and Defence Council (NSDC) have reported several attempts by the separatist forces to retake it over the weekend of 21–22 February. This and further reports of Russian tanks, trucks and self-propelled howitzers crossing the Russia Ukraine border is a concern for the viability of the Minsk package of measures.”

21.7 The Minister described these additional measures as “an appropriate and necessary response to that escalation” and said that:

— it was vital that all parties fully implement the ceasefire agreed in Minsk on 12 February without delay and without further loss of life;

— it was also vital that decisive measures are taken to de-escalate tensions and engage constructively with the Government of Ukraine;

Established in November 2014 in Russia, headed by Russian officer Igor Strelkov and, according to its stated objectives, aiming at providing all-round, effective assistance to “Novorossiya”, including by helping militia fighting in Eastern Ukraine. See “Background” for full details of the listings.


See the original 2014 12-point plan and details of the February 2015 agreement.
— the Government had been consistently clear that it “will not lift sanctions before Russia complies with Minsk fully and completely”; and

— that “if the situation deteriorates further we will look at adding more sanctions”.

21.8 The debate on the causes of and how best to respond to this crisis continued, both in the House and in the wider public domain. For our part, we cleared these measures from scrutiny, and drew these developments to the attention of the Foreign Affairs Committee.

21.9 On this occasion and in the circumstances described — “the speed at which events in Ukraine have developed, requiring a rapid response from the EU Council, and the threat of asset flight if these measures became public” — we did not take issue with the Minister having over-ridden scrutiny.89

21.10 The amendments made in this further Council Decision and Council Implementing Regulation result from the normal review process that is carried out after any decision to renew the overall package. Their purpose, the Minister explains, is to ensure that the statements of reason and identifying information remain accurate and up to date; consequently, fifty “listed” persons have had their details amended, and one deceased person has been removed from the list.

21.11 The Minister also explains that, due to the length of the discussions since 29 January, and the requirement to pre-notify individuals where changes to their listings were made, the first drafts of the Council Decision and Council Regulation were circulated to Member States only on 3 March, and not finalised until 6 March; meaning that, had he not agreed to their adoption before 15 March, the entire package of measures would have fallen away; the resulting scrutiny over-ride was, he says, thus regrettably unavoidable.

21.12 We accept that, on this occasion and in these circumstances, the Minister’s explanation is reasonable.

21.13 We now clear the documents from scrutiny.

**Full details of the documents:** (a) Council Decision 2015/432/CFSP of 13 March 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine: (36749), —; (b) Council Implementing Regulation (EU) No. 2015/427 of 13 March 2015 implementing Regulation (EU) No. 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine: (36750),—.

**Background**

21.14 The full background to these measures, and the wider EU role in and response to the Ukraine-Russia crisis, and the Committee’s consideration thereof, is set out in our previous relevant Reports (which are cited at the end of this chapter of our Report).

The Council Decision and Council Implementing Regulation

21.15 In his Explanatory Memorandum of 18 March 2015, the Minister says that, after having decided on 29 January 2015 to extend for a further six months these restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, the individual designations have been reviewed as part of the renewal process and it has been decided that the entries for fifty persons should be amended.

21.16 He explains this outcome thus:

“These amendments ensure the statements of reason and identifying information for each individual remain accurate and up to date. In addition, one individual, Ludmila Shvetsova, was delisted from these measures. The attached Council Implementing Regulation (EU) No. 2015/427 and Council Decision 2015/432/CFSP effect these changes.”

The Government’s view

21.17 The Minister recalls what prompted the 29 January 2015 FAC meeting (the increase in violence in January, separatist shelling of civilians in Mariupol, assault on and subsequent capture of Debaltseve) and the Council’s response (roll over Tier of II sanctions until September 2015, review the existing listings of individual and entities, list new persons and entities, and task the Commission with preparing additional Tier III economic sanctions, in order to sustain the pressure on Russia and the separatists to fulfil their commitments under the September 2014 Minsk agreement), and says:

“In February the Normandy format (Germany, France, Russia, and the separatists) convened again in Minsk and signed up to a new agreement, and since then we have seen a notable decrease in the level of violence (though Minsk II remains far from fulfilled).”

21.18 On the timing of his Explanatory Memorandum, the Minister says:

“Unfortunately due to the length of these discussions, and the requirement to pre-notify individuals where changes to their listings were made, the first drafts of the Council Decision and Council Regulation were only circulated to EU Partners on 3 March. This meant I was unable to submit these measures for Parliamentary scrutiny prior to their adoption.”

The Minister’s letter of 18 March 2015

21.19 The Minister adds the following:

“These drafts were then revised on 6 March. I therefore found myself in the position of having to agree to the adoption of these documents on 13 March, before your
Committee had had an opportunity to scrutinise the documents. Any delay in adoption would have resulted in the entire package of measures falling away.\textsuperscript{91}

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

\textbf{Previous Committee Reports}


\section*{22 Comitology — adaptation of the regulatory procedure with scrutiny}

\begin{tabular}{|l|l|}
\hline
\textbf{Committee’s assessment} & Legally and politically important \\
\textbf{Committee’s decision} & Cleared from scrutiny \\
\hline
\textbf{Document details} & Draft Regulation adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny \\
\textbf{Legal base} & Article 81(2) TFEU; QMV; co-decision \\
\textbf{Department} & Ministry of Justice \\
\textbf{Document numbers} & (35179), 12539/13, COM(13) 452 \\
\hline
\end{tabular}

\textsuperscript{91} The measures having previously been renewed until 15 March 2015.
Summary and Committee’s conclusions

22.1 The delegation of powers to the Commission to adopt subordinate legislation has been in operation for many years, subject to various degrees of control by committees of Member States, through a process known as “comitology”. In 2009 the Lisbon Treaty replaced existing comitology procedures with two legal instruments. It introduced powers for the Commission to adopt “implementing acts” where “uniform conditions for implementation” are needed (Article 291 TFEU). It also introduced powers for the Commission to adopt “delegated acts”, which are measures to “supplement or amend certain non-essential elements of a basic legislative act” (Article 290 TFEU).

22.2 Subsequently, Regulation No. 182/2011, the comitology Regulation, laid down new rules and general principles for committee procedures to control the Commission’s exercise of its powers to make implementing acts. It also converted most of the old pre-Lisbon comitology procedures to the new ones. However, one old procedure — known as “Regulatory Procedure with Scrutiny” (“RPS”) — was not included in this. Instead, the Commission issued a statement that it would review the provisions attached to this procedure in each instrument it intends to modify, in order to adapt them in due course according to criteria laid down in the Treaty, and that it would assess the results of this process by the end of 2012 in order to estimate how many legislative acts containing references to the RPS remain in force. It would then prepare the appropriate legislative initiatives to complete the adaptation.

22.3 This proposal was intended to convert, wholesale, existing RPS procedures in the area of justice to the delegated legislation procedure.

22.4 The Government, with the support of this Committee, objected to the automatic wholesale conversion to the delegated legislation procedure. Since the Lisbon Treaty Member States have generally favoured the implementing legislation procedure because it gives them a greater say in the formulation of the subordinate legislation.

22.5 The Minister has informed the Committee, by letter dated 18 March 2015, that the Commission has withdrawn this proposal, notice of which has appeared in the Official Journal of the European Union on 7 March 2015.92

22.6 This proposal having been withdrawn we clear it from scrutiny.

22.7 A welcome consequence of the withdrawal of this proposal is that the Commission will now need to address on a case by case basis the updating of remaining subordinate legislation powers which use the Regulatory Procedure with Scrutiny.

Full details of the documents: Draft Regulation adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny: (35179), 12539/13, COM(13) 452.

Previous Committee Reports

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

Department for Business, Innovation and Skills

(36700) Draft Council Decision on the position to be taken under the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, as regards the amendment of Annex III on the mutual recognition of professional qualifications.

(36711) Commission Report on the implementation of the work under the nuclear decommissioning assistance programme to Bulgaria, Lithuania and Slovakia in the period 2010–2014.

Department of Energy and Climate Change

(36713) European Court of Auditors’ Special Report No. 24/2014: Is EU support for preventing and restoring damage to forests caused by fire and natural disasters well managed? (pursuant to Article 287(4), second subparagraph, TFEU).

Foreign and Commonwealth Office

(36755) Council Implementing Decision (CFSP) implementing Decision 2010/656/CFSP renewing the restrictive measures against Côte d’Ivoire.


Home Office


Draft Council Decision on the signing and provisional application of the Agreement between the European Union and the Republic of Trinidad and Tobago on the short-stay visa waiver.


(36740) Draft Council Decision on the conclusion of the Agreement between the European Union and Republic of Trinidad and Tobago on the short-stay visa waiver.
Formal minutes

Wednesday 24 March 2015

Members present:

Sir William Cash, in the Chair

Michael Connarty
Geraint Davies
Nia Griffith
Kelvin Hopkins

Chris Kelly
Jacob Rees-Mogg
Henry Smith

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.5 read and agreed to.

Paragraphs 1.6 to 1.7 read, amended and agreed to.

Paragraphs 1.8 to 4.7 read and agreed to.

Paragraph 4.8 read, amended and agreed to.

Paragraphs 4.9 to 5.3 read and agreed to.

Paragraph 5.4 read, amended and agreed to.

Paragraphs 5.5 to 23 read and agreed to.

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

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

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[The Committee Adjourned.]
Standing Order and membership

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

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

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

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

The expression “European Union document” covers—

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

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

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

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

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

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

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

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

Current membership

Sir William Cash MP (Conservative, Stone) (Chair)
Andrew Bingham MP (Conservative, High Peak)
Mr James Clappison MP (Conservative, Hertsmere)
Michael Connarty MP (Labour, Linlithgow and East Falkirk)
Geraint Davies MP (Labour/Cooperative, Swansea West)
Julie Elliott MP (Labour, Sunderland Central)
Stephen Gilbert MP (Liberal Democrat, St Austell and Newquay)
Nia Griffith MP (Labour, Llanelli)
Chris Heaton-Harris MP (Conservative, Daventry)
Kelvin Hopkins MP (Labour, Luton North)
Chris Kelly MP (Conservative, Dudley South)
Stephen Phillips MP (Conservative, Seaford and North Hykeham)
Jacob Rees-Mogg MP (Conservative, North East Somerset)
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (Conservative, Crawley)
Mr Michael Thornton MP (Liberal Democrat, Eastleigh)

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

Mr Joe Benton MP (Labour, Bootle)
Jim Dobbin MP (Labour/Co-op, Heywood and Middleton)
Tim Farron MP (Liberal Democrat, Westmorland and Lonsdale)
Penny Mordaunt MP (Conservative, Portsmouth North)
Sandra Osborne MP (Labour, Ayr, Carrick and Cumnock)
Ian Swales MP (Liberal Democrat, Redcar)