House of Commons
European Scrutiny Committee

First Report of Session 2015-16

Documents considered by the Committee on 21 July 2015, including the following recommendations for debate:

Better Regulation
The EU and the post-2015 development agenda
EU General Budgets for 2015 and 2016
Economic and Monetary Union
Financial assistance for Greece
European Agenda on Security
EU Charter of Fundamental Rights
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Report, together with formal minutes

Ordered by the House of Commons
to be printed 21 July 2015
Notes

Numbering of documents

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

- Numbers in brackets are the Committee’s own reference numbers.
- Numbers in the form “5467/05” are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.
- Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

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

Abbreviations used in the headnotes and footnotes

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<td>EC</td>
<td>(in “Legal base”) Treaty establishing the European Community</td>
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<tr>
<td>EM</td>
<td>Explanatory Memorandum (submitted by the Government to the Committee)*</td>
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<td>GAERC</td>
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<td>OJ</td>
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<td>QMV</td>
<td>Qualified majority voting</td>
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<td>RIA</td>
<td>Regulatory Impact Assessment</td>
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<td>SEM</td>
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<td>TEU</td>
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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, Terry Byrne, Leigh Gibson, Peter Harborne, Eliot Wilson (Clerk Advisers), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser and Assistant Counsel for European Legislation), Amelia Aspden (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss, Beatrice Woods and Rob Dinsdale (Committee Assistants), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 1AA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee’s email address is escom@parliament.uk
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**Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House**

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- **Formal minutes**
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- **Standing Order and membership**
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Meeting Summary

Better Regulation

The Commission published its Better Regulation Package on 19 May 2015. It comprises (a) an overarching Communication, (b) the second annual scorecard of progress on the pre-existing Commission Regulatory Fitness and Performance Programme (REFIT), designed to make EU law simpler and to reduce regulatory costs, (c) Commission internal Better Regulation Guidelines, (d) a proposal for an Interinstitutional Agreement on Better Regulation, which has annexed to it (e) a proposal for a Common Understanding on Delegated Acts.

In recommending the package for debate in European Committee C, we welcome the initiative but stress the vital importance of high quality, evidence based EU legislation and the need for the good intentions expressed in these documents to be put into practice. We seek further information from the Ministers who submitted Explanatory Memoranda (the Minister for Europe (the Rt Hon David Lidington) and the Minister of State for Small Business, Industry and Enterprise (the Rt Hon Anna Soubry)) as to how the package might be strengthened, the steps that might be taken to ensure it is rigorously applied, and the extent to which it represents a power grab by the Commission.

We note, and are exploring with the Minister for Europe, the implications of the package for scrutiny of EU legislation by Parliament; and the implications for the use of the delegated legislation procedure for EU subordinate legislation.

The EU and the post-2015 development agenda

This Commission Communication, A Global Partnership for Poverty Eradication and Sustainable Development after 2015, sets out the Commission’s views on the delivery of a new global partnership for poverty eradication and sustainable development after 2015, the principles that should underpin the partnership and the components needed to implement the post-2015 agenda. It also puts forward specific proposals on possible contributions by the EU and its Member States. The Communication does not assuage widespread concerns that Sustainable Development Goals (SDG’s) for post 2015, due to be agreed at the UN in September (after the UN General Assembly), are more numerous, complex and challenging to implement than their predecessors, the Millennium Development Goals. There is also concern that the financial costs of the new SDGs would massively exceed the current development aid budget. Given the importance of these developments we draw the document to the attention of the International Development Committee, and recommend that it is debated in European Committee B.

EU General Budgets for 2015 and 2016

We consider a Draft Budget, which sets out the Commission’s proposals for EU expenditure in 2016, and four related documents. This is the first stage in preparation and negotiation of the 2016 Budget. In its Draft Budget, the Commission proposes
commitment appropriations of €153,529.5 million (£110,387.7 million), which represents 1.04% of EU Gross National Income (GNI). For payment appropriations, the Commission proposes €143,541.5 million (£103,206.3 million), or 0.98% of EU GNI. In accordance with the custom of our predecessors we have recommended that these documents be debated in European Committee B before the Council finalises its first reading of the Draft Budget, which we understand will be in September. We have suggested that amongst the matters Members may wish to explore during the debate are the degree of support the Government is receiving from other Member States for a disciplined approach to next year’s EU Budget; the significance for budgetary discipline of the proposed mobilisation of the EU Solidarity Fund and the Flexibility Instrument; and the consequences of the Draft Budget for budget lines from which the UK particularly benefits.

**Economic and Monetary Union**

We consider a report presented by the Commission President suggesting, in cooperation with the Presidents of the European Council, the Eurogroup, the European Central Bank and the European Parliament, measures to improve the Economic and Monetary Union, under four key pillars: towards Economic Union; towards Financial Union; towards Fiscal Union; and democratic accountability, legitimacy, and institutional strengthening; which could be implemented in three stages. The Presidents make clear that their report “focuses on the euro area, as countries that share a currency face specific common challenges, interests and responsibilities”. They also make clear that the process towards deeper Economic and Monetary Union should be “transparent and preserve the integrity of the Single Market in all its aspects”. Although this report is targeted primarily at the Eurozone, implementation of its proposals will inevitably have implications for non-Eurozone Member States, including in relation to democratic accountability and legitimacy. So we have recommended that the document be debated on the floor of the House, where Members may wish to examine the potential implications for the UK. We also draw the document to the attention of the Treasury Committee, particularly for the suggestions for a Fiscal Union and a Financial Union.

**Financial assistance for Greece**

On 13 July Eurogroup Ministers agreed a new financial support programme for Greece, to be financed in part from the Eurozone’s European Stability Mechanism. However, to avoid further defaulting on some of its commitments, Greece needs bridging finance until the new programme can be put into place and has applied for assistance from the EU wide European Financial Stability Mechanism. We have recommended for debate on the floor of the House three documents responding to this situation: a Council Implementing Decision granting Greece bridge financing from the European Financial Stability Mechanism, which includes protection for the financial interests of non-Eurozone Member States; a statement from the Commission and the Council limiting future use of the European Financial Stability Mechanism, and a Council Implementing Decision approving the economic and financial adjustment programme submitted by the Greek government.
European Agenda on Security

The EU agreed its first Internal Security Strategy in 2010. In this Communication, the Commission sets out a new European Agenda on Security for the period 2015-20. It identifies three core priorities — terrorism, serious and organised cross-border crime, and cybercrime — and proposes a range of actions to address these and other new or evolving security threats. The Government agrees with the strategic objectives underpinning the Agenda and the emphasis placed on strengthening cooperation between EU institutions and agencies, Member States and national authorities. We seek some additional information from the Government, for example on the role of national parliaments, the degree of “mutual trust” between Member States (the foundation for deeper operational cooperation), and possible UK participation in a recently-established EU Internal Security Fund. Given the scope and importance of the Communication in setting a strategic direction for EU action, we draw it to the attention of the Home Affairs Committee and recommend that it is debated in European Committee B.

EU Charter of Fundamental Rights (the Charter)

The Charter became legally binding in 2009 and only applies to Member States (including the UK) when acting “within the scope of EU law”. Each year the Commission publishes an annual report on how the Charter has been applied by EU institutions and national courts. This document is the 2014 report. It notes the increasing legal prominence of the Charter both in proceedings before the Court of Justice of the European Union (CJEU) and national courts. It also identifies as a priority that the Commission should update fundamental rights policies in the areas of security, the digital agenda and migration. The previous Committee recommended the 2013 report for debate on the floor of the House in February but that debate was not organised by the previous Government before dissolution. This week we confirm that debate recommendation, and also recommend that it should include the 2014 annual report. We request that the Secretary of State for Justice provides us with further information in advance of the debate, including his view of whether the Charter has been applied by UK courts in 2014-15 only to cases falling “within the scope of EU law”, and how that concept has been applied by the CJEU. As the 2014 report also addresses the stalled process of EU accession to the European Convention on Human Rights, we ask the Minister for a detailed update on progress on that initiative. We draw this chapter to the attention of the Joint Committee on Human Rights and the Justice and the Women and Equalities Committees.

Use of genetically modified food and feed

EU legislation provides for the cultivation and use of genetically modified organisms (GMOs), and of food and feed products containing them, to be authorised by the Commission. However, any proposals are subject to a vote by Member States, and, because of deep divisions among them, have invariably resulted in “no opinion” being issued. This led to suggestions that Member States should have greater freedom in this area, and the Commission brought forward in 2010 a proposal enabling them to restrict or prohibit the cultivation of authorised GMOs. Insofar as the measure sought to return to Member States
certain powers exercised by the EU, it was welcomed in principle by the UK, although it also had concerns that the emphasis on decisions of this kind being based on scientific assessment could be undermined and an unfortunate precedent set for other areas. Despite this, the UK supported its subsequent adoption as Directive (EU) No. 2015/42.

As that measure applies only to the cultivation of GMOs, the Commission has now proposed a draft Regulation giving Member States the ability as well to restrict or prohibit the use of authorised genetically modified food and feed. The Government reiterates that, as a general rule, it would in principle welcome Member States being given more discretion, but has again identified a number of issues, including the consistency of the proposal with the principle of science-based decision-making, and its potential impact on trade in GM products, on which it will provide a supplementary explanatory memorandum in due course.

We have observed that, although the issues identified by the Government are similar to those which arose on the earlier proposal, these did not prevent the UK from supporting the adoption of Directive (EU) No. 2015/42, and we have said that we will therefore await with interest the outcome of its consideration of this latest proposal. We draw these documents to the attention of the Environmental Audit, Environment, Food and Rural Affairs, and Science and Technology Committees.

**Outstanding debate recommendations**

The Committee also considered the references of the previous Committee of EU documents to European Committees still outstanding at the end of the last Parliament. The sixteen outstanding debate recommendations were as follows:

**The free movement of EU citizens**


**Strategic Guidelines for EU Justice and Home Affairs to 2020**

European Union Documents No. 7838/14, a Commission Communication: The EU Justice Agenda for 2020: Strengthening Trust, Mobility and Growth within the Union, and No. 7844/14 and Addendum, a Commission Communication: An open and secure Europe: making it happen.

**Rule of Law in EU Member States**


**Ports**

European Union Document No. 10154/13 and Addenda 1 to 5, a draft Regulation establishing a framework on market access to port services and financial transparency of ports.
EU Charter of Fundamental Rights


The European Police College (Opt-In Decision)

European Union Documents No. 8230/1, a Commission Communication: Establishing a European Law Enforcement Training Scheme, No. 12013/14, Draft Regulation establishing a European Union agency for law enforcement training (Cepol), repealing and replacing Council Decision 2005/681/JHA.

Zero waste programme for Europe


European Defence: implementation road map


EU Budget 2014


Value added taxation


EU Strategy in Afghanistan 2014–16


European Semester 2015

United Kingdom 2015: Including an In-Depth Review on the prevention and correction of macroeconomic imbalances.

**Guidelines for economic and employment policies**

European Union Document No. 6813/15, a draft Council Recommendation on broad guidelines for the economic policies of the Member States and the Union, and No. 6144/15 and Addendum, a draft Council Decision on guidelines for the employment policies of the Member States.

**Female genital mutilation**


**EU Merger Control**

European Union Document No 11976/14 and Addenda 1-3, a Commission White Paper: Towards more effective EU merger control.

**International cooperation to combat match-fixing**

European Union Documents No. 6720/15 and Addendum, a draft Council Decision on the signing, on behalf of the European Union, 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, and No. 6721/15 and Addendum, a draft Council Decision on the signing, on behalf of the European Union, 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.

The Committee agreed that all these debate recommendations should stand except:

**Strategic Guidelines for EU Justice and Home Affairs to 2020**

European Union Documents No. 7838/14, a Commission Communication: The EU Justice Agenda for 2020: Strengthening Trust, Mobility and Growth within the Union, and No. 7844/14 and Addendum, a Commission Communication: An open and secure Europe: making it happen.

**The European Police College (Opt-In Decision)**

European Union Documents No. 8230/1, a Commission Communication: Establishing a European Law Enforcement Training Scheme, No. 12013/14, Draft Regulation establishing a European Union agency for law enforcement training (Cepol), repealing and replacing Council Decision 2005/681/JHA.

**EU Budget 2014**

European Union Document No. 14442/14, a Draft Amending Budget No. 6 to the General Budget for 2014: General statement of revenue - Statement of expenditure by section:

European Semester 2015


Guidelines for economic and employment policies

European Union Document No. 6813/15, a draft Council Recommendation on broad guidelines for the economic policies of the Member States and the Union, and No. 6144/15 and Addendum, a draft Council Decision on guidelines for the employment policies of the Member States.
1 Better Regulation

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; recommended for debate in European Committee C; further information required

Document details
(a) Commission Communication: Better regulation for better results — An EU agenda
(b) Commission Communication: Proposal for an Interinstitutional Agreement on Better Regulation

Legal base
(a) —
(b) Article 295 TFEU; QMV

Departments
(a) Business, Innovation and Skills
(b) Foreign and Commonwealth Office

Document numbers
(a) (36885), 9079/15 + ADDs 1–2, COM(15) 215
(b) (36888), 9121/15 + ADD 1, COM(15) 216

Summary and Committee’s conclusions
1.1 On 19 May 2015 the Commission published its package of measures intended to refresh and take forward its work on better regulation. It comprises:

- an overarching Communication, document (a), the themes of which are increased scrutiny of, and consultation on, EU legislative proposals. Details are outlined below;

- an accompanying Commission staff working paper Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook. This is the second edition of the scoreboard which reviews the 164 initiatives for simplification and regulatory burden reduction identified by the Commission under its rolling REFIT programme;

- the Commission’s internal Better Regulation Guidelines, which it has been applying since 19 May 2015, and is complemented by a series of downloadable web-tools comprising the Better Regulation “Toolbox”. The Guidelines draw on public consultations carried out in 2013 and 2014 on the previously separate guidelines on impact assessment, stakeholder consultation and evaluation;

- a proposal for an Interinstitutional Agreement on Better Regulation (IIA), document (b). This would set out the commitments of the European Parliament, the Council and Commission concerning better regulation, interinstitutional relations and the legislative process as outlined in more detail below; and

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1 “REFIT” stands for the Commission’s Regulatory Fitness and Performance Programme first proposed in December 2012.
• a proposed Common Understanding on Delegated Acts, annexed to the IIA, which repeats the reassurance for Member States of early input into the delegated legislation procedure found in a similar 2011 document, and also sets out, for the first time, some guidelines for determining when procedure for the Commission to adopt EU subordinate legislation should be the delegated legislation procedure or the implementing legislation procedure, as outlined in more detail below.

1.2 It is vitally important that the EU legislates only when necessary; and that such legislation is high quality and evidenced based. EU legislative practice must ensure that this is the case. The statements of intent and commitments contained in these documents are welcome, but only go so far. They need to be put into practice rigorously. The fact that this new package is so substantially based on existing programmes and agreements indicates that this has not been the case in the past. We consider that this package needs to be accompanied by a change in attitude by all the EU institutions concerned.

1.3 Given the importance and wide ranging nature of the package we recommend it for debate in European Committee C. In the meantime these documents remain under scrutiny.

1.4 In advance of that debate we ask both Ministers who have submitted an Explanatory Memorandum (Anna Soubry and Mr David Lidington) the following general questions:

• How they think the package could be strengthened?

• What practical steps they envisage to ensure that it is rigorously applied?

• The extent to which the package represents, as has been asserted by some commentators,2 a power grab by the Commission by limiting the autonomy of the European Parliament and the Council in operating the legislative process?

1.5 We welcome the creation of a Regulatory Scrutiny Board which is stronger than its predecessor Impact Assessment Board. However we note that the Communication envisages the Commission being able to take action “in the absence of an adequate supporting impact assessment” whereas the Guidelines require a positive opinion of the Board before internal interservice consultation in the Commission can proceed. We ask the Minister for Small Business, Industry and Enterprise (Anna Soubry) to clarify the circumstances in which the Commission can table a legislative proposal in the absence of a positive opinion from the Board, and whether she considers that this aspect of the package needs strengthening.

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2 As reported by Euractiv.
1.6 We welcome increased consultation and transparency in the legislative process. We draw attention to three aspects of this package which could affect scrutiny of EU legislation by this Committee:

- “inception impact assessments” could provide an evidential base on which to start early consideration of compliance of a legislative proposal with the principle of subsidiarity. We therefore ask the Minister for Europe whether he will press for these to be drawn to the attention of national parliaments. At present the proposed IIA only envisages that the final results of Impact Assessments will be made available to national parliaments;

- the Commission’s intention to include a more through explanation in its explanatory memoranda as to how a legislative initiative meets the twin tests of subsidiarity and proportionality responds to a consistent call from our predecessor Committee in its reasoned opinions, which itself was based on the grounds that this was a Treaty obligation which the Commission had been failing to meet; and

- our predecessor Committee drew the attention of the House to the difficulties of scrutiny due to the prevalence of documents being classified as Limité. This makes scrutiny of trilogue negotiations involving the European Parliament, the Council and the Commission particularly difficult. Increased transparency during the legislative process would alleviate this difficulty, but we note, with disappointment, that paragraph 28 of the proposed IIA retains the equivocation of its 2003 predecessor as to the obligation of the institutions to be transparent in respect of trilogue negotiations. In this context we also draw the attention of the House to the fact that the European Ombudsman has opened an inquiry into the transparency of trilogues based on her concern that they be conducted in a manner which can be reconciled with the requirements as to the transparency of the legislative procedure, set out in Article 15(2) and (3) TFEU.

1.7 It is disappointing that the IIA does no more than “reiterate the role and responsibility of national Parliaments as laid down in the Treaties”. We understand this is also an active concern of the Dutch Parliament. We welcome the Minister for Europe’s statement that “The Government believes that there is much that can be improved in engagement between the EU institutions and national parliaments and will continue to underline the importance of this issue for the UK during the IIA negotiations and elsewhere”. We ask the Minister for Europe what specific amendments to the proposed IIA he will seek with a view to enhancing the role of national parliaments.

1.8 We welcome, in principle, guidance clarifying the divide between the delegated legislation procedure and the implementing legislation procedure in the proposed

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3 Article 5 of Protocol 2 On the Application of the Principles of Subsidiarity and Proportionality.
Common Understanding. Up to now the Government has favoured the implementing legislation process over the delegated legislation process because the former affords more effective Member State input into the formulation of the proposal for EU subordinate legislation. We ask the Minister for Europe for his view whether the ongoing commitment to making better use of national experts meets this concern and, if not, what changes he will be seeking to the proposed Common Understanding.

1.9 We note the Minister for Europe’s view that the “Member States should also preserve full autonomy over plans for implementation”. We ask him how this should be reflected in the proposed IIA.

Full details of the documents: (a) Commission Communication: Better regulation for better results — An EU agenda: (36885), 9079/15, COM(15) 215, + ADDs 1–2; (b) Commission Communication: Proposal for an Interinstitutional Agreement on Better Regulation: (36888), 9121/15, COM(15) 216, + ADD 1.

The Communication

1.10 The significant new components of the better regulation agenda envisaged by the Commission in this Communication are:

- “Roadmaps” and “inception impact assessments” intended to give stakeholders the chance to provide feedback and prompt them for relevant information, right from the very start of work on a new initiative;

- twelve-week public consultations when preparing new proposals and when the Commission evaluates and carries out “fitness checks” of existing legislation;

- an invitation from the Commission to citizens and stakeholders to provide feedback during the eight week period national parliaments have for delivering subsidiarity reasoned opinions;

- an indicative list of proposed delegated acts to be published online with draft texts open to the public at large on the Commission’s website for four weeks in parallel to the consultation of experts in the Member States. The same will apply to proposals for important Commission implementing legislation;

- a new “Lighten the Load – Have Your Say” feature on the Commission’s Better Regulation website to give the public a chance to air their views and make comments on existing EU laws and initiatives in addition to the formal consultations the Commission undertakes;

- an improved explanatory memorandum accompanying each Commission proposal for legislation except implementing legislation.

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4 Except implementing legislation.
applied, its impact (particularly on SMEs), the views of stakeholders, and a more through subsidiarity and proportionality explanation;

- the replacement of the existing Impact Assessment Board of the Commission by a Regulatory Scrutiny Board with more personnel resources, some independent members and a remit extended to the checking of major evaluations and “fitness checks”. Should the Commission wish to proceed in the absence of an approved impact assessment it will publicly explain why; and

- the REFIT programme to be refreshed by focussing on serious sources of inefficiency and regulatory burden, providing quantitative estimates of benefits, embedding it in the annual Work Programme and creating a “REFIT Platform” to provide a basis for inclusive work on a common agenda. It will involve high level experts from business, social partners, and civil society appointed through an open and transparent process as well as experts from all 28 Member States, the European Economic and Social Committee and the Committee of the Regions.

1.11 The Commission uses the Communication to call upon the European Parliament and the Council to commit to better regulation, including by prioritising legislation emerging from the REFIT programme, carrying out impact assessments on any substantial amendment which they propose, and to include systematically in every new act provisions for monitoring and future evaluation. It also calls upon Member States to avoid “gold plating”.

The proposed Interinstitutional Agreement

1.12 This proposal is intended to replace an existing 2003 Interinstitutional Agreement on better lawmaking and the 2005 Interinstitutional Common Approach to Impact Assessment; and to supplement continuing Agreements on codification (1994), the quality of drafting (1999), the use of the recasting technique for legal acts (2001);\(^5\) plus Declarations on practical arrangements for the co-decision procedure (2007)\(^6\) and on explanatory documents (2011).\(^7\)

1.13 The significant elements of it are:

- it would re-iterate the importance of the “Community method”, transparency of the legislative process, democratic legitimacy, subsidiarity, proportionality, legal certainty and simplicity, clarity and consistency in the drafting of legislation”;

- it would seek to re-enforcement the EU’s “annual and multiannual programming”, including by the Commission and the European Parliament exchanging views on the “the main elements guiding the preparation of the Commission Work Programme” on the basis of a letter from the Commission President;

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\(^5\) To prevent the need to refer to multiple amending instruments.
\(^6\) Design to encourage early agreement to legislative proposals.
\(^7\) Concerning information to be provided by member States of their transposition of EU directives.
• the three institutions would agree to identify proposals from the Commission’s Work programme that will receive priority treatment, and there would be regular in-year updates;

• the Commission’s impact assessment process would commence with consultation of stakeholders, to address whether EU action is needed and to map out alternative solutions using quantitative and qualitative analysis. European Parliament and Council consideration of legislative proposal would start by consideration of the Commission’s Impact Assessment and any substantial proposed amendments to the Commission’s proposal would be subject to an impact assessment. The final results of the impact assessment process would be made available, including to national parliaments;

• any of the three institutions would be able call for an independent panel to assess whether a substantial proposed amendment to a Commission proposal meets the requirements to “be comprehensible and clear; allow parties to easily understand their rights and obligations; include appropriate reporting, monitoring and evaluation requirements; avoid disproportionate costs; and be practical to implement”;

• an eight week consultation with stakeholders would follow the publication of a proposal and its impact assessment, in parallel to the period for subsidiarity consideration by national parliaments;

• a provision that “The three institutions agree that proposals for significant amendments or development of Union legislation should be rooted in robust prior evaluation of the efficiency, effectiveness, relevance, coherence and value added of existing law and policy” would be supported by monitoring, evaluation and reporting requirements in existing legislation;

• the Commission would reiterate that it will include in its explanatory memoranda explanations of the choice of legal instrument and how the proposed measure is justified in the light of the principles of subsidiarity and proportionality and are compatible with fundamental rights;

• the institutions would be a co-ordinate of the legislative process and transparency by making public “their preparatory and legislative work … in an appropriate fashion” and by ensuring “an appropriate degree of transparency of the legislative process, including of trilateral negotiations between the three institutions”; and

• Member States would be asked for better and more transparent implementation, making clear any addition national gold plating.
The proposed Common Understanding on Delegated Acts

1.14 The proposed Common Understanding would clarify when the delegated legislation procedure⁸ should be prescribed for subordinate legislation in parent legislation, and when the implementing legislative procedure.⁹ The following should be adopted by the delegated legislative procedure: (a) any amendment of the parent legislative act, including annexes, (b) the addition of further substantive rules and criteria, (c) establishing procedures (i.e. a way of performing or giving effect to something) that involves a further policy choice, (d) determining the type of information which must be provided or supplementing the obligation to provide information. The following should be adopted by the implementing legislative procedure: (a) authorisations, (b) establishing details of procedures to ensure uniform conditions, (c) the format of information to be provided, and (d) work programmes and implementing financial instruments.

1.15 It would also reinforce prior consultation in respect of proposals for delegated acts by envisaging consultation with outside experts and experts designated by the European Parliament, in addition to the current commitment to consult experts designated by Member States; and require the Commission to summarise the results of consultation in the explanatory memoranda for proposed delegated acts.

The Explanatory Memoranda

1.16 In her Explanatory Memorandum of 4 June the Minister for Small Business, Industry and Enterprise summarises the Communication, the guidelines and the State of Play and outlook on REFIT. She recalls that many of the commitments in the Communication respond to recommendations called for in the COMPETE principles advocated in the October 2013 report of the Prime Minister’s Business Taskforce report (“Cut EU Red Tape”). She generally welcomes the Communication and the commitments it contains, and more specifically:

- welcomes the call for the burden of Council or European Parliament amendments to proposed legislation to be assessed, as a step towards the compilation of an annual statement of the cost of new EU regulation recommend by the Taskforce;
- welcomes the wide range of evaluation activity planned as part of the REFIT programme; and
- indicates that the Guidelines implement the UK’s top priorities.

1.17 In his Explanatory Memorandum of 25 June the Minister for Europe summarises the IIA under the headings of better regulation, inter-institutional relations and the legislative process. He generally welcomes the IIA but makes the specific observations:

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⁸ Article 290 TFEU.
⁹ Article 291.
• the Government will engage constructively with the institutions to ensure that new legislative proposals address sufficiently the needs of Small and Medium-sized Enterprises (SMEs) and micro-enterprises; to strengthen quality control of Impact Assessments: and to encourage EU burden reduction efforts, ideally through a burden reduction target;

• the implementation of EU legislation by Member States should provide sufficient flexibility to address individual national characteristics. Member States should also preserve full autonomy over plans for implementation; and

• the Government believes that there is much that can be improved in engagement between the EU institutions and national parliaments and will continue to underline the importance of this issue for the UK during the IIA negotiations and elsewhere.

Previous Committee Reports
None.

2 The EU and the post-2015 development agenda

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Summary and Committee’s conclusions

2.1 This Commission Communication is the latest stage in a process that began with Commission Communication 7075/13 — “*A decent life for all: ending poverty and giving the world a sustainable future*”. That earlier Commission brought together the debate about
what international framework should succeed the MDGs\textsuperscript{10} and the process to establish new Sustainable Development Goals (SDGs) arising from the Rio+20 — where government leaders agreed that the new SDGs should be coherent and integrated with the post-2015 development agenda.\textsuperscript{11}

2.2 Commission Communication 12434/13, “Beyond 2015 — towards a comprehensive and integrated approach to financing poverty eradication and sustainable development” on the Commission’s perspectives on financing the post-2015 development framework, is also relevant.\textsuperscript{12} Both Communications were examined in a European Committee debate on 11 December 2013.\textsuperscript{13}

2.3 A follow-up Joint Communication 10412/14, of June 2014, “A decent Life for all: from vision to collective action”, set out the Commission’s and European External Action Service’s (EEAS) thinking on the post-2015 development agenda, so as to secure international agreement for a new set of sustainable development goals (SDGs) that would shape global development priorities to 2030. It was examined on several occasions by the previous Committee\textsuperscript{14} and subsequently debated, in European Committee B, on 11 March 2015).\textsuperscript{15}

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

2.5 This latest Commission Communication is not the EU position \textit{per se}, but (as the three Ministers then responsible put it) its principles and key components were broadly in-line with the then Government’s established positions; it was a good overview of what is needed for effective implementation of the post-2015 development agenda and for laying the groundwork for more specific policy development, which would be set out in Council Conclusions in December 2014 and May 2015.

\textsuperscript{10} The eight goals UN Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.


\textsuperscript{12} See (35203), 12434/13: Fourteenth Report HC 83-xiv (2013–14), chapter 7 (11 September 2013) for our consideration of this Commission Communication.

\textsuperscript{13} The record of the European Committee is available at Gen Co Deb, European Committee B, 11 December 2013, cols. 3-20.


\textsuperscript{15} The record of the European Committee debate is available at Gen Co Deb, European Committee B, 11 March 2015, cols. 3-18.
2.6 The previous Committee engaged with the then Government both before its publication and subsequently about this policy development process and what the then Ministers described as the “team EU approach” to the relevant UN discussions in 2015, via a tried-and-tested burden-sharing agreement enabling individual Member States, including the UK, to lead negotiations on certain issues or goal areas.

2.7 The relevant Ministers have now provided their assessment of the May 2015 “Development” Foreign Affairs Council Conclusions, Global Partnership for Poverty Eradication and Sustainable Development after 2015, which set out the EU’s high-level position for the ongoing Financing for Development Negotiations, which they fully support, and which they say provide helpful clarity in the run up to the “Financing for Development” conference in Addis Ababa this July.16 They describe them as setting out a strong commitment to ensuring that “international public resources from all providers should contribute to supporting poverty eradication and sustainable development, and that all development is climate smart and climate resilient”.

2.8 They also state that there are no competency issues raised by the Council Conclusions: during their negotiation, “clear and consistent messages to the Commission that any development or updating of common positions must be in accordance with Member State competencies” have been reflected in the recognition in the text of Member State competencies, and the Commission and EEAS “formally stated during negotiations that the development of common positions within the Council Conclusions would respect Member State competencies”.

2.9 Not least among the many questions that arise is whether replacing eight MDGs and 21 targets with 17 SDGs and 169 targets will stretch development budgets too far and not provide value for money. According to “Euractiv”,17 the sheer scale of the...
proposed objectives has already drawn criticism from many quarters: “too ambitious perhaps, when you consider the failures of the last 15 years”, according to a source from the NGO “Aide et Action”; and, according to Bjørn Lomborg, founder of Copenhagen Consensus Centre: “Promising everything to everyone gives us no direction. Having 169 priorities is like having none at all”. The new SDGs are seen as not only more numerous, but also more complex and more difficult to implement than their predecessors, with one potential side effect of this abundant new list of targets being to reduce the priority of issues like poverty, nutrition and education, which were the backbone of the previous MDGs. Another concern is the extent of the finances needed in order to achieve such a long list of targets. Estimated at $135 to $195 billion per year for the eradication of poverty, and $5 to $7 trillion a year for infrastructure investments, the cost of the new SDGs would massively exceed the current global development aid budget. Described as “sceptical of the extremely broad scope of the SDGs”, the Copenhagen Consensus Centre, in partnership with economic experts, including several Nobel laureates, industry, NGO and UN representatives, has come up with what is described as a more focused list of 19 alternative goals. According to the panel of experts, if the United Nations adopted the list of 19 priorities, every dollar it invested would bring an economic, social or environmental return of $32, whereas the return currently predicted by the UN is a more modest $7 for every dollar invested.\(^{18}\)

2.10 The time has now come for these major developments to be debated further in European Committee B. This debate should be held immediately after the House returns from the “conference” recess, so that the House can be provided with, and discuss, the Government’s analysis of the outcome of both the Addis Ababa “Financing for Development” conference and the discussions at the United Nations in September.

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

2.12 In the meantime, the Joint Communication remains under scrutiny.

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

**Background**

2.13 The 25 June 2013 Council Conclusions on the “Overarching Post 2015 Agenda”\(^{19}\) stressed that the post-2015 process should reinforce the international community’s commitment to poverty eradication and sustainable development and set out a single comprehensive and coherent framework for effective delivery and results at all levels. The framework should be defined around a single set of global goals in order to drive action in

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18 See [Smart Development Goals](#).

19 See [Council Conclusions](#).
all countries. The EU and its Member States reiterated their commitment to play a full and active role in the work to define the post-2015 framework and to work inclusively with all partners, including civil society, scientific and knowledge institutions, local authorities, the private sector and social partners, in considering priority areas for the framework.

A decent Life for all: from vision to collective action

2.14 This follow-up Joint Communication sets out the Commission’s and European External Action Service’s thinking on the post-2015 development agenda, so as to secure international agreement for a new set of sustainable development goals (SDGs) that would shape global development priorities to 2030. The Committee first considered it at its meeting on 2 July 2014.20

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

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

— of EU competence in development issues;21

— this was a tried and tested method, with previous such processes having demonstrated that negotiating as the EU is more likely to secure UK objectives than acting alone, given the tendency in UN negotiations to adopt a “bloc” approach;22 and

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

2.17 However, as the then Ministers noted, how this would work in practice needed to be agreed with the Commission, Member States and legal advisers. The previous Committee:

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21 The EU’s competence in development cooperation and humanitarian aid is a specific form of shared competence commonly referred to as a parallel competence. The treaties define the nature and scope of the EU’s competence as follows: “In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct common policy: however the exercise of that competence shall not result in Member States being prevented from exercising theirs”. (Article 4(4) TFEU). While the Maastricht Treaty (1993) provided the first explicit treaty basis for cooperation with developing countries, the Nice Treaty (2003) provided a legal basis for financial and technical cooperation with third countries, notably including non-developing countries in the Balkans, the Middle East and North Africa. Most recently, the Treaty of Lisbon (2009) added an explicit basis for humanitarian aid. More generally, the EU’s competence in development cooperation and humanitarian aid is defined in detail in Part V of the TFEU, which sets out the overall framework of the EU’s external action. For a full discussion of these issues, see “Review of the Balance of Competences between the United Kingdom and the European Union: Development Cooperation and Humanitarian Aid Report”.
22 I.e. the G77, EU and JUSCANZ (Australia, Canada New Zealand, Japan, US).
— accordingly asked them to write again with:

- full information on these arrangements, once they had been agreed, explaining how they reflected the proper division of competences under the Treaties;

- their evaluation of the Council Conclusions that were due to be agreed in December 2014, shortly after the publication of the UNSG’s synthesis report, so that the House would have the benefit of both documents when this Commission Communication was debated, so that when the debate took place; and

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

The then Ministers’ letter of 8 January 2015

2.18 The then Ministers (Baroness Northover and Dan Rogerson) said that the Council Conclusions: “A transformative post-2015 agenda” were endorsed at the 12 December 2014 Foreign Affairs Council (Development), adopted by the 16 December 2014 General Affairs Council and endorsed by the Environment Council on 17 December 2014. They updated and set the broad parameters of the EU’s negotiating position. They helpfully remained firm on principle, avoid setting out a detailed negotiating position prematurely, yet maintained strong reference to the Government’s priorities on poverty eradication, gender, environmental sustainability, climate change and governance. What was needed was a final framework of goals and targets that was simple, inspiring and workable while retaining the breadth and balance of the 17 goals and 169 targets proposed in the Open Working Group (OWG) Report; and with a strong focus on eradicating extreme poverty with sustainable development at the core. This was, they said, within reach in the forthcoming negotiations and the Conclusions provided a good basis for the Government to continue to build support for this approach.

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

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

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

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

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

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

**The previous Committee’s assessment**

2.24 The previous Committee:

— noted the question marks over the detailed arrangements that would underpin the “Team EU” approach, and that some compromise and flexibility might be needed at times;

— noted also that this approach was tried-and-trusted, and to the best of its knowledge had not infringed upon the proper division of competences under the Treaties in the past;

— looked forward to being updated on how these arrangements were working in practice during the process of scrutinising the forthcoming Communication on means of implementation; and

— in the meantime, concluded that it was now time for the issues set out in the Joint Communication and the Council Conclusions on it to be debated in European Committee B.\(^\text{25}\)

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

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

A Global Partnership for Poverty Eradication and Sustainable Development after 2015

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

2.27 It proposes the following key components of the global partnership:

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

2.28 The Communication will form the basis for agreeing an EU position in advance of the UN Financing for Development Conference in July and the “Post-2015” Summit at the UN in September. The Communication strongly supports the UN Secretary General’s call that all developed countries meet the UN target of 0.7% ODA/GNI and agree to concrete timetables for doing so.
2.29 The then Ministers at the Department for International Development (Baroness Northover), the Department for Environment, Food and Rural Affairs (Dan Rogerson) and the Department of Energy and Climate Change (Amber Rudd) noted that agreeing an EU recommitment to 0.7% ODA/GNI was a top UK objective, and that they would make “all efforts to ensure that this includes a renewed timetable and target dates for countries that have not yet met their commitments”.

2.30 The then Ministers went on also to note that, though based on recent discussions within the EU, Member States were not formally consulted on the text during its preparation and it was “not an articulation of agreed EU policy”. The Communication would, however, “set the tone for this year’s Council Conclusions on EU post-2015 development financing which will be negotiated by Council working groups”, and the Council would “choose how to respond to the views expressed by the Commission in the Communication”. The UK’s input to this response would reflect cross-HMG views and would be in line with the position set out below; they would “remain closely engaged with the EU Presidency and other Member States as work proceeds on drafting the Council Conclusions this spring”.

2.31 The then Ministers described the Commission as a good overview of what was needed for effective implementation of the post-2015 development agenda and for laying the groundwork for more specific policy development. The principles and key components set out in the Communication were broadly in-line with established HMG positions. They welcomed in particular:

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

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

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

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

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

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

— the inclusion of trade, agreeing that it played a critical role in development; they welcomed, too, the effort to categorise different actions between “actions for all” and actions for the EU;
— the emphasis on the role of the private sector; it was rightly characterised as a key actor in the transition to sustainable development and an important engine for innovation, sustainable growth, job creation, trade and poverty reduction;

— the principles set out for addressing private sector engagement;

— references to the important linkages between climate change, sustainability, and development, since eradicating extreme poverty was impossible without addressing climate change and sustainability;

— the emphasis on the need for a monitoring, accountability and review framework underpinned by the principles of transparency, inclusiveness and responsiveness, efficiency and effectiveness; and

— the strong focus on data and participation, connecting national, regional and global reporting and accountability, while avoiding duplication and building on existing systems (see our predecessor Committee’s Report of 18 March 2015 for the then Ministers’ comments on each of these issues27).

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

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

2.33 Looking ahead, the Ministers:

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

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

— noted that the process of developing the EU position and “offer” on Financing for Development was taking place through a series of Joint Working Group and Expert

Meetings, with a view to the adoption of Council Conclusions at the 25 May Development Ministers meeting.

The previous Committee’s assessment

2.34 The previous Committee took the view that there would no doubt be a time when this process would warrant debating. However, as the Ministers made clear, this Commission Communication was not an EU position, and that this has to be elaborated between now and the end-May “development” Foreign Affairs Council. The Council Conclusions agreed thereat would thus be the key document.

2.35 The previous Committee therefore asked the Ministers to provide the Committee with a copy of the agreed Council Conclusions, their assessment of the final outcome, and to demonstrate how they have ensured that “the EU negotiating position does not stray into areas of Member State competence”.

2.36 In the meantime, they retained the Joint Communication under scrutiny.

2.37 They also drew these developments to the attention of the International Development Committee.28

The Ministers’ letter of 12 June 2015

2.38 The new Ministers at the Departments for International Development (Baroness Verma), Environment, Food and Rural Affairs (Rory Stewart) and Energy and Climate Change (Lord Bourne) write concerning the outcome of the EU Foreign Affairs Council Conclusions that were agreed on 26 May 2015, where the UK was represented by the Secretary of State for DFID, as follows:

“We welcome the adoption by EU Foreign Ministers of Council Conclusions on the Global Partnership for Poverty Eradication and Sustainable Development after 2015. The Council Conclusions set out the EU’s high-level position for the ongoing Financing for Development Negotiations. The UK fully supports the publication of the Conclusions, which provides helpful clarity in the run up to the Financing for Development Conference in Addis Ababa this July.

“In particular, we are pleased that EU Member States have made a time-bound recommitment to the 0.7% Official Development Assistance (ODA) UN target. This is hugely significant given the fiscal challenges faced by many EU Member States.

“Member States also committed to reach the UN ODA Least Developed Countries (LDC) target of 0.15-0.2% in the short term and 0.2% within the time frame of the post-2015 agenda. This is the first time that there has been a time-bound commitment to reaching the LDC target, which aims to support specifically the poorest people in the most vulnerable countries.

28 Ibid.
“This demonstrates Europe’s commitment to ensuring ODA is focused where it is most needed and to take concrete steps for the immediate implementation of the post-2015 agenda.

“The UK is proud to have met the 0.7% target and to have enshrined this in law this year. While most other EU Member States are not in this position, we are pleased that collectively Europe has signalled its intention to continue to provide leadership as the world’s largest donor. This has underlined our shared values and commitment to eradicating poverty and promoting sustainable development.

“The Council Conclusions also set out a strong commitment to ensure that international public resources from all providers should contribute to supporting poverty eradication and sustainable development, and that all development is climate smart and climate resilient.

“Additionally, we welcome the focus on creating an enabling policy environment as a key component of the global partnership. The UK considers this vital for developing countries to gain the most from all resource flows. This includes supporting countries to effectively mobilise domestic public finance and attract private investment, promoting trade, fostering science, technology and innovation, and addressing the challenges and harnessing the positive effects of migration.

“There are no competency issues raised by the Council Conclusions. The Conclusions are the result of a negotiation process in which the UK was fully involved.

“In preparation for the Conclusions, the UK was engaged in a detailed process of negotiation in Brussels, and was represented by the Cabinet Office and lead Departments at all relevant meetings. In addition to remaining vigilant on ‘competence creep’, the UK sent clear and consistent messages to the Commission that any development or updating of common positions must be in accordance with Member State competencies. This is reflected in the recognition in the text of Member State competencies. The Commission and European External Action Service formally stated during negotiations that the development of common positions within the Council Conclusions would respect Member State competencies.”

2.39 The Council Conclusions run to 64 paragraphs over 23 pages.29 In the introduction, the Council:

— describes the Post-2015 Agenda as a great opportunity to address the interlinked challenges of poverty eradication and sustainable development, and making the most of this as a key priority for the EU and its Member States;

29 See Council Conclusions for the full text.
— welcomes this Joint Communication as an important contribution to further developing the position of the EU and its Member States;

— says these Council Conclusions complement its December 2014 conclusions and further develop aspects of the new global partnership needed to achieve the sustainable development goals (SDGs);

— state that, to implement such a far-reaching agenda, “a new global partnership for poverty eradication and sustainable development is required”, which “should transform and strengthen the way in which the international community works together”;

— assert that significant progress has already been achieved, with the proposal from the Open Working Group on Sustainable Development Goals (SDGs), the report of the Intergovernmental Committee of Experts on Sustainable Development Financing and the UN Secretary-General’s synthesis report showing that “an agreement on an ambitious Post-2015 Agenda for people and the planet leaving no-one behind is within reach”;

— conclude that a successful outcome of the Third International Financing for Development Conference in July in Addis Ababa (the “Addis Ababa Conference”) will be important for agreeing a coherent and transformative framework for action at the United Nations summit for the adoption of the Post-2015 development agenda in New York, as well as the 21st Conference of the Parties to the UN Framework Convention on Climate Change in December in Paris; and

— state that the outcome of these three processes “should strengthen and highlight synergies and co-benefits between poverty eradication and sustainable development including climate change”.

2.40 Looking ahead, the Council say:

— the EU and its Member States will continue to play an active and constructive role in all ongoing processes and support their convergence in order to achieve a single, overarching Post-2015 Agenda;

— for this purpose, the EU and its Member States will continue to develop and update common positions in order to engage in an effective and unified manner in the ongoing international negotiations, including by taking forward the issues identified in the Annex to the Commission Communication “A Global Partnership for Poverty Eradication and Sustainable Development after 2015”;

— for this global partnership to succeed, all will have to contribute; and

— the EU and its Member States are committed to playing their part in full and to working constructively with others so that an ambitious, transformative and inclusive Post-2015 Agenda can be established and implemented.
Previous Committee Reports


3 EU General Budgets for 2015 and 2016

Committee’s assessment
Politically important

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

Document details
(a) Draft Decision about use of the EU Solidarity Fund in 2016
(b) Draft Budget for 2016: political presentation
(c) Draft Budget for 2016: financial programming 2017-20
(d) Draft Decision about use of the Flexibility Instrument in 2016
(e) Letter of amendment No 1 to the draft general budget 2016: Financing of the EFSI Guarantee Fund.
(f) Draft Amending Budget No. 6 to the General Budget 2015

Legal base
Articles 314 TFEU and 106a, EURATOM Treaty; co-decision; QMV

Department
HM Treasury
(a) (36821), 9404/15, COM(15) 281
(b) (36899), —, SEC(15) 240
(c) (36900), —, SEC(15) 240
(d) (36906), 9403/15, COM(15) 238
(e) (36955), 10343/1/15, COM(15) 317
(f) (36988), —‘COM(15) 351
3.1 The Draft Budget sets out the Commission’s proposals for EU expenditure in 2016. It is the first stage in the annual process of establishing the EU’s General Budget for the following year and provides the basis for negotiations between the two arms of the Budgetary Authority (the Council and the European Parliament). The context for the Draft Budget is determined by the Multiannual Financial Framework for the period 2014-20, which sets out annual ceilings for the six headings of budget expenditure.

3.2 In the Draft Budget for 2016 the Commission proposes commitment appropriations\(^30\) of €153.53 billion (£110.39 billion), which represents 1.04% of EU Gross National Income (GNI). For payment appropriations\(^31\), the Commission proposes €143.54 billion (£103.21 billion), or 0.98% of EU GNI.

3.3 On the basis of totals for the 2015 Budget which are not yet fully agreed, the Commission states that the Draft Budget represents a decrease in commitment appropriations of €8,413.3 million (£6,049.2 million) or 5.2% and an increase of €2,260.9 million (£1,625.6 million) in payment appropriations or 1.6% compared to 2015 levels. The margin\(^32\) under the Multiannual Financial Framework ceiling is €2,208.5 million (£1,587.9 million) for commitment appropriations and €1,143.5 million (£822.2 million) for payment appropriations.

3.4 The Interinstitutional Agreement on budgetary matters provides the possibility of finance for (“mobilisation of”) the EU Solidarity Fund, which releases emergency financial aid following a major disaster in a Member State or candidate country, and the Flexibility Instrument, which provides funding in a given financial year for clearly identified expenses which could not be covered by one or more budget headings without exceeding their expenditure ceilings. These two draft Decisions would mobilise the EU Solidarity Fund and the Flexibility Instrument for sums included in the Draft Budget.

3.5 The Commission has the option of publishing Amending Letters to update its Draft Budget while it is still subject to negotiation. This first Amending Letter for the 2016 Draft Budget concerns more certain estimates for the European Strategic Investment Fund, the legislation for which was agreed after publication of the Draft Budget.

3.6 The Government emphasises to us, in standard terms, its commitment to budgetary restraint and discipline, notes particularly the somewhat misleading basis of the Commission’s comparisons with the 2015 General Budget, notes that level of expenditure proposed is consistent with the Multiannual Financial Framework and that the margins under the Framework ceilings have increased compared with 2015 and says that, given that

\(^{30}\) Commitment appropriations set the limit of legal obligations that can be made in the budget year for activities that will lead to payments in the current and future budget years.

\(^{31}\) Payment appropriations are the amounts of funds available to be spent during the budget year, arising from commitments made in the current or preceding years.

\(^{32}\) The ‘margin’ refers to the difference between total commitment appropriations/payment appropriations in the DB and total commitment appropriations/payment appropriations provided for in the MFF.
these budgetary matters are decided by QMV, it will need to work closely with like-minded budget disciplinarian Member States to deliver the best deal possible for the UK.

3.7 The Government tells us that the Council is likely to adopt its position on the Draft Budget for negotiation with the European Parliament in early September. It says that the Council position reduced the Commission proposal by €0.56 billion (£0.40 billion) in commitment appropriations and €1.42 billion (£1.02 billion) in payment appropriations, while backing the funds proposed by the Commission for priority areas, resulting in an overall position of €153.30 billion (£110.22 billion) in commitment appropriations and €142.10 billion (£102.1 billion) in payment appropriations. It states that this left a €2.6 billion (£1.87 billion) margin below both the annual commitment and payment appropriation ceilings and that, compared to the current 2015 Budget, this would represent a decrease of 5.4% in commitment appropriations and a minor increase of 0.59% in payment appropriations.

3.8 Related to the annual budget cycle is reconciliation of Member State revenue contributions as GNI numbers become more certain. This Draft Amending Budget for the 2015 General Budget concerns a routine adjustment of revenue calculations and, more importantly treatment of a significant retrospective GNI based contribution attributed to the UK. The Government explains to us how this Draft Amending Budget would affect the UK’s net contributions for 2015.

3.9 It has been the custom of our predecessors to recommend the Draft Budget for debate before the Council concludes its first reading and we intend to continue that very appropriate practice. Accordingly, we recommend that the documents for the 2016 General Budget be debated in European Committee B. Our inevitably late consideration of these documents mean that a debate is not possible before the Summer Recess. But despite the Government’s expectation we have been able consider these proposals before the Council’s first reading of the Draft Budget is completed. So it is important that, if at all possible, the debate takes place before the Council finalises its first reading, which we understand will be early in September.

3.10 We suggest that amongst the matters Members might explore during the debate are:

- the degree of support the Government is receiving from other Member States for a disciplined approach to next year’s EU Budget;
- the significance for budgetary discipline of the proposed mobilisation of the EU Solidarity Fund and the Flexibility Instrument; and
- the consequences of the Draft Budget for budget lines from which the UK particularly benefits.

3.11 As for the Draft Amending Budget, we recommend that it should too be debated, on the same occasion, in European Committee B. In addition to exploring the
background to this issue Members might wish to establish what the year-end UK net contribution is likely to be as a result of the present and expected DAB adjustments.

**Full details of the documents:**  (a) Draft Decision on mobilisation of the EU Solidarity Fund to provide for payment of advances in the 2016 Budget: (36821), 9404/15, COM(15) 281; (b) Statement of Estimates of the Commission for 2016 (Preparation of the 2016 Budget): Political Presentation: (36899), —, SEC(15) 240; (c) Statement of Estimates of the Commission for 2016 (Preparation of the 2016 Budget): Financial programming 2017-2020 (Provisional figures): (36900), —, SEC(15) 240; (d) Draft Decision on the mobilisation of the Flexibility Instrument for the provisional measures in the area of international protection for the benefit of Italy and Greece: (36906), 9403/15, COM(15) 238; (e) Letter of amendment No 1 to the draft general budget 2016: Financing of the EFSI Guarantee Fund: (36955), 10343/1/15, COM(15) 317; (f) Draft Amending Budget No. 6 to the General Budget 2015: (36988), —, COM(15) 351.

**Background**

3.12 The Draft Budget (DB) sets out the Commission’s proposals for EU expenditure in 2016. It is the first stage in the annual process of establishing the EU’s budget for the following year and provides the basis for negotiations between the two arms of the Budgetary Authority (the Council and the European Parliament). The Economic and Financial Affairs (ECOFIN) Council expects to negotiate and agree its first reading position on the DB in early September (the TFEU requires the Council to complete this stage by 1 October), which will then be forwarded to the European Parliament. The European Parliament will in turn discuss and agree its first reading position by late October (the TFEU deadline is 42 days after the Council adopts its position). If it proposes further amendments to those made by the Council, a conciliation committee would be convened to meet over 21 days, largely in late October and early November, with the aim of reaching agreement on the 2016 General Budget. This will be subject to separate approval by both the Council and the European Parliament, after which the EU’s General Budget for 2016 will be deemed to have been adopted.

3.13 The context for the DB is determined by the Multi-annual Financial Framework (MFF) for the period 2014-20, which sets out annual ceilings for the six headings of budget expenditure:

- Smart and inclusive growth;
- Sustainable Growth: natural resources;
- Security and Citizenship;
- Global Europe;
- Administration; and
- Compensation (temporary measures previously connected to the accession of Croatia).
3.14 During the course of negotiation of the EU General Budget for the following year the Commission may present Amending Letters to its DB.

3.15 During the course of a financial year the Commission presents to the Budgetary Authority Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current EU General Budget — there are normally about ten DABs each year.

The Commission’s Draft Budget

3.16 The DB for 2016 is the second of the 2014-20 MFF. As well as programme expenditure, it includes draft estimates of required appropriations for the EU Institutions — the European Parliament, the Council, the Office of the President of the Council (the latter two being treated as one institution for the purpose of establishing the budget), the Commission, the European Court of Justice, the European Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Ombudsman and the European Data Protection Supervisor and the European External Action Service.

3.17 The DB consists of two main documents: a political presentation (including information on objectives and spending levels for each major EU programme), document (b), and details of the financial programming over the MFF (in provisional figures), document (c).

3.18 The tripartite Interinstitutional Agreement (IIA) of December 2013 on budgetary discipline, on cooperation in budgetary matters and on sound financial management provides the possibility of finance for (“mobilisation of”) the EU Solidarity Fund, which releases emergency financial aid following a major disaster in a Member State or candidate country, and the Flexibility Instrument, which provides funding in a given financial year for clearly identified expenses which could not be covered by one or more budget headings without exceeding their expenditure ceilings.

3.19 The Explanatory Memorandum of 11 June 2015 provided to us by the Financial Secretary to the Treasury (Mr David Gauke) focuses on the political presentation of the DB for 2016, document (b), but also touches on the MFF financial programming and the EU Solidarity Fund and Flexibility Instrument draft Decisions, documents (a), (c) and (d). We annexe to this chapter two tables, from that Explanatory Memorandum, illustrating, in euros and sterling, the key DB figures. In his second Explanatory Memorandum, of 14 July 2015, the Minister describes and discusses the Commission’s Amending Letter, document (e).

Overview

3.20 The political presentation is broken down into five sections. Section 1 covers the Commission’s priorities for the 2016 DB, which it then places within the context of the MFF in Section 2. Section 3 breaks down the key aspects of the DB on a heading-by-heading basis. Details of cross-cutting issues are presented in Section 4 (‘horizontal issues’).
Section 5 consists of annexes, which include the 2014-2020 MFF in current prices (Annex I), the DB broken down by policy area and financial framework headings (Annex II), details of the intended contribution made by the DB to climate tracking and biodiversity (Annex III) and an overview of human and financial resources requested for bodies set up by the EU, or agencies (Annex IV).

3.21 The Commission states that the key objective of the DB is to ‘provide a new boost for jobs, growth and investment’. Three major new elements are included in the DB:

- measures relating to the proposed creation of the European Fund for Strategic Investment (EFSI)\(^ {33} \) under Sub-Heading 1a — in addition to redeployment from existing EU funding, the Commission proposes to complete its financing for 2016 by making use of the Global Margin for Commitments, for an amount totalling €351.4 million (£252.7 million), though at the time of the DB’s publication negotiations on the EFSI were ongoing;

- the proposed mobilisation of the Flexibility Instrument totalling €124.0 million (£89.2 million) for additional funding under Heading 3 to provide temporary support to asylum and migration measures in Italy and Greece; and

- the proposed reinforcement of operational programmes and decentralised agencies under Heading 3 amounting to €123.2 million (£88.6 million) in commitment appropriations to respond to migratory pressures in 2016, building on related measures proposed in DAB No. 5/2015.\(^ {34} \)

**Key figures**

3.22 The Commission proposes commitment appropriations of €153,529.5 million (£110,387.7 million), which represents 1.04% of EU Gross National Income (GNI). For payment appropriations, the Commission proposes €143,541.5 million (£103,206.3 million), or 0.98% of EU GNI.

3.23 Including Amending Budget No. 1/2015,\(^ {35} \) and excluding as yet unadopted DABs for 2015, the current 2015 budget totals €161,800.4 million (£116,334.5 million) in commitment appropriations and €141,214.0 million (£101,532.9 million) in payment appropriations. When comparing any figures from the DB to the 2015 Budget, the Commission includes Amending Budget No. 1/2015, and unadopted DABs, DAB No. 1/2015,\(^ {36} \) DAB No. 3/2015,\(^ {37} \) DAB No. 4/2015\(^ {38} \) and DAB No. 5/2015.\(^ {39} \) This corresponds

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\(^ {34} \) (36881) 9000/15: see chapter 4 of our Second Report HC342-ii (21 July 2015).


\(^ {37} \) (36795) 8014/15: see chapter 82 of this Report.

\(^ {38} \) (36796) 8015/15: see chapter 34 of this Report.
3.24 The DB includes €124.0 million (£89.2 million) in commitment appropriations and €45.7 million (£32.9 million) in payment appropriations for the Flexibility Instrument and €351.4 million (£252.7 million) in commitment appropriations for the Global Margin for Commitments. The DB also includes €524.6 million (£377.2 million) in commitment appropriations for ‘other Special Instruments’: €309.0 million (£222.2 million) for the Emergency Aid Reserve, €165.6 million (£119.1 million) for the European Globalisation Adjustment Fund and €50.0 million (£36.0 million) for the EU Solidarity Fund. Similarly, it includes €389.0 million (£279.7 million) in payment appropriations for such instruments: €309.0 million (£222.2 million) for the Emergency Aid Reserve, €30.0 million (£21.6 million) for the European Globalisation Adjustment Fund and €50.0 million (£36.0 million) for the EU Solidarity Fund.

**Detail of proposed expenditure by budget Heading**

3.25 Sub-Heading 1a — Competitiveness for growth and jobs:

- total commitment appropriations of €18,618.4 million (£1,307.4 million), representing an increase of 6.1% compared to 2015;
- total payment appropriations of €17,518.1 million (£1,259.5 million), representing an increase of 11.4% compared to 2015; and
- a margin of €200.0 million (£143.8 million) beneath the commitment appropriations ceiling.

3.26 The main changes under Sub-Heading 1a include:

- an increase in payment appropriations for the Connecting Europe Facility of €225.2 million (£161.9 million) or 15.5%, for Education, Training and Sport (Erasmus+) of €418.2 million (£300.7 million) or 30.1% and for the Common Strategic Framework for Research and Innovation (including Horizon 2020) of €978.9 million (£703.8 million) or 10.5%;
- a decrease in payment appropriations for large infrastructure projects of €180.7 million (£125.2 million) or 9.6% and for energy projects to aid economic recovery of €230.6 million (£146.4 million) or 56.7%; and

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23 Op cit.
3.27 Sub-Heading 1b — Economic, social and territorial cohesion:

- total commitment appropriations of €50,821.7 million (£36,540.8 million), representing a decrease of 15.9% compared to 2015. The significant decrease in commitment appropriations arises from the impact of the reprogramming of commitment appropriations which remained unused in 2014 due to the late adoption of certain operational programmes under Sub-Heading 1b, Heading 2 and Heading 3. When neutralising the impact of the reprogramming exercise, total commitment appropriations for 2016 represent an increase of 2.5% compared to 2015;
- total payment appropriations of €49,060.1 million (£35,274.2 million), representing a decrease of 4.0% compared to 2015; and
- a margin of €15.3 million (£11.0 million) beneath the commitment appropriations ceiling.

3.28 The main changes under Sub-Heading 1b include:

- an increase in payment appropriations for transition regions of €1,900.5 million (£1,366.5 million) or 212.9%, for competitiveness (more developed regions) of €1,739 million (£1,250.3 million) or 25.9% and for the Common Strategic Framework for Research and Innovation of €978.9 million (£703.8 million) or 10.5%; and
- a decrease in payment appropriations for the Cohesion Fund of €5,902.3 million (£4,243.8 million) or 47.0% and for European Territorial Cooperation of €180.2 million (£129.6 million) or 15.7%.

3.29 Heading 2 — Sustainable growth: natural resources:

- total commitment appropriations of €63,104.4 million (£45,372.1 million), representing a decrease of 1.2% compared to 2015;
- total payment appropriations of €55,856.9 million (£40,161.1 million), representing a decrease of 0.2% compared to 2015; and
- a margin of €1,157.6 million (£832.3 million) beneath the commitment appropriations ceiling.

3.30 The main changes under Heading 2 include:

- an increase in payment appropriations for the European Agricultural Fund for Rural Development of €699.6 million (£503.0 million) or 6.3%; and
• a decrease in payment appropriations for market related expenditure and direct payments (CAP Pillar 1) of €588.3 million (£423.0 million) or 1.4% and for the European Maritime and Fisheries Fund of €238.6 million (£171.6 million) or 24.9%.

3.31 Heading 3 — Security and Citizenship:
• total commitment appropriations of €2,670.0 million (£1,919.7 million), representing an increase of 9.7% compared to 2015;

3.32 The main changes under Heading 3 include:
• an increase in payment appropriations for the Asylum, Migration and Integration Fund of €133.7 million (£96.1 million) or 35.0%, for the Internal Security Fund of €42.4 million (£30.5 million) or 15.5%, for food and f eed of €46.5 million (£33.4 million) or 21.6% and for decentralised agencies (for example FRONTEX) of €46.0 million (£33.1 million) or 8.3%; and
• a decrease in payment appropriations for pilot projects and preparatory actions of €5.8 million (£4.2 million) or 32.1%.

3.33 Heading 4 — Global Europe:
• total commitment appropriations of €8,881.7 million (£6,385.9 million), representing an increase of 5.6% compared to 2015;

3.34 The main changes under Heading 4 include an increase in payment appropriations for the Instrument for Pre-accession Assistance of €523.8 million (£376.6 million) or 33.7%, for the European Neighbourhood Instrument of €539.3 million (£387.8 million) or 34.1%, for the Development Cooperation Instrument of €587.2 million (£422.2 million) or 27.4% and for humanitarian aid of €147.3m (£105.9m) or 16%. There are no significant decreases in payment appropriations proposed under Heading 4.

3.35 Heading 5 — Administration:
• total commitment appropriations of €8,908.7 million (£6,405.4 million), representing an increase of 2.9% compared to 2015;
• total payment appropriations of €8,910.2 million (£6,406.4 million) representing an increase of 2.9% compared to 2015; and

• a margin of €574.3 million (£412.9 million) beneath the commitment appropriations ceiling.

3.36 The main changes under Heading 5 include an increase in payment appropriations for pensions and European Schools of €93.3 million (£67.1 million) or 5.4% and administrative expenditure of the institutions of €154.9 million (£111.2 million) or 2.2%. There are no significant decreases in payment appropriations proposed under Heading 5.

3.37 Heading 6 — Compensations. This heading was intended to help improve cash-flow in the national budget of Croatia, agreed during accession negotiations. The facility was limited to the year 2014 only. As a result, as in 2015, there are neither commitment nor payment appropriations under Heading 6.

**Mobilisation of the Flexibility Instrument:**

3.38 The 2014-2020 MFF Regulation allows for the mobilisation of the Flexibility Instrument to allow the financing of clearly identified expenditure which could not be financed within the limits of the ceilings available for one or more headings of the MFF. Having examined all possibilities for re-allocating appropriations, the Commission proposes, with a draft Decision, document (d), mobilisation (use) of the Flexibility Instrument. This mobilisation, incorporated into the DB, would total €124.0 million (£89.2 million) of commitment appropriations and €45.7 million (£32.9 million) of payment appropriations, and is intended to complement the financing of a set of temporary asylum measures to help relieve pressure on the asylum and migration systems of Italy and Greece. The total cost budgeted in 2016 for these measures is estimated at €150.0 million (£107.9 million).

**Mobilisation of the EU Solidarity Fund:**

3.39 The Commission also proposes with another draft Decision, document (a), mobilisation of the EU Solidarity Fund to provide €50 million (£35.6 million) in commitment and payment appropriations for inclusion in the DB.

**Amending Letter No. 1**

3.40 This Amending Letter, document (e), amends the DB to reflect the impact of the political agreement on the financing of the EFSI reached between the Council and the European Parliament, which facilitated the adoption of the EFSI Regulation on 24 and 25 June. Since this political agreement was reached after publication of the DB, this Amending Letter serves to update the relevant lines of the Commission’s proposal for 2016. The Council and the European Parliament are expected to take the revised figures into account in their deliberation of the 2016 General Budget.

3.41 The following changes have been made to the DB:
• redeployment of commitment appropriations from Horizon 2020 would be reduced by €153 million (£108.8 million): from €317.9 million (£226.2 million) to €164.9 million (£117.3 million);

• redeployment of commitment appropriations from the Connecting Europe Facility would be reduced by €150 million (£106.7 million): from €650 million (£462.4 million) to €500 million (£355.7 million);

• these redeployments would be compensated by a corresponding increase in the use of the unallocated margin under Sub-Heading 1a and the Global Margin for Commitments;

• the unallocated margin left under Sub-Heading 1a would decrease by €111.4 million (£79.2 million): from €200 million (£142.3 million) to €88.6 million (£63 million);

• use of the Global Margin for Commitments would be increased by €191.6 million (£136.3 million): from €351.4 million (£250 million) to €543 million (£386.3 million).

3.42 The net impact of these changes in 2016 would be an increase of €303 million (£215.6 million) in commitment appropriations. The overall level of payment appropriations would remain unchanged.

**Draft Amending Budget No. 6/2015**

3.43 DAB No. 6/2015, document (f), provides for a revision in the forecast of Member State Traditional Own Resources (TOR) contributions (customs duties and sugar levies), revisions to Member State hypothetical harmonised VAT-bases and GNI-bases and the budgeting and financing of revisions to the UK abatement. The combined effect of the changes proposed in the DAB reduce the overall level of contributions required from Member States by €1.4 billion (£1.1 billion) from the adopted General Budget for 2015 and change the contributions of Member States.

**Revision of the forecast of TOR, VAT and GNI bases**

3.44 The revenue of the EU General Budget is largely derived from the EU’s Own Resources, which comprise TOR contributions, contributions based on a hypothetical harmonised VAT base, and GNI-based contributions, as set out in a document known as the Own Resources Decision (ORD). The ORD sets out the system by which Member States finance the annual EU Budget.

3.45 In line with established practice, this DAB presents updated forecasts for VAT-based and GNI-based contributions, as well as revisions to forecasts of TOR. The changes to

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40 Contributions are calculated under ORD2007 (Council Decision 2007/436/EC, Euratom of 7 June 2007) until ORD2014 (Council Decision of 2014/335/EU, Euratom of 26 May 2014) comes into force. ORD2014 will enter into force when all Member State have ratified the decision, but will apply retrospectively from 1 January 2014.
Member State VAT and GNI-bases from which the revised contributions flow were agreed at a meeting of the Advisory Committee on Own Resources (ACOR) on 19 May. The revised TOR forecasts were also agreed at this meeting.

3.46 Compared with the assumptions used for the 2015 General Budget, based on VAT bases and GNI bases agreed by ACOR on 19 May 2014, both the total uncapped VAT-base and the total capped VAT base\(^1\) have been revised down by 1.3% and the total GNI base has been revised up by 0.4%. Forecast custom duties have increased by 6.8% on the estimate used in the 2015 General Budget. There has been no adjustment to the forecast of sugar levies provided in the in the 2015 General Budget.

3.47 The DAB shows that UK shares of EU VAT and GNI bases have increased from the 2015 General Budget — the share of the EU VAT base has increased from 16.4% to 18.4% and the share of the EU GNI base has increased from 15.4% to 16.4%.

**UK abatements (2011 – 2014)**\(^2\)

3.48 This DAB includes a definitive calculation of the 2011 UK abatement, which is €198 million (£167 million) higher than the figure budgeted in Amending Budget No. 4/2014. It includes revisions to the 2012, 2013 and 2014 UK abatements:

- the 2012 abatement has been revised up by €512 million (£418 million) on the calculation provided in Amending Budget No. 6/2013;
- the 2013 abatement has also been increased, a change of €381 million (£318 million) on the figure provided in Amending Budget No. 4/2014; and
- the revised calculation for 2014 sees a reduction of €889 million (£693 million) from the initial figure provided in the 2015 General Budget.

**The Government’s view**

3.49 In his first Explanatory Memorandum the Minister introduces, in regularly repeated terms, his comments, by saying that:

- the Government has been clear that it wants to see real budgetary restraint in the EU over the coming years, as well as the longer term, in order to reduce costs to the UK and to UK taxpayers; and
- to deliver this goal, the Government is committed to continue to work hard to limit EU spending, reduce waste and inefficiency in all areas of the budget, and to ensure that where EU funds are spent they deliver the best possible value for money for taxpayers.

3.50 The Minister then comments that:

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\(^1\) A Member State’s VAT base is capped at 50% of its GNI base.

\(^2\) Converted using historical exchange rates.
the Government notes that the proposed level of expenditure outlined in the DB is consistent with the annual ceiling for commitment and payment appropriations set out in the MFF;

it believes that there should be a significant margin between the agreed budget and the annual ceiling, as this represents sound budgetary management;

with a commitment appropriations margin of €2,208.5 million (£1,587.9 million) and a payment appropriations margin of €1,143.5 million (£822.2 million), the Government notes that the proposed margins have increased compared to 2015;

while the Government supports the principle of the EU Solidarity Fund and, in this instance, the objectives of the mobilisation of the Flexibility Instrument, it has been consistently clear that it wants to see real budgetary restraint in the EU in order to avoid unaffordably high costs to the UK; and

the Government’s view is that the Commission should always look first to reallocate funds from within existing agreed budgets to meet emerging pressures.

3.51 The Minister gives a brief summary of the Government’s views on the Headings, saying that:

the Government welcomes the DB’s focus on growth, jobs and competitiveness programmes which Sub-Heading 1a (Competitiveness for Growth and Jobs) supports;

this use of EU funding represents some high value spend and benefit to UK companies;

the Government welcomes the Commission’s measured approach to payments for Sub-Heading 1b (Economic, social and territorial cohesion);

the level of payment appropriations requested sees a decrease of 4% compared to 2015;

the Commission states that the level of payments identified will be sufficient to phase out the backlog of unpaid payment claims relating to 2007-2013 programmes by end-2016, as well as to ensure the proper implementation of 2014-2020 programmes;

payment appropriations should be set at the minimum necessary to fund programme implementation, and based on realistic implementation rates and estimates of Member States’ absorption capacity;

the Government notes that in the DB the Commission proposes that Heading 2 (Sustainable Growth: Natural Resources) should remain at approximately 40% of the overall budget, and continues to believe that much of this expenditure, in particular Pillar 1 of the CAP, represents very poor value for money;
• the Government welcomes, however, the fact that, across the 2014-2020 MFF period, overall CAP spending will fall by 13% compared with the previous MFF period;

• the Government notes that Heading 3 (Security and Citizenship) will see a significant increase in payment appropriations compared to the 2015 Budget in order to fund emergency measures in relation to asylum and migration;

• instruments funded through Heading 4 (Global Europe) need to be funded appropriately if the EU is to deliver on its priorities of poverty reduction, building stability and security in external countries and increasing the prosperity of the EU through stronger ties with external countries;

• the Government is disappointed that Heading 5 (Administration) payments have marginally increased in the DB, meaning that Heading 5 remains around 6% of the total budget; and

• greater budgetary restraint is still needed on administration — in particular, it is important that cost reductions result from the institutions’ commitment to reduce staff by 5% from 2013-2017.

3.52 The Minister also notes two further separate points:

• the DB is agreed by QMV and the Government will need to work closely with like-minded budget disciplinarian Member States to deliver the best possible deal for the UK; and

• according to the DB the UK’s post-abatement financing share in 2016 is 13.9%.

3.53 In his second Explanatory Memorandum, on the Amending Letter, document (e), the Minister says that:

• the Government supports the establishment of the EFSI to raise growth prospects across the EU and boost private sector investment;

• it welcomes that the Regulation is clear that the establishment of the EFSI is fully consistent with the terms of the Multiannual Financial Framework for 2014-20;

• as part of the political agreement reached on the EFSI, the Government welcomes the protection of the ‘Strengthening frontier research in the European Research Council’, ‘Marie-Sklodowska-Curie actions’ and ‘Spreading excellence and widening participation’ programmes;

• these programmes will not contribute to the redeployment from Horizon 2020 for the provisioning of the EFSI Guarantee Fund;

• the UK, along with all other Member States, supported the final EFSI text in COREPER on 25 June; and
3.54 In his Explanatory Memorandum of 20 July 2015 on DAB No.6/2015, document (f), the Minister says that:

- this DAB updates the Commission’s forecasts of contributions for 2015, and will be reflected in changes for Member States contributions for 2015 once the DAB is adopted;
- these changes are routinely anticipated in Office for Budget Responsibility (OBR) forecasts, for the purpose of forecasting UK public expenditure;
- the changes in this DAB have already been anticipated in the OBR’s most recent forecast;
- changes to the GNI base and VAT base forecasts will affect payments made to the EU in 2015;
- UK TOR payments are calculated from the UK’s actual customs duties and sugar levies and will not be based on the forecasts in this DAB;
- the Commission’s upward revisions to calculations of UK abatements between 2011 and 2014 reduces the UK’s post abatement contributions by €202 million (£208 million);
- compared to the 2015 Budget, the DAB shows a total increase in the UK’s gross post abatement contributions of €1.3 billion (£1.0 billion), of which €0.4 billion (£0.3 billion) is due to upward revisions to TOR contributions, €0.3 billion (£0.2 billion) due to VAT-based contributions, €0.7 billion (£0.5 billion) due to GNI-based contributions, and €0.2 billion (£0.2 billion) due to revisions proposed; and
- this moves the Commission’s estimates closer to the OBR’s July 2015 expectation of UK contributions over 2015 — changes to both forecasts have been driven by an increase in the UK’s forecast share of the EU economy.

The Minister’s letter of 15 July 2015

3.55 The Minister writes further to his first Explanatory Memorandum on the DB to inform us that the Council’s position on the Commission’s proposals was agreed by COREPER on 8 July. He says that:

- this position reflects in-principle Council agreement and will trigger a formal Council vote by written procedure, which will conclude in early September; and
- the Government does not expect any objections to the agreement to arise during written procedure as all Member States supported the proposal in COREPER, with the exception of Denmark and the Netherlands, who placed scrutiny reserves but fully intend to lift these and support the Council position in the written procedure.
3.56 The Minister reports that:

- the Council position reduced the Commission proposal by €0.56 billion (£0.40 billion) in commitment appropriations and €1.42 billion (£1.02 billion) in payment appropriations, while backing the funds proposed by the Commission for priority areas;

- this resulted in an overall position of €153.3 billion (£110.22 billion) in commitment appropriations and €142.1 billion (£102.1 billion) in payment appropriations;

- this left a €2.6 billion (£1.87 billion) margin below both the annual commitment and payment appropriation ceilings; and

- compared to the current 2015 Budget, the Council position on the 2016 Budget would represent a decrease of 5.4% in commitment appropriations (largely caused by the represion of commitment appropriations that took place last year) and a minor increase of 0.59% in payment appropriations.

3.57 The Minister says that the Council made reductions to the DB across all of the budget headings, setting these out as follows:

- in Sub-Heading 1a, the Council reduced the Commission proposal by €140 million (£100.66 million) in commitment appropriations and €435 million (£312.77 million) in payment appropriations, while preserving the funds required for the EFSI, COSME, to support small and medium sized enterprises, and Erasmus+ to improve youth employability;

- this leaves a commitment appropriation margin of €230 million (£165.37 million) under the Sub-Heading;

- in Sub-Heading 1b, the Council reduced the Commission’s proposal by €3 million (£2.16 million) in commitment appropriations and €220 million (£158.18 million) in payment appropriations, while still being wholly consistent with the payment plan as agreed between the institutions earlier this year;

- this leaves a commitment appropriation margin of €19 million (£13.66 Million) under the Sub-Heading;

- in Heading 2, the Council reduced the Commission’s proposal by €200 million (£143.80) in commitment appropriations and €250 million (£179.75 million in payment appropriations;

- €200 million (£143.80) of these cuts in both payment and commitment appropriations were borne by the European Agriculture Guarantee Fund, which is market related expenditure and direct payments;

- this leaves a commitment appropriation margin of €1.36 billion (£0.98 billion) under this Heading:
in Heading 3, the Council reduced the Commission’s proposal by €25 million (£17.98 million) in commitment appropriations and €34 million (£24.45 million) in payment appropriations, while protecting all funding for programmes dealing with migration pressures;

as the Commission’s proposal mobilised the Flexibility Instrument (as in document (d)) above the Heading 3 commitment appropriations ceiling, the margin in Heading 3 remains zero even with these reductions;

in Heading 4, the Council reduced the Commission’s proposal by €163 million (£117.20 million) in commitment appropriations and €450 million (£323.55 million) in payment appropriations, while protecting humanitarian aid and the Common Foreign and Security Policy instrument which allow flexibility to respond to short term priorities;

this still results in 22% growth in this Heading compared to last year;

this leaves the Heading commitment appropriations margin at €425 million (£305.58 million), again, leaving greater flexibility for Heading 4 to respond to unforeseen external events; and

in Heading 5, the Council reduced the Commission’s proposal by €31 million (£22.29 million) in both payment and commitment appropriations — the Government welcomes this cut in the administrative budget of the EU.

3.58 Reminding us that, as he had said in his original Explanatory Memorandum, the Commission’s DB was consistent with the 2014-2020 MFF, the Minister comments that:

the Council’s position further increased the overall margins available in 2016, allowing greater flexibility to respond to unforeseen needs in 2016, and in future years;

the Government judges that the Council position supports the long term delivery of the MFF; and

the Government therefore supported the Council position in COREPER and intends to formally vote in favour in the written procedure.

3.59 The Minister continues that:

“I recognise that, regrettably, this constitutes a scrutiny override. However, as your Committee has not yet reconvened and won’t be able to scrutinise the proposal before the written procedure closes, and that supporting this Council position places us in a stronger position for the autumn negotiations on the budget, I believe that it was in the UK’s interests to support the Council position at this time.”
3.60 In this letter the Minister also discusses DAB No.6/2015, document (f), which concerns the rebate the UK will receive on the 2014 surcharge payment.\textsuperscript{43} He asserts that this is important in a number of ways. He says that, first, the DAB confirms the rebate the UK will receive its surcharge payment following the Chancellor’s agreement last year and that this rebate will be paid simultaneously in the same year as making the UK payment — the normal procedure is for the rebate to be paid with a year’s lag. The Minister says that, secondly:

- the DAB sets out that the UK will receive a higher rebate than originally estimated by the Commission last autumn;
- its previous estimate was for a rebate of around €1 billion (£0.72 billion), and the OBR included a figure of £0.8 billion in its Economic and Fiscal Outlook for the 2014 Autumn Statement;
- the DAB confirms the rebate at €1.1 billion, which represents around £0.9 billion at the relevant exchange rates;
- this means that the total net surcharge payment from the UK to the EU will be under £0.8 billion, less than half of the original bill of £1.7 billion; and
- this is, again, a reduction to the net payment of £0.9 billion forecast by the OBR in its Autumn Statement 2014 publication.

3.61 The Minister recalls that in December 2014 he explained to the predecessor Committee that the process for paying the different transfers relating to the surcharge is being administered with the other standard monthly EU budget transfers, and aggregated into net payments.\textsuperscript{44} He then sets out that:

- the agreement on the surcharge meant the UK would make two payments to the EU, and there would be various repayments, including the exceptional application of the rebate on the surcharge;
- these now sum to the net payment of under £0.8 billion;
- the payment profile has been updated since December;
- the Commission paid the UK the first tranche of its repayment from the surcharge, worth £0.5 billion, in February;
- this was earlier than expected, and well in advance of the UK making any payments to the EU;
- the Government’s original assumption was that the UK would not receive any repayments from the EU ahead of it making payments;


\textsuperscript{44} Ibid.
the Government paid the first of the UK’s instalments, £435 million, to the
Commission, at the beginning of July, and will pay the balance in September;
as well as the publication of DAB No.6/2015, the Commission will publish a DAB
containing the second tranche of repayments from the surcharge;
these two DABs will then have to be adopted by the Council and the European
Parliament; and
the overall impact of this means that for the majority of the year, despite the fact
that the UK is a net contributor from the surcharge overall, the UK has been a net
recipient, and indeed the largest net recipient of all Member States.

Previous Committee Reports
None.

4 Economic and Monetary Union

Committee’s assessment
Politically important
Committee’s decision
Not cleared from scrutiny; recommended for debate
on the floor of the House; drawn to the attention of
the Treasury Committee

Document details
Commission Report, on behalf of the “Five
Presidents”, about Completing Europe’s Economic
and Monetary Union

Legal base
—
Department
HM Treasury
Document number
(36946), —

Summary and Committee’s conclusions

4.1 In recent years various measures have been discussed, and some introduced, to
strengthen economic governance in the eurozone and in the wider EU. Much of this
activity has been concerned with countering the present eurozone difficulties.

4.2 Building on earlier work the Commission President (Jean-Claude Juncker) now
presents this report, described as having been produced in close cooperation with the
Presidents of the European Council, the Eurogroup, the European Central Bank and the
European Parliament. After providing background information on the Economic and
Monetary Union, the first section of the report sets out an overview of sequencing,
describing how measures to improve the Economic and Monetary Union could be
implemented in three stages. The next sections of the report focus on four key pillars of
further EMU reform: towards Economic Union; towards Financial Union; towards Fiscal Union; and democratic accountability, legitimacy, and institutional strengthening.

4.3 The Presidents make clear that their report “focuses on the euro area, as countries that share a currency face specific common challenges, interests and responsibilities”. They also make clear that the process towards deeper Economic and Monetary Union should be “transparent and preserve the integrity of the Single Market in all its aspects”.

4.4 The Government welcomes the Presidents’ statement about the integrity of the single market and says that it does not want to stand in the way of the eurozone resolving its difficulties, economic and financial stability in the eurozone being in the UK’s interests. But the Government adds that it will not let the integration of the eurozone jeopardise the integrity of the single market or in any way disadvantage interests of non-euro Member States, such as the UK.

4.5 Although this report is targeted primarily at the eurozone, implementation of its proposals will inevitably have implications for non-eurozone Member States, including in relation to democratic accountability and legitimacy. So we recommend that the document be debated on the floor of the House, when Members might wish to examine the potential implications for the UK. We also draw the document to the attention of the Treasury Committee, particularly for the suggestions for a Fiscal Union and a Financial Union.

Full details of the document: Commission Report — Completing Europe’s Economic and Monetary Union: (36946), —.

Background

4.6 In recent years various measures have been discussed, and some introduced, to strengthen economic governance in the eurozone and in the wider EU. Much of this activity has been concerned with countering the present eurozone difficulties. In December 2012 a Report, Towards a genuine Economic and Monetary Union, commonly referred to as the “Van Rompuy Report” or the “Four Presidents’ Report”, was published for the European Council. It was prepared by the President of the European Council, “in close collaboration with” the Presidents of the Commission, the Eurogroup and the European Central Bank. The Report suggested measures, for implementation in three stages — 2012–2013, 2013–2014 and post-2014, under four pillars thought necessary for a genuine Economic and Monetary Union (EMU): an integrated financial framework, an integrated budgetary framework, an integrated economic policy framework and democratic legitimacy and accountability. The Report said that “the process towards a deeper EMU should be … fully compatible with the Single Market in all aspects”.

4.7 Since the Report implementation of these suggested measures has been concerned primarily with an integrated budgetary framework, especially the Banking Union, designed

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for the eurozone and any non-eurozone Member States which wish to participate. The Banking Union measures, principally the Single Supervisory Mechanism and the Single Resolution Mechanism, are based upon the EU’s “single rulebook” or common financial regulatory framework — the legislation which governs the financial sector across the entire EU.

4.8 However, the October 2014 Euro Summit called “for work to continue … to develop concrete mechanisms for stronger economic policy coordination, convergence and solidarity. It invited the President of the Commission, in close cooperation with the President of the Euro Summit, the President of the Eurogroup and the President of the European Central Bank, to prepare next steps on better economic governance in the euro area”.46 In response an analytic note, Preparing for next steps on better economic governance in the euro area,47 was presented for consideration at the February informal European Council.48

The document

4.9 Building on the February analytical note and earlier work the Commission President now presents this report, described as having been produced in close cooperation with the Presidents of the European Council, the Eurogroup, the European Central Bank and the European Parliament. (Consequently the report is commonly referred to as the Five Presidents’ Report.)

4.10 After providing background information on the EMU, the first section of the report sets out an overview of sequencing, describing how measures to improve the EMU could be implemented in three stages:

- Stage 1 (between 1 July and mid 2017) — relatively modest reforms to the priorities and procedures of the EU and eurozone;
- Stage 2 (from mid-2017 to 2025) — more substantial suggestions for stronger economic and political integration; and
- Stage 3 (2025 onwards) — a properly functioning EMU that other EU countries will want to join.

4.11 The next sections of the report focus on four key pillars of further EMU reform:

- towards Economic Union;
- towards Financial Union;
- towards Fiscal Union; and
- democratic accountability, legitimacy, and institutional strengthening.

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4.12 The report makes clear that it “focuses on the euro area, as countries that share a currency face specific common challenges, interests and responsibilities”. It also makes clear that the process towards deeper EMU should be “transparent and preserve the integrity of the Single Market in all its aspects”.

**Economic Union**

4.13 The Presidents argue that convergence between Member States to the highest levels of prosperity is “at the heart of our Economic Union”. They suggest that it follows that all eurozone Member States should pursue sound policies so that they can rebound quickly from short term shocks and are able to exploit their comparative advantage within the single market, thereby sustaining high levels of growth and employment. They add that much could be achieved through a deepening of the single market, which is important for all 28 Member States.

4.14 On Stage 1 the Presidents propose:

- creation of a eurozone system of Competitiveness Authorities;
- strengthened implementation of the Macroeconomic Imbalance Procedure;
- greater focus on employment and social performance; and
- stronger coordination of economic policies within a revamped European Semester.

4.15 For Stage 2 the Presidents propose formalising the convergence process, by agreeing a common set of high level standards that would be defined in EU legislation. They argue that these standards should focus primarily on:

- labour markets;
- competitiveness;
- business environment;
- public administrations; and
- certain aspects of tax policy (for example, corporate tax base).

**Financial Union**

4.16 The Presidents argue that a stronger Economic Union must be accompanied by the completion of a Financial Union, suggesting that this is because in a Monetary Union the financial system must be single or else the impulses from monetary policy will not be transmitted uniformly across Member States. They propose that in Stage 1 the Banking Union should be completed. This would include:
• full transposition of the Bank Resolution and Recovery Directive; setting up a bridge financing mechanism for the Single Resolution Mechanism’s Single Resolution Fund (SRF);

• implementing concrete steps towards a common backstop to the SRF;

• agreeing a common Deposit Insurance Scheme;

• improving the effectiveness of the process for direct bank recapitalisation in the European Stability Mechanism (ESM); and

• addressing the significant margin for discretion at the national level.

4.17 In also recommending launching of a Capital Markets Union for Stage 1, the Presidents:

• note the need to address the most important bottlenecks preventing the integration of capital markets in areas such as insolvency law, company law, property rights, and legal enforceability of cross-border claims;

• argue that this will require strengthening the tools to manage financial players’ systemic risks prudently, and strengthening the supervisory framework to ensure the solidity of all financial actors; and

• argue that this should ultimately lead to a single EU capital markets supervisor.

Fiscal Union

4.18 The Presidents argue that a key lesson from the crisis is that fiscal policies are a matter of vital common interest in a Monetary Union. They say that responsible national fiscal policies must perform a double function of ensuring that fiscal automatic stabilisers can operate to cushion country-specific economic shocks and ensure that the sum of national budget balances leads to an appropriate fiscal stance at the eurozone level.

4.19 For Stage 1 the Presidents propose an advisory European Fiscal Board, which would coordinate and complement the national fiscal councils set up in the context of the Council Directive 2011/85/EU on requirements for the budgetary frameworks of Member States, for the Stability and Growth Pact (SGP)’s excessive deficit procedure. Such a Board would provide public and independent assessment, at the EU level, of how budgets perform against the EU fiscal framework. The Presidents also argue that every Member State should stick to the fiscal rules, and that the forthcoming review of the ‘Six-Pack’ and ‘Two-Pack’ SGP legislation⁴⁹ should be an opportunity to improve clarity, transparency, compliance and legitimacy, while preserving their stability-oriented nature.

4.20 The Presidents propose that in Stage 2:

• a macroeconomic stabilisation function for the eurozone be set up, as “the culmination of a process of convergence and further pooling of decision making on national budgets”;

• this function could build on the European Fund for Strategic Investments;\(^{50}\)

• to avoid moral hazard, participation should be tightly linked to compliance with the common economic governance standards they suggest and to progress on convergence; and

• the function should be consistent with the current EU fiscal framework, and should not be an instrument for crisis management.

**Democratic accountability, legitimacy, and institutional strengthening.**

4.21 The Presidents argue that:

• greater responsibility and integration at the EU and eurozone level should go hand in hand with greater democratic accountability, legitimacy, and institutional strengthening;

• at the height of the crisis, far-reaching decisions had often to be taken in a rush, sometimes overnight;

• in several cases, intergovernmental solutions were chosen to speed up decisions or overcome opposition; and

• “now is the time to review and consolidate our political construct”.

4.22 The Presidents’ Stage 1 proposals include:

• reorganising the European Semester;

• strengthening European Parliament and national parliamentary oversight of the European Semester;

• increased cooperation between the European Parliament and national parliaments;

• taking steps towards a consolidated external representation of the eurozone; and

• strengthening the Eurogroup President and its support function.

4.23 For Stage 2 the Presidents:

• recommend integrating the ESM into EU law;

• argue that a genuine Fiscal Union will require more joint decision making on fiscal policy; and

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• suggest setting up a eurozone treasury accountable at the EU level.

The Government’s view

4.24 In his Explanatory Memorandum of 3 July 2015 the Financial Secretary to the Treasury (Mr David Gauke) introduces his remarks by saying that the Government notes that the report’s focus is the eurozone and that it will study the recommendations in the report in more detail. He continues that:

• the Government welcomes that the Presidents state that the process towards a deeper EMU should be “transparent and preserve the integrity of the Single Market in all its aspects”;

• the UK benefits from the single market and the Government does not want to stand in the way of the eurozone resolving its difficulties — economic and financial stability in the eurozone is in the UK’s interests; but

• the Government has been clear that it will not let the integration of the eurozone jeopardise the integrity of the single market or in any way disadvantage interests of non-euro Member States, such as the UK.

4.25 On timetabling the Minister tells us that:

• the report was discussed at the June European Council where leaders “took note of the report on the Economic and Monetary Union requested by the December 2014 European Council and asked the Council to rapidly examine it”; and

• the timetable for Council discussions is yet to be agreed.

Previous Committee Reports

None.
5 Financial assistance for Greece

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared from scrutiny; recommended for debate on the floor of the House

Document details
(a) Council Implementing Decision on granting short-term Union financial assistance to Greece
(b) Joint declaration by the Commission and the Council on the use of the EFSM
(c) Council Implementing Decision approving the adjustment programme of Greece

Legal base
(a) Article 3(2) Council Regulation (EU) No. 407/2010; —; QMV
(b) —
(c) Article 7(2) Regulation (EU) No. 472/2013; —; QMV of eurozone Member States, less Greece

Department
HM Treasury

Document Numbers
(a) (36987), 10991/15, —
(b) (36993), 10994/15, —
(c) (36994), 10992/15, —

Summary and Committee’s conclusions

5.1 On 13 July Eurogroup Ministers agreed a new financial support programme for Greece, to be financed in part from the eurozone’s European Stability Mechanism. However, to avoid further defaulting on some of its commitments, Greece needs bridging finance until the new programme can be put into place and has applied for assistance from the EU wide European Financial Stability Mechanism.

5.2 We have considered three documents responding to this situation: a Council Implementing Decision granting Greece bridge financing of €7.16 billion (£5.1 billion) from the European Financial Stability Mechanism, which includes protection for the financial interests of non-eurozone Member States; a statement from the Commission and the Council limiting future use of the European Financial Stability Mechanism and a Council Implementing Decision approving the economic and financial adjustment programme submitted by the Greek government.

5.3 The Government explains to us the background to these documents, how in its view the UK’s interests have been protected, and why it thought it necessary to override scrutiny.

5.4 These documents are an important development in attempts to resolve the Greek economic and financial crisis and the consequential impact on the eurozone. So we recommend that the documents be debated on the floor of the House. We suggest that,
in addition to the situation the documents seek to address, Members will also want to consider the wider implications of this use of the European Financial Stability Mechanism for political statements by the European Council.

Full details of the documents: (a) Council Implementing Decision on granting short-term Union financial assistance to Greece: (36987), 10991/15, —; (b) Joint declaration by the Commission and the Council on the use of the EFSM: (36993), 10994/15; (c) Council Implementing Decision approving the adjustment programme of Greece: (36994), 10992/15, —.

Background

5.5 In December 2010 the European Council agreed to a Treaty amendment, under Article 48(6) TEU, to allow the eurozone Member States to establish a European Stability Mechanism (ESM). As this mechanism was designed to safeguard the financial stability of the eurozone as a whole, the European Council agreed that Article 122(2) TFEU, under which the EU wide European Financial Stabilisation Mechanism (EFSM) had been established, would no longer be needed for such purposes. The Treaty amendment was adopted in March 2011. However, the EFSM Regulation was not formally amended to reflect this limitation.

5.6 On 13 July Eurogroup Ministers agreed a new, heavily conditioned, financial support programme for Greece, to be financed in part from the eurozone’s ESM. However, to avoid further defaulting on some of its commitments, Greece needs bridging finance until the new programme can be put into place.

The documents

5.7 On 8 July Greece requested stability support to be provided from the ESM through a loan for a duration of three years. A Eurogroup Summit on 13 July gave its approval, in principle, for negotiations to be pursued on a programme of stability support through the ESM. On 15 July the Greek government submitted a request to the EU for the EFSM to provide emergency short term financial assistance. The loans provided by the EFSM would allow it to pursue the negotiations on the ESM during July whilst also safeguarding its financial stability. The additional funds would be sufficient for Greece to make the scheduled bond repayments to the ECB and to clear its arrears to the IMF.

5.8 Greece also submitted a draft economic and financial adjustment programme to the Commission and Council in which it sets out the reforms it will adopt with a view to making its public finances more sustainable.

5.9 The Commission, in response to Greece’s request, proposed two Council Implementing Decisions to approve the economic and financial adjustment programme and to grant short term assistance to Greece through the EFSM. Accompanying these
proposals are a joint declaration of the Commission and Council on the future use of the EFSM and a declaration of the Eurogroup on transparency.

5.10 The Council Implementing Decision on granting short-term EU financial assistance to Greece, document (a), proposes, following a request from the Greek government that bridge financing of €7.16 billion (£5.1 billion) in loans be provided through the EFSM. The loans would be disbursed in two disbursements and will have a maximum maturity of three months.

5.11 This financial assistance aims to allow Greece to meet its financial obligations during July 2015, after which it will commence receiving financial assistance from the ESM. The first disbursement of ESM financial assistance to Greece, once agreed, will be used to repay the loans provided to Greece through the EFSM. A loan facility agreement will set out the detailed financial terms of the €7.16 billion financial assistance that Greece will receive. Disbursements under the EFSM are conditional on Greece adopting the measures stated in its adjustment programme and having agreement in principle from ESM Members for new financial assistance under the ESM.

5.12 Member States that are not members of the eurozone, through a legally binding arrangement, will be provided with liquid collateral amounting to their full exposure in case of a default. This means that non-eurozone Member States will have no contingent liability. A declaration of the Eurogroup on transparency commits to ensure transparency in their cooperation with non-eurozone Member States with regards, in particular, to discussions on the EU Budget and the EFSM.

5.13 The joint declaration by the Commission and the Council on the use of the EFSM, document (b), commits the Commission to revising the EFSM regulation in order to make the provision of collateral for non-eurozone Member States legally binding for any potential future use of the EFSM for a eurozone Member State.

5.14 The second Council Implementing Decision, document (c) approves the economic and financial adjustment programme submitted by the Greek government.

The Government’s view

5.15 In his Explanatory Memorandum of 20 July 2015 the Financial Secretary to the Treasury (Mr David Gauke) says:

“The Government has been clear that whilst Greece remains a member of the euro area, euro area Member States should be liable for all financial assistance for Greece and that non-euro area Member States, including the UK, should not be exposed to any risk.

“The Government successfully secured safeguards in the draft implementing decision ensuring that non-euro area Member States, including the UK, will carry no liability for assistance to Greece in case of a default.
“The Government welcomes the draft implementing decision setting out the legally binding arrangements through which collateral will be provided to cover the UK’s full liability in the event Greece is unable to make the repayment. This will ensure that no financial assistance can be disbursed until the collateral arrangements and accompanying legal work are firmly in place.

“The Government achieved the adoption of a joint declaration of the Commission and Council on the future use of the EFSM. This sets out safeguards with regards to the liability of non-euro area Member States, including the UK, under potential future financial assistance provided to euro area Member States. It is stated that the future use of the EFSM or any other instrument of a similar nature for the purpose of the financial stability of a euro area Member State must have a legally binding arrangement ensuring all non-euro area Member States bear no liability under the financial assistance through receiving equivalent collateral.

“The Government welcomes the Commission’s commitment to bring forward a proposal to amend the EFSM regulation to make the provision of collateral for non-euro area Member States legally binding on any potential use of the EFSM for a euro area Member State. The Commission commits to bring forward no new proposals for the use of the EFSM until the amendment to the regulation is complete.

“The declaration of the eurogroup on transparency is in conformity with the Government’s clear position that matters such as the EU budget and EFSM are to be discussed and decided upon in the Council, in which all Member States are represented.

“The Government has sought to be constructive and wants to see a stable solution in Greece. Through what have been tough talks, the Government has secured a deal which places an impregnable ring-fence around British taxpayers’ money with regards to emergency financing through the EFSM. The commitment to enshrine this principle in the EFSM regulation represents a strengthening of the protection of non-euro area countries, including the UK, in ensuring they hold no financial liability for financial assistance for euro area countries. It is for this reason that the Government supported the deal.”

5.16 On the financial implications the Minister says:

“The European Financial Stabilisation Mechanism (EFSM) provides loans to EU Member States through raising funds on the capital markets. The EU Budget acts a guarantee for the loans provided under the EFSM, which is only realised in the event of default. The UK, as a contributor to the EU Budget, holds a contingent liability for its share of the total liability arising from the EFSM in line with the UK’s pre-abatement share of the EU budget.

“The draft implementing decision on granting the financial assistance through the EFSM also provides safeguards for non-euro area Member States by ensuring that
they have legally binding access to collateral to cover the full amount of their exposure in case of a default by Greece.

“This collateral for non-euro area Member States will be provided from an account at the European Central Bank (ECB) provisioned with €1.8 billion (£1.3 billion) ECB profits and from €160 million (£114 million) from the first EFSM disbursement.

“EFSM financial assistance for Greece cannot be disbursed until the collateral arrangements and accompanying legal work are firmly in place.

“The first disbursement under the ESM, once agreed, will be used by Greece to repay the loans granted to the country under the EFSM.”

5.17 Earlier, in his letter of 17 July 2015 the Minister elaborated further about these developments, particularly in relation to the use of the EFSM and, as he asserted, “strengthened protections for the UK in the latest Greek bailout and any future bailouts of Eurozone countries”.

5.18 Noting that the financial situation in Greece was critical, the Minister said that:

- the eurozone Member States had reached agreement on the basis of a new financial assistance programme through the ESM, in which the UK has no liability;
- this was being negotiated as he wrote, with relevant parliamentary procedures taking place in Greece and other eurozone countries that week; and
- further, recognising its immediate financing needs to service its debt obligations and repay its arrears to the IMF, on 15 July the Greek Government requested a short-term EFSM programme to provide bridging finance until the ESM programme was in place.

5.19 The Minister continued that:

- the Government had sought to be constructive and wanted to see a stable solution to the Greek crisis;
- but it would not have been acceptable for it to have allowed UK taxpayers’ money to be on the line in what is an issue for the eurozone itself to resolve;
- following tough talks, the agreement reached on a Greek EFSM programme put in place an impregnable ring-fence around UK taxpayers’ money, which would not be at risk in any way;
- the Government had secured the same protections for all other non-eurozone Member States; and
- the agreements had established an important principle in EU law.

5.20 The Minister explained that first part of the protections was a legal agreement ensuring no financial liability for non-eurozone Member States as part of the proposed
The Minister then said that the proposed programme:

- is a €7.16 billion EFSM loan, with a three-month duration;
- the full amount of the EFSM loan should be repaid by the first tranche of the full eurozone programme, once agreed;
- as part of this, cash collateral, predominantly comprised of profits the eurozone received from the European Central Bank (ECB)'s Security Market Programme (that is, profits made by the ECB on its holdings of Greek bonds), equivalent to the full contingent liability of non-eurozone Member States (roughly 28% of the total), will be placed into an account managed by the ECB;
- it was written into the legally-binding articles of the Council Implementing Decision on the programme that the EFSM will not be disbursed until the collateral arrangements, and accompanying legal work, are firmly in place;
- this meant that the Government will have a legal right to access the UK’s share of this collateral in the event that Greece fails to repay the EFSM loan, thus ensuring no financial liability.

The Minister explained also that:

- the second part of the protections was a joint Commission and Council declaration, document (b), to amend the underlying EFSM Regulation to enshrine the principle that non-eurozone countries should bear no financial liability for financial assistance to eurozone countries;
- this made the provision of collateral for non-eurozone Member States, or a similar arrangement, legally binding on any future use of the EFSM; and
- this amendment must take place before the EFSM can be used again.

The Minister added that:

- more generally, the joint declaration states: “The Commission and the Council agree that any future use of the EFSM Regulation or any other instrument of a similar nature, for the purpose of safeguarding the financial stability of a Member State whose currency is the euro, will be made conditional upon arrangements (via collateral, guarantees or equivalent measures) being in place which ensure that no
financial (direct or indirect) liability will be incurred by the Member States which do not participate in the single currency”; and

- finally, in a statement alongside these agreements, the Eurogroup has committed “to ensure proper transparency and to strengthen cooperation with the non-euro area EU Member States” and “confirmed that all matters of general application, including the EU budget and the EFSM, are to be discussed and decided upon in the Council involving all Member States”.

5.24 The Minister concluded that:

- reflecting the urgency of the situation in Greece and the importance of securing strengthened protections, an expedited timetable had been necessary;
- Greece requested EFSM assistance on 15 July, and the Commission bought forward a formal proposal shortly thereafter;
- this was subject to immediate intensive negotiations;
- official level agreement was reached in principle on the afternoon of 16 July, following which Council written procedure was initiated with a deadline for agreement on 17 July — and Council agreement was reached; and
- he regretted that, in turn, that this necessitated a scrutiny override, but that he was convinced the strengthened protections for financial liability to the UK were in the national interest.

Previous Committee Reports

None.

6 European Agenda on Security

Committee’s assessment

Committee’s decision

Politically important

Not cleared from scrutiny; drawn to the attention of the Home Affairs Committee; for debate in European Committee B

Document details

Commission Communication: The European Agenda on Security

Legal base

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Department

Home Office

Document numbers

(36829), 8293/15, COM(15) 185
Summary and Committee’s conclusions

6.1 The Commission Communication, *The European Agenda on Security*, proposes a framework for cooperation between Member States, EU institutions and agencies for the period 2015–20 to tackle common threats to internal security, with a particular focus on organised crime, terrorism and cybercrime. It describes the measures already developed at EU level to support Member States in fulfilling their “front line responsibility for security” and calls for their full and effective implementation to ensure “better information exchange, increased operational cooperation and mutual trust”.52 The Agenda identifies a number of areas in which further measures may be necessary, for example, to counter radicalisation and to strengthen laws on “foreign fighters”, and sets out five principles to underpin all action:

- full compliance with fundamental rights, as well as the principles of necessity, proportionality and legality;
- transparency, accountability and democratic control, with the involvement of the European Parliament and national parliaments and the creation of a new EU Security Consultative Forum;53
- better application and implementation of existing EU instruments, supported by effective monitoring and peer evaluation to develop mutual trust;
- better inter-agency cooperation54 across all security-related policy areas; and
- greater coherence between the internal and external dimensions of security, underpinned by stronger engagement with neighbourhood countries, key strategic partners and international organisations.

6.2 The Commission has published a separate *European Agenda on Migration* which focusses specifically on threats to security stemming from the smuggling of migrants, human trafficking and border management.55

6.3 The Minister for Security (Mr John Hayes) welcomes the Commission’s focus on implementing existing EU measures and strengthening cooperation between EU institutions and agencies, Member States and national authorities. He agrees that terrorism, serious and organised crime, and cybercrime should remain as the EU’s strategic objectives for 2015–20, whilst emphasising that national security is the sole responsibility of Member States. The Minister’s detailed comments on the main elements of the Commission Communication, and areas of concern, are summarised later in this chapter.

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52 See p.2 of the Commission Communication.
53 The Forum would bring together Member States, the European Parliament, EU agencies, and representatives of civil society, academia and the private sector.
54 The most relevant EU agencies are Europol, the European Police College (CEPOL), the EU judicial cooperation agency (Eurojust), the agency for the management of operational cooperation at the EU’s external borders (Frontex), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the agency for large-scale IT systems (eu-LISA).
6.4 There is a clear sense of continuity in the actions proposed by the Commission in its European Agenda on Security for 2015–20 and its earlier EU Internal Security Strategy covering the period from 2010 to 2014. We note that the Minister expects the Conclusions to be agreed by the Justice and Home Affairs Council in June to set out the Council’s “key strategic aims” rather than simply to endorse the content of the Commission Communication. We ask the Minister to provide a copy of the Council Conclusions, highlighting any areas in which they depart from the principles and actions set out in the Communication and explaining the significance of any changes. We would also welcome further details on the “operational implementation plan” which the Council’s Standing Committee on Internal Security (COSI) will be invited to develop. We recommend that the Commission Communication should be debated in European Committee B once we have received this additional information.

6.5 Before the debate takes place, we ask the Minister to comment further on the “five principles” outlined in the first section of the Communication (and summarised above in our first paragraph) since he does not do so in his Explanatory Memorandum. In particular, we ask him to explain how “the specific role of national parliaments in the area of freedom, security and justice” will be reflected both in the legislative and non-legislative measures taken forward by the Commission and Council, given the likelihood that internal security measures will have some impact on individuals’ rights and privacy. We also ask the Minister whether he considers that there is a sufficient degree of “mutual trust” between Member States, as well as in their respective judicial systems, to warrant further, more intrusive internal security measures at EU level.

6.6 The UK has recently opted out of some of the existing measures highlighted in the Communication, notably the Prüm Decisions establishing a framework for cross-border cooperation to tackle terrorism and serious crime, and the 2008 Framework Decision on Terrorism. We note that Parliament will be asked to vote, before the end of the year, on future UK participation in Prüm. The Minister says that the Government will ensure that the updating of the 2008 Framework Decision on Terrorism proposed in the Communication “reflects UK priorities”. We ask him to explain what the UK’s priorities are and how effectively the UK will be able to influence the outcome of these negotiations, given that it has no vote on the final text.

6.7 The UK has not opted into the EU’s Internal Security Fund covering the period 2014–20. The previous Government informed our predecessors in December 2013 that it would consider whether to recommend opting into the policing component of the Fund following its adoption, but we have received no formal update since then. We ask the Minister to clarify the Government’s intentions.

6.8 We look forward to receiving the information we have requested promptly, so that the debate we have recommended can take place before further measures are brought forward to implement the EU’s new Internal Security Strategy. Given the scope and importance of the Communication in setting a strategic direction for EU action, we draw it to the attention of the Home Affairs Committee.

**Background**

6.9 The EU Treaties require EU action in the area of freedom, security and justice to “respect fundamental rights and the different legal systems and traditions of the Member States” whilst also endeavouring to ensure “a high level of security”.56 A standing committee within the Council (known by its French acronym “COSI”) is responsible for strengthening operational cooperation on internal security and helping to coordinate action by national law enforcement authorities. The EU Treaties distinguish between internal security and law and order, for which Member States bear the primary responsibility, with the EU acting only in those areas where it can add value, and national security, which is the sole responsibility of each Member State.57 The primacy of Member State action is reflected in the limited role given to the Court of Justice which lacks jurisdiction to consider how Member States have exercised their responsibility to maintain law and order or safeguard internal security, or to review the validity or proportionality of operations carried out by police or other national law enforcement bodies.58

6.10 The EU agreed its first Internal Security Strategy in 2010. It set out a “shared agenda” for action based on five overarching strategic objectives:

- Disrupting international criminal networks;
- Preventing terrorism and addressing radicalisation and recruitment;
- Raising levels of cyber security for citizens and business;
- Strengthening security through border management; and
- Increasing Europe’s resilience to crises and disasters.

6.11 The Commission’s final report on the implementation of the EU Internal Security Strategy concluded that these objectives remained valid and should be included in a renewed Strategy accompanied by a further set of actions for the period 2015–20. In June 2014, the European Council agreed strategic guidelines for justice and home affairs which called for a “review and update” of the EU Internal Security Strategy by mid-2015.59 More detailed Conclusions agreed by the Justice and Home Affairs Council in December 2014 set out the structure and principles which should underpin the new Strategy and invited the Commission to put forward a Communication to that effect.60

56 Article 67 TFEU. The area of freedom, security and justice encompasses policies on visas and border controls, asylum and immigration, judicial cooperation in civil and criminal matters, and police cooperation.
57 Articles 4 TEU and 72 TFEU.
58 Article 276 TFEU.
59 The European Council Conclusions of 26/27 June 2014.
60 Conclusions of the Justice and Home Affairs Council, 4 December 2014.
The Commission Communication: The European Agenda on Security

6.12 The Communication sets out a “shared agenda” for Member States and EU institutions and agencies which is intended to ensure more effective cooperation and coordination of action to tackle common security threats. The aim is to achieve “an EU area of internal security where individuals are protected in full compliance with fundamental rights”.⁶¹

6.13 The European Agenda on Security (“the Agenda”) first describes the range of legal, practical and support tools which are already in place, or in the process of negotiation, to improve the exchange of information, increase operational cooperation and enhance internal security through training, financial support and research and innovation. The success of these tools, according to the Commission, depends on “responsibility-sharing, mutual trust and effective cooperation between all actors involved” based on the five key principles described above in paragraph 1 of the Summary.

Information exchange

6.14 The Agenda identifies existing tools to improve the exchange of information between national law enforcement authorities and urges Member States to ensure their full implementation or, where negotiations are continuing, their speedy adoption. The tools include:

- the Schengen Information System (SIS) which, the Commission suggests, should be used together with Interpol’s database on Stolen and Lost Travel Documents to strengthen security at the EU’s external borders;

- a variety of information sharing systems, such as the Customs Advance Cargo and Anti-Fraud Information Systems which improve security in relation to the cross-border movement of goods, and the Maritime Common Information Sharing Environment;

- the Prüm framework which provides for the automated comparison of DNA profiles, fingerprint and vehicle registration data;

- the analytical and operational capabilities of Europol;

- an EU Passenger Name Record (PNR) system for the exchange of information on airline passengers travelling to, from and within the EU (still under negotiation), as well as further work on “legally sound and sustainable solutions to exchange PNR data with other third countries”;⁶²

- common EU rules on data protection requirements applicable to police and criminal justice authorities and a framework agreement for the transfer of personal

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⁶¹ See p.2 of the Commission Communication.
⁶² See p.7 of the Commission Communication.
data between the EU and US for law enforcement purposes (both still under negotiation); and

- the exchange of information on the previous convictions of EU nationals under the European Criminal Records Information System (ECRIS).

6.15 The Commission also highlights potential gaps in the coverage of the EU’s existing tools for information exchange, indicating that it will assess the need for additional categories of information to be included in the Schengen Information System, such as travel bans imposed at national level. It will continue to monitor the effectiveness of the Schengen Border Code (in which the UK does not participate) and produce a set of common risk indicators to assist in the detection of foreign terrorist fighters. The Commission intends to extend the scope of ECRIS to include information on the convictions of third country nationals in the EU and will examine the need for a European Police Record Index System to facilitate cross-border access to information held in national police records.

**Operational cooperation**

6.16 The Agenda sets out a further set of tools which support effective operational cooperation between law enforcement authorities. They include:

- the EU Policy Cycle for serious and organised crime which identifies common priorities and operational actions and is overseen by the Standing Committee for Operational Cooperation on Internal Security (COSI);

- EU agencies, notably Europol and Eurojust in relation to cross-border law enforcement cooperation and prosecution, and Frontex in relation to operational cooperation at the EU’s external borders;

- the EU Emergency Response Coordination Centre which provides round-the-clock coordination and support for crisis response and management operations;

- the use of Joint Investigation Teams to investigate cross-border crimes complemented, in the customs area, by Joint Customs Operations;

- networks of national specialist units, such as Financial Intelligence Units and Asset Recovery Offices to combat money laundering and trace proceeds of crime;

- the growing number of Police and Customs Cooperation Centres in border regions; and

- a range of judicial cooperation instruments, notably the European Arrest Warrant and the European Investigation Order, as well as the European Judicial Network to support the application of these instruments.

6.17 The Commission suggests that there are sufficient tools to support operational cooperation between Member States but calls for greater synergies between EU agencies as
well as “more systematic coordination and full use of” existing tools, notably Joint Investigation Teams.63

**Supporting action**

6.18 The Commission highlights the Internal Security Fund (in which the UK has chosen not to participate) as an important source of funding for security-related matters. Funding priorities include updating the national interfaces with the Schengen Information System, implementing the Prüm framework, strengthening cross-border operational cooperation, and developing “exit strategies” for radicalised individuals based on the work of the Radicalisation Awareness Network. Other possible sources of EU funding are the Justice Programme (also not available to the UK) and a range of funding programmes in which the UK does participate, such as Horizon 2020 (research and innovation), European Structural and Investment Funds (regional policy), the Customs 2020 Programme, and various external action funding instruments.

6.19 The Agenda underlines the importance of training in the use of cross-border law enforcement and judicial cooperation tools, highlighting the role of the European Police College (CEPOL) and the European Judicial Training Network, as well as the information available on the e-Justice Portal. The Commission says it will take forward work to create a European Forensic Area to “foster cooperation and ensure confidence” in the accuracy and reliability of forensic data obtained in one Member State and used in criminal proceedings in another Member State. The Commission also emphasises the need for a competitive EU security industry to contribute to the EU’s autonomy in meeting security needs and describes work underway to develop common standards, including on a “privacy by design” standard to embed high standards of security and the protection of fundamental rights at the earliest stage of technological design.

**EU priorities for 2015–20**

6.20 The Commission considers that the strategic objectives set out in the EU Internal Security Strategy for 2010–14 remain valid and that the EU should continue to focus its efforts on three “core priorities” — terrorism, serious and organised cross-border crime, and cybercrime — while retaining sufficient flexibility to respond to new or evolving security threats.

**Tackling terrorism and preventing radicalisation**

6.21 The Agenda calls for “a strong response to terrorism and foreign terrorist fighters” following a spate of recent terrorist attacks in Europe. It describes work underway and sets out the following proposed actions:

- establishing within Europol a European Counter-Terrorism Centre which will bring together Europol’s existing counter-terrorism law enforcement capabilities

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63 See p.10 of the Commission Communication.
(including, by July 2015, a new Internet Referral Unit to deal with violent extremist online content) and strengthen the support available to Member States;

- launching an EU-level forum for IT companies, law enforcement authorities and civil society to develop tools to counter terrorist propaganda on the internet and in social media;

- strengthening measures to track and combat terrorist financing;

- reviewing the EU’s existing legislative framework on terrorism with a view to introducing more coherent laws to tackle foreign terrorist fighters and identifying any gaps in the EU’s response to online “hate speech” and incitement to violence;

- re-orienting existing EU policy frameworks in the field of education and training, culture, youth and sport to promote social inclusion and prevent radicalisation;

- tackling radicalisation in prisons through support for training, disengagement programmes and exchanges of best practice; and

- establishing a Centre of Excellence for the existing Radicalisation Awareness Network to serve as a “knowledge hub” for the detection and prevention of radicalisation and working more closely with Turkey and other third countries in the Western Balkans, the Middle East and North Africa.

**Disrupting organised crime**

6.22 The Agenda underlines the “huge human, social and economic costs” associated with serious cross-border crime, such as people smuggling, human trafficking, drug smuggling and trading in firearms, as well as the involvement of organised crime networks in fuelling and financing terrorism and conflict. The Commission describes the main tools and actors available at EU level to tackle serious and organised crime and suggests that they can be strengthened in the following ways:

- strengthening the involvement of neighbouring third countries in the operational activities of the EU’s Policy Cycle for serious and organised crime, notably to disrupt criminal networks responsible for the smuggling of migrants to the EU;

- exposing the infiltration of the licit economy by organised crime groups through effective implementation of EU anti-money laundering legislation, improving the mutual recognition of freezing and confiscation orders, and reviewing the possibility of common rules for non-conviction based confiscation of criminal proceeds;

- reviewing existing legislation on firearms with a view to developing proposals to improve information-sharing, traceability, marking, and common standards for neutralising firearms;
• assessing the progress made in implementing the current EU Drugs Action Plan and the need for a successor Plan for the period 2017–20;

• strengthening cooperation with third countries of origin and transit to prevent and detect the smuggling of migrants;

• building on the existing EU framework on human trafficking to develop a coordinated and coherent post-2016 strategy;

• reviewing existing policies and laws on environmental crime with a view to strengthening monitoring and enforcement and further approximating criminal sanctions across the EU; and

• supporting the work of the European Union Crime Prevention Network and continuing efforts to combat corruption.

**Fighting cybercrime**

6.23 The Commission describes cybercrime as “an ever-growing threat” to fundamental rights, to the economy and to the development of a digital single market, offering “a huge potential gain to criminals and a huge potential loss to citizens”.64 The Agenda emphasises the importance of cybersecurity and the need for a high level of network and information security. Proposed action includes:

• rapid adoption and implementation of the proposed Directive on network information and security, as well as full implementation of EU legislation on attacks against information systems and on online child sexual exploitation;

• possible updating of EU legislation on fraud and counterfeiting of non-cash means of payment to take account of new challenges, such as virtual currencies and mobile payments;

• the development of Europol’s European Cybercrime Centre into a central law enforcement information hub;

• stronger international cooperation on cybercrime, including through the use of external funding instruments to promote cyber capacity building; and

• a Commission assessment of obstacles impeding criminal investigation and prosecution of cybercrime, with a particular focus on jurisdiction and access to, and admissibility of, evidence.

6.24 The Commission invites the Council and the European Parliament to endorse its *European Agenda on Security* ahead of the European Council on 25–26 June 2015 and calls on Member States and EU institutions and agencies to use the Agenda as the basis for their cooperation and joint action for the period from 2015–20.

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64 See p.13 of the Commission Communication.
The Government’s Explanatory Memorandum of 3 June 2015

6.25 The Minister agrees with the Commission’s assessment that the strategic objectives set out in the EU Internal Security Strategy for 2010–14 remain valid and should continue to be pursued at EU level. He notes that the actions proposed in the Commission Communication, *A European Agenda on Migration* in the areas of human trafficking, people smuggling and border management are also of direct relevance to internal security and says that the Government will “press to ensure that organised immigration crime and related security issues are prioritised”.

6.26 Turning first to the Commission’s proposals for working better together on security, based on the five principles described above in paragraph 1 of our Summary, the Minister expresses caution about the involvement of the EU’s Fundamental Rights Agency in ensuring full compliance with fundamental rights for matters relating to security. He explains:

“The Government considers it is important that the Fundamental Rights Agency (FRA) acts within the limits of its legal remit as set out in its establishing Regulation. This is limited to the former first pillar (Community law). Consequently, the Agency does not have a remit to undertake its tasks in the areas of police and judicial cooperation in criminal matters.

“The Communication states that the impact of any new initiative on free movement and the protection of personal data must be fully in line with the proportionality principle, and fundamental rights. It is the Government’s view that the role of the FRA must be limited to its remit.”

6.27 The Minister welcomes the Commission’s focus on implementing existing EU measures concerning the exchange of information and operational cooperation. He provides the following observations on the tools already available, or under negotiation, to improve information exchange:

- **Schengen Information System**: the UK connected to the second generation Schengen Information System (SIS II) on 13 April for law enforcement purposes and supports its further development, for example, to track and monitor registered sex offenders, disrupt criminal activity and make better use of fingerprints to confirm identities.

- **Anti-Fraud Information System**: the UK plays a full and active role in developing and improving this system, considers to it be an important tool for promoting mutual administrative assistance in the customs area, and agrees that Member States should make best use of it, in accordance with their national laws on information disclosure.

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65 See para 18 of the Government’s Explanatory Memorandum.

• **Prüm Council Decisions:** a full business and implementation case, carried out in cooperation with other Member States, Europol and Eurojust, is currently underway to assess the practical benefits of Prüm and the steps that would need to be taken if the UK were to seek to participate. The results will be provided to Parliament by the end of September 2015, followed by a vote before the end of the year.\(^{67}\)

• **EU Passenger Name Records Directive:** the Government fully supports the completion of negotiations on this proposed Directive, as well as ongoing work on data protection issues in the context of requests for PNR data from third (non-EU) countries. The Minister adds that “this needs to be done at a European level to ensure consistency of approach and clarity for UK and other carriers”.\(^{68}\)

• **European Criminal Records Information System (ECRIS):** the Government welcomes the commitment to improving the sharing of information on convictions of third country nationals in the EU and would also like to see “more proactive sharing of criminal conviction data of those convicted of serious offences — such as terrorism, murder and child sex offences. This would allow us to police individuals more effectively when they move between countries post-release”.\(^{69}\)

• **European Police Record Index System (EPRIS):** the Minister notes the lack of detail in the Communication, adding “whilst we support the principle of greater data sharing, we would need to know more about what is being proposed before reaching a confirmed position. We would not support any system which was overly complex and did not contain sufficient safeguards for the sharing of police data. We know some other Member States share this concern”.\(^{70}\)

6.28 The Minister agrees with the Commission that the EU Policy Cycle on serious and organised crime provides a valuable framework for operational cooperation and suggests that it should be used more by Member States. He continues:

> “The UK participates in all EU policy cycle work streams (each dedicated to a different crime type) and leads on two key strands, human trafficking and online child sexual exploitation, and co-leads work on cocaine/heroine flows, excise/missing trader (MTIC) fraud and criminal use of firearms. We believe this is a good example of the benefits practical cooperation has over legislation — an example being the joint enforcement operation ‘Archimedes’ in 2014 — and expect it to continue to be a template for future activity in this area and others.”\(^{71}\)

\(^{67}\) The Prüm Council Decisions were amongst the measures which ceased to apply to the UK on 1 December 2014, following the previous Government’s decision to exercise its block opt-out of pre-Lisbon EU police and criminal justice measures. The UK is entitled to seek to opt back into individual measures. For further details, see our Twenty-first Report of Session 2013–14, HC 683, and our Seventeenth Report of Session 2014–15, HC 762.

\(^{68}\) See para 26 of the Government’s Explanatory Memorandum.

\(^{69}\) See para 27 of the Government’s Explanatory Memorandum.

\(^{70}\) Ibid.

\(^{71}\) See para 28 of the Government’s Explanatory Memorandum. Operation Archimedes involved 34 participating countries and was coordinated by Europol. It sought to disrupt the activities of criminal groups involved in drug
6.29 The Minister offers the following comments on the tools available at EU level to support operational cooperation between law enforcement authorities:

- **Europol and Eurojust**: the Government agrees that both EU Agencies play an important role in supporting operational cooperation and is actively involved in negotiations to reform their structure, governance and tasks. The Minister reiterates the Government’s opposition to the proposed European Public Prosecutor’s Office (EPPO) and makes clear that the UK will not participate.

- **EU Emergency Response Coordination Centre**: the Government recognises the value of a coordination centre at European level to bring coherence to EU activity during crises and emergencies. The Minister emphasises the importance of implementing recent EU legislation on civil protection, as well as the UK’s support for the Sendai Framework for Disaster Risk Reduction 2015–30.72

- **Joint Investigation Teams (JITs) and Joint Customs Operations (JCOs)**: the Government supports the use of JITs and JCOs as “an important ready-made framework for cooperation between Member States in the fight against cross border crime”.73

6.30 The Commission Communication identifies supporting action, such as training, funding, and research and innovation, which can also make an important contribution to enhancing internal security. The Minister notes that the UK has not opted into a new proposal concerning the European Police College (CEPOL) — an EU Agency that provides training for senior police officers on cross-border and serious international crime — because of concerns that it would expand CEPOL’s remit and create additional obligations for Member States. He adds:

“The Government believes that the professionalism of the police and other law enforcement agencies should be led and developed by those organisations themselves at a national or local level.”74

6.31 Although not currently participating in the EU’s Internal Security Fund for 2014–20, the Minister says that any funding to support internal security tasks should be “targeted to be effective and efficient”.75 The UK does participate fully in the Horizon 2020 programme on research and innovation and supports its use to “develop technology and innovation to stay ahead in the ever evolving sphere of terrorism, serious and organised crime and tackling irregular or illegal migration”.76 Turning to research in the field of civil protection, the Minister adds:

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72 This is a UN initiative establishing an international framework for disaster risk reduction, based on voluntary commitments by participating States and other stakeholders.
74 See para 33 of the Government’s Explanatory Memorandum.
75 See para 34 of the Government’s Explanatory Memorandum.
The Government recognises the value of a strong interface between research and end users, but maintains it is important that the creation of a knowledge centre and a community of users complements rather than duplicates or conflicts with activity already underway within Member States. These initiatives should include a focus on ensuring appropriate linkages are made between research activity under various EU funding streams, and to share widely the output of EU funded work (in civil protection).  

The Government broadly supports the actions proposed in the Communication for the period 2015–20 to implement the three strategic objectives relating to terrorism, organised crime and cybercrime. On terrorism and measures to prevent radicalisation, the Minister makes the following observations:

- **European Counter-Terrorism Centre at Europol:** whilst acknowledging that its purpose is to streamline and integrate Europol’s counter-terrorism activity, the Minister notes that national security is reserved to Member States and that the Centre should not have a role in any operational matters.

- **EU Internet Referral Unit at Europol:** the Government welcomes the establishment of this Unit (by July 2015) and sees its role as “referring terrorist and extremist content online to industry, for assessment against their own terms and conditions and subsequent takedown”.

- **EU-level forum to counter terrorist propaganda:** the Government cautions against any attempt by the forum to expand EU activity into areas such as encryption, which relate to national security, or to develop legislative tools.

- **Terrorist finance tracking:** the Government considers that the Terrorist Finance Tracking Programme (TFTP) has proven its value and that Member States should make active use of its capabilities. The Government also expects to participate in any process to create an EU-wide counter-terrorism sanctions regime for EU “internals”, but adds that “any future proposal should not undermine our domestic regime or broader counter-terrorism interests”.

- **2008 Framework Decision on Terrorism:** the UK no longer participates in this Framework Decision but the Government is “fully supportive of work at international level to create better national counter-terrorism legislation and best practices across Member States to increase investigative capability and the capacity to prosecute terrorist activity”. The Government intends to monitor

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77 See para 36 of the Government’s Explanatory Memorandum.

78 See para 38 of the Government’s Explanatory Memorandum.

79 See para 40 of the Government’s Explanatory Memorandum. The TFTP is an Agreement between the EU and the US for the exchange of financial information to assist in countering terrorism and terrorist financing.

80 See para 41 of the Government’s Explanatory Memorandum. This is one of the measures that ceased to apply to the UK on 1 December 2014 following the previous Government’s decision to exercise its block opt-out of pre-Lisbon EU police and criminal justice measures.
closely any proposed changes to the Framework Decision to ensure that they reflect UK priorities.

- **Radicalisation Awareness Network:** the Government envisages a role for the Network in sharing best practice between practitioners and Governments across the EU on countering extremist ideologies and in providing comparative analysis.

- **Countering radicalisation in prisons:** the Minister notes that the UK has an extensive programme to address offending behaviour and prevent others from becoming radicalised, has participated in work carried out by the European Organisation for Prison and Correctional Services (Europris), and has shared its experiences with other Member States. He adds that “any further EU action in this area must fully respect the boundaries of Member State competence”.

6.33 The Government welcomes many of the actions proposed to disrupt organised crime, notably the proposed feasibility study on non-conviction based recovery of assets, and continuing EU support for Member States in the fight against illicit drugs and in tackling organised immigration crime, such as human trafficking and people smuggling.

6.34 Whilst expressing support for enhanced EU action on deactivated firearms, the Minister makes clear that EU legislation should be based on minimum standards to prevent weapons being reactivated. He expresses a concern that legislation based on common (rather than minimum) standards could prevent Member States from implementing stricter measures and responding quickly to new threats. Alongside legislation, the Government is keen to take forward “a package of joint non-legislative work” addressing the external dimension of trafficking in firearms and the security threat posed by a number of priority source countries. The Minister expresses disappointment that there is no specific reference to the need for an effective network to deal with forensic ballistics information to help trace the use of ammunition and firearms across borders. He adds:

“As a minimum we are pressing Member States to develop a national capability to do this and to establish a single point of contact through which other Member States and Europol can share forensic ballistics information.”

6.35 The Minister urges caution in reviewing existing legislation on environmental crime:

“The Government considers that the level and specific nature of sanctions are a matter for Member States, and that the current 2008 Directive on Environmental Crime provides a sufficient EU framework for this as it requires Member States to establish an appropriate sanctions regime for a range of listed criminal offences.”

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81 See para 43 of the Government's Explanatory Memorandum.
6.36 Finally, on the Commission’s third strategic objective, the Minister underlines the importance of enhancing Member States’ capacity to tackle cybercrime “individually and collectively”, working with the private sector, the EU Cybercrime Centre at Europol and Eurojust. He expresses the Government’s support, in principle, for the proposed Directive on network information and security, adding:

“the current focus of negotiations is to safeguard our national security interests, minimise regulatory burdens on UK business particularly with regards to reporting and to ensure that liaison with law enforcement agencies on cyber incidents is handled at a national level.”

6.37 The Minister expects the Justice and Home Affairs Council to agree Conclusions on the renewed EU Internal Security Strategy at its meeting on 16 June, but explains that they are likely to reiterate the Council’s “key strategic aims” rather than simply endorse the Commission Communication, and that the Council’s Committee on Internal Security (COSI) will be invited to develop an operational implementation plan.

**Previous Committee Reports**

7 EU Charter of Fundamental Rights

Committee’s assessment
Legally and politically important

Committee’s decision
(a) Not cleared from scrutiny (debate recommended on the floor of the house, decision reported on 4 February 2015);
(b) Not cleared from scrutiny; further information requested; for debate on the floor of the House as part of the outstanding debate on document (a); draw to the attention of the Justice Committee and the Joint Committee on Human Rights

Document details
(a) 2013 Report on the application of the EU Charter of Fundamental Rights (the Charter); (b) 2014 Report on the application of the Charter.

Legal base
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Department
Ministry of Justice

Document number
(a) (35971), 9042/14 + ADDs 1–3, COM(14) 224
(b) (36897), 8707/15 + ADD 1, COM(15) 191

Summary and Committee’s conclusions
7.1 Document (a) is the Commission’s 2013 annual report on the application of the EU Charter of Fundamental Rights (the Charter) which our predecessors recommended for debate on the floor of the House, a debate which is still outstanding. Document (b) is the new annual report for 2014.

7.2 The Charter has been legally binding since 1 December 2009. It sets out a range of rights and principles derived from national and EU law (including the case law of the Court of Justice) and international human rights instruments, principally the European Convention on Human Rights (ECHR). The Charter only applies to Member States when they are acting “within the scope of EU law”.

7.3 The 2014 report notes the increasing legal prominence of the Charter in proceedings before both the Court of Justice (CJEU) and national courts. It also identifies as a priority that the Commission should update fundamental rights policies in the areas of security, the digital agenda and migration.

7.4 The Government provides views on certain aspects of the Report, particularly in relation to asylum claims based on sexual orientation and data protection but does not comment more widely on how the Charter is being applied at EU or national level.

7.5 Our predecessor Committee recommended the 2013 annual report (document (a)) for debate on the floor of the House because it continued “to have concerns about the
scope of the Charter’s application in the UK” which it raised not only during the scrutiny of that document but also in its 2014 Charter Inquiry Report.

7.6 The Committee noted that although some of its questions had been addressed by the previous Government’s Response to the Charter Inquiry Report and its Balance of Competences Review of EU Fundamental Rights, it had yet to learn how the Government intended to apply the assessments made in either of those documents.

7.7 We agree. We confirm our predecessors’ recommendation that document (a) be debated on the floor of the House and recommend that the debate also include the 2014 annual report on the Charter, document (b).

7.8 In advance of that debate, we ask the Secretary of State to provide us with:

a) his view of whether the Charter has been applied by UK courts during 2014-15 only to cases falling “within the scope of EU law”, with reference to court judgments where possible;

b) his view of how the “within the scope of EU law” test has been interpreted and applied in CJEU case law during 2014-15, with reference to the relevant decisions; and

c) a detailed update on:

i) how the EU institutions, including the Commission and the FREMP\(^85\) Working Party have been working to revive EU accession to the ECHR in the wake of the CJEU’s Opinion 2/13;

ii) what the response of the Council of Europe has been to that Opinion; and

iii) how the Luxembourgish Presidency is planning to proceed with accession.

7.9 In the meantime, both documents (a) and (b) remain under scrutiny.

**Full details of the documents:** (a) 2013 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Application of the EU Charter of Fundamental Rights: (35971), 9042/14 ADDs 1–3, COM(14) 224; (b) 2014 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Application of the EU Charter of Fundamental Rights: (36897), 8707/15 ADD 1, COM(15) 191.

**Background**

7.10 In 2014 our predecessors published a Report, following an inquiry, on the application of the Charter in the UK.\(^86\) Amongst other things, this clarified that the UK does not have

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an opt-out from the Charter. A key issue addressed by that Report was how widely the test for the application of the Charter to Member States when acting “within the scope of EU law” was being interpreted and applied at EU and Member State level.

The current document (b)

7.11 The report aims to review how the EU and Member States have given effect to the Charter in 2014. Although it focuses more on the former, it does include some examples of national courts applying the Charter and infringement proceedings against Member States in an accompanying Staff Working document. UK examples comprise preliminary references relating to the Tobacco Products Directive and on minimum price on alcohol legislation in Scotland. However the report does refer to research by the Fundamental Rights Agency (FRA) which “confirms that in 2014 Member State high courts continued referring to the Charter for guidance and inspiration, even in cases which fell outside the scope of EU law”.

7.12 The report notes the increasing legal prominence of the Charter. Before the EU Courts, it was referenced in 43 decisions in 2011, rising to 210 in 2014. It was mentioned in 11 infringement proceedings in 2014 (five relating to asylum and migration), compared with five in 2013. However, preliminary references by national judges have only marginally increased in 2014 to 43 from 41 in 2013. These concerned human dignity in asylum decisions, the principle of equality of arms in consumer protection cases and the “ne bis in idem” principle (being punished for the same crime twice). Also, the report indicates that general awareness of the Charter has not increased significantly since 2007, though steps are being taken to increase awareness, including through dialogues between national judiciaries.

7.13 The 2014 report focuses in particular on the Charter’s application to:

- EU institutions and bodies when distributing EU funds;
- EU external action, noting the review of the Action Plan on Human Rights and Democracy (2012-2014) and that the new Plan (2015-2019) is intended to ensure coherence between the EU’s internal and external work on fundamental rights, notably in the areas of counterterrorism, migration, mobility and trade;

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87 Directive 2014/40, See C-547/14, Philip Morris Brands and Others, refers also to Articles 11 and 35 of the Charter. Also C-477/14, Pillbox 38, for both cases see also Articles 17 and 35.
88 C-333/14 – The Scotch Whisky Association and others against The Lord Advocate, The Advocate General for Scotland, although the reference concerns free movement of goods law and does not itself does not directly address Article 35 of the Charter. That Article requires a “high level of human health protection” to be ensured in “the definition and implementation” of all the Union’s policies and activities.
89 The Commission refers to the FRA 2014 annual report “to be published on 22 May 2015”. By the date of the publication of our Report, the FRA report was still not available.
90 For example, the Fundamental Rights Clarity project and the ‘CharterClick’ project accessible at http://www.charterclick.eu/.
• EU restrictive measures (sanctions), resulting in several annulments by the Court of Justice for failure to comply with Articles 41 and 47 of the Charter— the right to good administration and the right to an effective remedy; and

• the protection of fundamental rights in the digital era, exemplified by the Digital Rights Ireland\textsuperscript{91} and Google Spain\textsuperscript{92} decisions and to be addressed by the proposed Data Protection package (which is important for the Digital Single Market).

7.14 The report also highlights the EU’s continuing commitment to accede to the ECHR despite the Court of Justice’s ruling in Opinion 2/13\textsuperscript{93} that the draft accession agreement was incompatible with the Treaties.

The Government’s view on document (b)

7.15 The Lord Chancellor and Secretary of State for Justice (Michael Gove), sets out the basis of his Explanatory Memorandum of 9 June 2015. He says that it provides the Government’s view on a number of areas covered by the report but not on all of the individual measures, proposals, communications or examples referred to. This should not signify Government agreement on those matters not addressed. He explains that the Government view will have been given on certain measures during their scrutiny process and that in any case further responses can be sought from the Government if needed.

7.16 He then addresses particular areas of the report. He says that:

• The Government has carried out staff training on guidance it has updated to comply with the application of human dignity (Article 1 of the Charter) to the handling of asylum claims based on sexual orientation in the judgment in A, B, C v Staatssecretaris van Veiligheid en Justitie\textsuperscript{94}; and

• Referring to ongoing negotiations on the data protection package and the related Google Spain judgment, the Government does not agree with that the effect of that judgment has been to create “a right to be forgotten”. Such a title is “inaccurate and misleading”.

\textsuperscript{91} C293/12 and C594/12, Judgment of 08.04.14. The Data Retention Directive was declared invalid because it disproportionately restricted the rights to privacy and to the protection of personal data (Articles 7 and 8 respectively of the Charter).

\textsuperscript{92} C131-12, Judgment of 13.04.14. Google, as a data controller established in the EU was obliged to respect Articles 7 and 8 of the Charter and comply with requests to remove links to certain personal data in certain circumstances. This has been coined “the right to be forgotten”.

\textsuperscript{93} Opinion delivered on 18.12.14. The CJEU found the provisional accession agreements to be incompatible with the Treaties for reasons relating to the co-respondent mechanism, the prior involvement mechanism, the JHA mutual trust principle, and the CJEU’s own role in relation to the interpretation of the Treaties and judicial review of CFSP measures.

\textsuperscript{94} Joined cases C-148 to C-150/13.
Previous Committee Reports


8 Interoperability as a means for modernising the public sector: the ISA2 programme

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Proposal for a Council Decision establishing a programme on interoperability solutions for European public administrations, businesses and citizens (ISA2)

Legal base

Article 172 TFEU; ordinary legislative procedure; QMV

Department

Cabinet Office

Document Numbers

(36197), 11580/14, COM(14) 367

Summary and Committee’s conclusions

8.1 ISA2 is a proposal for the continuation of the ISA programme, which funds projects on interoperability for public services across the EU. In this context, “interoperability” means enabling different national systems to communicate with each other, reducing friction and improving efficiency in cross-border and cross-sector transactions. As such, “interoperability” underpins the aims of the European Commission’s Digital Single Market strategy, particularly in relation to work on e-government and “the cloud”.

8.2 When the ISA2 Council Decision was presented for scrutiny in October 2014, the then Minister (Mr Francis Maude) illustrated a number of concerns, and noted that the Commission had yet to produce a full evaluation of the earlier ISA programme. Our predecessors said that the Commission was thus pushing ahead without any objective evaluation of how effective the predecessor programme had been, or any assessment of the impact of its proposed successor. When responding to its observations, in February, the Minister was only able to add that he was still trying to obtain definitive responses from the Commission to some of the questions raised; its view, meanwhile, was that the need for an EU interoperability programme had been previously agreed and, because ISA2 was a continuation of an existing programme, there was no requirement for a full impact assessment; he and other like-minded would continue to press the Commission to properly
justify the proposals for ISA2 before further discussions of the detail, especially as ISA2 was now to be a Latvian Presidency priority; and a full update would be provided when progress on these issues had been made.

8.3 The new Minister for the Cabinet Office, and Paymaster General (Matthew Hancock) has now written, on 10 June 2015, stating that, after a “lot of work … in Council working groups on this file over the last two months”, the Commission has proposed that Member States vote to agree a General Approach on the ISA2 text at the 12 June 2015 Telecommunications Council. He illustrates a number of ways in which he says that the text has been improved. But the Commission continues to maintain that no impact assessment was required because ISA2 is the continuation of an existing programme which is believed to be of value; whereas the Minister continues to believe that the ISA2 proposal would have been stronger if a proper impact assessment had been prepared when the proposal was being drafted. Whilst stating that the Council draft is significantly better than the Commission’s original proposal, the Minister says that more could and should also be done during trilogue to improve the text to ensure that ISA2 is effective.

8.4 The Government continues to support the overall aim of improving interoperability to reduce the friction involved in online transactions across borders and across sectors within the EU. However, given that it has not yet been possible to properly scrutinise the text and given the areas where he believes further improvements to the text could have been made, the Minister says that he will abstain from voting on the general approach on 12 June. Beyond that, he will continue to work to support further improvements:

“with the hope that the proposal will be something that we can support when it comes to a future Telecoms Council for final agreement. The European Parliament has voiced some similar concerns on the proposal to those set out by the UK, so we do not anticipate any significant risk of the work to date being reversed during the trilogue process.”

8.5 The Minister notes that the interim evaluation of the predecessor ISA programme raised concerns with regards to the important areas of effectiveness, coherence and coordination; and that the Commission’s proposal for ISA2 did little to address those concerns. But the Commission remains obdurate: full evaluation will not be produced until the latest date possible, in December 2105; work will nonetheless continue on ISA2 without the benefit of this evaluation; and no impact assessment is required because ISA2 is the continuation of an existing programme which is believed to be of value. This is an entirely circular argument. How can a programme be deemed of value if it has not been fully evaluated? And how can any successor be deemed not to need an impact assessment because it is a continuation of something that has not been fully evaluated? The Minister refers to an annex to his letter, on the Commission’s reasoning, which he did not in fact enclose. We should therefore be grateful if he would send it to us, along with a letter summarising its key points and setting out his views.

8.6 The other like-minded Member States of February have presumably been won over during the working group discussions. Nonetheless, in these circumstances, it was
plainly right for the Minister to have abstained. We now look forward to his keeping us regularly updated on the trilogue process, since it may be appropriate for this Council Decision to be debated before a final position is adopted, and we do not wish to be presented with a fait accompli; on this occasion, the dissolution and then the absence of a Committee in mid-June has meant that the lack of any update until the last minute was immaterial, but it would not be acceptable in future.

8.7 In the meantime, the draft Council Decision remains under scrutiny.

**Full details of the documents:** Draft Council Decision establishing a programme on interoperability solutions for European public administrations, businesses and citizens (ISA2): (36197) **11580/14**: COM(14) 367.

8.8 The ISA programme was launched on 1 January 2010 and runs for five years. It has a budget of €160 million (£114 million). Its main objective is to support cooperation between European public administrations by facilitating efficient and effective electronic cross-border and cross-sectoral interaction, with a view to enabling the delivery of electronic public services supporting the implementation of EU policies and activities (see our predecessor’s Report of last October for full details).95

8.9 A January 2013 interim evaluation was largely positive. But it was too early to arrive at any firm conclusions on the programme’s utility or effectiveness. The need to identify possible means to ensure the long term sustainability of an increasing number of solutions developed by the ISA programme was highlighted. Although the evaluation found that ISA was generally working well internally and with other EU initiatives, the majority of stakeholders interviewed suggested that there were overlaps that could be better managed; and whilst Member States were involved in the oversight of the ISA programme, it was not yet sufficiently effective in meeting the needs and priorities of individual Member States.96

8.10 The proposed Council Decision is for a successor programme, ISA2, to run from 2016–20, with a budget of €146.6 million (£104.2 million), and is intended to “consolidate, promote and expand its activities”. In particular, the new programme will:

- “help to identify, create and operate interoperability solutions, which will then be provided for unlimited use to other Union institutions and bodies, and national, regional and local public administrations, thus facilitating cross-border or cross-sector interaction between them;

- “develop interoperability solutions autonomously or complement and support other Union initiatives by piloting interoperability solutions as a ‘solution incubator’ or ensuring their sustainability as a ‘solution bridge’; and

- “assess the ICT implications of existing and proposed EU legislation.”97

96 Ditto.
97 COM(14) 367, p.11.
8.11 The then Minister (Mr Francis Maude) noted that there were a number of interrelated programmes across many policy areas including Health, Taxation, Business and Competition, Justice, Procurement, Animal Health, Statistics, and ICT & Digital Services, and is broadly supportive of this proposed Council Decision, as are the other government departments who have been consulted (see our predecessor’s Report of last October and its annex for full details).

8.12 He also noted that:

— the Commission had yet to undertake an impact assessment on this decision and that “UKREP have been trying to obtain more information”;

— adoption of this decision affected a number of programmes or initiatives;

— however, it did not “itself have any direct impacts on businesses or citizens since it promotes interoperability between governments at all levels”;

— the only assessment undertaken by the EU was largely based on the evaluations of previous programmes and on the fact that these programmes had identified an ongoing need for developing or updating interoperability standards; and

— “the full evaluation of the current programme is not yet available and HMG will want to monitor progress in implementing the recommendations from the interim evaluation”.

8.13 Finally, the Minister said that he did not know “when Council will give consideration to this decision, nor which Council will lead the discussions”.

**The previous Committee’s assessment**

8.14 The picture was thus of the Commission pushing ahead without any objective evaluation of how effective the predecessor programme had been, or any assessment of the impact of its proposed successor.

8.15 At the same time, both the then Minister and his predecessor had made their requirements clear:

— greater value for money from any new programme, and a shift in focus from funding for studies to funding for implementation, with an emphasis on re-use or adaption;

— indications of progress in implementing the recommendations from the interim evaluation;

— more work on common methodologies;

— more use of open standards, a streamlined governance structure, and “a more iterative, agile approach” in any successor programme;
— “more clarity about governance, a better articulation of user needs, a clearer understanding of how this will work with other initiatives, and clarity on the financial case for investment”; and

— addressing concerns about “the usage of jargon, acronyms, and ambiguous wording where the meaning is not clear”.

8.16 Given that the new programme was envisaged to start in 15 months’ time, it seemed extraordinary that the then Minister had no idea of the timetable, or which Council would be responsible for handling this dossier.

8.17 Nor did the then Minister analyse the present ISA2 text either in terms of the extent to which it addressed the areas of concern identified in the ISA interim evaluation or with regard to what he and his predecessor wished to see in the proposed new programme.

8.18 However, he seemed to have become a victim of his own concern about ambiguous wording where the meaning is not clear, in that they at least had no idea what was meant by “a more iterative, agile approach”, or implementation, with an emphasis on re-use or adaption.

8.19 The previous Committee accordingly asked the then Minister to address these issues forthwith; and also to know when he expected a full evaluation of the current programme to emerge; and the Commission impact assessment of the proposed ISA2.

8.20 In the meantime, the draft Council Decision was retained under scrutiny.98

8.21 The Minister did not reply until 9 February 2015. When he did so, it was part of a “portmanteau” letter embracing a number of digital issues, revolving around Public and International Procurement.99 In sum, the Minister noted that:

— his officials, working with UKREP, were still trying to obtain definitive responses from the Commission to some of the questions raised;

— the Commission view was that the need for an EU interoperability programme, its policy objectives and its benefits had been previously agreed;

— because ISA2 was a continuation of an existing programme, there was no requirement for a full impact assessment;

— they had, however, agreed to share more information from the mid-term interim evaluation of the existing ISA programme;

— many of the issues identified by the previous Committee about the first ISA programme related to the lack of a full evaluation of the existing ISA programme and an impact assessment for ISA2; the UK was one of a number of Member States to raise these concerns and was looking to work with other like-minded Member States to

ensure they were fully addressed; a full update would be provided when progress on these issues had been made; his officials continued to push the Commission together with other Member States to properly justify the proposals for ISA2 before further discussions of the detail of the proposal; and

— the Telecommunications Council would now take this programme forward and the Latvian Presidency had made this a priority matter.

8.22 With regard to the previous Committee’s uncertainty about the meaning of “adopting an agile iterative approach with an emphasis on reuse and adaptation”, the then Minister said:

“Agile is an iterative approach to software development and project management, which the Cabinet Office (in particular the Government Digital Service) has effectively used in developing digital services. It is an approach that many believe can help with rapid development of interoperability solutions. Agile provides a methodology to develop and deliver solutions quickly, these can then be used, re-used or adapted as required. If ISA2 adopted an agile approach, it should see more solutions appearing quicker than has been the case in the current ISA programme.”

The Minister’s letter of 10 June 2015

8.23 The Minister begins his letter by stating that the Commission has proposed that Member States vote to agree a general approach on the ISA2 text at the Telecommunications Council on 12 June 2015. He continues thus:

“A lot of work has been done in Council working groups on this file over the last two months, but the draft proposal is now more stable in advance of Friday’s Telecommunications Council, so I am taking this opportunity to write to update the Committee.”

8.24 Recalling our predecessors’ October 2014 Report, the Minister continues as follows:

“The Committee’s report highlighted a number of concerns on the Commission’s work on interoperability which had been raised in the Explanatory Memorandum (11580/14) on the proposal. They included:

- “the need for a clearer, better structured programme to ensure that ISA2 creates value for money”;
- “the need for progress to be made on implementing the recommendations from the interim evaluation of the predecessor ISA programme; and

The Minister’s footnote: “(this includes clearer language; more clarity about governance; and an approach that focuses more on implementing interoperability solutions that make a real impact). Member States will play a role in ongoing decisions about the ISA2 programme through the Committee referred to in Article 11 of the proposal. However this new legal basis is an opportunity to refine the programme and give it a clearer structure.””
• “the need for a clearer understanding of how the programme fits with other initiatives to ensure the most useful possible projects are being funded in the context of wider European work on interoperability.

“The interim evaluation of the predecessor ISA programme raised concerns with regards to the important areas of effectiveness, coherence and coordination. The Commission’s proposal for ISA2 did little to address those concerns. In particular:

• “article 9, which failed to make provision for funding to be stopped in the case of an action which is not showing any results;

• “articles 5-7 in relation to actions to be funded under ISA2 and the implementation of ISA2’s work programme, where there was no guiding structure for prioritising which actions ISA2 should fund, missing the opportunity to create a more effective programme that can ensure it is funding the most appropriate and useful actions;

• “article 3 that included the ambiguous language around ‘solution incubators’ and ‘solution bridges’; and

• “article 11 and the recitals, which failed to properly set ISA2 in the context of other European initiatives also working towards interoperability, therefore missing the opportunity to ensure that the actions funded are aligned with other European efforts and to avoid duplication of work.

“The Committee’s report also noted concerns about the lack of impact assessment, and asked about the likely timing of the final evaluation for the first ISA programme. On the latter, the results of the final evaluation on ISA will be communicated to the European Council and Parliament by 31 December 2015, in line with Article 13(3) of Decision Number 922/2009/EC.101

“Discussion in Council

“We have outlined all of our concerns over the course of the Council’s discussion of the proposal on ISA2 at working group meetings.

“With regards to the impact assessment, the Commission has made it clear that it does not feel that an impact assessment was necessary. The Commission maintains the argument that no impact assessment was required because ISA2 is the continuation of an existing programme which is believed to be of value. Their full reasoning is enclosed in Annex A to this letter.

101 This says:

“The ISA programme shall be subject to an interim evaluation and a final evaluation, the results of which shall be communicated to the European Parliament and the Council by 31 December 2012 and 31 December 2015 respectively. In this context the responsible committee of the European Parliament may invite the Commission to present the evaluation results and answer questions put by its members.

“The evaluations shall examine issues such as the relevance, effectiveness, efficiency, utility, sustainability and coherence of the ISA programme’s actions and shall assess performance against the objective of the ISA programme and the rolling work programme. The final evaluation shall, in addition, examine the extent to which the ISA programme has achieved its objective”: see OJ L 260/20 of 16 September 2009, page 7.
"With regards to the text of the proposal itself, some progress has been made towards improving it. The restrictive handling marking (limité) was removed on 5 June, so the Council’s latest draft text is enclosed in Annex B.

"The most significant advancements to the draft text thus far are:

- additions to recital 33 to ensure better coordination with other programmes;
- the removal of the confusing terms ‘solution incubator’ and ‘solution bridge’ in article 2;
- the inclusion of new articles on criteria for eligibility and prioritisation of actions to be funded after article 6, helping to create a clearer governance structure; and
- the inclusion of a new provision to stop funding ineffective actions in article 9.

"UK position"

"I continue to believe that the ISA2 proposal would have been stronger if a proper impact assessment had been prepared when the proposal was being drafted. Whilst the draft now produced by the Council is significantly better than the Commission’s original proposal, more could and should also be done during trialogue to improve the text to ensure ISA2 is effective.

"In particular, I am still keen to see further improvements in relation to:

- a clearer requirement, either in the recitals or in article 3, stating that the main objective of the programme should be on developing and maintaining tools which contribute to interoperability — this would ensure that most of the programme’s efforts are spent on practical progress towards interoperability;
- better coordination with other EU activities on interoperability to ensure different parts of the Commission are working together - this could including looking at a possible joint evaluation of ISA2 together with other measures on interoperability rather than evaluating each separately; and
- clearer prioritisation of user needs, for example by making provision in articles 9 and 11 to base monitoring, evaluation and on-going funding on some genuine testing during development of ISA’s interoperability solutions.

"Next steps"

"It remains the case that the UK supports the overall aim of improving interoperability to reduce the friction involved in online transactions across borders and across sectors the EU. However, given that it has not yet been possible to properly scrutinise text and given the areas where I believe further improvements to the text could have been made, the UK will abstain from voting on the general approach on 12 June."
“We will continue to work to support further improvements to the file with the hope that the proposal will be something that we can support when it comes to a future Telecoms Council for final agreement. The European Parliament has voiced some similar concerns on the proposal to those set out by the UK, so we do not anticipate any significant risk of the work to date being reversed during the trialogue process.”

8.25 The Minister concludes by expressing the “hope that the Committee will feel that, in conjunction with the then Minister for the Cabinet Office’s letter of 9 February 2015, this addresses all of the points made in the Committee’s report of 15 October 2014”, and undertakes to “keep the Committee updated with further progress on this file”.

8.26 On 12 June, the Council issued a statement confirming that the Council had adopted a general approach on the ISA 2 Programme. The aim is to make sure that European public administrations can interact electronically with each other and with citizens and businesses in a seamless manner. The ISA 2 Programme will support both cross-border and cross-sector interaction. It is set to run from 2016 to 2020, with a financial envelope of “about €131 million”. The programme will support actions to assess, improve and re-use existing interoperability solutions and to develop new ones. Compared to the initial Commission proposal, the presidency compromise text:

“introduces provisions to clarify the eligibility criteria for actions to be financed under the ISA 2 programme and introduces criteria to prioritise actions. It also includes provisions to avoid overlaps and ensure consistencies and coordination with other EU programmes.”

8.27 The Council statement also notes that, in order to be adopted, the decision will have to be approved by both the Council and the European Parliament, the latter of which has not yet voted its position.

**Previous Committee Reports**


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9 **The European Citizens’ Initiative**

| Committee’s assessment | Politically important |
| Committee’s decision   | Not cleared from scrutiny; further information requested |
| Document details       | Commission Report on *the application of Regulation (EU) No. 211/2011 on the citizens’ initiative* |

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102 Available at [General Approach](#).
103 See [Press release](#).
Summary and Committee’s conclusions

9.1 The European Citizens’ Initiative was introduced by the Lisbon Treaty to encourage greater democratic involvement of EU citizens in the legislative activities of the EU. It allows one million EU citizens from at least one quarter of the Member States to call on the Commission to propose legislation on any matter for which it has the power to act. The right to propose a European Citizens’ Initiative is enshrined in the EU Treaties. The rules and procedures for doing so are set out in a Regulation adopted in 2011 (“the 2011 Regulation”). To qualify as a European Citizens’ Initiative, the initiative must be formally registered with the Commission. Since 1 April 2012, when the 2011 Regulation took effect, the Commission has registered 31 European Citizens’ Initiatives and rejected a further 20 on the grounds that they failed to meet the criteria for registration.

9.2 The report published by the Commission provides its first assessment of the application of the 2011 Regulation. The Commission notes that the European Citizens’ Initiative is now fully operational across the EU, identifies a number of challenges, accepts that there is scope for improvement, but concludes that it is “still too early to assess the long-term impacts of the European Citizens’ Initiative on the EU institutional and legislative process”.

9.3 The Minister for Constitutional Reform (John Penrose) notes that the Commission report does not propose any changes to the 2011 Regulation and concludes that there are no legal, financial or policy implications for the UK.

9.4 It seems clear that there are problems with the operation of the European Citizens’ Initiative. A significant proportion of proposed Initiatives are not registered by the Commission, suggesting a mismatch between citizens’ perceptions of the purpose of European Citizens’ Initiatives and their scope as set out in the EU Treaties and the 2011 Regulation. Only three of the 31 European Citizens’ Initiatives registered with the Commission since April 2012 have obtained more than one million signatures and met all the requirements of the 2011 Regulation. Citizens appear to be losing faith in the power of European Citizens’ Initiatives to influence and inform EU decision making. Since their launch, there has been a marked decline in the number registered with the Commission each year.

9.5 The Commission report highlights “challenges” and says that it has “noted with interest” the findings and recommendations made in a detailed study on European Citizens’ Initiatives commissioned by the European Parliament, as well as the guidelines proposed by the European Ombudsman following an own-initiative inquiry.
on the operation of European Citizens’ Initiatives. Few of the changes proposed in the study and inquiry to improve the operation of the European Citizens’ Initiative and to make it less costly and burdensome for participants are reflected in the Commission report. We highlight, in particular, recommendations to:

- clarify the scope and purpose of European Citizens’ Initiatives to establish whether they are primarily an “agenda setting” tool, a tool for implementing specific legislation within the EU’s existing competences, or a means of proposing wider changes to the EU Treaties;

- provide robust, consistent and comprehensible reasons for refusing to register a proposed European Citizens’ Initiative — we draw attention to the complex legal reasons given by the Commission for rejecting a proposed Initiative entitled “STOP TTIP”, currently the subject of a legal challenge before the General Court;105

- provide free translation services for the organisers of European Citizens’ Initiatives;

- simplify and standardise the statement of support forms and ensure that all EU citizens, including those resident in another Member State, are able to sign European Citizens’ Initiatives;

- ensure that procedures are inclusive and transparent and that public hearings at the European Parliament involve a broad range of stakeholders as well as both parts of the EU legislature (Council and European Parliament); and

- ensure full transparency of funding for European Citizens’ Initiatives.

9.6 It is disappointing that the Minister’s Explanatory Memorandum does not address any of the challenges identified in the Commission report or offer any view either on the value of the European Citizens’ Initiative as a tool for greater democratic involvement of EU citizens in the activities of the EU, or on the practical obstacles which may be impeding participation and how to overcome them. We ask the Minister for the Government’s view on the recommendations we have highlighted above and, more broadly, whether he agrees with the European Ombudsman that some provisions of the 2011 Regulation “clearly have placed administrative and bureaucratic hurdles in the way of citizens, every one of whom has, according to the Treaty, the right to participate in the democratic life of the Union”.106

9.7 We also ask the Minister whether he considers that European Citizens’ Initiatives have made a contribution to strengthening the democratic legitimacy of the EU. What conclusions does he draw from the reduction in the number of European Citizens’

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105 Commission reply refusing registration.
106 See the Ombudsman’s Decision, para 33.
Initiatives since their high-water mark in 2012, and from the number of legal proceedings brought so far (six to date) to challenge the Commission’s refusal to register proposed Initiatives? In light of the Commission’s refusal to register the proposed “STOP TTIP” Initiative, would the Government support an amendment to the 2011 Regulation to make clear that EU citizens may ask the Commission not to act, or to prevent it doing something within its existing powers?

9.8 Finally, given the possibility that some UK nationals resident in another Member State may be unable to participate in a European Citizens’ Initiative, we ask whether the Government will consider including this category within its own procedures for verification of statements of support.

9.9 Pending the Minister’s reply, the Commission report remains under scrutiny.


**Background**

9.10 Before being launched across the EU, a European Citizens’ Initiative (“ECI”) must first be registered on a central website managed by the Commission. The website also lists initiatives which have been proposed but which the Commission considers do not quality for registration. An online Guide describes how to launch and sign up to a European Citizens’ Initiative. The main steps are:

- the formation of a “citizens’ committee” composed of at least seven EU citizens of voting age living in at least seven different Member States — these are the ECI organisers;
- registration of the proposed ECI, following an initial check by the Commission that the registration criteria have been met;
- the collection of paper and/or online statements of support by the organisers, to be concluded within one year of the date of registration — if collected electronically, the online collection system must be “certified” by the Member State in which the data are to be stored to ensure that it is secure and that the technical requirements of the 2011 Regulation are met;
- verification and certification of the statements of support by the competent national authorities;
- formal submission of the ECI to the Commission, provided it has the support of at least one million eligible signatories from at least seven Member States, and that it

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107 See the [Commission website](https://ec.europa.eu/).  
meets the minimum numerical threshold\textsuperscript{109} specified for each Member State in the 2011 Regulation (for example, 74,250 signatories in Germany, 54,000 in France, Italy and the UK, 3,750 in Malta); and

- examination of the Initiative by the Commission and publication of a Communication setting out what action (if any) it proposes to take, following a meeting with the organisers and a public hearing at the European Parliament.

9.11 European Citizens’ Initiatives cover a wide range of policy areas. A Table setting out those that have been registered since 1 April 2012 and their current status (Annex 1), as well as a list of those refused registration by the Commission (Annex 2), can be found at the end of this chapter.

**The Commission Report**

9.12 The Commission describes European Citizens’ Initiatives as “one of the major innovations introduced by the Lisbon Treaty”. It says that they have:

- facilitated pan-European debates and enabled like-minded people to forge links across the EU;

- provided a means for citizens to connect directly with EU institutions and become more closely involved in agenda-setting at EU level; and

- contributed towards the aim of further strengthening the democratic legitimacy of the EU.\textsuperscript{110}

9.13 The report first considers the state of play, focussing on the number of requests for an initiative to be registered as a European Citizens’ Initiative. It then reviews the implementation of the procedures set out in the 2011 Regulation, highlights a number of “challenges” and areas for improvement, and makes some concluding observations about the impact of the European Citizens’ Initiative.

**State of play**

9.14 The Commission notes that an estimated six million statements of support have already been collected for European Citizens’ Initiatives since April 2012. A more detailed breakdown reveals that:

- the Commission has received 51 requests to register a proposed European Citizens’ Initiative;

- 31 ECIs were registered, broken down by year — 16 in 2012, nine in 2013, five in 2014 and one so far in 2015; and

\textsuperscript{109} The requirement for a minimum number of signatories per Member State is intended to ensure that a European Citizens’ Initiative is genuinely representative.

\textsuperscript{110} See p.2 of the Commission report.
20 proposed ECIs were not registered by the Commission on the grounds that they failed to meet the registration criteria.

9.15 Of the 31 registered European Citizens’ Initiatives, only three have so far met the threshold required for formal consideration by the Commission with a view to further action at EU level. 12 failed to meet the threshold, three were closed by the organisers, 10 were withdrawn during the 12-month period for collecting signatures, and three remain open and are in the process of collecting signatures. The organisers of six Initiatives which were refused registration by the Commission are bringing legal proceedings before the General Court (the EU’s court of first instance); a further case has been brought by the organisers of the “One of Us” Initiative — although this Initiative met the requirements for registration and formal consideration by the Commission, the legal action brought by the organisers seeks to challenge the reasons given by Commission for taking no further action to implement it. All of these cases are pending.

Implementation of the 2011 Regulation

Registration

9.16 The report deals briefly with each stage of the process for organising and participating in a European Citizens’ Initiative. The requirements for registration of an ECI are set out in Article 4 of the 2011 Regulation. Apart from meeting a number of procedural conditions, this Article requires the Commission to refuse registration if a proposed ECI is:

- “manifestly outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties”;
- “manifestly abusive, frivolous or vexatious”; or
- “manifestly contrary to the values of the Union as set out in Article 2 TEU”.111

9.17 The Commission indicates that all 20 of the proposed ECIs which it refused to register foundered on the grounds that they manifestly exceeded the Commission’s powers to act under the EU Treaties.

Collection of signatures of support

9.18 The Commission notes that implementation of the requirement for verification and certification of signatories varies between Member States and can, in some circumstances, prevent or deter citizens from being able to support a European Citizens’ Initiative. For example: UK authorities verify statements of support made by EU citizens resident in the UK, but not by UK citizens resident elsewhere in the EU or outside the EU; some Member States require signatories to provide a substantial amount of personal data which may have

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111 The values set out in Article 2 TEU are “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”
a deterrent effect. The Commission suggests that there is scope to simplify requirements to ensure that EU citizens of voting age are able, in practice, to support a European Citizens’ Initiative. It also provides information on the number of translations of European Citizens’ Initiatives, once registered, to make them more accessible to all EU citizens, noting that on average, ECI s have been translated into 11 languages (with four translated into all the official languages of the EU).

9.19 The report describes the requirements for certification of online data collection systems by a competent Member State authority before the organisers of a European Citizens’ Initiative are allowed to collect online statements of support. It notes that Member States are reluctant to certify systems prior to registration by the Commission, in case registration is refused. Certification after registration, however, reduces the time available for the collection of online signatures. The Commission has produced open source Online Collection Software and offered to host organisers’ online collection systems on its own servers, free of charge, in order to overcome obstacles encountered when the first European Citizens’ Initiatives were launched.

**Verification of statements of support**

9.20 All of the designated competent authorities of Member States have been involved in verifying the statements of support for one or more of the three European Citizens’ Initiatives which reached the threshold for examination by the Commission — “Right2Water”, “One of us” and “Stop vivisection”. Overall, 90% of the statements of support for these Initiatives were found to be valid. The Commission has found no significant discrepancies between the results obtained by means of random sampling or by individual verification of each statement of support.

**Examination by the Commission**

9.21 The first Initiative examined by the Commission, “Right2Water”, called for “legislation implementing the human right to water and sanitation as recognised by the United Nations and promoting the provision of water and sanitation as essential public services for all”. The second, “One of us”, sought an end to EU financing of “activities which pre-suppose the destruction of human embryos, in particular in the areas of research, development aid and public health”.112 In both cases, the organisers of each ECI were invited to a meeting with the Commission and to a public hearing at the European Parliament.

9.22 The Commission published a positive response to the “Right2Water” Initiative, setting out the actions it proposed to take to support access to safe drinking water and sanitation within Europe and at a global level.113 By contrast, it considered that the issues raised in the “One of us” Initiative were adequately addressed by the EU’s existing

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112 See p.10 of the Commission report.
113 The details of the Commission’s response are set in a Communication.
legislative framework and proposed no further action.\textsuperscript{114} The Commission’s response to the third ECI, “Stop vivisection”, was published after the Commission report (on 15 June).\textsuperscript{115}

9.23 “One of us” attracted the most signatories (more than 1.7 million), followed by “Right2Water” (around 1.66 million) and “Stop vivisection” (nearly 1.2 million). None of these Initiatives attracted sufficient support to meet the minimum threshold of 54,000 signatories required for the UK. In each case, the organisers have focussed their efforts on a lead Member State (Germany for “Right2Water” and Italy for “One of us” and “Stop vivisection”) to reach their target of one million signatures, whilst also ensuring that the minimum threshold for the number of signatories has been met in at least seven Member States. The Commission notes that campaigning with equal intensity in all Member States presents a particular challenge for the organisers of European Citizens’ Initiatives.

\textbf{Funding}

9.24 All sources of funding for a European Citizens’ Initiative which exceed €500 per year and per sponsor must be disclosed. Of the 31 Initiatives successfully registered with the Commission, 14 received no funding, nine received less than €10,000 and eight — including the three Initiatives which reached the final stage of examination by the Commission — exceeded €10,000.\textsuperscript{116}

\textbf{Point of contact}

9.25 The Commission has established a contact point in its Europe Direct Contact Centre to provide information and assistance relating to European Citizens’ Initiatives.

\textbf{The Commission’s assessment}

9.26 The Commission notes that the necessary procedures and mechanisms are now in place to make European Citizens’ Initiatives operational across the EU, but recognises that “there is still room to improve” and highlights the following challenges:

- difficulties reported by organisers in operating as an informal citizens’ committee, without legal personality, and risks linked to the management of funds and personal data;
- problems encountered in seeking to register a European Citizens’ Initiative, with a large proportion being refused on the grounds that they are manifestly outside the scope of the Commission’s competences;

\textsuperscript{114} See the Commission Communication.
\textsuperscript{115} See the Commission Communication on the ECI “Stop vivisection”.
\textsuperscript{116} €140,000 for “Right2Water”, €159,219 for “One of us” and €23,651 for “Stop vivisection”.
• divergent practices concerning the conditions to be fulfilled and personal data to be provided by signatories in different Member States which make European Citizens’ Initiatives less accessible for some EU citizens;

• the complexities involved in establishing an online collection system, which may reduce the time available for the collection of signatures, as well as difficulties in obtaining certification and in using the software made available by the Commission;

• the absence of a specific time limit for submitting a successful ECI to the Commission for examination after the 12-month period allowed for collecting signatures;

• verification of the accuracy of translations provided by the organisers of an ECI can be cumbersome;

• limited opportunities for stakeholders representing a range of views to participate in the public hearings held at the European Parliament; and

• insufficient dialogue and interaction between the organisers and the Commission throughout the process, including after the Commission has adopted a Communication indicating what action (if any) it proposes to take.

**The Commission’s conclusions**

9.27 At the outset of the report, the Commission makes clear that it “attaches utmost importance to the European Citizens’ Initiative and is fully committed to making this instrument work, so that it can fully achieve its potential”. 117 It concludes that it is “still too early to assess the long-term impacts of the European Citizens’ Initiative on the EU institutional and legislative process” but undertakes to continue “monitoring and discussing” with a view to identifying ways of improving the instrument. 118

9.28 The Commission notes “with interest” the findings of a European Parliament study published in 2014, *European Citizens’ Initiative — First lessons of implementation* 119, as well as the conclusions of an inquiry by the European Ombudsman 120 and feedback from events held by the European Economic and Social Committee. It says that it has commissioned a study to consider whether online collection processes can be simplified, and adds that it will continue to host organisers’ online collection systems on its own servers, free of charge, for “as long as needed”. The Commission expects to “engage in more in-depth discussions” with the Council and the European Parliament, but proposes no changes to the 2011 Regulation.

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117 See p.2 of the Commission report.
118 See p.15 of the Commission report.
119 EP study.
120 Ombudsman inquiry.
The Minister’s Explanatory Memorandum of 24 June 2015

9.29 In a brief Explanatory Memorandum, the Minister says that the Commission report has no legal, financial or policy implications for the UK “because it does not propose implementing any reforms to remedy the issues it cites, not does it ask for input/feedback from Member States”. He continues:

“It is the UK Government’s policy to engage openly and cooperatively with our EU partners to improve the Regulation. The UK Government supports the exploration of any measure to reform the Regulation that either makes it easier for citizens to engage with it or for competent authorities to administer it. Each proposal for reform will be considered on its own merit.”

Previous Committee Reports

None, but the following Reports setting out the Commission’s response to the “Right2Water” and “One of us” Initiatives are relevant: Forty-seventh Report HC 83-xlii (2013-14), chapter 20 (30 April 2014) and Fifth Report HC 219-v (2014-15), chapter 9 (2 July 2014).

Annex 1: Table of proposed European Citizens’ Initiatives

<table>
<thead>
<tr>
<th>Title and subject matter</th>
<th>Registration</th>
<th>Current status</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Fraternité 2020 — Mobility, Progress, Europe” – EU citizenship and mobility</td>
<td>May 2012</td>
<td>Closed November 2013, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“Let me vote” – EU citizenship and mobility</td>
<td>May 2012</td>
<td>Withdrawn January 2013</td>
<td></td>
</tr>
<tr>
<td>“Water and sanitation are a human right! Water is a public good, not a commodity!”</td>
<td>May 2012</td>
<td>Closed. One million threshold met.</td>
<td>Commission agreed to take further follow-up action.</td>
</tr>
<tr>
<td>“High Quality European Education for All”</td>
<td>July 2012</td>
<td>Closed November 2013, insufficient support.</td>
<td></td>
</tr>
<tr>
<td>“Pour une gestion”</td>
<td>July 2012</td>
<td>Closed November</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>Date</td>
<td>Status</td>
<td></td>
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<tr>
<td>----------------------------------------------------------------------</td>
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<td>---------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>“Provision of a central public online collection platform for European Citizens’ Initiatives”</td>
<td>August 2012</td>
<td>Closed November 2013, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“Suspension of the EU Climate and Energy Package” – climate change</td>
<td>August 2012</td>
<td>Closed November 2013, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“European Initiative for Media Pluralism”</td>
<td>October 2012</td>
<td>Withdrawn August 2013</td>
<td></td>
</tr>
<tr>
<td>“End Ecocide in Europe: A Citizens’ Initiative to give the Earth Rights”</td>
<td>October 2012</td>
<td>Withdrawn January 2013</td>
<td></td>
</tr>
<tr>
<td>“Kündiging Personenfreizügigkeit Schweiz” - termination of the EU/Switzerland Agreement on the Free Movement of Persons</td>
<td>November 2012</td>
<td>Withdrawn February 2013</td>
<td></td>
</tr>
<tr>
<td>“30km/h — making the streets liveable!” – road safety</td>
<td>November 2012</td>
<td>Closed November 2013, insufficient support</td>
<td></td>
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<tr>
<td>“Single Communication Tariff Act” – mobile roaming charges</td>
<td>December 2012</td>
<td>Closed December 2013, insufficient support</td>
<td></td>
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<tr>
<td>“Let me vote” – EU citizenship and mobility</td>
<td>January 2013</td>
<td>Closed January 2015, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“End Ecocide in Europe” – environmental protection</td>
<td>January 2013</td>
<td>Closed January 2014, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“Unconditional Basic Income — Exploring a pathway towards emancipatory welfare conditions in the EU”</td>
<td>January 2013</td>
<td>Closed January 2014, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“Teach for Youth — Upgrade to Erasmus 2.0” – education and mobility</td>
<td>June 2013</td>
<td>Withdrawn June 2014, insufficient support.</td>
<td></td>
</tr>
<tr>
<td>“ACT 4 Growth” – female entrepreneurship</td>
<td>June 2013</td>
<td>Closed June 2014, not submitted to the Commission</td>
<td></td>
</tr>
<tr>
<td>“Do not count education spending as part of the deficit!”</td>
<td>August 2013</td>
<td>Closed August 2014, insufficient support</td>
<td></td>
</tr>
<tr>
<td>“European Initiative for Media Pluralism”</td>
<td>August 2013</td>
<td>Closed August 2014, not submitted to the Commission</td>
<td></td>
</tr>
</tbody>
</table>
| “Weed like to talk” – legalisation of cannabis                       | November 2013 | Closed November 2014, not submitted to }
Annex 2: List of proposed European Citizens’ Initiatives which have been refused registration

- **The European anthem** (“Recommend singing the European Anthem in Esperanto”, 2012);

- **Guarantees of European citizenship following the secession of a part or region of an existing EU Member State** (“Fortalecimiento de la participación ciudadana en la toma de decisiones sobre la soberanía colectiva”, 2012);

- **Unconditional basic income** (2012);

- **Nuclear power** (“My voice against nuclear power”, 2012);

- **Creation of a European investment bank** (“Création d’une Banque publique européenne axée sur le développement social, écologique et solidaire”, 2012)

- **Debt and the financial crisis** (“One million signatures for ‘A Europe of Solidarity’”, 2012);

- **Protection of children and of animals** (“Abolición en Europa de la tauromaquia y la utilización de toros en fiestas de crudeza y tortura por diversión”, 2012); (“Our concern for insufficient help to pet and stray animals in the European Union”, 2013), (“Stop cruelty for animals”, 2013) and (“Ethics for animals and kids”, 2014);

- **EU institutions** (“To hold an immediate EU referendum on public confidence in the competence of European Government”, 2013); (“A new EU legal norm, self-
abolition of the European Parliament”, 2014); and (“The supreme legislative and executive power in the EU must be the EU referendum as an expression of direct democracy”, 2014);

- **Lifelong social care** (“Right to lifelong care: Leading a life of dignity and independence is a fundamental right”, 2013);

- **Cultural and linguistic diversity in Europe** (“Minority SafePack — one million signatures for diversity in Europe”, 2013);

- **Regional policy** (“Cohesion policy for the equality of the regions and sustainability of regional cultures”, 2013);

- **Prostitution** (“Ensemble pour une Europe sans prostitution legalization”, 2013);

- **Self-determination** (“Enforcing self-determination as a human right in the EU”, 2013);

- **The Transatlantic Trade and Investment Partnership** (“Stop TTIP”, 2014);

- **Action against poverty** (“Vite l'Europe sociale! Pour un nouveau critère européen contre la pauvreté”, 2014).
10 EU elections

Committee’s assessment (a) Politically important; (b) Legally and politically important

Committee’s decision Not cleared; further information requested; drawn to the attention of the Public Administration and Constitutional Affairs Committee

Document details (a) Commission Communication reporting on the EU elections of 22–25 May 2014; (b) European Council Decision proposing to the European Parliament a candidate for President of the European Commission

Legal base (a) —; (b) Article 17(7) TEU; —; QMV

Departments (a) Cabinet Office (b) Foreign and Commonwealth Office

Document numbers (a) (36803), 8876/15, COM(15) 206 (b) (36170), —

Summary and Committee’s conclusions

10.1 This report reviews the conduct of the 2014 European Parliament (EP) elections. These were the first to take place since the ratification of the Lisbon Treaty. They also established for the first time a direct link between the outcome of the elections and the appointment of the European Commission President. As part of that process, the European political parties nominated Presidential candidates, the European Council then nominated the candidate of the majority party following the elections and that candidate was then elected by the EP.

10.2 The report focuses on the measures taken to enhance the transparency, democratic conduct and European dimension of the elections. It assesses citizens’ awareness of the elections and their associated rights, the action taken by Member States and EU institutions and actual turnout. The assessments are based on a variety of sources, principally Eurobarometer surveys, Member State responses to Commission questionnaires and a Commission-authorised study which incorporated interviews with key stakeholders.¹²¹

10.3 One of the key findings of the report is that overall turnout was 42.61% — a decrease of 0.36% compared with 2009 (42.97%). There was significant difference in turnout across the EU with a high of 89.64% in Belgium (where voting is mandatory) to a low of 13.05% in Slovakia. 35.4% of the electorate voted in the UK, up from 34.5% in 2009. There was limited adoption of the practice of indicating affiliation to European parties on ballot papers; such as there was mostly appeared in printed election material.

¹²¹ Including European political parties, national authorities, media.
10.4 The Commission’s conclusions are mainly positive. It considers that the direct link between elections and the appointment of the Commission President together with the greater provision of information about the different candidates’ programmes have increased voter engagement. The use of interactive social media also helped. Voters could better understand the impact of their vote on the political direction of the EU for the next five years, take into account European (and not exclusively national) political issues and distinguish between alternative European political choices. This in turn, the Commission believes, has “reinforced the democratic legitimacy” of the Commission and strengthened accountability. The participation of Presidential candidates in EU-wide political debates and events “europeanised” the elections. Finally, Directive 2013/EU ensured that mobile EU citizens could exercise their franchise more effectively and efficiently.

10.5 For the 2019 elections, the Commission identifies ways of further enhancing the democratic legitimacy of the EU decision-making process, its “European dimension” and persistently low turnout in some Member States. These include greater use of awareness-raising campaigns at national, regional and local level, highlighting affiliations between national and European political parties and encouraging EU citizens to participate in dialogues.

10.6 In respect of document (a), we thank the Minister for Constitutional Reform at the Cabinet Office (John Penrose) for his Explanatory Memorandum. While we are familiar with the views he expresses on the process for appointing the Commission President and the common voting day (reflecting those of the previous Government), we are grateful to him for drawing to our attention the work of the Government, Electoral Commission and the Political and Constitutional Reform Committee on voting by EU mobile citizens.

10.7 Our main concern reflects that of our predecessors, namely, whether there is a prospect that initiatives, either set out in the Commission’s Recommendation on enhancing the democratic and efficient conduct of the elections to the European Parliament or emerging in the follow-up to document (a), could become proposals for binding EU legislation. We ask the Minister to keep us fully informed of any relevant developments, particularly any arising from the 12 June meeting of the EU Expert Group on Electoral Matters.

10.8 In respect of document (b), we ask the Minister for Europe (Mr David Lidington) to respond to our predecessor Committee’s questions set out in the conclusions to its Report of 16 July 2014. These concern the way in which the Commission President, Mr Juncker, was nominated and elected and the European Council’s commitment to reviewing that process.
10.9 In the meantime, we retain both documents under scrutiny, and draw this report to the attention of the Public Administration and Constitutional Affairs Committee given the interest of its predecessor noted in paragraph 10.6 above.

**Full details of the documents:** (a) Commission Communication: *Report on the European elections of 22-25 May 2014* (36803), 8876/15, COM(15) 206; (b) European Council Decision proposing to the European Parliament a candidate for President of the European Commission: (36170), —.

**Background**

**Document (a)**

10.10 This is a new document. However, in the last Parliament our predecessors scrutinised other documents on the conduct of the 2014 EU elections: a Commission Communication on preparing for the 2014 European elections and a Commission Recommendation on enhancing the democratic and efficient conduct of the elections to the European Parliament (EP).

10.11 Those documents included proposals for national political parties and Member States to promote parties’ affiliation with European political parties in the lead-up to the elections; for Member States to agree on a common day for the elections of the EP, with polling stations closing at the same time; for European political parties to promote their candidate for the President of the European Commission and for national political parties to inform voters about their candidate for Commission President and their programme. The Government at that time was opposed to those non-binding recommendations for the reasons set out in the previous Committee’s Report.

10.12 These recommendations were also relevant to the proposal for a Regulation on the statute and funding of European political parties and foundations. This was drafted to require European political parties to take all appropriate measures to inform voters of the affiliations between themselves, national political parties and candidates. Our predecessors recommended this document, and a proposed amending Regulation on the financing of EU political parties for debate in European Committee. This took place on 6 February 2013. The Regulations were adopted by the EU on 29 September 2014.

10.13 When our predecessors recommended that the Communication and Recommendation should be debated on the floor of the House, they recognised that although the proposals were not legally-binding they increased “the possibility of

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126 See footnote 2.
127 Regulation No 1141/2014 of 22 October 2014 on the statute and funding of European political parties and European political foundations.
128 Regulation No. 1142/2014 of 22 October 2014 amending Regulation No 966/2012 as regards the financing of European political parties.
129 Stg Co Deb, European Standing Committee B, 6 February 2013, cols. 3-18.
subsequent Commission-led legally binding measures”. They considered that the measures, particularly on a common voting day, addressed to national political parties and elections, represented:

“a clear intention to interfere with Member States' electoral arrangements and traditions and to restrict national parties' freedom to act, without power being conferred on the EU to do so.”

10.14 They also agreed with the Government that in those documents “the Commission places an emphasis on the role of the European Parliament and elections in the nomination of the next President of the Commission which is not warranted by Article 17(7) TEU”. The relevance of this Article is explained in the context of document (b) in paragraph 0.17 below.

10.15 Our predecessors asked the Government to provide, in advance of the debate, a detailed analysis of its views on the competence of the Commission to propose each of the measures in the Recommendation, and with its views on how the Commission was likely to follow up these two documents. The documents were debated on the floor of the House of Commons on 18 June 2013.130

**Document (b)**

10.16 This is a document which our predecessors retained under scrutiny in their Report of July 2014.131 It proposed Jean-Claude Juncker as the European Council's candidate for Commission President. It was adopted at the European Council on 27 June 2014 by a qualified majority of EU Heads of State and Government. Only UK and Hungary voted against Mr Juncker's nomination. He was subsequently elected by the EP on 15 July 2014.

10.17 The Minister for Europe (Mr David Lidington) explained to our predecessors that the UK's opposition to document (b), legally-speaking, was based on the interpretation of Article 17(7) TEU. This states:

“taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members.”

10.18 It was the view of the previous UK government that:

“it should not be for the European Parliament to dictate the choice of candidate for the role of President of the European Commission. The Treaties clearly set out the

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130  HC Deb, 18 June 2013, cols. 818-836.
role of the European Parliament and the European Council play respectively in the
process of selecting the new Commission President.”

10.19 As a concession to UK opposition to Mr Juncker’s nomination, the European
Council gave the following commitment in corresponding Council Conclusions:

“Once the new European Commission is effectively in place, the European Council
will consider the process for the appointment of the President of the European
Commission for the future, respecting the European Treaties.”

10.20 Our predecessors asked the Minister for Europe to respond to various questions in
the conclusions to their Report which examined the robustness of that commitment.

The Government’s view on document (a)

10.21 In an Explanatory Memorandum of 30 June 2015, the Minister for Constitutional
Reform at the Cabinet Office (John Penrose) first addresses the question of the link
between the EU citizen vote and the election of the Commission President, first set out in
the Commission’s Recommendation. He notes that the Commission refers in document
(a) to this aspect of the 2014 process as “a new constitutional order”. The Minister
considers that, in accordance with Article 17(7) TEU, it is for the European Council,
composed of EU Heads of State and Government, to propose the Commission President.
Referring to the commitment secured in the European Council in June 2014, he says that
the Government will “engage with the review to press its views”.

10.22 Referring to proposals in the Commission’s Recommendation on making the link
between national and European political parties more visible, the Minister says:

“Participation in European elections is governed by the laws of Member States.
National political parties participate in elections in the UK, not European political
parties. There is nothing within UK domestic law which would prevent a national
political party from making known its affiliation with a European political party,
during the course of its election campaign. Conversely, there is nothing that can
force a national political party to make known its affiliation with a European political
party.”

10.23 Turning to a common voting day, the Minister reports that practice did not change
in the 2014 process: 21 Member States held elections on Sunday 25 May and seven between
22 and 24 May. Of these seven, the UK maintained its tradition of holding Thursday
elections by opting for 22 May. This reflects the Government’s view that “electoral diversity

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132 Explanatory Memorandum of the Minister for Europe 11 July 2014.
133 This is how the Prime Minister portrayed the commitment: “I believe that it was a bad day for Europe because the
decision of the Council risks undermining the position of national Governments, and it risks undermining the power
of national Parliaments by handing further power to the European Parliament. Although the nomination has been
decided and must be accepted, it is important that the Council at least agreed to review and reconsider how to
handle the next appointment of a Commission President. That is set out in the Council conclusions”. HC Deb, 30 June
2014, col. 600.
134 See note 5.
across the EU should be respected”. He reiterates views put to us by the previous Government that having a common election day could actually undermine turnout instead of increasing it and that it is impractical given time-zone differences.

10.24 On the question of the ability of EU mobile citizens to vote, the Minister refers to discussions between the Commission and UK authorities concerning some issues reported by EU citizens residing in the UK. The Minister notes that the report mentions the relevant recommendations of the Political and Constitutional Reform Committee on “Voter Engagement in the UK” to simplify the registration system and to run a corresponding publicity campaign. He informs us that the Cabinet Office plans to discuss these issues further with the Electoral Commission and other electoral stakeholders, in the context of both EP and local elections.

10.25 The Minister concludes by explaining that document (a) was discussed at the EU Expert Group on Electoral Matters meeting on 12 June, with future steps for proposals to be determined.

Previous Committee Reports


11 The Telecommunications Single Market

| Committee’s assessment | Legally and politically important |
| Committee’s decision   | Not cleared from scrutiny; further information requested; drawn to the attention of the Culture, Media and Sport Committee |
| Document details       | (a) Commission Communication on the Telecommunications Single Market  
                        | (b) Proposal for a Regulation laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent |
| Legal base             | (a) —;  
                        | (b) Article 114 TFEU; ordinary legislative procedure; QMV |

Summary and Committee’s conclusions

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

11.2 Having made intermittent progress in 2014, the Latvian Presidency then decided to prioritise this dossier and focus on the two issues where there was a degree of common ground, i.e., mobile roaming and net neutrality. Subsequent developments are summarised in the “Background” section below.

11.3 In his most recent update, just prior to the dissolution, the Minister for Culture and the Digital Economy at the Department for Culture, Media and Sport/Business, Innovation and Skills (Mr Edward Vaizey) was concerned that, were the current text to come into effect, it would have a negative impact on the UK child online protection regime with regard to the “default on” filters for mobile devices and home broadband, and potentially the filtering of public WiFi services. As such, “this formulation” was “a clear breach of a UK Red Line and was therefore sufficient for UK to vote against the text at the recent Coreper meeting”. However, the Presidency and the Commission had indicated their willingness to continue to work with his officials on this section of the text “to fully mitigate this negative impact in advance of Trialogue commencing”. The Minister therefore intended to “monitor this situation as it develops over the next month or so”, but noted that “it may be necessary for the UK to vote negatively again at the appropriate time should the UK be unsuccessful in its attempt to garner such a change”.

11.4 On 8 July, the Council announced that “another step” had been taken in ending mobile roaming charges, when Coreper had approved a deal with the European Parliament, which also included “the first EU-wide rules to safeguard open internet access, also known as net neutrality”.

11.5 In the latest of his full and helpful updates, the Minister now reports that the main points on mobile roaming are:

- January 2016–June 2017: “Consumers will continue to pay mobile roaming charges in the EU at the following rates: 19c/minute for outgoing-voice calls; 6c/SMS; and 20c/MB for data. These rates are comparable with the existing caps as set out under the third Mobile Roaming Regulation and will remain in place until the eventual

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cessation of mobile roaming charges. It is entirely possible that UK consumers may be offered roaming charges below these rates;

- January 2016–June 2017: “the Commission and BEREC\(^{138}\) will conduct a review of the current pricing regime, and competition effects driven by same, including the existing level and divergence of wholesale prices. They will then propose and implement any necessary changes, in order to ensure that a ‘roam like at home’ solution is economically sustainable in the long-term”;

- June 2017 onwards: “Consumers will no longer be charged mobile roaming charges as the ‘roam like at home’ regime comes into effect”; and

- Fair-Use Policies: “in order to manage the risks around arbitrage — SIMs from member states with low domestic rates being re-sold in states with high domestic rates and used to roam permanently — network operators will be able to implement fair-use policies”.

11.6 Summing up, the Minister says:

— given that this outcome is one that that the Government has championed from the outset, he has no hesitation in supporting it;

— it offers clear tangible benefits to consumers — through the eventual cessation of mobile roaming charges and removing the risk of future bill shock whilst roaming — and provides a concrete example of the benefits that can be delivered through membership of the EU;

— by conducting a review of the wholesale pricing regime and ensuing actions, it places the ‘roam like at home’ outcome on a sustainable basis for the longer-term and will help further integrate the telecoms single market and provide further momentum towards the creation of the digital single market; and

— the outcome has “drawn support from the Prime Minister and meets his ambition of seeing the end of mobile roaming charges in the EU”.

11.7 With regard to net neutrality, the Minister says that:

— overall, the text agreed is principles-based and service and technology-neutral, will ensure an open internet across Europe where all legal traffic is treated equally and end the unfair blocking of rival services;

— it thus fully meets the wider criteria in the Government’s negotiating position;

— with regard to the impact on the UK domestic regime, the work of the Internet Watch Foundation and the current voluntary parental control filters regime can continue without further intervention, by implementing the necessary legislation in the UK;

— his Department is now taking this forward, on the basis of a December 2016 deadline for implementation that provides “ample time” to complete this process;

— bearing in mind how it evolved from Commission and European Parliament proposals that were largely unpalatable for the UK, this outcome is “largely positive overall” and “well within a range of outcomes that would have been acceptable to HMG”; and

— he can therefore, on balance, support it.

11.8 Like our predecessors, we commend the Minister for the open and transparent way in which he continues to facilitate proper parliamentary scrutiny of this important dossier, and agree with our predecessors that it should be given wider currency in Whitehall as an example of “best practice”.

11.9 It seems to us that the outcome is as the Minister describes it. But we are not the technical experts; hence we again draw these developments to the attention of the Culture, Media and Sport Committee in case there are other considerations that we have overlooked.

11.10 We now await the final, revised text and a fresh Explanatory Memorandum, in good time prior to the Council meeting at which it is eventually scheduled for adoption.

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

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

**Background**

11.12 On 12 September 2013 the Commission published a legislative package for a Connected Continent: Building a Telecoms Single Market, which it says is aimed at building a connected, competitive continent and enabling sustainable digital jobs and industries; with proposed legislative changes to several regulations that (the Commission said) would “make a reality of two key EU Treaty Principles: the freedom to provide and to consume (digital) services wherever one is in the EU”.

11.13 The full background to the Commission Communication and this draft Regulation is set out in the first of our previous Reports; likewise the very detailed and helpful analysis of both documents by the Minister in his Explanatory Memorandum of 10 October 2013.139

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11.14 Our predecessors’ subsequent Reports embody a number of series of full and very helpful updates ever since this package was first deposited. They include, in September 2014, the Opinion of the Culture, Media and Sport (CMS) Committee, along with Ofcom’s submission to that Committee. The CMS Committee deemed it clear from Ofcom’s submission that at least some of the proposals lacked sufficient grounding in terms of evidence, analysis and consultation, and that much work remained to be done to achieve outcomes that were proportionate and struck an appropriate balance between national and wider European interests.

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

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

“Council’s negotiating stance

“The mandate to negotiate the new regulation covers

• “EU-wide rules on open internet, safeguarding end-users’ rights and ensuring non-discriminatory treatment in the provision of internet access services

• “changes to the current roaming regulation (known as Roaming III), representing an intermediate step towards phasing out roaming fees.

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

“The regulation would apply from 30 June 2016.

“Roaming reform

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

110 List of previous Reports at the end of this Chapter.
calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU.

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

- “Roaming III regulation

“Protecting open internet

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

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

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

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

“How will this become a law?

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

Mobile roaming

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

**Net neutrality**

11.17 The current text remained “principles-based” and “technology and service neutral”, and retained sufficient flexibility for future innovation with regard to emerging and new digital services. However, were the current text to come into effect, it would have a negative impact on the current child online protection regime in operation within the UK, namely the matter of “default on” filters for mobile devices and home broadband, and potentially the filtering of public WiFi services. As such, “this formulation is a clear breach of a UK Red Line and was therefore sufficient for UK to vote against the text at the recent Coreper meeting”. Both the Presidency and the Commission had indicated their willingness to continue to work with his officials on this section of the text “to fully mitigate this negative impact in advance of Trialogue commencing”. The Minister therefore intended to “monitor this situation as it develops over the next month or so”, but noted that “it may be necessary for the UK to vote negatively again at the appropriate time should UK be unsuccessful in its attempt to garner such a change” (see our predecessor’s most recent Report for details).³⁴³

11.18 Given these uncertainties, the current timetable and the imminent dissolution, the Minister recognised that the final formulation of the text would not be known until after the last meeting of the previous Committee, prior to the dissolution of Parliament in view of the 7 May 2015 general election. Therefore, he said:

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

**The previous Committee’s assessment**

11.19 The previous Committee again thanked the Minister for the open and cooperative fashion in which he and his officials had approached the handling of this difficult dossier, which they regarded as worthy of wider study by the Cabinet Office and scrutiny teams across Whitehall.

11.20 The previous Committee hoped that, by early summer, there would be not only a new Government but also a new Committee; but also recognised that, in the post-election period, the Minister might well be unable to submit the final text to the next Committee for

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scrutiny prior to a formal vote in Council. But even so, they recognised that the new Committee would be nonetheless interested in the final outcome, and therefore made it clear that it expected the Minister, or his successor, to deposit any final text along with a fresh Explanatory Memorandum, outlining its provisions in detail, and explaining why he (or she) voted as he (or she) did at the end of the day.

11.21 In the meantime, the documents were retained under scrutiny.

11.22 These developments were also again drawn to the attention of the Culture, Media and Sport Committee.144

11.23 On 8 July 2015, the Council issued a press statement that began thus:

“Another step in ending mobile roaming charges was taken on 8 July 2015, when member states at the Permanent Representatives Committee approved the deal with the European Parliament. The new law will also include the first EU-wide rules to safeguard open internet access, also known as net neutrality”.

11.24 The main points are:

**Mobile roaming**

- Roaming fees will come down on 30 April 2016. The maximum surcharge will then be €0.05 per minute for calls, €0.02 for texts and €0.05 per megabyte for data. These amounts correspond to the current maximum wholesale rates. For calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU, to be set out by the Commission by the end of 2015.

- Roaming surcharges will be abolished as of 15 June 2017. However, roaming providers will be able to apply a ‘fair use policy’ to prevent abusive use of roaming.

- The Commission will be mandated to review the wholesale roaming market and propose a new law by 15 June 2016.

**Protecting open internet**

- For the first time, an EU law will stipulate that operators will have to treat all traffic equally when providing internet access services. The text also enshrines the principle of users' right to access and distribute content of their choice on the internet.

- Operators may use reasonable traffic management measures to keep the internet running. Such measures are to be based on objective technical requirements, not on commercial considerations. Blocking or throttling will be allowed only in a limited number of circumstances, for instance to counter a cyber-attack or deal

144 Ibid.
with exceptional or temporary traffic congestion. Agreements on services optimised for specific content (e.g., tele-surgery) will be allowed where optimisation is necessary, but operators will have to ensure the general quality of internet access services. The open internet rules will be applicable from 30 April 2016, which is the overall date of application of the new regulation.

**How will this become a law?**

- The agreed text will undergo technical finalisation. It then needs to be formally approved by the Council and the Parliament. The Council is expected to formally adopt it in the autumn 2015. This does not need to take place in the Telecom Council: any Council configuration has the power to adopt the legal act.

- The regulation will enter into force 20 days after its publication in the EU Official Journal. 145

**The Minister’s letter of 9 July 2015**

11.25 The Minister says that, although the formal negotiations suffered some slippage, a formal agreement was reached as part of the trialogue process at the end of June. His letter provides: a “brief summary of the negotiating processes that took place since my last letter”; an “analysis of the agreed text and any impacts”; and a “timetable for the final formal stages before the Regulation comes into force”.

**Outline of negotiations (March–June 2015)**

“You may recall from my last letter, I set out a timetable that foresaw the continuation of the trialogue process after the Easter break and agreement at some point thereafter. Whilst this came to pass, it is fair to observe that the timetable suffered some severe slippage, as the Presidency struggled to consolidate a text that met the conflicting and substantive demands within Council, as well as between Council and the European Parliament. It was clear that there were some fundamental disagreements over the preferred outcomes covering both the roaming and net neutrality provisions in the Regulation.

“This continued lack of agreement drove the Presidency to organise an informal ministerial breakfast on the morning of Telecoms Council that took place on 12th June. Whilst the discussion enabled ministers to set out their positions - my intervention called for an early agreement, as well as supporting an end to roaming charges as quickly as possible — it failed to break the deadlock within Council. As a result, it was beginning to look increasingly likely that no agreement would be reached and the package would formally pass to a Second Reading stage for agreement after the Summer.

“Further technical meetings between the Presidency and EP took place, before the formulation of a text that was put forward in the second half of June. This text quickly gained traction in both Council and the EP and a point of political agreement was reached at the trialogue meeting that took place on 29th June.

“I now turn to an analysis of that text, noting the major outcomes for each element and how they meet HMG’s negotiating position.

**Mobile Roaming**

“In my last letter, the then roaming element of the Regulation had the main actions of:

- “the introduction of a roaming allowance with reduced roaming charges once the allowance was exceeded (as an interim measure whilst the wholesale review took place);
- “a commitment to review, and take action as necessary, of the wholesale pricing regime;
- “an extension of the existing consumer protection regime (SMS alerts) to cover the use of the allowance and charges thereafter; and
- “an eventual cessation of mobile roaming charges in the EU through the introduction of a ‘roam like at home’ solution once the wholesale price review was completed and any actions implemented.

“IT very much remained the case that both the level of the roaming allowance and the dates associated with the wholesale review and, thus, eventual cessation of mobile roaming charges were the points around which reaching agreement proved difficult within Council (many Member States favouring a cautious approach of lower allowances and later dates), and between Council and the EP (the latter preferring larger allowances and an early end to roaming).

“As negotiations commenced, it became clear that an early end to roaming charges began to garner majority support within Council and was seen as a tactical concession in order to manage the EP’s expectations with regard to net neutrality.

“As part of this discussion, some Member States began to cast doubt on the necessity and desirability of the roaming allowance; i.e., it would be in place for around 18 months and would drive network operators to change billing regimes twice in this period (as well as bear costs associated with providing an allowance without addressing the wholesale pricing regime). The Presidency therefore proposed that the allowance be dropped and an early end-date of roaming be adopted. This approach quickly gained majority support within Council and, as such, was agreed with the EP during the last trialogue session.
“Thus, the final outcome is text that sets out a clear timetable for the eventual cessation of mobile roaming charges, and confirms actions that required to be taken in order to achieve same.

“In summary, the main points are:

• **Jan ‘16 to June ‘17:** Consumers will continue to pay mobile roaming charges in the EU at the following rates: 19c/minute for outgoing-voice calls; 6c/SMS; and 20c/MB for data. These rates are comparable with the existing caps as set out under the third Mobile Roaming Regulation and will remain in place until the eventual cessation of mobile roaming charges. It is entirely possible that UK consumers may be offered roaming charges below these rates;

• **Jan ‘16 to June ‘17:** the Commission and BEREC will conduct a review of the current pricing regime, and competition effects driven by same, including the existing level and divergence of wholesale prices. They will then propose and implement any necessary changes, in order to ensure that a ‘roam like at home’ solution is economically sustainable in the long-term;

• **June ‘17 onwards:** Consumers will no longer be charged mobile roaming charges as the ‘roam like at home’ regime comes into effect; and

• **Fair-Use Policies:** in order to manage the risks around arbitrage - SIMs from member states with low domestic rates being re-sold in states with high domestic rates and used to roam permanently - network operators will be able to implement fair-use policies.

“Given that this outcome is one that HMG has championed from the beginning of negotiations (albeit via a slight detour through the introduction of the interim roaming allowance), I have no hesitation in supporting this result.”

11.26 In conclusion, the Minister says:

“In my view, it not only offers clear tangible benefits to consumers — through the eventual cessation of mobile roaming charges and removing the risk of future bill shock whilst roaming — it also provides a concrete example of the benefits that can be delivered through membership of the EU. Further, by conducting a review of the wholesale pricing regime and ensuing actions, it places the ‘roam like at home’ outcome on a sustainable basis for the longer-term and will help further integrate the telecoms single market. It is anticipated that consumers will further engage with digital goods and services whilst roaming, providing further momentum towards the creation of the digital single market; a real benefit to businesses providing same.

“Finally, this outcome is one that has drawn support from the Prime Minister and meets his ambition of seeing the end of mobile roaming charges in the EU.
Net neutrality

“Overall, the text agreed is principles-based and is service & technology neutral. It will ensure an open internet across Europe where all legal traffic is treated equally and bring to an end the unfair blocking of rival services we have seen in some instances in the past.

“In terms of traffic management, it requires that any traffic management undertaken by operators is transparent. It also provides further clarification on what powers are conferred to national regulatory authorities — Ofcom in the UK’s instance — and what action they can take when they believe the requirements of the Regulation are being breached. As such, the text fully meets the wider criteria that set down HMG’s negotiating position.

“However, you may recall from my previous correspondence that HMG was pursuing a specific exemption within the Regulation to avoid the UK having to place its current child online protection regime (both the voluntary parental control filters and the work of the Internet Watch Foundation to combat illegal child sex abuse imagery) on a legislative footing. Despite some opposition within Council to this UK-specific exemption, such a text formulation was retained in the text moving forward until the final trialogue meeting. It was leading up to this meeting whereby the EP indicated that they could not accept such an outcome and would seek its removal from the text during the upcoming plenary session.

“As such, the Presidency were forced into a difficult position: to either drop the text or continue to support its inclusion on behalf of the UK and risk both alienating the EP and it being eventually removed at a later stage. In order to ensure an overall deal was reached, largely to protect the position on roaming, and offer a concession to the EP to avoid them focussing on other, more sensitive, issues around the net neutrality text, the Presidency opted for the former.

“Whilst it is fair to say that this impact on the UK domestic regime is not perfect in terms of outcomes, it certainly does not stop UK from continuing to operate its existing regime. We have ensured that the work of the Internet Watch Foundation can continue without further intervention, and have ensured the current voluntary parental control filters regime can also continue by implementing the necessary legislation in the UK, which my Department is now taking forward. HMG was successful in gaining an implementation period to ensure that UK is able to become compliant with the new requirements; that deadline is December 2016, giving us ample time to complete this process.

“Therefore, on balance, and bearing in mind how the outcome on net neutrality evolved from the original Commission and EP proposals which were largely unpalatable for the UK, I judge this outcome to be largely positive overall and is well within a range of outcomes that would have been acceptable to HMG. As such, I can also support the outcome for this element.
“In summary, I note that the text that was agreed at the final triologue contains a positive outcome with regard to UK’s ambition on an eventual cessation to mobile roaming charges in the EU and that UK has been largely successful in shaping the resulting regulatory requirements cover matters relating to net neutrality. It also manifests a much simplified Regulation; another key UK negotiating objective.

“Thus, on balance, I am content to support the overall outcome.

Next stages and adoption

“With agreement finally gained in the dying embers of the Latvian Presidency, the formal process of adoption will now fall to the incoming Presidency of Luxembourg.

“As such, the final text was approved at a meeting of Coreper on Wednesday 8th July and will now pass through the jurist-linguist process for legal review and translation into the official languages of the EU. The Regulation will then be put to an upcoming Council, and a full plenary of the EP for adoption; the specific Council and date of the EP Plenary have yet to be confirmed. The Regulation will come into force after publication on the Official Journal of the European Union. It is anticipated that the net neutrality provisions will come into force on April 2016; the stages for roaming are noted above.

“Given the above analysis of the outcomes, that shows that the Regulation has largely meets HMG’s negotiating position, it is my intention that UK votes to accept the Regulation.”

Previous Committee Reports


12 The EU and the ITU World Radiocommunication Conference WRC-15

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information requested; drawn to the attention of the Culture, Media and Sport Committee
Document details
Proposal for a Council Decision on the EU position at the November 2015 World Radiocommunication Conference (WRC-15)

Legal base
Articles 114 and 218(9) TFEU; QMV

Department
Culture, Media and Sport

Document numbers
(36909), 9455/15 + ADD 1, COM(15) 234

Summary and Committee’s conclusions

12.1 World radiocommunication conferences (WRC) are held every three to four years. It is the job of WRC to review, and, if necessary, revise the Radio Regulations, the international treaty governing the use of the radio-frequency spectrum and the geostationary-satellite and non-geostationary-satellite orbits. Revisions are made on the basis of an agenda determined by the International Telecommunication Union (ITU) Council, which takes into account recommendations made by previous world radiocommunication conferences. The general scope of the agenda of world radiocommunication conferences is established four to six years in advance, with the final agenda set by the ITU Council two years before the conference, with the concurrence of a majority of Member States.

12.2 The European Conference of Postal and Telecommunications Administrations (CEPT) — a pan-European body rather than an EU (including countries such as Russia and Iceland) — has been involved in preparations for WRC-15 since 2012.

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546 The 2014–18 membership is:
- **Region A (Americas):** 9 seats: Argentina, Brazil, Canada, Costa Rica, Cuba, Mexico, United States, Paraguay, Venezuela;
- **Region B (Western Europe):** 8 seats: France, Italy, Germany, Greece, Lithuania, Spain, Switzerland, Turkey;
- **Region C (Eastern Europe and Northern Asia):** 5 seats: Azerbaijan, Bulgaria, Poland, Romania, Russian Federation;
- **Region D (Africa):** 13 seats: Algeria, Burkina Faso, Egypt, Ghana, Kenya, Mali, Morocco, Nigeria, Rwanda, Senegal, Tanzania, Tunisia, Uganda;
- **Region E (Asia and Australasia):** 13 seats: Australia, Bangladesh, China, India, Indonesia, Japan, Korea (Republic of), Kuwait, Pakistan, Philippines, Saudi Arabia, Thailand, United Arab Emirates.

547 The European Conference of Postal and Telecommunications Administrations - CEPT - was established in 1959 by 19 countries. It now has 48 members. CEPT offers its members the chance of:
- establishing a European forum for discussions on sovereign and regulatory issues in the field of post and telecommunications issues;
- providing mutual assistance among members with regard to the settlement of sovereign/regulatory issues;
- exerting an influence on the goals and priorities in the field of European Post and Telecommunications through common positions;
- shaping, in the field of European posts and telecoms, those areas coming under its responsibilities;
- carrying out its activities at a pan-European level;
- strengthening and fostering more intensive co-operation with Eastern and Central European countries;
- promoting and facilitating relations between European regulators (e.g. through personal contacts);
- influencing, through common positions, developments within ITU and UPU in accordance with European goals;
- responding to new circumstances in a non-bureaucratic and cost-effective way and carrying out its activities in the time allocated;
- settling common problems at committee level, through close collaboration between its committees;
- giving its activities more binding force, if required, than in the past; creating a single Europe on posts and telecommunications sectors.

Since 2001, as a response to the convergence in the telecommunications sector and the requirements of the information society, the two committees dealing separately with radiocommunications and telecommunications were replaced by a single Electronic Communications Committee.
12.3 The Commission draft proposal sets out the negotiating positions that (in its view) Member States must take on behalf of the EU at the International Telecommunication Union (ITU) World Radiocommunication Conference (WRC-15) which will take place in Geneva from 2 to 27 November 2015.

12.4 The Minister for Culture and the Digital Economy at the Department for Culture, Media and Sport (Mr Edward Vaizey) explains that, earlier this year, the Radio Spectrum Policy Group (RSPG) published an Opinion setting out its view of EU objectives for the WRC. It envisaged that this would lead to a Commission Communication and then non-binding Council Conclusions on the positions that EU Member States should adopt — the approach for previous WRCs, which has “worked reasonably well”.

12.5 This year, however, the Commission is proposing a Council Decision, which would be binding on all Member States. The Commission argues that decisions on some of the agenda items at the WRC will affect areas of EU policy and so it is necessary for Member States to take positions on behalf of the Union. The EU is a “sector member” of the ITU, not a full member, so it is unable to negotiate on its own behalf. The proposed Decision sets out positions to be adopted on behalf of the EU in relation to four of the WRC-15 Agenda items and provides that Member States “must ensure that any relevant amendments comply with EU law and do not bear any prejudice to its future foreseeable development”. The details are set out in “Background” below.

12.6 As the then Committee’s 2011 Report on the most recent World Radiocommunication Conference, WRC-12, demonstrates, the Minister is correct about the normal preparatory procedure. The Commission’s approach here is a clear departure from previous practice in that it is now asserting more aggressively that the EU has exclusive competence over some of the subject matter of the negotiations. Whether this new approach will be vindicated will depend upon the Commission being able to establish that there is indeed some element of EU exclusive competence, albeit it has not been asserted in the past.

12.7 We note that the Minister considers that there is no good reason for changing of the EU approach to these negotiations, and that it should instead maintain and build on the process used at WRC-12, especially as his understanding is that the RSPG (of which the Commission is a member) has expressed a similar view and that a number of other Member States will similarly resist the implications of this proposal as drafted.

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148 The RSPG consists of representatives of the Member States and of the Commission. In addition, representatives of the EEA countries, the candidate countries, the European Parliament, the European Conference of Postal and Telecommunications Administrations (CEPT) and the European Telecommunications Standardisation Institute (ETSI) attend as observers. The RSPG contributes to the development of a EU Radio Spectrum Policy, taking into account not only technical parameters but also economic, political, cultural, strategic, health and social considerations. The high-level advisory group also considers the various potentially conflicting needs of radio spectrum users with a view to ensuring that a fair, non-discriminatory and proportionate balance is achieved. The RSPG adopts opinions, which are meant to assist and advise the Commission on Radio Spectrum Policy issues, on coordination of policy approaches and, where appropriate, on harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market.

12.8 We shall accordingly retain this proposal under scrutiny, pending an update from the Minister on the end-June Council Working Group discussion to which he refers, in which he undertakes to “keep the position in relation to competence under review”. We should like this update to be provided no later than Thursday 3 September (i.e., in time for the Committee to consider it at its first meeting after the summer recess, on 9 September). We ask that it includes his assessment whether or not the Commission is likely to pursue its claim of exclusive competence to litigation.

12.9 We are also drawing these developments to the attention of the Culture, Media and Sport Committee.

**Full details of the documents:** Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, in the International Telecommunication Union (ITU) World Radiocommunication Conference 2015 (WRC-15): (36909), 9455/15 + ADD 1, COM(15) 234.

**Background**

12.10 Under the terms of the [ITU Constitution](https://www.itu.int/), a WRC can:

- revise the Radio Regulations and any associated Frequency assignment and allotment Plans;
- address any radiocommunication matter of worldwide character;
- instruct the [Radio Regulations Board](https://www.itu.int/en/RadioRegulations/) and the [Radiocommunication Bureau](https://www.itu.int/en/RadiocommunicationBureau/), and review their activities; and

12.11 The WRC-15 will be held in Geneva, from 2-27 November 2015.  

12.12 In his Explanatory Memorandum of 15 June 2015, the Minister says that the Commission:

“argues that decisions on some of the agenda items at the WRC will affect areas of EU policy and so it is necessary for Member States to take positions on behalf of the Union. The EU is a ‘sector member’ of the ITU, not a full member, so it is unable to negotiate on its own behalf. The proposed Decision sets out positions to be adopted on behalf of the EU in relation to four of the WRC-15 Agenda items and provides that Member States must ensure that any relevant amendments comply with EU law and do not bear any prejudice to its future foreseeable development.”

12.13 With regard to the **Legal and Procedural Issues** raised by this proposal, the Minister says:

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150 See World Radiocommunication Conferences.
• the legal bases cited are Articles 114 and 218(9) TFEU;

• Article 114 concerns the internal market; and

• Article 218(9) sets out a procedure for establishing the EU’s position in an international organisation.

"Recital (1) to the proposed Decision states ‘All EU Member States are Parties to the Radio Regulations, and at least some of the revisions may affect common EU rules or alter their scope. Therefore, although the Union is not a full member of the ITU, it is necessary to decide on positions to be taken on the Union’s behalf’. Article 216(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the EU has external competence where the conclusion of an agreement ‘is likely to affect common rules or alter their scope’. This is an area of exclusive external competence (Article 3(2) TFEU).

“However, there is an argument that revisions to the Radio Regulations will not affect common rules or alter their scope. The Radio Regulations allow assignment to a station of any frequency. In operating, the station must not cause harmful interference to radio services or communications of other ITU Member States or of recognized operating services where these operate in accordance with the Radio Regulations. The Radio Spectrum Policy Group (a high-level advisory group that assists the Commission in the development of radio spectrum policy) has explained that ‘It is up to each ITU Member state or group of Member States to decide on the actual use of frequency bands in their countries taking into account the sharing conditions and coordination requirement defined in the RR [Radio Regulations] in order to protect spectrum use in other countries’. The RSPG Opinion goes on to express the view that ‘the modifications of the RR cannot affect the EU common rules on spectrum’ (RSPG Opinion 19 February 2015151).

“The view of the RSPG was that ‘the common policy objectives have to be established in accordance with the requirements of the principle of sincere cooperation, as pointed out in the RSPP [Radio Spectrum Policy Program Decision 243/2012/EU], Art. 10.1 (b)’. Article 10(1)(b) of the RSPP provides that in international negotiations relating to spectrum matters ‘if the subject matter of the international negotiations falls partly within the competence of the Union and partly within the competence of the Member States, the Union and the Member States shall seek to establish a common position in accordance with the requirements of sincere cooperation’.

“Also of relevance to the consideration of competence are the Framework Directive (Directive 2002/21/EC) and the Radio Spectrum Decision (Decision 676/2002/EC).

“Article 8a of the Framework Directive concerns the strategic planning and coordination of radio spectrum policy. Article 8a(4) provides that ‘Where necessary to ensure the effective coordination of the interests of the European Community in

151 Minister’s footnote: See "RSPG Opinion on Common Policy Objectives for WRC-15".
international organisations competent in radio spectrum matters, the Commission, taking utmost account of the opinion of the RSPG, may propose common policy objectives to the European Parliament and the Council’.

“Article 6 of the Radio Spectrum Decision concerns relations with third countries and international organisations. This provides that the Commission ‘shall monitor developments regarding radio spectrum in third countries and in international organisations, which may have implications for the implementation of this Decision’. Under Article 6(3) the Commission ‘may propose measures with the aim of securing the implementation of the principles and objectives of this Decision, where appropriate. When necessary to meet the aim set out in Article 1, common policy objectives shall be agreed to ensure Community coordination among Member States’. The aim set out in Article 1 is to ‘establish a policy and legal framework in the Community in order to ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in Community policy areas such as electronic communications, transport and research and development’. Article 1(2) explains that, amongst other things, the Decision establishes procedures to ‘ensure the effective coordination of Community interests in international negotiations where radio spectrum use affects Community policies’. Article 1(3) goes on to explain that ‘Activities pursued under this Decision shall take due account of the work of international organisations related to radio spectrum management, e.g. the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT)”.

The Government’s view

12.14 The Minister describes the Commission’s approach as “a clear departure from previous practice”.

12.15 He continues as follows:

— at WRC-12, the Commission invited Member States to agree negotiating positions through the adoption of a Commission Communication and then non-binding Council Conclusions on the positions that EU Member States should take;

— while this discussion still needs to take place at Council level, the Government does not at this time see any rationale for changing the EU approach to these negotiations, and would prefer to maintain and build on the process used at WRC-12; and

— the Government understands that “the RSPG has a similar view”, and that “a number of other Member States will similarly resist the implications of this proposal as drafted”.

12.16 In the immediate future, as of 15 June, the Minister’s expectation was that the Commission would present its proposal to a Council Working Group at the end of June, when he would “keep the position in relation to competence under review”.
**Previous Committee Reports**


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**13 Renewable energy progress report**

**Committee’s assessment** Politically important

**Committee’s decision** Not cleared from scrutiny; further information requested; draw to the attention of Energy and Climate Change Committee

**Document details** Commission progress report on renewable energy

**Legal base** —

**Department** Energy and Climate Change

**Document numbers** (36935), 9964/15 + ADDs 1–2, COM(15) 293

**Summary and Committee’s conclusions**

13.1 In order to support the development and integration of renewable energy, Directive 2009/28/EC sets a legally binding target whereby the EU as a whole must ensure that 20% of its final energy consumption by 2020 comes from renewable sources, with a sub-target of 10% for renewable energy use in transport. In parallel with this, each Member State has its own overall target — which, for the UK, is 15% — whilst all Member States have the same (10%) sub-target for transport. Progress is measured by interim (two-yearly) targets, which become steeper in the approach to 2020, and the Directive requires the Commission to produce a mid-term report on the EU’s progress.

13.2 This document sets out the position on the basis of reports submitted by Member States to the Commission in 2013, and says that, overall, renewables are projected in 2014 to account for 15.3% of gross final energy consumption, with the EU and an overwhelming majority of Member States advancing well towards their 2020 target, although it cautions that, as the trajectory becomes steeper, some Member States (including the UK) may need to intensify their efforts, or reassess their policy tools, in order to keep on track. The Commission also comments in more detail on the three areas identified in the Directive — electricity, heating and cooling, and transport — noting that progress has been slowest on the last of these.

13.3 Given the important role which EU energy policies give to renewables, this is clearly a document of some interest, which we think it right to draw to the attention of the House. In doing so, we note that, notwithstanding certain qualifications (notably as regards transport), the Commission takes a reasonably optimistic view of the EU as a
whole meeting its overall targets, and that it believes that a majority of Member States are on course to do so as well.

13.4 At the same time, the Commission has identified the UK as one of the Member States which may need to assess whether existing policy tools are sufficient to enable them to meet their renewable energy objectives. As we have commented, the Minister of State at the Department for Energy and Climate Change (Andrea Leadsom), has made no reference to this in her Explanatory Memorandum, and indeed has provided figures which suggest that, at least so far as 2013-14 is concerned, the UK is likely to exceed its interim target. Whilst this assessment is not necessarily incompatible with the observations made by the Commission, there is clearly scope for confusion, and it would be helpful therefore if the Minister could indicate whether she believes the UK is likely to meet its 2020 targets (and in particular whether she agrees with the Commission’s observations).

13.5 In the meantime, we hold the document under scrutiny, and draw it to the attention of the Energy and Climate Change Committee.

**Full details of the documents:** Commission Report: Renewable energy progress report: (36935), 9964/15 + ADDs 1–2, COM(15) 293.

**Background**

13.6 According to the Commission, renewable energy is an essential element in the fundamental transformation needed to achieve the Energy Union, and it notes that a comprehensive policy framework to support the development and integration of renewables, based on quantified targets, regulatory clarity and market based investment, is contained in Directive 2009/28/EC. In particular, this sets a legally binding target whereby the EU as a whole must ensure that 20% of its final energy consumption by 2020 must come from renewable sources, with a sub-target of 10% for renewable energy use in transport. In parallel with this, each Member State has its own overall target — which, for the UK, is 15% — whilst all Member States have the same (10%) sub-target for transport. The Directive also distinguishes between consumption of electricity (which accounts for 24% of overall EU energy use), that for heating and cooling (which accounts for 46%), and that for transport (which accounts for the remaining 30%).

13.7 Member States can meet their targets either through domestic policies providing incentives to renewable energy generation; by physical trading (such as partnerships with another Member States on projects generating renewable energy); and by statistical trading (whereby a Member State can purchase “credits” from another Member State which has surpassed its target). Progress is measured by interim (two-yearly) targets, which become steeper in the approach to 2020, and, along with other Member States, the UK outlined its plans to meet its target in a National Renewable Energy Action Plan, which was submitted to the Commission in 2010.
The current document

13.8 The Directive requires the Commission to produce a mid-term report on the EU’s progress towards meeting its 2020 goal, and this document sets out the position on the basis of reports submitted by Member States to the Commission in 2013.

13.9 The Commission says that, overall, renewables are projected in 2014 to account for 15.3% of gross final energy consumption, and that the EU and an overwhelming majority of Member States are advancing well towards their 2020 target (although it suggests that in part this is due to decreases in overall energy consumption in recent years). It also cautions that, as the trajectory becomes steeper, some Member States may need to intensify their efforts to keep on track (and, where necessary, make use of cooperation mechanisms with others): and it suggests that some Member States — including France, Luxembourg, Malta, the Netherlands and the UK — may need to assess whether policy tools are sufficient and effective in meeting their renewable energy objectives. However, it stresses that this assessment is based on modelling and only take account of policy measures implemented by the end of 2013, with some Member States having in the meantime taken decisions which, if implemented in a timely manner, would deliver the necessary outcome by 2020.

13.10 As regards the three individual areas, it comments that the share of renewable energy in the heating and cooling sector was estimated to be 16.6% in 2014, and that it is increasingly being used as a cost-efficient alternative to fossil fuels in district heating and at local level; and that about 26% of the EU’s power is generated from renewables (including about 10% sourced from variable renewable energy, such as wind and solar). However, it says that in the transport sector — where the bulk of renewable energy is still expected to come from biofuels — progress towards the 10% target has been slow, with a projection for 2014 of only 5.7%, this being due to slow progress in road vehicle and rail electrification, to the uncertainty caused by a delay in finalising the means of limiting the risks of indirect land-use change\textsuperscript{152} increasing emissions levels, and to insufficient progress in the deployment of alternative, second generation biofuels.

13.11 The Commission comments that, despite the steady progress made until now, achieving the 2020 targets is still largely dependent on continuity of current policies, and additional measures enabling the deployment of renewable energy: and it suggests that, for some Member States, this will require cooperation with others, whilst Member States will also need to address non-cost barriers, including planning, administrative and authorisation procedures, and to facilitate market access for new entrants, in particular small and medium-sized enterprises. It notes that there has been some progress in these areas, including the introduction of a one-stop-shop system for project approvals, on-line information platforms, and improved cooperation between involved authorities. It also notes that the UK has introduced a 12 month time limit for planning permits (including time for appeals).

\textsuperscript{152} This arises when, as a result of more agricultural land being used to grow fuel crop rather than food, woodland is used instead to grow food crops, thus releasing stored carbon.
Finally, the Commission notes that, as part of its Regulatory Fitness (REFIT) programme, a review of the Renewable Energy Directive was carried out in 2014, which concluded that the setting of binding national targets had been successful, not least in increasing transparency for investors, improving the quality of information about renewable energy markets, and achieving the EU’s energy and climate policy goals, security of supply, employment, public acceptance and regional development. In addition, it says that the targets have avoided emissions of around 388 million tonnes of carbon dioxide in 2013, and have reduced EU demand for fossil fuels, reduced inland consumption of natural gas by at least 7% in almost half of Member States, and avoided at least €30 billion (£25.5 billion) a year on imported fuel costs.

The Government’s view

In her Explanatory Memorandum of 2 July 2015, the Minister says that although there are no policy issues arising directly from this report, her department continues to monitor progress against the 2020 renewables target, and will report on progress against the interim targets. In the meantime, she comments that, overall, the UK met its first interim target of 4.1% for 2011-12, and, with provisional figures showing that 6.3% of energy consumption came from renewables in 2013-14, is on track to meet the target of 5.4% for that year; that it is among the 21 Member States which have met the deployment trajectory for renewable heating and cooling, and that it is also among the 16 Member States which were above their indicative trajectory for renewable electricity use in 2013. She does not comment on Commission’s observation that the UK is one of the Member States which may need to assess whether policy tools are sufficient and effective in meeting its overall renewable energy objectives.

Previous Committee Reports

None.
14 Use of genetically modified food and feed

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information awaited; drawn to the attention of the Environmental Audit, Environment, Food and Rural Affairs and Science and Technology Committees

Document details

(a) Commission Communication reviewing the decision-making process on genetically modified organisms (GMOs)
(b) Proposal for a Regulation amending Regulation (EC) No. 1829/2003 as regards the possibility for Member States to restrict or prohibit the use of genetically modified food and feed on their territory

Legal base

Article 114 TFEU; ordinary legislative procedure; QMV

Department

Environment, Food and Rural Affairs

Document numbers

(a) (36814), 8344/15, COM(15) 176
(b) (36817), 8356/15, COM(15) 177

Summary and Committee’s conclusions

14.1 EU legislation provides for the cultivation and use of genetically modified organisms (GMOs), and of food and feed products containing them, to be authorised on the basis of an assessment by the European Food Safety Authority (EFSA) of any risks to human and animal health and the environment. Authorisations are granted by the Commission, but any such proposals are subject to a vote by Member States, and, because of deep divisions among them, this has invariably resulted in “no opinion” being issued, with the Commission then being free to adopt the measures on its own initiative, if it so decides.

14.2 This led to suggestions that Member States should have the freedom to decide whether GMOs should be cultivated on their territory, and the Commission brought forward in July 2010 a draft Regulation which would provide a greater measure of national discretion as regards the cultivation of GMOs, whilst retaining an EU authorisation system based on a scientific risk assessment. In particular, it proposed that the relevant legislation should be amended to provide an explicit legal base authorising Member States to restrict or prohibit the cultivation of all or particular authorised GMOs in part or all of their territories on grounds other than health and the environment, so long as this conformed both to the wider provisions in the Treaties, and to the EU’s international obligations.

14.3 Our predecessors considered the proposal on a number of occasions, commenting that it was somewhat unusual, in that it sought to return to Member States certain powers in relation to the cultivation of GM crops which were currently exercised by the EU, and, to that extent was to be welcomed in principle. However, they also noted that the UK in
particular had consistently placed considerable emphasis on the need for decisions of this kind to be taken with strict regard to scientific assessment, and that, if that approach was not to be undermined and thus set an unfortunate precedent for other areas, it would be important to be quite clear on what basis Member States would in this instance be free to take their own decisions. They also drew attention to these and other practical and legal issues in the light of further information provided by the Government, and the documents were debated in European Committee A on 14 June 2011.

14.4 The proposal was eventually adopted as Directive (EU) No. 2015/42, which the UK supported, despite a number of continuing misgivings over the prospect of national restrictions being imposed on non-scientific grounds. However, as this applies only to the cultivation of GMOs, the Commission undertook in 2014 to review the decision-making process for authorising their use in food and feed, and it has now produced a Communication, which is accompanied by a draft Regulation amending Regulation (EC) No. 1829/2003 so as to allow Member States to restrict or prohibit the use of genetically modified food and feed which has been authorised, subject to certain conditions similar to those now applicable to its cultivation.

14.5 The Government is currently considering the implications of this proposal, but says that, as a general rule, it would in principle welcome Member States being given more national discretion in relation to EU decisions. However, its initial analysis has identified a number of significant questions, including the consistency of the proposal with the single market ethos, and the principle of science-based decision-making; its potential impact on trade in GM products into and within the single market; and the setting of a general precedent for the grounds on which products might be banned. It says that it will provide a supplementary explanatory memorandum when it has completed its initial deliberations.

14.6 We have considered whether the proposed Regulation complies with the subsidiarity principle, particularly in the light of the two reasoned opinions submitted by the Spanish and Dutch parliaments. However, we are satisfied that the proposed restoration of some powers to Member States currently exercised by the EU respects subsidiarity and should result in more decisions being taken “as closely as possible” to the EU citizen. We note, in any event, that the official deadline for the House to submit a reasoned opinion expired on 23 June, before this Committee was formed.

14.7 We consider that the proposal gives rise to other issues, similar to those identified in relation to the earlier proposal and which the Government intends to address. We share these concerns, although we note that, in the event, they did not prevent the UK from supporting the adoption of Directive (EU) No. 2015/42. We will therefore await with interest the outcome of the Government’s deliberations on this latest proposal, and we retain these documents under scrutiny. In the meantime think it right to draw these documents to the attention of the Environmental Audit, Environment, Food and Rural Affairs and Science and Technology committees as well as the wider House.

Full details of the documents: (a) Commission Communication: Reviewing the decision-making process on genetically modified organisms (GMOs): (36814), 8344/15.
European Scrutiny Committee, First Report, Session 2015-16

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COM(15)196; and (b) Draft Regulation amending Regulation (EC) No. 1829/2003 as regards the possibility for Member States to restrict or prohibit the use of genetically modified food or feed on their territory: (36817), 8356/15, COM(15)177.

Background

14.8 The authorisation of the cultivation and use of genetically modified organisms (GMOs), and of food and feed products containing them, is laid down in EU legislation, with Directive 2001/18/EC dealing with their environmental release and Regulation (EC) No 1829/2003 with the marketing of related products, whilst Regulation (EC) No 1830/2003 sets out rules on traceability and marketing. Requests for approval are assessed by the European Food Safety Authority (EFSA) and by the scientific authorities in Member States for any risks to human and animal health and the environment, and, where formal approval for a product has been granted, the provisions apply throughout the EU. However, Member States can take safeguard measures to prohibit or restrict the cultivation of GMOs on their territory if they can produce new evidence to demonstrate that an approved product presents a risk, and they may also take measures to avoid the unintended presence of GMOs in other products.

14.9 Approvals are granted by the Commission (previously by Decisions adopted under the former comitology procedure, but latterly by means of implementing acts in accordance with Regulation (EU) No. 182/2011). Proposals for such measures are subject to a vote by Member States in a Standing Committee, but, because of deep divisions among them, particularly as regards the cultivation of GMOs, this process has invariably resulted in “no opinion” (with neither a qualified majority for or against) being issued, and the Commission is then free to adopt the measure, if it so decides.

14.10 This has led to suggestions that Member States should have the freedom to decide whether GMOs should be cultivated on their territory, and the Commission brought forward in July 2010 three documents — a background Communication, guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops, and (most importantly) a draft Regulation which would amend Directive 2001/18/EC to provide a greater measure of national discretion as regards the cultivation of GMOs, whilst retaining an EU authorisation system based on science. In particular, it suggested that, although the existing system was based upon a scientific risk assessment, it was possible in principle to differentiate between regions, if this could be scientifically justified and so long as the matter was addressed in the authorisation.

14.11 At the same time, the Commission noted that there were a number of other reasons — for example, consumer attitudes — why Member States might wish to impose a ban, but that the legislative framework did not provide them with the necessary freedom to take

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these into account. It therefore proposed that the relevant EU legislation should be amended to provide an explicit legal base authorising Member States to restrict or prohibit the cultivation of all or particular authorised GMOs in part or all of their territories on grounds other than health and the environment, so long as this conformed both to the wider provisions in the Treaties, and to the EU’s international obligations. However, this dispensation would not apply to the movement within the EU of GM seed, of food and feed produced from GM crops, or of imported material, which would remain subject to EU-wide rules relating to free circulation.

14.12 Our predecessors first considered the proposal on 8 September 2010, when they commented that it was somewhat unusual, in that it sought to return to Member States certain powers in relation to the cultivation of GM crops which were currently exercised by the EU, and, to that extent was to be welcomed in principle. On the other hand, they noted that the UK in particular had consistently placed considerable emphasis on the need for decisions of this kind to be taken with strict regard to scientific assessment, and, if that approach was not to be undermined and thus set an unfortunate precedent for other areas, it would be important to be quite clear on what basis Member States would in this instance be free to take their own decisions. These and other practical and legal issues (including the choice of Article 114 TFEU as the legal base, and the compatibility of the proposed measures with the EU’s commitments under the World Trade Organisation (WTO)) were subsequently addressed in Reports produced by our predecessors on 11 May 2011 and 22 June 2011 in the light of further information provided by the Government, and the documents were debated in European Committee A on 14 June 2011.

14.13 This was eventually followed by a letter from the Government on 24 June 2014, indicating that political agreement had been reached at the Environment Council, which had been supported by all Member States, except Belgium and Luxembourg. It added that the proposal was not ideal, as the UK still believed that decisions should be grounded on a science-based safety assessment, and did not like restrictions being implemented for non-safety reasons. However, the key issue for the UK had been to see an end to the dysfunctional operation of the EU decision-making process, together with the belief that allowing for greater national discretion would make it easier to reach EU decisions authorising GM crops.

The current document

14.14 The proposed measure was eventually adopted by the Council and European Parliament as Directive (EU) No. 2015/42, which, subject to certain provisos,154 permits a Member State to restrict or prohibit the cultivation of a GMO on all or part of its territory if there are “compelling grounds” related to such areas as environmental policy objectives, town and country planning, land use, socioeconomic impacts, the avoidance of GMOs in other products, agricultural policy objectives, and public policy. However, as the Directive applies only to the cultivation of GMOs, the Commission undertook in 2014 to review the

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154 Notably that the measure conforms with EU law, and is reasoned, proportionate and non-discriminatory.
decision making process for authorising the use of GMOs in food and feed, and it has now produced two further documents — (a) a Communication reviewing the decision-making process in this area, and (b) a draft Regulation amending Regulation (EC) No. 1829/2003 so as to allow Member States to restrict or prohibit the use of genetically modified food and feed.

**Document (a)**

14.15 The Communication reiterates that draft Commission decisions authorising GMOs, whether for cultivation or for food and feed, have always resulted in a “no opinion” from Member States, and that, notwithstanding the Commission’s ability then to proceed on its own account, only three GMOs\(^\text{155}\) have been authorised for cultivation since 1990, with resistance to this having increased in recent years. Likewise, the number of GM food products is small, reflecting general consumer opposition, but, on the other hand, the Commission says there is a substantial market in the EU for GM feed, notably through imports of soya from countries (such as Brazil, Argentina and the United States) where its cultivation is dominated by GMOs.

14.16 However, it notes that this has not been reflected in voting patterns, with draft authorisation Decisions systematically resulting in a “no opinion”, suggesting that — unlike other areas where EU comitology procedures apply — Member States do not feel that the process enables them to address their individual concerns in areas going beyond the health and environmental considerations considered by the EFSA (leaving the Commission to take decisions without their support). It also makes the point that, although the Commission can take into account “legitimate factors” other than those addressed by the EFSA’s risk assessment, the current legislation does not allow it to use these to impose an EU-wide ban on products considered safe by the EFSA.

**Document (b)**

14.17 Against this background, and the steps which have now been taken in Directive (EU) 2015/412 to address the corresponding issues in relation to GM cultivation, the Commission has proposed that Regulation (EC) No. 1829/2003 should similarly be amended to allow Member States, for compelling reasons other than the health and the environmental considerations assessed by the EFSA, to restrict or prohibit the use on all or part of their territory of GM food authorised at EU level. Any such measures adopted by Member States would have to be reasoned, proportionate, non-discriminatory, and compatible with the rules of the internal market (in particular Article 34 TFEU prohibiting restrictions on the free movement of goods), and would also need to be justified on the public interest grounds set out in Article 36 TFEU and relevant the case law of the Court of Justice. In addition, a Member State would also have to provide specific justification for the case concerned, taking into account the GMO in question, the type of measure envisaged, and the specific national or regional circumstances constituting grounds for the opt-out,

\(^{155}\) Only one (maize) product is currently authorised, but represents only 1.5% of the land devoted to maize production in the EU.
and it would remain bound by its international obligations, including those arising from WTO rules.

The Government’s view

14.18 In his Explanatory Memorandum of 4 June 2015, the Minister of State at the Department for Environment, Food and Rural Affairs (George Eustice) says that the Government is currently considering the implications of this proposal, and has yet to reach a definite view. As a general rule, it would welcome the principle of giving Member States more national discretion in relation to EU decisions, but, at the same time, its initial analysis has identified that the proposal could raise a number of significant questions, including:

- its consistency with the single market ethos, and the principle of science-based decision-making;
- its potential impact on trade in GM products into and within the single market, in particular in a context where the UK is dependent on imported GM animal feed; and
- its potential impact on wider trade, in terms of setting a general precedent for the grounds on which the use of a product or products might be banned.

14.19 The Minister says that a supplementary explanatory memorandum will be provided in due course when the Government has completed its initial deliberations.

Previous Committee Reports

None.

15 Food and Agriculture Organisation

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Summary and Committee’s conclusions

15.1 As a UN agency, the Food and Agricultural Organisation (FAO) coordinates the efforts of governments and technical agencies in the development of agriculture, forestry, fisheries, and land and water resources. When the European Community joined in 1991, a general division of competences between the EU and Member States in areas under the FAO’s mandate was agreed by the Commission and Council, as well as the process for coordinating joint positions ahead of the FAO meetings.

15.2 The Commission proposes a new declaration of competences (Annex 1 to the Communication) to better reflect the Lisbon Treaty and to replace the agreement of specific declarations for each agenda item in advance of FAO meetings. This sets out “EU competences” and “EU and Member States competences” relevant to the FAO’s activities by subject area. The Commission also proposes new arrangements for participation in the FAO (Annex 2) with the aim of improving coherence, unity and efficiency of representation. It wants to ensure that EU positions to be presented from behind the “EU nameplate” and agreement of common positions between the EU and Member States (where agenda items are not covered by EU competences alone) can be established in advance of meetings.

15.3 The previous Government told our predecessors that it opposed:

- the general nature of the updated declaration of competences;
- the preference for “lines to take” rather than fully agreed statements;
- the proposed enhancement of the co-ordinating “spokesperson” role of EU delegation and/or Commission at the expense of Member States;
- national “voices” supporting EU positions no longer being delivered from behind the “national nameplates”;
- Member States having to inform each other as well as the EU Delegation and the Commission about their draft positions and voting intentions in respect of agenda items not covered by EU or common positions; and
- the annexes being endorsed by the Council in their original form, as they risked undermining Member State competence in FAO and setting an unhelpful precedent for other international organisations.

15.4 Since then some progress has been made. Competences in the updated declaration are now more clearly and accurately defined. It has been confirmed that the annexes will be agreed by consensus (and not just by the Council “taking note” as originally proposed). Despite this, outstanding matters remain on the working arrangements. The new Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) now updates us on the latest developments. She indicates that the Commission is responsible for a lack of progress on the relevant texts.
15.5 We thank the Minister for her very detailed update.

15.6 We are reassured by the continued determination of the UK and other likeminded Member States to protect their lawful roles and competences when participating in an international organisation such as FAO. We note that the ball is now firmly in the Commission’s court in terms of making the concessions necessary for agreement of the current texts. We look forward to receiving a further update from the Government on any significant progress from September onwards.

15.7 Pending that next update, we retain this document under scrutiny.

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

**Background**

15.8 A full background to and account of the current document, together with the previous Government’s initial view are set out in our Twelfth Report of 2013-14.156

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

15.9 The Minister says that since her predecessor’s letter of 27 February 2015, the Commission:

- had not provided written comments on the draft text for new working arrangements as requested by the Latvian Presidency; and

- was ready to support agreement on the updated declaration on competences based on the Presidency compromise if compromise could be reached on the new arrangements (the position set out in non-paper circulated on 27 February on the post-Lisbon role of the EU in the FAO jointly authored by the Commission and EEAS).

15.10 The Minister explains that Commission positions on outstanding institutional issues relevant to the working arrangements were highlighted in the non-paper and included that:

- all interventions in FAO should be presented by the Commission and EU Delegations from behind the “EU nameplate”;

- Working Party meetings should take place only in Brussels, while local coordination meetings in Rome should be chaired by the EU delegation and “deal with unforeseen issues” in FAO;

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• there should be a move away from a competence-based approach, and information notes on the division of competence for each agenda item of FAO meetings need not be submitted (despite FAO rules requiring this); and

• statements should be adopted by the Commission on the basis of existing EU positions, with the Working Party only being “duly and appropriately informed”.

15.11 The Minister further recounts that the Presidency revised text (circulated on 15 April), based on a variety of sources including the joint paper submitted by the UK and 19 other Member States in December 2014, was discussed at a Working Party meeting on 22 April. Although Member States positively engaged with the text, the Commission “simply maintained that overarching institutional questions needed to be addressed”.

15.12 To address this “impasse”, the Minister says that the Presidency prepared a progress paper for the COREPER meeting on 21 May, with the UK and other Member States contributing background briefing to maintain “the unity and robust lines provided by the Working Party”. The paper had the support of the UK and 19 Member States, on the basis that they would look at the detail of the Commission proposals but only in the context of a competence-based approach to representation and the current working arrangements. The Commission reiterated its concerns about the Presidency paper, but was prepared to suggest drafting amendments.

15.13 The Minister then sums up the current state of play. Following that meeting, the Presidency, noting the “near unity of COREPER”, invited the Commission to submit “concrete, modest” written proposals to be taken forward in the Luxembourgish Presidency. She adds:

“The UK has followed up with the incoming Luxembourg Presidency. In light of the clear message from COREPER, Luxembourg is unwilling to discuss this further in the Working Party unless some progress can be made. The first meeting of the semester is scheduled for 23 July but, as no comments have been received from the Commission yet, Luxembourg does not intend to place this item on the agenda. Any next steps will be considered as from September and I will keep the Committee apprised of further developments.”

**Previous Committee Reports**

16 The EU’s International Cooperation and Development Results Framework

Committee’s assessment
Politically important

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

Document details
Commission Staff Working Document on launching the EU’s international cooperation and development results framework

Legal base
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Department
International Development

Document numbers
(36775), 7604/15, SWD(15) 80

Summary and Committee’s conclusions

16.1 As the “Background” section below indicates (see paragraphs 0.09-0.16 for details), the previous Committee has taken a sustained interest over the years in the effectiveness with which the EU — the Commission and the European External Action Service — had spent EU taxpayers’ money in development and cooperation work.

16.2 The predecessor Commission Staff Working Document — “Paving the way for an EU Development and Cooperation Results Framework” — was accordingly debated in European Committee last November, when it was welcomed as:

“an important step towards putting in place a results framework which will help drive improvements in the impact of the European Commission’s development programmes by reporting results achieved and providing performance information for the Commission and others to act on.”

16.3 This further Commission Staff Working Document, “Launching the EU International Cooperation and Development Results Framework”, following on from the approach taken by other international development donors, lays out a standardised set of indicators against which EU development cooperation programmes will report results. This will allow the results from different programmes to be aggregated to give a set of development results for the EU as a whole. Reporting development results will thus increase the transparency and accountability of the money the EU spends on development. Properly used, the Results Framework should also identify at a strategic level which programmes are most effective at generating development results. The EU will publish results every year — the first such publication being in the second half of 2015.

16.4 The Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) strongly welcomes publication of the EU Results Framework. However, she says, while publishing the details of the Results Framework is an
important first step, the Commission’s full attention must now turn to implementation in a full and comprehensive manner and to start reporting on results: “This must be more than a box-ticking exercise: it needs to increase accountability and transparency of EU investments and drive change on the ground”. She and her officials will accordingly be active in pressing for this.

16.5 As the EU continues to publish the results of its projects, she and they will “engage significantly” to ensure that this leads to ongoing improvements in the delivery and effectiveness of EU aid and enhances the ability of the public to scrutinise EU spending on development, as well as increasing public engagement. She also expects the Commission to look to explore how the Results Framework could extend beyond aid into the wider field of development policy. At the start, the Results Framework will report only the results from projects that have completed. It would, the Minister says, clearly be preferable to report ongoing projects as well, in order to provide a full picture of what has been achieved in each year. A proportional system for reporting — scaling results by the proportion of EU funding involved in each project — would provide results that were more useful and much easier to interpret. Over time, the UK would also want to see the EU setting high-level targets for results achieved to provide further accountability and help the public interpret what results mean for the level of performance.

16.6 We endorse all that our predecessors have said about the importance of this process. As a major international actor in development cooperation, the EU has in the European Development Fund (EDF) its largest geographic instrument in this policy area, with €30.5 billion allocated to the 11th EDF for 2014-20. But this is only around 30% of total EU spending on external assistance, including spending on both development and other categories. The implications of this long-overdue work are thus enormous.

16.7 In the first instance, we would like the Minister to write to us after the first set of results have been published, with her views on the outcome and on the lessons they hold for future work in this area. We would also like to know at that time what progress has been made in the other areas in which the Minister would like to see further improvement, as outlined above.

16.8 In the meantime, we shall retain the Commission Staff Working Document under scrutiny, and draw these latest developments to the attention of the International Development Committee.

**Full details of the documents:** Commission Staff Working Document *Launching the EU International Cooperation and Development Results Framework*: (36775), 7604/15, SWD(15) 80.

**Background**

16.9 The Commission began its 2013 predecessor Commission Staff Working Document, “Paving the way for an EU Development and Cooperation Results Framework”, thus:
“In an increasingly performance-oriented society, metrics matter. What we measure affects what we do. If we have the wrong metrics, we will strive for the wrong things.” – J.E. Stiglitz, A. Sen, J.P. Fitoussi, “Mis-Measuring our Lives”.

16.10 With this central thought in mind, the Commission sets out what was currently doing to deliver against the commitment in the 2011 Communication “Agenda for Change”, 157 and the related Council Conclusions, 158 by the EU and its Member States to promote common results–based approaches and strengthen their capacity for monitoring, evaluating, and reporting operational results achieved by EU funded development and cooperation projects and programmes. The Commission described the paper as presenting a preliminary approach to the process of drafting an overall EU development and cooperation results framework, and as describing how, once finalized and implemented, this framework would bring together information on results achieved by the EU’s development and cooperation assistance. The Commission says that its results framework would track results aggregated from EU funded development and cooperation projects and programmes, and have two main purposes: i) as an accountability tool to communicate results to stakeholders; and ii) as a management tool to provide performance data to inform management decisions, ensuring resources are allocated efficiently.

16.11 In her 3 February 2014 Explanatory Memorandum, the then Minister (Lynne Featherstone) said that better, timelier, results data was vital “if we are to secure good value for money in our development programmes and demonstrate this to UK taxpayers”, and was “something the UK has been consistently calling for” since DFID’s 2011 Multilateral Aid Review (MAR) was first published. By tracking results aggregated from EU funded development and cooperation projects and programmes, the results framework would bring the EU in line with other multilateral (e.g. the World Bank, the IADB, the Asian Development Bank) and bilateral (e.g. DFID) development actors. The Commission approach drew on donor best practice, and would both enhance the quality and scope of the information available to demonstrate EU development results and provide relevant information for internal management decisions. Some technical issues needed to be sorted out. But the cost of implementing a results framework would be more than offset in the long run by increased value for money from Commission aid programmes.

16.12 Two days later, she led a European Committee debate concerning a European Court of Auditors’ report, which had examined €1.3 billion of EU support for governance in the Democratic Republic of the Congo. 159 Our predecessors had recommended this debate because the common denominator between this report and many other documents that the Committee had considered over the years was the effectiveness with which the EU — the Commission and the European External Action Service — had spent EU taxpayers’ money in this and other development and cooperation work. During that debate the then Minister said that, as the result of close working with the Commission by herself, the Secretary of State and her department over the previous couple of years to improve

159 Gen Co Deb, European Committee B, 5 February 2014, cols. 3-12.
management by results, the Commission was in the process of adopting a strong, new central results framework, which would have a clear effect on monitoring, evaluation and reporting.\textsuperscript{160}

16.13 However, in her EM on the Commission Staff Working Document, beyond saying that she and her officials would “continue to look for opportunities to influence the design of the framework, including the periodic reviews which may take place in the future ... [and] ... to press that the Commission delivers against its proposed timetable for finalising the framework and rolling it out”, and referring to prospective Council Conclusions at the 14 May “development” Foreign Affairs Council, she was less than clear as to how, and over what timescale, the aspects of the Commission proposal that she believed would undermine its effectiveness were to be definitively addressed.

16.14 The previous Committee recognised that her endeavours were perhaps made more difficult by those Member States who seemed to be grateful for small mercies. However, it also noted that the UK was in a different position, contributing nearly 15% of some €31 billion projected EU development assistance expenditure in this financial perspective. The Committee saw no real sign of (as the then Minister put it) “the Commission’s drive to implement a results framework”. On the contrary: the Commission appeared to be set out working at its own pace, arguing that having “over 100 delegations” made devising and running a system that would demonstrate whether or not EU taxpayers’ money was being spent effectively all too difficult, rather the key priority it should be. The then Minister appeared to regard commitments to “look again” at annual reporting and “further examine the option of setting targets for indicators” as significant achievements in and of themselves. Systems for data collection and measurement at both Delegation and Headquarters would no doubt need to be improved: but, the Committee noted, other development actors, including DFID, had already achieved this. Without a real drive by both Delegations in the field and Headquarters in Brussels — of which it could see no evidence — the Committee queried whether the Commission’s proposed results framework would amount to more than window-dressing, and whether UK taxpayers would be any the wiser as to whether or not EU development programmes were indeed good value for money. It therefore recommended that these issues be further examined and debated, after the 19 May “Development” Foreign Affairs Council, and thus with the benefit of the Council Conclusions.\textsuperscript{161}

16.15 Fast forward to October 2014, and the then Minister, commenting on one of the documents tagged to the debate — the annual report on EU development and external assistance policies and their implementation in 2013 — said of what was the customary wide-ranging narrative:

“Until a fully functioning results monitoring and reporting system is set up, the Commission will not be able to measure the impact of the aid programme. Work is well underway to design a results system and it will be piloted during 2015. It will be

\textsuperscript{160} Gen Co Deb, European Committee B, 5 February 2014, cols. 3-12.

important that future annual reports capture results to give a much clearer sense of impact achieved.”

16.16 The debate was finally held seven months after the Committee’s recommendation, on 6 November 2014, notwithstanding its clear intention that these matters should be debated soon after the May 2014 “Development” Foreign Affairs Council. At the end of the debate, the European Committee resolved thus:

“That the Committee takes note of European Union Document No. 17709/13, a Commission Staff Working Document: Paving the way for an EU Development and Cooperation Results Framework; and welcomes the document as an important step towards putting in place a results framework which will help drive improvements in the impact of the European Commission’s development programmes by reporting results achieved and providing performance information for the Commission and others to act on.”

The further Commission Staff Working Document

16.17 “Launching the EU International Cooperation and Development Results Framework” (EU RF ) accordingly develops the key issues set out in the December 2013 Staff Working Document and translates the approaches set out therein into operational terms; it includes mechanisms in support of the reporting process and details the indicators against which DG International Cooperation and Development will report annually as of 2015 to demonstrate how funds spent contribute to the achievement of the policy objectives.

16.18 The EU RF will also report on results of actions initiated in the past, i.e. for the first years of reporting, initiated under the programming 2007-2013.

16.19 The EU RF is also to be seen as part of a wider set of measures that the Commission says it is putting into place to strengthen monitoring and reporting on results of EU international cooperation and development assistance at the various levels, at the project and programme level, at country level and at the corporate level of the EU as a donor — measures described as:

“key for strengthening the EU capacity to provide support to the development of appropriate monitoring and accountability mechanisms at country level, in line with the aid effectiveness commitments taken in 2011 by the international community in Busan.”

16.20 The Commission defines its results framework as “a tool that is used to measure results achieved against strategic development objectives” that “should be understood as an articulation of the different levels of results expected from the implementation of a

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162 Gen Co Deb, European Committee B, 6 November 2014, cols. 3-10.
163 “The Busan Partnership for Effective Development Cooperation” (2011), agreed by a wide range of governments and organisations offering a framework for continued dialogue and efforts to enhance the effectiveness of development co-operation.
strategy”. With this in mind, the list of development sectors covered by the EU RF has been defined to reflect EU international cooperation and development assistance priorities, as set out in the Agenda for Change and the new Sustainable Development Goals (SDGs) and targets (which will replace the Millennium Development Goals in particular). The EU RF will thus be reporting on results aggregated from projects and programmes financed under the external assistance instruments managed by DG International Cooperation and Development. Publication of this information:

“[will increase] accountability and transparency and demonstrate to external stakeholders how the EU contributes to development progress in the countries and regions to which it provides development assistance, on the one hand, and it provides relevant information to inform internal management decisions, on the other hand, thus strengthening the framework for ensuring effectiveness of EU financed development aid.”

16.21 In her Explanatory Memorandum of 27 May 2015, the Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) outlines the EU RF as follows:

“The EU’s Results Framework has a similar design to that of other international donors (including DFID) — it has three levels of indicators against which it will report results:

- **Level 1** – these are the desired high-level outcomes of the EU’s development work: development progress in the EU partner countries. An example for this might be the number of countries where the rule of law has i) improved, ii) deteriorated; iii) stayed the same over the last 10 years. Indicators at level 1 are agreed internationally, for example the Millennium Development Goals. To present a full picture of development progress, level 1 indicators will be presented in full for all EU partner countries, rather than just the areas which receive EU funding.

- **Level 2** – these indicators are the output of development programmes: specific EU contributions to development progress in partner countries. An example might be the number of children enrolled in primary education with EU support. Results at level 2 should be associated with those at level 1 with a credible narrative.

- **Level 3** – these indicators show organisational efficiency and effectiveness in delivering programmes. Some other donors have split this into two separate levels, one for efficiency and one for effectiveness. An example indicator would be

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164 The results terminology used in this document follows the OECD DAC definition, where the term results should be interpreted as covering the results chain from outputs to outcomes and impact.


166 SWD(15) 80, p.3.
disbursement rates and compliance with EU regulatory and political commitments.

"The indicators"

"Level 1 and 2 of the EU Results Framework consist of 32 indicators each, covering twelve areas and sectors. Where possible, results data for both levels will be sex disaggregated. Level 1 and 2 indicators have been chosen using a number of criteria i) to be in line with the EU development priorities from 2014-20, ii) to be aligned with partner governments, iii) to ensure data is possible to collect and aggregate iv) where possible to be aligned with the indicators used by other donors.

"Level 1 and 2 indicators have been designed to have a strong link with what are expected to become Standardised Development Goals (SDGs) under the post-2015 framework. A review of the EU Results Framework is scheduled to take place in 2016 once the SDGs and the related indicators are defined.

"The Annex of the Staff Working Document gives full details on the specific indicators that have been chosen. For each of these, there is a detailed methodology note which can be found online.

"Reporting and collecting methodology"

"The specific design of the results framework, and the methodology behind reporting and collecting results, has not changed significantly since the previous Staff Working Document:

"Baseline – The Results Framework does not set targets for results achieved, but it sets a baseline of zero from when the results framework is implemented. Cumulative results will them be reported, presenting the numbers for the first year of reporting as well as those for the second year and so on. Reported results will therefore show total progress since the introduction of the Framework.

"Contribution approach – Results at level 2 will be reported as country results supported by EU development, rather than attempting to attribute results directly to the EU’s work. In addition, the total results of each project will be reported as supported by the EU, rather than attempting to report results scaled proportionally to the EU’s level of funding in a programme.

"Reporting cycle – The EU results framework will only be based on results linked to projects and programmes that have come to an end in each reporting period (one year), rather than attempting to provide results for ongoing projects. However, in the medium-term, the EU is upgrading operational information management systems, and will look to consider and test reporting of annual results from ongoing projects and programmes, providing a more accurate picture of results achieved in a given year.
"Publication of results"

"The first reporting under the new results framework is scheduled for 2015. In future years, reporting is envisaged to be part of the ‘Annual Report on the European Union’s development and external assistance policies and their implementation’. However, reporting of the first year is planned as a separate publication scheduled for the second half of 2015."

The Government’s view

16.22 The Minister describes an EU Results Framework as essential to demonstrating value for money spent on development, and continues thus:

"It has the potential to be transformational for the delivery of EU aid. The Results Framework provides a detailed set of indicators against which all EU development programmes will report. The publication is a critical step in the process, but the challenge will be to implement and report on the Results Framework in an effective way.

"The EU Results Framework should be used both as an accountability and transparency tool to better demonstrate and communicate what is being achieved through EU development cooperation, but also as a management tool to identify on a strategic level which programmes are most effective at generating development results.

"The EU will publish results every year and it is welcome that the first publication of results is happening soon — in the second half of 2015. The UK will be active in pressing for a full implementation of the Results Framework in the lead up to this.

"As the EU continues to publish the results of its projects, the UK expects this to lead to ongoing improvements in the delivery and effectiveness of EU aid and to enhance the ability of the public to scrutinise EU spending on development, as well as increasing public engagement. The UK will continue to engage significantly to ensure this is the case. The Commission should also look to explore how the Results Framework could extend beyond aid into the wider field of development policy.

"The UK strongly welcomes the publication of the EU Results Framework. This will provide much needed accountability and transparency for EU taxpayers and has the potential to transform EU development spending — allowing programmes to deliver much better value for money and development results. Publishing the details of the Results Framework is an important first step but the Commission’s full attention must now turn to implementation. This must be more than a box-ticking exercise: it needs to increase accountability and transparency of EU investments and drive change on the ground."
“The UK considers that the priority for the EU should be to implement the published Results Framework in a full and comprehensive manner and to start reporting on results. Over time, the UK will also work with the EU to ensure that the Results Framework continues to evolve and improve. At the start, the Results Framework will report only the results from projects that have completed. It would clearly be preferable to report ongoing projects as well, in order to provide a full picture of what has been achieved in each year. The UK also considers that a proportional system for reporting — scaling results by the proportion of EU funding involved in each project — would provide results that were more useful and much easier to interpret. Over time, the UK would also want to see the EU setting high-level targets for results achieved to provide further accountability and help the public interpret what results mean for the level of performance.”

**Previous Committee Reports**


**17 Carriage of Hazardous and Noxious Substances by Sea**

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Summary and Committee’s conclusions

17.1 Liability and compensation for damages arising from specific types of shipping activity is regulated at international level with a series of International Maritime Organization Conventions. The 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, which has not yet entered into force, has been amended twice, most recently by a 2010 Protocol.

17.2 In November 2002 the Council adopted a Council Decision on ratification of the Convention. This provided that “Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the HNS Convention within a reasonable time with the Secretary-General of the International Maritime Organization and, if possible, before 30 June 2006”.

17.3 The Commission considers that the 2010 Protocol amending the Convention needs to form the subject of new Council Decisions, taking into account developments in EU law since 2002, in particular the Environmental Liability Directive. It is proposing two new Council Decisions which would require all Member States to ratify or accede to the 2010 Protocol “no later than two years from the date of entry into force of this Decision”. One of the proposed Council Decisions would cover all aspects with the exception of aspects related to judicial cooperation in civil matters, which would be covered by the other proposed Council Decision.

17.4 As for the substance of the proposals the Government tells us of significant reservations about how the Convention would work and, consequently, about the proposed Council Decisions. It notes that its reservations are shared by other Member States.

17.5 The proposals also give rise to three legal issues:

- whether the EU has exclusive competence over any of the subject matter of the 2010 Protocol. To the extent that it does the Member States must act in accordance with authorisation by the EU. In the unlikely event that there is no exclusive EU competence these proposals become unnecessary;

- if the proposals are necessary, whether Article 218(6)(a)(v) TFEU is the appropriate procedural legal base; and

- whether the UK opt-in is engaged in respect of the proposal relating to judicial cooperation in civil matters, document (b).

17.6 We note that the Government is considering its position on the substance of the proposed Council Decisions, including in the light of problems about the Convention
itself. So we also wish to hear from the Government how consideration of the implications of the proposals is developing in the Council working group negotiations.

17.7 On the legal issues:

- we await the Government’s further consideration of the extent of EU exclusive competence;
- we consider that the judgment of the Court of Justice in Case C-399/12, whilst not directly concerned with the use of Article 218(6)(a)(v) TFEU, casts doubt on the use of this procedural legal base in these circumstances. We therefore ask the Government to clarify whether any Member State has raised objections or is likely to;
- we support the Government’s contention that the opt-in applies to document (b).

17.8 Meanwhile the documents remain under scrutiny.

**Full details of the documents:** (a) Proposal for a Council Decision on the ratification and accession by Member States on behalf of the Union to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea with the exception of aspects related to judicial cooperation in civil matters: (36950), 10248/15, COM(15) 304; (b) Proposal for a Council Decision on the ratification and accession by Member States on behalf of the Union to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea with regard to aspects related to judicial cooperation in civil matters: (36951), 10252/15 + ADD 1, COM(15) 305.

**Background**

17.9 Liability and compensation for damages arising from specific types of shipping activity is regulated at international level with a series of International Maritime Organization (IMO) Conventions, which rely on the same main principles, which are:

- strict liability of the shipowner;
- mandatory insurance to cover damages to third parties;
- a right of direct recourse of persons suffering damages against the insurer;
- limitation of liability; and
- in the case of oil, a special compensation fund that pays for damages when these exceed the liability limits of the shipowner.

17.10 Separate IMO Conventions have dealt with measures to combat maritime pollution. At a 1984 IMO conference it was recognised that none of these agreements covered
hazardous and noxious substances (HNS). This was addressed in 1996 by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention). The HNS Convention, which has not entered into force, was amended in 2000 by the OPRC-HNS Protocol, and then further amended by the 2010 HNS Protocol.

17.11 In November 2002 the Council adopted Council Decision 2002/971/EC on ratification of the HNS 1996 Convention. This provided that “Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the HNS Convention within a reasonable time with the Secretary-General of the International Maritime Organization and, if possible, before 30 June 2006”. Recital (2) of this Decision records, in effect, that the EU has exclusive competence over the part of the Convention that overlaps with Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments (the then Brussels I Regulation). This would indicate that the equivalent element of the 2010 Protocol, at least, is a matter of exclusive EU competence.

17.12 The general principles of the HNS Convention are based on similar principles used for the separate IMO Conventions relating to oil pollution from shipping. In simple terms this means that in the event of a major accident there are tranches of payment of damages:

- to start with, the ship owner/insurer pays, up to a certain amount based on the size of the ship involved in the accident/incident;

- should the incident be significant enough to go beyond the ship owners/insurers coverage, the relevant HNS Fund, (there are four different HNS Funds) would pay the remainder; and

- the money in the fund would come from all those companies based in countries across the world which have acceded to and ratified the HNS Convention, and which import above a significant amount of HNS each year, as specified by the HNS Convention.

17.13 The 2010 HNS Protocol is a revision of the HNS Convention. It will enter into force 18 months after the date on which the HNS Convention/Protocol is ratified by at least 12 (international) States, including four States that each have not less than 2 million units of gross tonnage, and have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo that would be contributing to the general HNS account. So far eight States have signed the HNS Convention/Protocol: Denmark, Canada, France, Germany, Greece, the Netherlands, Norway and Turkey. None have ratified it as yet.


2004/35/EC. It is proposing two new Council Decisions which would require all Member States to ratify or accede to the 2010 Protocol “no later than two years from the date of entry into force of this Decision”. The proposed Council Decision, document (a), would cover all aspects with the exception of aspects related to judicial cooperation in civil matters, which would be covered by the proposed Council Decision, document (b). The latter proposal is accompanied by a declaration to be deposited by Member States when ratifying or acceding to the 2010 HNS Protocol.

17.15 The proposed Decision relating to judicial cooperation in civil matters includes a legal basis found in Title V TFEU which would ordinarily engage the UK opt-in. However the Commission and the Council Legal Service take the view that, as the UK has opted into the Brussels I Regulation giving rise to exclusive EU competence over this international agreement, the opt-in no longer applies to any decision relating to it.

17.16 The legal base issue involves Article 218(6) TFEU. This provision sets out the procedure for the Council to conclude an international agreement. The question is whether this also applies to any decision authorising Member States to enter into an international agreement. This matter has not been directly considered by the Court of Justice, but in case C-399/12, it decided that Article 218(9) TFEU — the procedure to establish an EU position with a body created by an international agreement — was an appropriate legal base for the EU to authorise Member States to take a position where the EU could not accede to the international agreement and therefore was not itself a member of the body. In doing so, at paragraph 54 of its judgment, it contrasted Article 218(9) with the preceding provisions of Article 218 which “have as their object the negotiation and conclusion of agreements by the European Union”.

17.17 The Commission notes that no States have ratified the 2010 HNS Protocol, which it believes to be because of the requirement for the submission of data on the total quantity of contributing cargo received during the calendar year preceding ratification.

The Government’s view

17.18 In his Explanatory Memorandum of 8 July the Parliamentary Under-Secretary of State, Department for Transport (Mr Robert Goodwill) comments first that:

- the Government is considering its position on whether these proposals fall within an area of exclusive EU competence, as claimed by the Commission;
- in particular, along with other Member States, it has concerns about the extent of EU competence over Chapter IV of the HNS Convention particularly with regards to articles 37, 41 and 42;
- more generally, there are questions around the overlap of the Environmental Directive (which was very limited in scope) with the HNS Convention (which was much broader); and
• the Government will provide further information on these considerations in due course.

17.19 Turning to the question of judicial cooperation in civil matters the Minister says that:

• it is the view of the EU institutions that in matters of exclusive external competence the UK’s Opt-in Protocol does not apply;

• the proposed Council Decision, document (b), therefore includes text in Recital 15 stating that the UK and Ireland are bound by Regulation (EU) No 1215/2012¹⁶⁹ and are therefore fully taking part in the adoption and application of the proposed Council Decision;

• however, as the proposal cites a legal base in Title V of Part III TFEU, the UK’s JHA opt-in applies, in accordance with Protocol No 21 annexed to the TFEU; and

• the Government will seek to have Recital 15 amended to reflect the UK position.

17.20 The Minister continues that:

• the date of publication of the last language version of the proposal was 24 June;

• the date by which the UK must notify the Commission of its opt-in decision will therefore be 24 September 2015;

• in the light of this, it would be helpful to have our view on whether the UK should opt into this proposal by 19 August 2015.

17.21 The Minister tells us that the Government is considering its position on whether or not to opt in and that it is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision-making process. He explains that, in making the opt-in decision on this proposal, the Government will have particular regard to:

• whether it is in the best interests of the UK and UK business to sign and ratify the HNS Convention, specifically taking into account consideration of the potential impacts and cost for UK business and potential claimants;

• the likelihood that the proposals will be amended during negotiations, and that in particular the compulsory timeframe for ratification or accession will be removed; and

• whether the Government accepts that the EU has competence to act in the manner proposed by the Commission.

17.22 Finally on the JHA issue the Minister says that:

• whilst the UK’s JHA opt-in is triggered by the proposed Council Decision, document (b), the opt-in will not extend to the other proposed Council Decision, document (a); and

• the UK will therefore be bound to ratify the key components of the HNS Convention if the non-JHA proposed Council Decision is adopted even if the UK does not opt into the JHA proposed Council Decision.

17.23 On the substance of the proposals the Minister says that:

• the Government currently has no plans to ratify the Convention/Protocol and is considering its position on both of the proposed Council Decisions;

• it appreciates the importance of a robust regime for liability and compensation for damages, and recognises that some countries, including some Member States, are frustrated by the lack of progress in bringing the HNS Protocol into force;

• there is little likelihood of progress in doing so either internationally or in the EU unless the HNS Convention/Protocol comes into effect across all Member States simultaneously;

• the Government understands that the Commission has brought its proposals forward in response to these concerns, so that no Member State would be disadvantaged by ratifying the Convention/Protocol before its EU neighbour;

• this would mean, however, that Member States would be at a competitive disadvantage in comparison to non-Member States where the Convention would not apply;

• the fact that the Convention has been amended twice by two different Protocols, and the fact that it has never entered force, indicates how difficult this particular subject is to implement across the world’s nations;

• the mechanics of how the compensation regime would be administered have yet to be tested; and

• the IMO is attempting to address the difficulties by providing advice in the forum of an existing working group.

17.24 The Minister continues that individual Member States have contributed directly to this wider debate and should be allowed to continue to do so rather than through an EU line. He says that a number of countries, including the UK, are seeking clarification within the IMO on five areas of the HNS Convention and Protocol, as follows:

**Optional implementation**

• the HNS Protocol allows Member States to choose how they implement the Convention;
• this means that implementation can vary from State to State and the cost implications could vary;

• the implementation process requires each country to identify the receiver of HNS so that the receiver can pay contributions to the HNS Funds — the receiver could be the terminal where the HNS was delivered, or an agent;

• these concepts are left open to interpretation and could have an effect on which country pays for the impact of any HNS accident;

**Cost to business**

• Member States, including the UK, are parties to a number of other IMO Conventions including those relating to oil pollution;

• these Conventions have shown that the burden of payment for any accident falls almost entirely with a few major nations — for example in the case of oil pollution there are 117 nations covered by the relevant Convention but nearly all of the money comes from just eight countries of which the UK is one;

• if the UK should accede to and ratify the HNS Convention then the Government estimates that the UK would be the single biggest contributor to the Fund and so the UK businesses would be taking on a huge financial burden;

**Transhipment**

• transhipment is the process of the product arriving at a port of one country and being transported overland to another country — it is not addressed properly by the Convention;

• ports in some Member States would have a huge advantage over UK ports as they operate a lot of transhipment movements every year — as the UK is an island, UK ports do not benefit from transhipment movements and so their costs relating to HNS imports would be a lot higher;

**New substances**

• new HNS substances are being created every week, and even though the Convention covers thousands of current products, there is always the chance that an accident will take place involving a new product that the Convention, at the time of the accident, does not cover;

**Reporting of imports**

• the HNS Convention currently requires the reporting of the import of 2914 different substances — this is a huge amount of data that Member States would have the responsibility of compiling each year; and
• currently, in UK central government there is not the resource available to compile and hold this information.

17.25 The Minister says that:

• if the Council Decisions were agreed with their current wording, Member States would have two years to complete all the work to accede to and ratify the HNS Protocol;

• however, part of the ratification process is to undertake one year of reporting on contributing cargo, meaning that in practice there would only be one year to complete and have in place all the legislative and reporting procedures;

• all Member States would have to ratify within the same time frame, two years after the Council Decisions were agreed;

• this would mean that the HNS Convention/Protocol would come into effect 18 months afterwards, in the countries that had ratified it, as it would have reached the minimum amount, 12, of the necessary signatories and met the other conditions required for it to come into effect; and

• once ratified, all UK firms importing more than 20,000 tonnes of any HNS substance would be required to pay contributions to the HNS Funds.

17.26 On the financial implications of the proposals the Minister says that:

• if simultaneous implementation of the Convention/Protocol occurred across the whole of the EU, from three years and six months after the Council Decisions are agreed, all EU firms importing more than 20,000 tonnes of any HNS substance would be required to pay contributions to the HNS Funds;

• as the UK has a large chemical industry and is an island, it is one of the biggest importers of HNS by sea in the world; and

• as such the UK would almost certainly pay the biggest contributions to the Funds and would therefore be subject to the biggest financial implications within the EU.

17.27 Finally the Minister tells us that:

• other Member States are also considering their positions on the proposals;

• however, an initial working group discussion on 6 July indicated that many Member States have concerns over the compulsory time-frame and the feasibility of such a deadline, given that 12 months of data would have to be provided as part of the ratification process; and

• several Member States also consider that clarification is needed over the competence claims in the proposals.
Previous Committee Reports

None.

18 Employment guidelines

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; recommendation for debate in European Committee B made on 24 March 2015, along with the draft Council Recommendation on broad guidelines for economic policies of Member States and the EU (Council document 6813/15 + ADD 1), recommendation for debate rescinded; further information requested

Document details

Proposal for a 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

18.1 The EU Treaties provide that Member States are to regard their economic policies and the promotion of employment as “a matter of common concern”. In March, our predecessors considered a proposal for a Council Recommendation establishing four broad guidelines for Member States’ economic policies, as well as this proposal for a Council Decision setting out 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 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.

18.2 The Government noted that the guidelines were not legally binding and considered their content to be broadly acceptable, whilst highlighting concerns about the use of

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170 Articles 121 and 146(2) TFEU.
171 See our Thirty-seventh Report listed at the end of this chapter for further details.
172 See p.2 of the Commission’s explanatory memorandum accompanying the draft Decision.
“inappropriately prescriptive language on labour taxation and Member States’ social policies”. 173

18.3 Our predecessor Committee recommended that the proposed new integrated guidelines, covering economic and employment policies, as well as a number of additional documents relating to the 2015 European Semester, should be debated together ahead of the June Employment and Social Policy (EPSCO) Council (in the case of the employment guidelines) and the European Council (the remaining documents). 174

18.4 The Minister for Employment (Priti Patel) now writes to inform us that, as anticipated, the EPSCO Council agreed a general approach on the employment guidelines at its meeting on 18 June.

18.5 Elsewhere in this Report, we explain that it has not been possible for the Government to schedule a debate ahead of the June EPSCO and European Council meetings. 175 As the substance of the proposed new integrated guidelines on economic and employment policies has now been agreed, we rescind our predecessor Committee’s debate recommendation.

18.6 We would, nevertheless, welcome further information on the outcome of the June EPSCO Council. The Minister tells us that the Council agreed “a de facto general approach” on the employment guidelines set out in the proposed Council Decision. Although no formal vote was called, she notes that “it was clear that, as we did not have scrutiny clearance, the UK would abstain on this proposal”. We ask the Minister to clarify whether the UK did, in fact, abstain and how the UK’s abstention was expressed, given that her Written Ministerial Statement to Parliament on the outcome of the Council makes no reference to a UK abstention or to a Parliamentary scrutiny reserve. We also ask her to provide us with a copy of the general approach agreed by the Council.

18.7 Pending the Minister’s reply, the proposed Council Decision remains under scrutiny.

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

Background

18.8 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’

173 See para 20 of the Explanatory Memorandum dated 17 March 2015 submitted by the then Minister for Employment (Esther McVey).


175 See chapter 77 of this Report on the European Semester 2015: Country Specific Recommendations.
structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. The proposed new employment guidelines 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. Our earlier Reports, listed at the end of this chapter, provide more detailed information on the content of the proposed broad economic guidelines and the employment guidelines, as well as the Government’s position.

18.9 In its Explanatory Memorandum on the proposed Council Decision, the Government noted that the guidelines were not legally binding and were intended to “frame the scope” of Member States’ national employment policies. Whilst describing their content as “broadly acceptable”, the Government suggested that some of the language used on labour taxation and Member States’ social policies was “inappropriately prescriptive”.176

The Minister’s letter of 2 July 2015

18.10 The Minister for Employment (Priti Patel) explains that the proposed employment guidelines were considered by various EU-level Committees during March — the Employment Committee, the Social Protection Committee and the Education Committee — as well as by the Public Employment Services Network and by EU social partners (employers and trade unions). She continues:

“During these rounds of negotiations, we managed to relax the language on labour taxation and on Member States’ social policies. Other minor changes were also agreed, for example, including a reference to Public Employment Services, removing redundancies or changing the order of the text to make it flow better. All of these changes were in keeping with UK policies and were agreeable to us.”

18.11 The Minister notes that these changes were agreed by the Employment Committee on 31 March and discussed at Council working group meetings in April and May. Further changes, all broadly acceptable to the UK, were made to the recitals to the proposed Decision. The Minister continues:

“On 10 June, the Employment Guidelines were discussed at COREPER, where there was consensus to include a broad recital that describes that labour market reforms should consider Member States’ practices and circumstances, which is agreeable to the UK.

“Finally, the Employment Guidelines were scheduled for general approach at the Employment and Social Policies Council (EPSCO) on 18 June. Due to the electoral period, it has not been possible to schedule a debate as requested by your Committee. It was clear that, as we did not have scrutiny clearance, the UK would abstain on this proposal. No formal vote was called. As no Member States raised any objections to the proposal, the Presidency concluded that there was a de facto general approach.”

176 See the Explanatory Memorandum dated 17 March 2015 submitted by the then Minister for Employment (Esther McVey).
The Minister expects the Employment Guidelines to be formally adopted at a future Council, once the European Parliament has published an opinion on the Guidelines (expected in early July). She adds:

“We will continue to hold a parliamentary scrutiny reserve and abstain within Council until a debate has been held.”

**Previous Committee Reports**


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**19 Tackling youth unemployment — the Youth Guarantee**

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**Summary and Committee’s conclusions**

19.1 In April 2013, the Council adopted a Recommendation establishing a Youth Guarantee. Its purpose is to encourage Member States to develop schemes ensuring that all young people under the age of 25 receive a good-quality offer of employment, continued education, an apprenticeship or traineeship within four months of leaving formal education or becoming unemployed.\(^{177}\) This Special Report, agreed by the European Court of Auditors in February 2015, considers whether the Commission has provided appropriate support to Member States in setting up national Youth Guarantee schemes, as well as potential risks which could have an impact on the effective implementation of the

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schemes. The audit performed by the Court focusses on the Commission’s assessment of Youth Guarantee implementation plans submitted by five Member States (Ireland, Italy, Lithuania, Portugal and France) but also draws wider conclusions on the risks to effective implementation which are relevant to all Member States, including the UK. These concern:

- the adequacy of funding for Youth Guarantee schemes;
- the assessment of what constitutes a “good-quality offer” of employment, traineeship or apprenticeship; and
- monitoring and reporting arrangements.

19.2 The Court indicates that future reports will continue to focus on youth unemployment, including the implementation of EU initiatives at Member State level.

19.3 The Minister for Employment (Priti Patel) notes that the 2013 Council Recommendation is not binding and that “there is no question of implementation being required of a Member State”. She says that the UK “does not have a youth guarantee scheme of the kind envisaged by the EU” and that the Special Report “raises no policy issues of concern to the Government”.

19.4 Although the Minister says that the UK “does not have a youth guarantee scheme of the kind envisaged by the EU”, the UK has, in common with other Member States, presented to the Commission a Youth Guarantee Implementation Plan (in March 2014).\(^\text{178}\) It is disappointing that the Minister provides no information on its content, particularly as Annex III to the Special Report indicates that the Commission considered the UK’s Plan to be “very limited”. We ask the Minister to explain the basis for this assessment and to indicate how any concerns raised by the Commission have been addressed.

19.5 We note that Croydon, Hartlepool and Pembrokeshire have all taken part in pilot projects to develop practical recommendations for implementing national youth guarantee schemes and related activities supported by the European Social Fund and the Youth Employment Initiative. The Minister makes no mention of these in her Explanatory Memorandum. We ask her to provide further information on the outcome of these pilot projects.

19.6 We would welcome the Minister’s views on the three Recommendations made by the Court of Auditors in its Special Report. In particular:

- The Special Report indicates that the UK is one of a number of Member States that have not so far disclosed the amount of national funding being made available to support the implementation of their national Youth Guarantee Implementation Plans. Does the Minister agree with the Court of Auditors that a clear and complete overview of the cost of all planned measures to combat

\(^{178}\) According to the Commission, the UK has not made its Youth Guarantee Implementation Plan available online.
youth unemployment under the Youth Guarantee scheme (or national equivalent) is necessary to enable the Commission to assess overall funding needs?

- What are the Government’s criteria for determining whether job offers, apprenticeships, traineeships or continued education are of a “good quality”?

- Would the Government support action at EU level to define a minimum set of “qualitative attributes”, as envisaged in the Court’s second Recommendation?

- Does the Government consider that monitoring mechanisms are sufficiently comprehensive to demonstrate a clear link between implementation of the Youth Guarantee (or national equivalent) and increased opportunities for young people in the labour market, so that investment decisions can be made on the basis of evidence of what works well?

19.7 We also ask the Minister to provide a copy of any Conclusions relating to the Youth Guarantee agreed by the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council at its meeting in June. Meanwhile, the Special Report remains under scrutiny. We draw it to the attention of the Work and Pensions Committee, the BIS Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

Full details of the documents: Special Report of the European Court of Auditors — EU Youth Guarantee: first steps taken but implementation risks ahead: (36779), —, Special Report No. 03/2015.

Background

19.8 The Council Recommendation establishing a Youth Guarantee ("the 2013 Recommendation") was agreed at a time of stubbornly high youth unemployment in many Member States. Eurostat data reveal that, by the end of 2014, nearly five million young people under the age of 25 were unemployed across the European Union. The aggregate youth unemployment rate was 21.4% in the EU and 23% in the euro area, compared with 23.1% and 23.9% at the end of 2013. These figures conceal significant variations in youth unemployment between Member States. Those with the lowest rates were Germany (7.2%), Austria (9%) and the Netherlands (9.6%). At the other end of the scale, the youth unemployment rate exceeded 50% in Spain (51.4%) and Greece (50.6%) and 40% in Croatia (44.8%) and Italy (42%). The UK remains towards the lower end of the scale, with a youth unemployment rate of 16.7% in October 2014.

19.9 The introduction of Youth Guarantee schemes across the EU is intended to stimulate structural reforms of education, training and job-search systems to help young people enter, and remain in, the labour market. The 2013 Recommendation sets out a number of

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179 The youth unemployment rate is the number of people aged 15 to 24 who are unemployed as a percentage of the labour force of the same age. Young people in full-time education are not part of the labour force.

180 See Eurostat unemployment statistics.
guidelines to inform the development and implementation of national Youth Guarantee schemes “in accordance with national, regional and local circumstances”. The guidelines, which are addressed to Member States, highlight the need for partnerships involving all relevant labour market players, early intervention and activation, support for labour market integration measures, monitoring and evaluation of Youth Guarantee schemes to ensure that policy interventions are evidence-based and cost-effective, and “full and optimal use” of EU funding instruments. The UK is one of seven Member States that have recently taken part in a pilot project to develop local partnerships and practical experience to implement national Youth Guarantee schemes. The areas covered in the UK pilot were Croydon, Hartlepool and Pembrokeshire.\footnote{The European Commission has published a \textit{First Findings Report} on the pilot projects.}

19.10 The principal EU funding instruments for Youth Guarantee schemes are the European Social Fund and the Youth Employment Initiative. The latter, agreed by the European Council in February 2013, has a budget of €6.4 billion (£4.58 billion) (half drawn from the European Social Fund and the remaining €3.2 billion (£2.3 billion) from a dedicated Youth Employment budget line) to support implementation of the Youth Guarantee and other job creation measures in regions within the EU where the youth unemployment rate exceeds 25%.\footnote{Five UK regions qualify for funding from the Youth Employment Initiative: Inner London, Merseyside, Tees Valley and Durham, West Midlands, and South West Scotland.} Funding under the Initiative is “frontloaded” so that funds are available in the first two years of the 2014-20 programming period to provide immediate support for the integration of young people into the labour market. Whilst Member States are required to make a national contribution to their national programmes implementing the European Social Fund, the additional funding provided by the Youth Employment Initiative is not subject to the principle of co-financing.

19.11 The 2013 Recommendation envisages a role for the Commission in the design, implementation and assessment of Youth Guarantee schemes. It entrusts the Commission with four specific tasks:

- encouraging Member States to make best use of the European Social Fund and the Youth Employment Initiative to support the setting-up and implementation of Youth Guarantee schemes;
- collecting and sharing examples of good practice in implementing Youth Guarantee schemes at national, regional and local level;
- monitoring the implementation of Youth Guarantee schemes through the EU’s Employment Committee and developing country-specific recommendations, where appropriate, as part of the European Semester process of multilateral surveillance of Member States' economic and employment policies; and
- raising awareness of Youth Guarantee schemes across the EU.
European Scrutiny Committee, First Report, Session 2015-16

The Special Report of the Court of Auditors

19.12 The Court of Auditors notes that, throughout 2014, youth unemployment within the EU as a whole remained at “alarmingly high levels”. It estimates that 7.5 million young people were NEETs — not employed, not in education and not in training — and describes the range of short, medium and long-term measures available to Member States under the Youth Guarantee to support structural reforms as well as to provide individual assistance to young people seeking employment.

19.13 The first part of the Special Report focusses on the Commission’s assessment of Youth Guarantee Implementation Plans submitted by a sample of five Member States (not including the UK). It concludes that the Commission provided “timely and appropriate support” to Member States in setting up their Youth Guarantee schemes, and that its assessment of their national implementation plans was comprehensive and generally thorough.

19.14 The second part of the Special Report identifies “potential risks” to the effective implementation of Youth Guarantee schemes and makes recommendations which would affect all Member States. The first risk concerns the adequacy of funding. The Court notes that national Youth Guarantee schemes will require “substantial investment” and that there should be “clarity” on the sources from which they will be funded. It says that the UK is one of nine Member States that have so far failed to provide any information on the amount of national funding envisaged. Moreover, the Commission’s proposal for a Council Recommendation to establish a Youth Guarantee was not accompanied by the customary Impact Assessment, so there are no data (other than estimates produced by the International Labour Organisation) of the likely overall cost of implementing Youth Guarantee schemes. The Court explains that, in February 2015, the Commission estimated that a total of €12.7 billion (£9.1 billion) of EU funding would be allocated to finance the schemes for the 2014-20 programming period. It anticipated that an additional €4 billion (£2.87 billion) would be available from other sources. The Court highlights the shortfall between this sum — €16.7 billion (£11.9 billion), amounting to €2.4 billion (£1.7 billion) per year — and the higher implementation costs estimated by the ILO (around €21 billion (£15 billion)). It considers that there is insufficient information on the potential costs of implementing Youth Guarantee schemes in each Member State and on the various sources of funding (EU and national). This makes it difficult for the Commission to draw any conclusions on “the overall feasibility and sustainability of the Youth Guarantee financial plans” and creates the risk of a funding shortfall.183

19.15 The second risk identified by the Court concerns the absence of an agreed definition or qualitative attributes for a job offer to be considered as being of “good quality”. The Court notes that two non-binding EU instruments — a 2014 Council Recommendation on a Quality Framework for Traineeships184 and a 2013 Council Declaration relating to the

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183 See para 56 of the Special Report.
184 Council Recommendation.
European Alliance for Apprenticeships — set out minimum qualitative standards for traineeships and apprenticeships, but there are no similar instruments (other than some Commission guidance) defining a good-quality job. The Court concludes that “the absence of a set of qualitative attributes for a good-quality job offer leads to the risk that the Youth Guarantee schemes might be implemented inconsistently and ineffectively across Member States or even within an individual Member State”.

19.16 The third risk concerns the framework for monitoring the implementation of national Youth Guarantee schemes. The Court highlights the need for “robust monitoring mechanisms” from the outset to provide the basis for “effective, evidence-based policy making” and to ensure that funds are invested wisely and “make a real difference” for young people. It considers that peer reviews undertaken by the EU’s Employment Committee lack detail and depend on the quality and reliability of data provided by each Member State. Moreover, country-specific recommendations issued to individual Member States relating to their Youth Guarantee schemes are not, in many cases, effectively implemented. Other monitoring mechanisms and indicators established for the European Social Fund and Youth Employment Initiative do not provide sufficient detailed information on Youth Guarantee schemes and their contribution to tackling youth unemployment. The Court concludes that a comprehensive Youth Guarantee monitoring and reporting framework should be put in place so that the success or failure of Youth Guarantee schemes can be demonstrated and “to ensure that funds are invested wisely and measures are implemented in ways that will make a real difference for young people”.

19.17 The Court of Auditors makes three Recommendations to address the risks identified in its Special Report:

- Member States should provide a clear and complete overview of the cost of all planned measures to combat youth unemployment under the Youth Guarantee scheme so that the Commission can assess the overall funding needs;

- The Commission should promote a set of qualitative attributes that should be fulfilled for jobs, traineeships and apprenticeships to be supported from the EU budget. The Court suggests that this could be based on existing Commission guidance for the evaluation of the Youth Employment Initiative which defines a “good-quality” offer; and

- The Commission should put in place a comprehensive monitoring system for the Youth Guarantee scheme, covering both structural reforms and measures targeting individuals. The results of this monitoring should be reported to the European Parliament and the Council.

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185 Council Declaration.
186 See para 63 of the Special Report.
187 See para 65 of the Special Report.
188 See para 91 of the Special Report.
The Commission’s reply

19.18 The Commission confirms that it, too, would welcome further information from Member States on the overall cost of national measures implementing Youth Guarantee schemes. It accepts the remaining two Recommendations, which it suggests have already been partially implemented. The Commission says it will encourage further reflection on the concept of “good-quality” offers and provide further guidance. It notes that there are already quality standards covering apprenticeships, traineeships and continued education and adds, in relation to jobs:

“The Commission is of the view that, in general, an offer is of good quality if the person who benefits from it achieves sustainable labour market attachment. That is to say, not return to unemployment or inactivity thereafter; a ‘good-quality’ offer can thus be measured by its outcome.”

19.19 The Commission explains that “a lengthy consensus building exercise” to define a common monitoring framework for the Youth Guarantee might have delayed its introduction. It notes that the EU Employment Committee has agreed an Indicator Framework for Monitoring which, alongside other monitoring mechanisms, should provide “a holistic view” of the impact of Youth Guarantee schemes on the labour market situation of young people. All of these mechanisms will inform the Commission’s report on implementation of the Youth Guarantee which will be published in 2016.

The Government’s Explanatory Memorandum of 8 June 2015

19.20 The Minister notes that the Youth Guarantee is enshrined in a non-binding Council Recommendation and that “there is no question of implementation being required of a Member State”. She says that Special Report issued by the Court of Auditors (“ECA”) “raises no policy issues of concern to the Government”, adding:

“When considering the ECA’s report, is it important to remember that the European Youth Guarantee is not a spending programme. Rather, the non-binding Recommendation establishing a Youth Guarantee agreed by the Council in 2013 suggested a range of avenues for Member States to explore in tackling youth unemployment, in ways suited to national and local conditions and priorities. The UK does not have a youth guarantee scheme of the kind envisaged by the EU. Instead the Government prefers to pursue its own programme of successful interventions and support for young people.”

19.21 Whilst the Court of Auditors report gives prominence to the European Social Fund and the Youth Employment Initiative as the principal sources of EU funding for the Youth

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189 See p.44 of the Special Report.
190 See para 3 of the Minister’s Explanatory Memorandum.
191 See para 16 of the Minister’s Explanatory Memorandum. The closest equivalent to the Youth Guarantee in the UK is the Youth Contract, but this does not include, for example, the four month “trigger period” envisaged in the Council Recommendation.
Guarantee, the Minister makes clear that receipt of these funding streams is not conditional on establishing a Youth Guarantee. She continues:

“In the UK measures to address youth unemployment are being implemented through national programmes as well as through the European Social Fund and the Youth Employment Initiative.”

19.22 The Minister considers that the Court of Auditors report “offers an interesting appreciation of aspects of progress tackling youth unemployment across Europe” and says that the Government “will be keen to ensure that any new information gathering activities are justified and minimal”. She expects the Employment, Social Policy, Health and Consumers Affairs (EPSCO) Council to agree Conclusions at its meeting on 18 June which “note” the report and underscore the need for “approaches to be geared to national and local conditions and focussed on practical outcomes”.

**Previous Committee Reports**


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192 See para 4 of the Minister’s Explanatory Memorandum.
193 See para 17 of the Minister’s Explanatory Memorandum.
194 See para 20 of the Minister’s Explanatory Memorandum.
20 Diplomatic and consular protection of Union citizens in third countries

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; further information requested; drawn to the attention of the Foreign Affairs Committee

Document details


Legal base

Article 23(2) TFEU; QMV; consultation

Department

Foreign and Commonwealth Office

Document number

(33569), 18821/11 + ADDs 1–2, COM(11) 881

Summary and Committee’s conclusions

20.1 Under Article 23 TEU an EU citizen in the territory of a country in which s/he has no diplomatic mission is entitled to protection by the diplomatic or consular authorities in that country of any other Member State, on the same conditions as the nationals of that State. A so-called “Lead Country” mechanism has been the main vehicle for implementing this obligation (each EU mission in a given country has responsibility for particular “unrepresented” Member States’ nationals in line with centrally-agreed allocations that ensure than no-one is left without recourse to a local EU mission). A Council consular cooperation working party (COCON) organises exchanges of information on national best practices and appropriate guidelines. The south Asian Tsunami and Lebanon in 2006 demonstrated that these arrangements could also handle serious crises.

20.2 Nonetheless, since 2007, the Commission has been set on a path towards a “right” to a common level of consular protection for all Member States’ citizens in third countries and for a leading role by EU delegations in ensuring its provision.

20.3 As the “Background” section below relates, the Government and other like-minded Member States have been reshaping the Commission proposals so that UK “red lines” have not been crossed. Or — as revisions of the original draft have been limité — so the Minister for Europe (Mr David Lidington) says.

20.4 Now, the Minister declares that:

- the majority of the UK’s previous objections and concerns with the Directive having been addressed during the negotiations — with its title amended to better reflect its scope, viz., the “Proposal on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries” — the position was reached where the Foreign Secretary and he could agree the text;
• the Presidency pushed for a quick adoption of the Directive as Member States were in broad agreement;

• the Directive was adopted by QMV at the 20 April 2015 Foreign Affairs Council; and

• the UK abstained from voting on the grounds that the Directive had not cleared scrutiny.

20.5 He also notes that Member States now have until 1 May 2018 to implement the Directive.

20.6 We ask the Minister to deposit the final text of the Directive and, in his supplementary Explanatory Memorandum, illustrate precisely where, and how, the UK’s concerns have been met, interests safeguarded and “red lines” not been crossed.

20.7 We would also like the Minister to look into the process by which scrutiny of the negotiations was handled in the FCO. As noted in the “Background” section below, the Committee made it clear more than a year ago that it envisaged a revised text being deposited and — as with the precursor Green Paper and Commission Communication — debated prior to adoption by the Council. Yet nothing was heard from the Minister until less than two weeks prior to its last, pre-dissolution meeting — and then in a letter that went astray, and which made no mention of this clear expectation.

20.8 In the meantime, we shall retain the document under scrutiny.

20.9 We again draw these developments to the attention of the Foreign Affairs Committee.


**Background**

20.10 The Commission’s 2007 Green Paper (which was debated in European Committee) and two subsequent Communications put forward a number of proposals covering the full range of consular services. The Commission seemed determined on a path that was likely to lead to increasing pressure for a “right” to a common level of consular protection for all Member States’ citizens in third countries and for a leading role by EU delegations in ensuring its provision.

20.11 The most recent European Committee B debate, on the second of the Commission Communications, took place on 12 July 2011, at the end of which the Committee agreed the following motion:

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195 See Stg Co Deb, cols. 3–16.
196 See the Committee’s Fifty-fourth Report HC 428-xlix (2010–12), chapter 7 (1 February 2012) for a full summary of the Green Paper and the subsequent Commission Communications.
“That the Committee takes note of European Union Document COM (2011) 149, relating to consular protection for EU citizens in third countries; recalls that such Communications are not legally binding; underlines that the competence for consular protection remains with Member States; and agrees with the Government’s approach to the EU’s consular work.”\textsuperscript{197}

20.12 The Minister’s concerns about the subsequent draft Directive are summarised in our predecessors’ February 2012 Report.\textsuperscript{198} The Committee endorsed them, and also the high priority that the Government attached both to the provision of consular services and to keeping this service democratically accountable to Parliament, flexible, able to respond to need, and professionally delivered.

20.13 Nothing more was heard from the Minister until April 2014, when he reported that the Greek Presidency had decided to press ahead, and that the most recent draft text addressed “a number of concerns held by ourselves and other Member States”. He recalled that his major concerns were around ensuring that it is Member States and not the EU Institutions who provide consular services, and avoiding any restrictions on the Government’s freedom to choose which consular services to provide and the manner in which those services are provided. While the Directive was unnecessary, he was content that it did not “cross UK red lines”. Some changes to the text were, however, being suggested; and Article 12 (which looks at financial procedures) still needed to be addressed. The Minister concluded by undertaking to continue to keep the Committee updated on the discussions.

20.14 Being a \textit{limité} text, the Committee pointed out that it was unable in any way to discuss the Minister’s assertion about its not crossing “UK red lines”. The Committee also made it clear that it would wish to recommend that the final version of the draft Directive be debated prior to any vote in Council; and asked the Minister to ensure that the text was deposited in good time for such a debate to be held, along with an Explanatory Memorandum that demonstrated:

— how all the concerns outlined in his original 2012 Explanatory Memorandum had been addressed;

— how it did not cross “UK red lines”;

— how consistency of language with previous Council Decisions and the language on the EEAS review agreed at the General Affairs Council in December 2013 had been achieved; and

— how the financial procedures to which he referred had been satisfactorily addressed.

\textsuperscript{197} See \textit{Stg Co Deb}, cols. 3–12.

\textsuperscript{198} See the Committee’s Fifty-fourth Report HC 428-xlix (2010–12), chapter 7 (1 February 2012).
20.15 The Committee also drew these developments to the attention of the Foreign Affairs Committee.199

20.16 The Minister’s further update of 6 June 2014 again said that he had “met all UK red lines by ensuring the removal of certain provisions from the Directive” and “that other provisions mirror language from existing council decisions”. He maintained that the “overly prescriptive” first draft had been significantly reduced in size, with the Articles that attempted to set out standards of consular assistance in a range of scenarios being removed in their entirety, so that the current draft reflected “the reality that Member States provide assistance to unrepresented EU nationals in line with the assistance they would offer to their own nationals”. He was nonetheless “continuing to press for a text that was consistent with Article 5 (10) of the Council Decision establishing the organisation and functioning of the EEAS (2010/427/EU) and with the language agreed at the General Affairs Council meeting in December, in particular to highlight that any activities undertaken by the EU delegation were at the request of Member States”. These changes had occurred “as a result of a robust negotiation strategy and lobbying of like-minded Member States to support”. He maintained that he had “ensured that the Directive no longer tries to influence Member State national policy or practice, as these are a Member State competence”. Negotiations were still ongoing, but he was “confident that we can maintain the protection of our red lines and that consular policy is only made by Member States”.200 The Minister again concluded by undertaking to continue to keep the Committee updated on the discussions.

The previous Committee’s assessment

20.17 This further information was reassuring, but the Minister was reminded that the Committee continued to await the “complete package”, as set out in paragraph 0.16 above.

20.18 In the meantime, the draft Directive remained under scrutiny.

20.19 This further update was drawn to the attention of the Foreign Affairs Committee.201

The then Minister’s letter of 11 March 2015

20.20 The Committee did not become aware of this letter until after the dissolution, when it was referred to in a subsequent letter of 27 April (see below).

20.21 The then (and current) Minister refers to his letter of 6 June 2014 and continues as follows:

“As I explained in my last letter, the majority of our previous objections and concerns with the Directive had been removed during the negotiations. We had met all UK red lines by ensuring the removal of certain provisions from the Directive, and that other provisions mirrored language from existing council decisions. The

majority of Member States were happy with the Directive and supported concluding the negotiations. Member States also agreed to amend title of the Directive to better reflect its scope – it is now called the “Proposal on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries”.

“Over the course of the Italian Presidency, the negotiations progressed and we worked to protect our remaining outstanding red line on the role of the EU delegations. At the end of 2014, we undertook bilateral discussions with the French to explore a possible compromise on Articles 1 (General Provisions) & 9 (Role of the Union delegations), and the corresponding Recital (17), all of which refer to the role of the EU delegations.

“At their first COCON meeting in February 2015, the Latvian Presidency judged that the negotiations at the technical level were close to completion and announced their intention to take the Directive to COREPER. They called an extra COCON meeting on 5 March to have a final run through of their compromise text. Prior to this, we met with the French, Commission and EEAS (hosted by the Presidency) to look again at the compromise language on Articles 1 & 9 and Recital 17.

“We successfully negotiated changes to Recital 17 which ensures that the role of the EU delegation remains within the boundaries established by Article 35 of TFEU and Article 5 (10) of the EEAS Council Decision. We also secured a three year implementation period, plus a three year review period, which should limit the chance of any further discussion on the role of the EU in consular work in the medium term.

“The remaining issues with the text were addressed at COCON on 5 March, with the Presidency confirming the conclusions of the discussions at the technical level. They will be presenting the Directive for adoption at COREPER in April, with final adoption at Council following shortly thereafter.”

The Minister’s letter of 27 April 2015

20.22 Recalling his letter of 11 March 2015, which he says embodied “a position where the Foreign Secretary and I could agree the text”, the Minister continues thus:

“I am writing to inform you that the Directive was adopted by Qualified Majority Voting (QMV) at the Foreign Affairs Council on 20 April 2015. The Presidency pushed for a quick adoption of the Directive as Member States were in broad agreement. The UK abstained from voting on the grounds that the Directive had not cleared House of Commons Parliamentary scrutiny. As the vote was subject to QMV our abstention did not affect the overall outcome. Member States now have until 1 May 2018 to implement the Directive.”
Previous Committee Reports


21 Free movement and public documents

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Proposal for a Regulation 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

21.1 The proposed 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.

21.2 The proposal 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.

21.3 The UK does not require the legalisation of documents for use in the UK. The main beneficiaries of the proposed Regulation are therefore likely to be UK citizens living or

202 There are two standard processes: legalisation requires the issuing authority and the consular authority in the Member State where the document is to be used to certify a document’s authenticity; apostille requires a seal of authenticity to be attached to the document by the issuing authority.
working abroad who are required to present official documents to public authorities in their host Member State.

21.4 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 proposed Regulation, as well as the possibility of “mission creep” if common format documents were eventually to replace national documents.

21.5 The Minister for Europe (Mr David Lidington) has provided frequent updates on the progress of negotiations on the proposed Regulation. At the Committee’s meeting on 4 March 2015, our predecessors 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 on most elements of the proposal, with the exception of multilingual standard forms and a number of other related provisions. The Minister indicated that the Presidency was expected to seek a general approach on all elements of the proposed Regulation in June, adding that he would “ask for sufficient time to allow full scrutiny consideration”.203

21.6 In his latest letter, the Minister confirms that the Justice and Home Affairs Council is likely to agree a general approach at its meeting on 15 June, before we have had an opportunity to consider and report on its content, and that “the need for the override of scrutiny on this occasion in order to secure an advantageous general approach is regrettably unavoidable”.204

21.7 We note, with regret, that the Minister has been unable to secure “sufficient time to allow full scrutiny consideration” before agreeing to the general approach at the Justice and Home Affairs Council on 15 June. Having considered the latest information provided by the Minister, we are willing to accept that the outcome achieved at the Council appears to address the concerns raised by the Minister in earlier correspondence about the introduction of multilingual standard forms and the risk of competence creep.

21.8 As negotiations on the proposed Regulation have proceeded in a piecemeal fashion within the Council, we ask the Minister to provide a copy of the general approach agreed in June (without a limité marking) and to describe the key changes made to the text originally proposed by the Commission, including the extent to which they will remove unnecessary bureaucratic procedures for citizens and businesses living, working or trading in the EU. We would also welcome some analysis of the prospects and timescale for reaching an agreement with the European Parliament and the areas in which the Government considers that there is scope for compromise. In particular, we ask the Minister whether he would support the inclusion of a broader category of business documents to simplify formalities for businesses trading in other Member

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203 Letter of 18 March 2015 from the Minister for Europe to the Chair of the European Scrutiny Committee.

204 In her Written Statement to Parliament on the outcome of the Justice and Home Affairs Council, the Home Secretary (Mrs Theresa May) confirmed that the Council had agreed a general approach, based on a Presidency compromise text.
States and to explain how any changes to the scope of the proposed Regulation may affect its legal base.

21.9 We note the Minister’s view that the changes agreed by the Council, particularly with regard to multilingual standard forms, “will be of more use to the citizen” than the Commission’s original proposal. Given that Member States will be able to charge “a cost recovery fee”, we ask the Minister to indicate how much UK citizens might be expected to pay if they request a multilingual standard form and how the level of fees will compare to the average cost of obtaining an apostille. We also ask the Minister whether obtaining a multilingual standard form will obviate the need for any further translation of the national document to which it relates.

21.10 We remind the Minister that we await further details of the cost and practical implications associated with the introduction of multilingual standard forms.

21.11 Finally, the Minister considers that the inclusion of specific wording in the proposed Regulation protecting Member States’ right to negotiate international agreements (or to agree accessions to them) on matters covered by the Regulation “manages the external exclusive competence issue as far as is reasonably possible”. We ask him whether similar wording has been included in other binding EU instruments and how effective they have been — or this wording is likely to be — in light of the Court of Justice’s generally expansive interpretation of EU external competence.

21.12 We look forward to receiving further reports on the progress of trilogue negotiations. Meanwhile, the proposed Regulation remains under scrutiny.

**Full details of the documents:** Proposal for a 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**

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

21.14 The Commission’s original proposal for a Regulation cited 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) TFEU on the internal market). During negotiations within the Council, the scope of the proposal has been reduced to remove certain categories of documents, notably those concerning the legal status and representation of a company, which would be of particular interest to businesses trading in another Member State.

21.15 By contrast, the First Reading position agreed by the European Parliament in February 2014 sought both to expand the categories of documents included within the
scope of the proposed Regulation and to increase those 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”.

21.16 As the UK does not require the legalisation of documents for use in the UK, the Government does not expect the proposed Regulation to have a significant impact on UK law. 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 proposed 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”.

21.17 The Government has provided a preliminary assessment of the potential costs and benefits of the proposed 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.

21.18 It is clear from the updates provided by the Minister on the progress of negotiations within the Council that significant changes have been made to the text originally proposed by the Commission. In particular, under the Commission’s proposal, EU citizens would be entitled to request a multilingual standard form concerning birth, death, marriage, registered partnership, or the legal status and representation of a company instead of (“as an alternative to”) the equivalent national document and present it to a public authority in another Member State without the need for legalisation. The multilingual standard form would have “the same formal evidentiary value as the equivalent public document” and would be issued “under the same conditions” (meaning at no further cost). By contrast, the Council favours a more limited use of multilingual standard forms, so that they would operate merely as a translation aid, without any autonomous evidentiary value.

21.19 The Council has also explored the possibility of including wording in the proposed Regulation to mitigate the risk that 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, such as the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

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205 EP First Reading.
206 See letter of 23 April 2014 from the Minister for Europe to the Chair of the European Scrutiny Committee.
207 Text of the Convention.
The Minister’s letter of 15 June 2015

21.20 In his latest letter, the Minister confirms that the Justice and Home Affairs Council will consider a general approach on the proposed Regulation at its meeting on 15 June, adding:

“It is important that the UK is able to support this general approach in order to secure text which is acceptable to us.”

21.21 The Minister notes that we have previously granted a scrutiny waiver to enable the Government to support a partial general approach on provisions concerning the abolition of apostilles, administrative cooperation between Member States, and rationalisation of certified copies and translations. He provides a limité copy of the text to be agreed by the Justice and Home Affairs Council and suggests that it has been “considerably improved” since the Commission published its original proposal.

21.22 Turning first to the provisions on multilingual standard forms, the Minister describes the changes made in recent weeks which make them more acceptable for the UK:

“The multilingual forms are no longer autonomous forms with independent evidentiary value but are now simply translation aids which must be attached to a national document (specifically, certificates of birth, marriage, civil partnership and death for the UK, and some extremely rare cases where court judgments are used in lieu of certificates). This reduces any future risk of possible EU control over civil status documents. The EU flag/logo has also been removed from the template for translation aid forms which further reduces any perception of official EU influence over matters which are a national prerogative.

“The format was originally proposed to include a minimum number of mandatory standard information fields (such as name, date and place of birth for birth forms). Following the change to a translation aid, a new format which increases the usefulness of the aids has been agreed. It will consist of a standard cover sheet which explains the underlying national document and gives personal information in the mandatory standard fields. A second sheet will be tailored to correspond to the underlying national document. For this part of the form the issuing authority will create a template by selecting the relevant entries from a comprehensive list of fields which will be held on the eJustice portal and translated by the EU Commission into all EU official languages. The issuing authority will use the software of the eJustice portal to automatically translate the fields chosen into the language of the receiving State specified by the citizen, and will transcribe the un-translated personal data into these information fields. Thus a bilingual translation aid will be produced. This will be easier for a receiving authority to read than a fully multilingual translation aid. In addition, a condensed translation of the chosen fields into all languages will appear at the foot of the page so that if necessary it can, with a bit more difficulty, be used as a

208 The Minister makes clear that documents marked limité “cannot be published, nor can they be reported on in any way which would bring detail contained in the documents into the public domain”.


European Scrutiny Committee, First Report, Session 2015-16

21.23 The Minister notes that the requirement in the Commission’s original proposal to charge no more for a multilingual standard form than the fee for the equivalent national document (for example, a birth certificate) has been removed in the general approach. Member States will be able to charge “a cost recovery fee, subject to approval under the appropriate UK legislation”. He continues:

“As details of the requirements for producing these aids have yet to be finalised, we are working to provide a cost assessment in the near future. The number issued will depend on how many eligible citizens request them, which is difficult to assess, but based on the number of documents for which apostilles destined for other Member States are currently requested we estimate a maximum of 25,000 such aids to be issued annually across the UK.”

21.24 The Minister considers that the changes agreed on multilingual standard forms, which limit their use to simple translation aids, have “removed the problems the UK felt most strongly about and will be of more use to the citizen than were the originally-proposed multilingual common forms”.

21.25 In earlier correspondence, the Minister explained that he expected specific wording on external competence to be included in the Regulation itself and that it was “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”. He confirms that wording to this effect will be included in Article 18(2)(b) of the proposed Regulation, adding:

“We are satisfied that this manages the external exclusive competence issue as far as is reasonably possible.”

21.26 The Minister expresses his regret that the vote on the proposed general approach will take place before our first meeting in the Parliamentary Session 2015-16 and that, as a consequence:

“I find myself in the position of having to agree to voting in support of this proposed Regulation before the Committee has had an opportunity to scrutinise the documents. As you know, the responsibility to keep your Committee informed is something I take seriously and the need for the override of scrutiny on this occasion in order to secure an advantageous General Approach is regrettably unavoidable.”

Previous Committee Reports


209 Letter of 18 March 2015 from the Minister for Europe to the Chair of the European Scrutiny Committee.
22 An EU regional strategy for Syria and Iraq as well as the Da’esh threat

Committee’s assessment Politically important
Committee’s decision Not cleared from scrutiny; further information requested
Document details Joint Communication: *Elements for an EU regional strategy for Syria and Iraq as well as the Da’esh threat*
Legal base —
Department Foreign and Commonwealth Office
Document numbers (36664), 6031/15, JOIN(15) 2

Summary and Committee’s conclusions

22.1 This is not the first time that the EU has endeavoured to articulate a comprehensive approach to the Syria crisis (see paragraphs 0.18 below for details).

22.2 But events moved so quickly between the end of 2013 and last summer that, come October 2014, the Foreign Affairs Council had tasked the European External Action Service (EEAS) and the Commission with producing this successor. It flows from the response of the August 2014 European Council to the deterioration of the security and humanitarian situation in Iraq and in Syria as a result of the occupation of parts of their territory by the self-styled Islamic State in Iraq and the Levant (ISIL), and the indiscriminate killings and human rights violations perpetrated by this and other terrorist organisations, by describing the creation of an Islamic Caliphate in Iraq and Syria, and the Islamist-extremist export of terrorism on which it is based, as a direct threat to the European security, and saying that the European Union was determined to contribute to countering the threat posed by ISIL and other terrorist groups in Iraq and Syria.

22.3 The Joint Communication, *Elements for an EU regional strategy for Syria and Iraq as well as the Da’esh threat*, was accordingly published on 5 February 2015. It focuses on three key areas:

*Objectives common to Syria, Iraq and other affected areas:*

- regional engagement;
- countering ISIL as a terrorist organisation and its narrative;
- stemming the flow of foreign terrorist fighters, funds and arms to ISIL;

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210 See the full Foreign Affairs Council Conclusions.
211 See the Annex to our previous Report and full European Council Conclusions.
212 The acronym in Arabic of the so-called “Islamic State in Iraq and the Levant” is Da’esh.
• preventing regional spill-over and enhancing border security;
• humanitarian aid; and
• building resilience and capacity.

**Country specific objectives for Syria:**
• Work towards political transition;
• Strengthening the moderate opposition and civil society;
• Promoting human rights and ensuring accountability; and
• Preparing for long term recovery and stabilisation.

**Country specific objectives for Iraq:**
• Supporting Iraqi government efforts to be more inclusive;
• Strengthening regional and local administration;
• Supporting basic services and economic development; and
• Supporting peace building and national reconciliation.

22.4 The Minister for Europe’s (Mr David Lidington) approach to this proposal is summarised in the “Background” section below. 213

**The previous Committee’s assessment**

22.5 Most analysts took the view that denying it territory was the key to defeating the ISIL phenomenon; and the EU had no role therein.

22.6 In other ways, however, there was no doubt that the EU had a major role to play in securing long-term stability. The challenge, as the Minister rightly highlighted, was to ensure that “the right framework is in place to ensure that initiatives are targeted and add value to the efforts of the Global Coalition to Counter ISIL” and that existing EU activity to address the problems in Iraq, Syria and the region was “brought together as part of a single strategy with a clear purpose”.

22.7 On the other hand, as the European Committee resolved after having debated this Joint Communication’s precursor, that “in responding to the Syrian crisis, the EU should focus its efforts on those areas in which it has expertise, complementing broader national and international efforts”. 214

214 See [http://www.publications.parliament.uk/pa/cm201314/cmgeneral/euro/131202/131202s01.htm](http://www.publications.parliament.uk/pa/cm201314/cmgeneral/euro/131202/131202s01.htm) for the record of that debate.
22.8 As its title suggests, this Joint Communication was the first stage. Even so, it was already sitting alongside an existing related EU Strategy, about which the Minister had said very little. Moreover, it awaited reinforcement and further fleshing-out in Council Conclusions; and, then, an implementation plan. The Minister had set out what he wanted to see; in the first instance, the House needed to see whether he achieved this.

22.9 The previous Committee therefore asked the Minister to write immediately after the 16 March Foreign Affairs Council, so that it could report the outcome to the House before it dissolved (the Committee’s last meeting being on 24 March). In that letter, it asked the Minister to articulate clearly how the Council Conclusions met his objectives. In sum, the previous Committee wished to know what an EU regional strategy for Syria and Iraq as well as the Da’esh threat then looked like.

22.10 The previous Committee also asked:

- the Minister to explain more clearly how he saw this new EU strategy dovetailing with the external dimensions of the EU’s counter-terrorism current and prospective work; and
- what the plans then were for the publication of the implementation plan for any new EU regional strategy for Syria and Iraq as well as the Da’esh threat.

22.11 In the meantime, the previous Committee retained the Joint Communication under scrutiny.215

22.12 The then (and current) Minister for Europe (Mr David Lidington) confirmed on 24 March that the 16 March Foreign Affairs Council (FAC) adopted the Joint Communication, as drafted, and that it and the Council Conclusions — which set out the context for the Strategy and reiterate earlier related Councils Conclusions from October 2014, December 2014 and February 2015 — now constitute the EU Regional Strategy for Syria, Iraq and ISIL/Da’esh. He notes in particular that the Conclusions make clear that the Regional Strategy will be coordinated with and complementary to the efforts of Member States, and international organisations and partners. He also highlights a number of specific points that reflect and complement UK policy (see paragraphs 22.20-22.21 below for details).

22.13 Principal among these are:

- **ISIL**: EU efforts to tackle ISIL will be coordinated with the “Global Coalition to Counter ISIL” through its working groups and will focus on areas where the EU can add most value. Whilst the Regional Strategy outlines the overall framework for the EU’s comprehensive response to Syria and Iraq, the EU’s “Syria and Iraq CT and Foreign Fighters strategy identifies specific areas for CT activity in the region, with a focus on countering the foreign fighters phenomenon; both documents are closely linked;
— **Syria**: though essentially a development on the 2013 Joint Communication, “Towards a comprehensive EU approach”, the Regional Strategy accordingly acknowledges the changing situation on the ground, including the rise of extremist groups such as ISIL. To tackle these threats there must be an inclusive political solution that meets the democratic aspiration of the Syrian people and those moderate opposition groups who represent them; the repressive and violent methods used by Assad to resist calls for democratic change has enabled extremist groups to flourish; there is no place for Assad in Syria’s future;

— **Iraq**: the UK worked to ensure that the Regional Strategy’s objectives for Iraq are clearly aligned with the Government of Iraq’s agreed government programme, which includes commitments to political reform, reconciliation between communities and the respect for human rights; it will thus create opportunities for the EU to assist with security and justice sector reform, economic reform and development, as well as anti-corruption efforts and enhanced public financial management;

— Joint Council, EEAS and Commission monitoring of implementation will include six-monthly progress updates, about the first of which the Government will update the Committee.

22.14 **We look forward to receiving the first such update as soon as it is produced, with the Minister’s views thereon.**

22.15 **In the meantime, we deeply regret the fact that — despite our predecessors explaining why they wished to consider these developments at their last meeting before dissolution — the Minister and his officials took eight days to provide a letter on a straightforward matter, so that it did not arrive until after the meeting had taken place. Moreover, the letter contains no word of explanation or apology.**

22.16 **We accordingly trust that the Minister will wish to ensure that systems are now put in place to ensure that this does not happen in future, as the basis of what we hope will be a generally more constructive engagement with the scrutiny process. In the first instance, we would like a swift explanation as to why the previous Committee’s reasonable request was not met.**

22.17 **In the meantime, we shall continue to retain the Joint Communication under scrutiny.**

**Full details of the documents:** Joint Communication to the European Parliament and the Council — *Elements for an EU regional strategy for Syria and Iraq as well as the Da’esh threat* (36664),
Background

22.18 In 2013, the Commission and European External Action Service (EEAS) Joint Communication “Towards a comprehensive EU approach to the Syrian crisis” reviewed the conflict and its consequences both in Syria and its neighbouring countries in what by then were depressingly familiar terms and proposed a comprehensive EU response. It described a number of areas in which the EU did or should focus its efforts, and methods by which this would continue or could be carried forward. After several exchanges between it and the Minister, the previous Committee recommended that it should be debated on the floor of the House. That debate was instead held, at the Government’s insistence in European Committee B, and not until 2 December 2013. At the end of the debate, the European Committee resolved as follows:

“That the Committee takes note of European Union Document No. 11482/13, a Joint Commission and High Representative Communication: Towards a comprehensive EU approach to the Syrian crisis; and agrees with the Government that in responding to the Syrian crisis, the EU should focus its efforts on those areas in which it has expertise, complementing broader national and international efforts.”

22.19 Subsequent developments are outlined above. They include reference to the 9 February 2015 Foreign Affairs Council Conclusions on counter-terrorism, which:

— called for comprehensive action against terrorism in line with the 2005 EU Counter-Terrorism Strategy and in full compliance with international law, fundamental values and international human rights standards;

— noted that, while Member States have the primary responsibility for addressing terrorism, the EU as such can add value in many ways; and that the actions taken in the area of justice and home affairs need to be complemented by external engagement and outreach, especially to countries in the Middle East, North Africa, the Sahel and the Gulf;

— said that close coordination between internal and external action on the one hand, and between relevant EU actors and EU Member States on the other hand, will enhance the impact of our common efforts; and that more emphasis on the prevention of terrorism, in particular countering radicalisation, on recruitment, equipment and financing of terrorism, and address underlying factors such as conflict, poverty, proliferation of arms and state fragility that provide opportunities for terrorist groups to flourish;

— against this background, decided to step up, as a matter of urgency, its external action on countering terrorism in particular in the Mediterranean, the Middle East, including Yemen, and North Africa, in particular also Libya, and the Sahel;

216 11482/13, JOIN(13) 22.
218 See http://www.publications.parliament.uk/pa/cm201314/cmgeneral/euro/131202/131202s01.htm for the record of that debate.
— said that counter-terrorism (CT) will be mainstreamed fully into EU foreign policy;

— called for accelerated implementation of the EU Syria and Iraq and Counter-Terrorism/Foreign Fighters Strategy (adopted on 20 October 2014) with a particular focus on foreign terrorist fighters and the EU’s Maghreb Communication;

— welcomed the Joint Communication on EU regional strategy for Syria and Iraq as well as the Da’esh threat and looks forward to its implementation as soon as possible; and

— also welcomed a number of initiatives to be implemented in the course of 2015, building on those actions that are already taking place in the field of Justice and Home Affairs and in Foreign and Security Policy.219

22.20 On 16 March, the Council issued Conclusions, running to 27 paragraphs, that begin thus:

“1. The EU remains committed to achieving lasting peace, stability and security in Syria, Iraq and the wider region, as well as to countering the ISIL/Da’esh threat. An inclusive political transition in Syria and inclusive political governance in Iraq are crucial to sustainable peace and stability in the region. The EU will continue to support the role of the UN Special Envoy Staffan de Mistura and the efforts of the Iraqi Government to achieve those objectives. In this regard, the EU recalls the Council Conclusions of 20 October, 15 December 2014 as well as 9 February 2015.

“2. The EU condemns unreservedly the indiscriminate attacks, atrocities, killings and abuses of human rights which are perpetrated by ISIL/Da’esh and other terrorist groups, in particular against Christians and other religious and ethnic groups. The EU underlines the importance of preserving the multi-ethnic, multi-religious and multi-confessional character of the Syrian and Iraqi societies. The EU supports international efforts and initiatives to address these issues and welcomes in this regard the Ministerial meeting that will take place at the UN Security Council on 27 March on the victims of attacks and abuses on ethnic or religious ground in the Middle East.

“The EU strongly condemns acts of violence and abuses committed against children, noting with concern the practice of Da’esh/ISIL of enlisting children into its armed units, forcing them to participate in executions and subjecting them to various forms of physical and psychological pressure.

“3. The EU urges all international actors, in particular the countries in the region, to play a constructive role in addressing the crises as their engagement is necessary in order to achieve regional and international stability and to find durable solutions.

“4. The EU supports efforts by the Global Coalition to counter ISIL/Da’esh, including military action in accordance with international law. It recalls that military action in

this context is necessary but not sufficient to defeat ISIL/Da’esh. It will coordinate closely with international partners in the framework of the Global Coalition’s working groups on stabilisation, strategic counter-messaging, foreign terrorist fighters, countering terrorist financing and military action. It will also contribute to implement UN Security Council resolutions 2161, 2170, 2178, 2199, and other relevant resolutions. This will include the security measures spelled out in the EU Syria and Iraq counter-terrorism/foreign fighters strategy endorsed by the Council on 20 October 2014, which is an integral part of the EU regional strategy.

“The EU calls on all states to comply with UN Security Council resolutions 2161 and 2199 to ensure that no funds, other financial assets or economic resources are made available, directly or indirectly, by their nationals or by persons within their territory for the benefit of ISIL/Da’esh, Al-Qaeda and affiliated groups.

“5. In the implementation of the strategy, the EU will focus its efforts on policy areas in which it has an added value in relation to the activities of the Member States. In pursuing its policy actions the EU will act in close coordination and will seek complementarity with the measures implemented by other international and regional partners, and the Iraqi government.”

220

The Minister’s letter of 24 March 2015

22.21 The then (and current) Minister highlights paragraph 5 of the Council Conclusions and then highlights the follow specific points, which he says reflect and complement UK policy:

“ISIL

“EU efforts to tackle ISIL will be coordinated with the ‘Global Coalition to Counter ISIL’ through its working groups and will focus on areas where the EU can add most value. Some key areas where the EU has a significant role to play include:

- “diplomatic engagement with countries in the region to promote regional support for security and long term peace;
- “assisting countries in the region, particularly Turkey, Lebanon and Jordan with border management and aviation security, including capacity building projects;
- “continuing to work to unblock Passenger Name Records (PNR) sharing within the EU;
- “delivering counter-extremism and counter-narrative initiatives, including amplifying messages from those in the region, and capacity-building projects in Lebanon and Jordan;

For the full Council Conclusions, see press release.
“continued provision of humanitarian assistance to address immediate needs and to promote resilience, recovery and post-conflict reintegration and development.

“The EU will also implement United Nations Security Council resolutions 2161, 2170, 2178, 2199 and other relevant resolutions. Whilst the Regional Strategy outlines the overall framework for the EU’s comprehensive response to Syria and Iraq, the EU’s Syria and Iraq CT and Foreign Fighters strategy identifies specific areas for CT activity in the region, with a focus on countering the foreign fighters phenomenon. Both documents are closely linked.

“**Syria**

“The Regional Strategy commits the EU to continue working towards:

- “A Syrian-led, broad-based transition on the basis of the Geneva Communiqué, and working with the moderate opposition and civil society actors towards this end;
- “Continuing to apply and increasing pressure on the Assad regime, notably through further targeted sanctions and other appropriate restrictive measures (through which the EU already adds significant value);
- “Assisting in the provision of services and rebuilding of administration in areas of reduced conflict; and
- “Promoting human rights / international humanitarian law and ensuring accountability.”

22.22 The then (and current) Minister describes this as a development on the earlier Joint Communication (‘‘Towards a comprehensive EU approach to the Syrian crisis’’) produced in June 2013 by the Commission and the High Representative.221 The Regional Strategy:

“therefore acknowledges the changing situation on the ground, including the rise of extremist groups such as ISIL. To tackle these threats there must be an inclusive political solution in Syria, which meets the democratic aspiration of the Syrian people and those moderate opposition groups who represent them. The repressive and violent methods used by Assad to resist calls for democratic change have created an environment that has allowed extremist groups to flourish; there is no place for Assad in Syria’s future.

“**Iraq**

“The EU, alongside the Global Coalition to Counter ISIL, has an important role to play in supporting PM Abadi as he works to rebuild public trust in the Government of Iraq. The UK worked to ensure that the Regional Strategy’s objectives for Iraq are

221 See (35105), 11482/13: Thirteenth Report HC 83-xiii (2013–14), chapter 3 (4 September 2013) for full details of this earlier Joint Communication and the previous Committee’s consideration thereof.
clearly aligned with the Government of Iraq’s agreed government programme, which includes commitments to political reform, reconciliation between communities and the respect for human rights. More specifically, it is welcome that the Regional Strategy will create opportunities for the EU to assist the Government of Iraq with security and justice sector reform, economic reform and development, as well as anti-corruption efforts and enhanced public financial management.

“The Council also highlighted some additional, key overarching points and principles:

- “The EU’s commitment to provide support to countries in the region, including Lebanon and Jordan.
- “Women’s empowerment and their full and effective participation will be integrated into all EU efforts;
- “Humanitarian aid will remain strictly separate from other strands of EU action, in line with the humanitarian principles;”

22.23 So far as an Implementation Plan is concerned, the Minister says:

“The EU does not plan to publish an implementation plan at present. The Conclusions set out that the Council, EEAS and Commission will work together to plan and swiftly implement the Strategy and that this implementation will be supported by the exchange of best practice and information. Joint monitoring of implementation will also take place, including through six-monthly progress updates from the Institutions. I will undertake to provide an update on implementation to the Committees in due course, in particular when the first progress report is made available.”

Previous Committee Reports


23 EU Special Representative for the Middle East peace process and wider EUSR issues

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Summary and Committee’s conclusions

23.1 EU Special Representatives (EUSRs) were established under Article 18 of the 1997 Amsterdam Treaty. They are appointed by the Council through the legal act of a Council Decision (formerly a Joint Action) where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

23.2 The substance of the mandate depends on the political context of the deployment. Some provide, inter alia, a political backing to a Common Security and Defence Policy (CSDP) operation; others focus on carrying out or contributing to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels. At the time at which this Council Decision was deposited for scrutiny, there were seven EUSRs; for Afghanistan, Bosnia and Herzegovina, Kosovo, the South Caucasus and the crisis in Georgia, the Horn of Africa, Human Rights and the Sahel.222

23.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR: Federica Mogherini). Each is financed out of the Common Foreign and Security Policy (CFSP) budget. In addition, Member States also contribute regularly through, for example, seconding some of the EUSR’s staff members.

23.4 After the coming-into-force of the Treaty of Lisbon and the establishment of the European External Action Service (EEAS), the HR now has the sole right of initiative for the establishment of EUSRs and also proposes the person to occupy the post. Most were previously senior national diplomats or active politicians. The Council continues formally to determine their mandate and to appoint EUSRs, who report back through the Political and Security Committee (PSC223), including meeting the PSC on a regular basis.

23.5 The previous EUSR for the Middle East, Dr Andreas Reinicke, was appointed in February 2012: a German diplomat with more than 25 years’ experience, who had devoted most of his career to the Middle East, and who had deep and extensive knowledge about the MEPP. A June 2013 Council Decision extended his mandate until 30 June 2014, with a provision to review developments on the ground between then and 31 December 2013. At

For further information, see http://eeas.europa.eu/background/eu-special-representatives/index_en.htm.

that point, the Council then decided to terminate it. The background is set out in our predecessors’ Reports of January and February 2014.224

23.6 The Foreign and Commonwealth Office describe Mr Reinicke as having “stepped down from the role”, with his role and responsibilities being “transferred to the EEAS in the interim, with Helga Schmidt (EEAS Deputy Secretary General) acting as envoy to the HR”. This carefully-worded formulation glosses over the much wider issue then in play: whether, post-Lisbon, the EUSR as a “concept” was to be continued or (as the then HR, Baroness Ashton, had proposed in the context of a revision of the EUSR guidelines) transferred, along with their associated resources, into the EEAS — the consequence being that Member States would no longer be able to approve the mandate of what are effectively the Council’s special envoys to a variety of trouble spots affecting EU and national interests; or the job holder; or their budget (which included salaries of c.€175,000 per annum plus allowances).

23.7 As our predecessors’ previous Reports relate, not only this mandate but also that of the EUSR to Central Asia and the EUSR to the Southern Mediterranean were set aside and, in the meantime, effectively replaced by the HR’s own Special Envoys. There was also a five-month gap, following the unexplained resignation in January 2014 of the EUSR to the South Caucasus and the crisis in Georgia, Philippe Lefort (a senior and experienced French diplomat, most of whose career had been dedicated to the Caucasus and Russia, including as Ambassador to Georgia in 2004–07), until Herbert Salber (Germany’s Deputy Permanent Representative to NATO, with extensive knowledge of the former-Soviet region and the conflicts in the South Caucasus) was appointed by the Council in June 2014.

23.8 In the event, final decisions on the way forward were put off until Baroness Ashton’s replacement was in post and virtually all the mandates came up for renewal in February 2015.

23.9 In the interim, the previous Committee endorsed the Minister for Europe’s position: Member States must retain at least their present degree of control over the establishment of each position, the mandate and the job-holder,225 and the need for greater transparency in the EUSR process.226

23.10 The previous Committee’s Reports in February 2015 deal with the outcome. In essence, the new HR (Federica Mogherini):

— decided to extend the extant mandates, which the then Minister for Europe described as “a positive step” that the UK had welcomed;
— proposed the reestablishment of the EUSRs for Central Asia and the Middle East Peace Process;

— had written to Member States on 27 January 2015 stating that the reason for the eight month extension for those EUSRs with a geographical remit was to allow her to “further acquaint herself with their work and interaction with the EEAS before making substantial proposals on the way ahead in autumn 2015”; and

— had also announced that she intended to conduct a wider evaluation on EUSRs, looking at the “political objectives, visibility of the EU, interaction with the EEAS, the resource implications and the ability of the EEAS to take on some of the tasks”.

23.11 The Minister for Europe:

— supported the initiative to hold such a “horizontal discussion”;

— reported that, prior to Ms Mogherini’s appointment, Member States had “once again fought off” proposals by the EEAS for a transfer of the EUSR budget from the CFSP Budget to the EEAS budget; and

— said that he would continue “to emphasise the importance of Member State oversight of this important tool of the CFSP”.227

23.12 This Council Decision proposes that Fernando Gentilini be appointed as EUSR for the Middle East peace process for a period of 12 months, until 30 April 2016.

23.13 Mr Gentilini is described as a senior Italian diplomat who is well connected in Brussels, with strong negotiation skills and an excellent understanding of CFSP issues and EU external relations; and as having worked on conflict issues including, most recently, the Western Balkans, where, as EUSR/Kosovo, he was well regarded by the parties to the dialogue. Though he has no background in Middle East issues, the view is put forward that this “may not necessarily hamper his efforts as it will mean he has a clean slate with both parties”. Re-establishing the EUSR/MEPP position is welcomed as “a visible demonstration of EU and Member States’ commitment to making progress on the peace process and enhancing the EU’s engagement”.

23.14 The proposed budget for financial year 2015/16 is currently calculated to be €1.98 million, based on costs associated with accommodation and an office in Jerusalem (see “Background” below for further details).

23.15 In writing to the Committee on 7 April 2015, the Minister said that it was “important that the EUSR is in place quickly so that he will be able to deliver his mandate as soon as the Israeli Government is formed following elections on 17 March” (and apologised for the consequential scrutiny override). He noted that the new EUSR’s mandate, while based on his predecessor’s, also includes a specific reference that the EUSR should report regularly to

the Political and Security Committee (PSC\textsuperscript{228}) in addition to the minimum requirements for reporting and objective setting, and should coordinate closely with the Heads of EUPOL COPPS,\textsuperscript{229} EUBAM RAFAH\textsuperscript{230} and the EU missions in Tel Aviv and Jerusalem.

23.16 The preamble to the draft Council Decision notes that “resolution of the Palestinian/Israeli conflict is a strategic priority for Europe and the European Union must remain actively engaged until it is solved on the basis of the two-State solution”.

23.17 At the time, however, there was effectively no Middle East Peace Process; indeed, during the Israeli election campaign, the eventual winner, Mr Benyamin Netanyahu, had cast doubt on the notion of a two-state solution. Little has changed since then.

23.18 Nonetheless, in his Explanatory Memorandum of 5 June, the Minister notes that the Middle East Peace Process remains high on the international agenda and says that there is “a growing appetite amongst EU partners for the EU to do more to help support efforts to return the parties to negotiations”. The new EUSR will therefore have “a useful role” to play in diplomatic efforts aimed at preserving the viability of a two state solution, supporting the conditions for a return to talks, mitigating the risk of renewed conflict in Gaza and improving the situation on the ground, and engaging Arab partners in the region. Access to key interlocutors on both sides will enable the new EUSR MEPP to present a strong unified EU voice on issues of concern, including UK priorities. In addition to supporting any US efforts to return to negotiations, the Minister is “encouraging him to focus on areas where the EU can make a visible difference — maintaining pressure on both parties to reduce tensions and improve conditions on the ground, particularly in Gaza”.

23.19 As well as the considerable uncertainty surrounding the “useful role” that Mr Gentili will be able to play in practice, there is a similar uncertainty about the precise location and size of his office, and the actual cost. We should therefore be grateful if, to enable the Committee to consider it at our meeting on 9 September, the Minister would clarify what has transpired between when he was appointed in April and now. We would like in particular to know the total number of staff engaged in Brussels and in Jerusalem in the EUSR’s office, and what the salary and allowances are of the EUSR slot within the total personnel costs.

23.20 We would also like the Minister to bring the Committee up to date on what has transpired on the political front since early April, and to outline how Mr Gentilini has been able to fulfil his role.

23.21 When he writes to us, we would like him to explain why special reporting requirements \textit{vis à vis} the Political and Security Committee are thought to be necessary in this instance, but not for other EUSRs. We would also like to know why, if it is


(rightly) felt to be necessary now, previous EUSRs/MEPP (and the interim HR “envoy”) were not required to coordinate closely with the Heads of EUPOL COPPS, EUBAM RAFAH and the EU missions in Tel Aviv and Jerusalem.

23.22 This leads on to the wider issues outlined above, when our predecessors noted in their February 2015 reports on other EUSR mandates that they were over-optimistic in thinking that the previous HR’s proposal had been dealt with definitively. They noted that the importance of this issue was clear: the more the EUSR role is absorbed into the EEAS, the less will the Member States control the mandates of what are effectively the Council’s special envoys to a variety of trouble spots affecting EU and UK interests, or the job holder and his or her or performance. Instead, such “special envoys” would more and more represent the HR/EEAS, and not the Member States through the Council. Citing words used at the time by the Minister for Europe, they noted that “oversight”, or supervision (OED), is significantly different from “control”, or “power of directing” (ibid), and said that the Committee would therefore continue to follow this matter closely. In the first instance, they asked the then Minister (or his successor), in early September, to provide the Committee with an update on the timing of the HR’s “wider evaluation”; what he or she then knew of the HR’s thinking; and what views he or she would be taking into the “horizontal discussion” to which the then Minister had referred. We look forward to hearing from the Minister on this matter too. For now, we note that the replacement of the EUSR for Central Asia by a similar HR/EEAS “envoy” led to a significant fall-off in effectiveness, which the new EUSR now has to restore.231

23.23 In the meantime, we shall retain the document under scrutiny.

Full details of the document: Council Decision appointing the European Union Special Representative for the Middle East peace process: (36769),—.

Background

23.24 The specific and wider background is summarised above, and detailed in those of our predecessors’ previous relevant Reports cited in, and at the end of, this chapter of our Report.

The draft Council Decision

23.25 Noting that “the resolution of the Palestinian/Israeli conflict is a strategic priority for Europe” and the European Union “must remain actively engaged until it is solved on the basis of the two-State solution”, the Council Decision proposes that an EUSR for the Middle East peace process should be appointed for a period of 12 months; and that Fernando Gentilini be appointed as the EUSR for the Middle East peace process until 30 April 2016.

231 See (36777), —: Council Decision appointing the European Union Special Representative for Central Asia at chapter 24 of this Report.
23.26 In a post-dissolution Explanatory Memorandum of 7 April 2015, the Foreign and Commonwealth Office noted that: EU HR Mogherini wrote to EU Member States on 27 January 2015, proposing to appoint a new EUSR/MEPP; a number of proposed candidates were put forward by EU Member States; the UK did not have a preferred candidate; at the 16 March 2015 Foreign Affairs Council meeting, Ms Mogherini announced Fernando Gentilini (“Italian, Director for Western Europe, Western Balkans and Turkey, EEAS”) as the new EUSR/MEPP; and no EU Member State objected to his candidacy.

23.27 In a separate letter of the same date, the then (and current) Minister for Europe (Mr David Lidington) said that it was important that the EUSR be in place quickly so that he would be able to deliver his mandate effectively as soon the Israeli Government was formed following the 17 March general elections, meaning that, on this occasion, it was necessary, and regrettably unavoidable, for the UK to agree to the adoption of this Council Decision before the Committee had had an opportunity to scrutinise the documents.

23.28 Noting that the mandate is based primarily on the previous EUSR’s mandate, the Minister says that the main additions, as agreed by EU Member States:

“are aimed at bringing out the importance of engaging with Arab partners, that the contribution to crisis management and prevention includes Gaza. This mandate also includes a specific reference that the EUSR should report regularly to PSC in addition to the minimum requirements for reporting and objective setting and that the EUSR should coordinate closely with Heads of EUPOL COPPS and EUBAM RAFAH as well as Heads of EU Del in Tel Aviv and EU Representation in Jerusalem.”

23.29 The Minister also commented further on the budget as follows:

“The total budget is €1,980,000. We cannot make a direct comparison with the previous EUSR budget as the newly appointed EUSR will be based, for the majority of his time, in Jerusalem rather than Brussels. Therefore, the allowances are different to those for EUSRs based in Brussels; the budget has taken this into account. There is a large contingency in the budget compared with others EUSRs as a result of the new nature of the regional based position, this will allow for minor changes (both up and down) to the individual budget lines on office accommodation etc., but within the agreed overall figure. We judge that other elements of the budget are in line with other EUSRs and within the 2014 Guidelines and that it is value for money for the mandate the EUSR will have.”

23.30 In his post-general election Explanatory Memorandum of 5 June 2015, the Minister reiterates the appointment process outlined above, and also that the HR’s proposals for the EUSR/MEPP mandate are based on the EU’s policy objectives regarding the Middle East peace process, including pursuing a comprehensive peace and a two-state solution; which will involve:

- “actively pursuing appropriate international initiatives to create a new dynamic for negotiations;
• “providing an active and efficient Union contribution to actions and initiatives aiming to achieve a final settlement of the Israeli-Palestinian conflict based on the two-state solution;

• “facilitating and maintaining close contact with all the parties and other relevant countries and international organisations, paying particular attention to factors affecting the regional dimension of the peace process, to the engagement with Arab partners and to the implementation of the Arab Peace Initiative;

• “supporting peace negotiations and contributing to the implementation of international agreements reached and;

• “contributing to efforts to bring about a fundamental change leading to a sustainable solution for the Gaza Strip. The government supports this approach.”

23.31 With regard to the Financial Implications, he:

— recalls that EUSR’s are funded from the EU’s CFSP Budget, to which the UK currently contributes 17.5%;

— notes that a political decision still needs to be taken on where the EUSR will be based;

— confirms that:

  • the cost of the EUSR’s mandate for financial year 2015/16 is currently calculated to be €1,980,000, based on costs associated with accommodation and office in Jerusalem;

  • a political decision still needs to be taken on where the EUSR will be based;

  • there is no capacity to host the EUSR office with the EUDEL office;

  • the budget is based on the previous EUSR/MEPP one, and is consistent with the EUSR guidelines and other EUSR budgets;

  • there is, however, a large contingency within it to allow for the confirmation of where the office will be finally located to provide the flexibility within an agreed level; and

  • the total number of staff has remained the same, although a greater number will be based in Jerusalem rather than Brussels, which has therefore increased the personnel costs; establishing a new office also means an increase in running costs;

  • the UK has suggested that savings should be made wherever possible (including mission costs on travel and running expenditure) in order to reduce overall costs.

23.32 The following itemised breakdown of costs is provided:

<table>
<thead>
<tr>
<th>Budget heading</th>
<th>Proposed budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personnel costs</td>
<td>551,269.29</td>
</tr>
</tbody>
</table>
The Government’s view

23.33 The Minister supports the work of the EUSR on the Middle East Peace Process:

“The Middle East Peace Process remains high on the international agenda and there is a growing appetite amongst EU partners for the EU to do more to help support efforts to return the parties to negotiations. The new EUSR will therefore have a useful role to play in diplomatic efforts, aligned with UK policy objectives, aimed at preserving the viability of a two state solution, supporting the conditions for a return to talks in the future, as well as on mitigating the risk of renewed conflict in Gaza and improving the situation on the ground and engaging Arab partners in the region.

“As the last 12 months have shown, even in the absence of direct negotiations, there is often a need for intensive diplomatic activity. With access to key interlocutors on both sides, the new EUSR MEPP will be able to present a strong unified EU voice on issues of concern, including UK priorities. In addition to the EUSR’s role in supporting any US efforts to return to negotiations, we are encouraging him to focus on areas where the EU can make a visible difference — maintaining pressure on both parties to reduce tensions and improve conditions on the ground, particularly in Gaza.

“At the EU Foreign Affairs Council in May Ministers welcomed Gentilini’s appointment and a distinct EU role to explore how to get the parties to return to negotiations and maintain the viability of the two state solution. Based in Jerusalem, the EUSR will regularly meet EU Heads of Mission and Heads of EU institutions in country (EUBAM Rafah, EUPOL COPPS) ensuring a coordinated approach and messaging. The EUSR will also report regularly to the PSC. We will use these meetings to review progress and influence which specific issues the EUSR should focus on as the situation develops.”

Previous Committee Reports

Annex: Key elements of the revised EUSR Guidelines

“B. APPOINTMENT AND MANDATE

1. Political context

“EUSRs, assisted by the EEAS, and acting in support of and in close coordination with the Council and the HR, should contribute to the unity, consistency and effectiveness of the Union’s external action and representation. They should help ensure that all Union instruments and Member States’ actions are engaged consistently to attain the Union’s policy objectives. In particular, they should contribute to improving the effectiveness of the EU’s response to crisis situations, and to the implementation of the EU’s strategic policies.

2. Procedure

“Where it considers that the political context so requires, the Council may invite the HR to present a proposal for the appointment of an EUSR with a mandate in relation to a particular policy issue. Following the presentation of a proposal for an EUSR, the Political and Security Committee (PSC) will assess the proposal and may then invite the competent Council Working Parties to examine the mandate, with a view to its adoption by the Council.

“The Foreign Relations Counsellors Working Party (RELEX) will assess the legal, institutional and financial aspects of the mandate, in particular with a view to ensuring consistency of EUSR mandates, and will finalise the draft legal act for adoption by the Council.

“Following an agreement in principle on appointing an EUSR, the HR will invite the Member States via the PSC to propose candidates. Member States are encouraged to propose more female candidates. The HR, assisted by the European External Action Service (EEAS), will organise the selection process, during which the Member States will be kept informed, and will submit a recommendation to the PSC regarding the nomination of the EUSR. If the PSC gives its political endorsement to that recommendation, the Council will formally adopt the decision appointing and mandating the EUSR. New and existing mandates and budgets should be proposed in sufficient time to allow Member States both to find suitable candidates and to carry out their national scrutiny procedures.

“EUSR mandates generally have a thematic focus, relating to a cross-cutting issue, and/or a geographic focus, in particular mandates covering specific regions.

“In exceptional cases a Head of an EU Delegation has also been appointed as an EUSR.

“C. STRUCTURE OF THE COUNCIL DECISION AND DURATION OF MANDATE

“The Council Decision appointing an EUSR will cover the following elements:
— “scope, policy objectives of the EUSR’s mandate and the EUSR’s tasks, including where appropriate standard language to cover horizontal issues;
— “appointment of the EUSR;
— “respective roles of the HR and the PSC;
— “duration of the mandate;
— “criteria and modalities for reporting to the relevant EU institutions and bodies;
— “co-ordination and liaison in Brussels and in the field;
— “appropriate indicators for assessing the achievement of objectives;
— “evaluation and review of the implementation of the mandate;
— “financial aspects (in particular financial reference amount and accountability);
— “constitution and composition of the EUSR’s team;
— “privileges and immunities for the EUSR and his/her staff;
— “security related aspects.

“As a general rule, an EUSR should be appointed for a period of 12 months while his/her total tenure of office should not exceed 4 years. Consideration should be given to harmonising, where possible, the dates of expiry of EUSRs’ mandates, whilst taking into account the timing of specific events related to the mandate.

“D. OPERATIONAL PRINCIPLES
1. Role of the HR and PSC
“The PSC will act as the primary point of contact within the Council and provide political direction and strategic guidance to the EUSR within the framework of the mandate. The HR should give the necessary operational direction to the EUSR. In accordance with Article 33 TEU, the EUSR carries out his/her mandate under the authority of the HR.”

24 EU Special Representative for Central Asia and wider issues

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

232 See Guidelines.
Document details

Council Decision on the Appointment of European Union Special Representative (EUSR) for Central Asia

Legal base

Articles 31(2) and 33 TEU; QMV

Department

Foreign and Commonwealth Office

Document numbers

(36777), —

Summary and Committee’s conclusions

24.1 The EU established an EUSR for Central Asia in September 2005 to ensure coordination and consistency of external EU actions in the region. The EUSR’s mandate was amended in 2007 in response to a new EU strategy for Central Asia. When it was last considered by the then Committee in mid-2013, the then and current Minister for Europe (Mr David Lidington) underlined the strategic importance of the Central Asia region, the necessity of EU being perceived as an effective player in the region and the importance of this EUSR mandate in order to enable continued personal, high-level engagement with the leaders of the five Central Asia states as the transition process got underway in Afghanistan (see paragraphs 24.13–24.14 below for further detail).

24.2 In the words of the Minister for Europe’s (Mr David Lidington) Explanatory Memorandum of 5 June 2015, the previous incumbent, Mrs Patricia Flor, “left post in early 2014 and was replaced in the interim by Janos Herman, a senior EEAS official, appointed by the former EU High Representative as EU Special Envoy to Central Asia in April 2014 with the task of ensuring continued EU high-level engagement in the region”.

24.3 As noted elsewhere in this Report regarding the reinstatement of the EUSR to the Middle East peace process,233 this carefully-worded formulation glosses over the much wider issue then in play: whether, post-Lisbon, the EUSR as a “concept” was to be continued or (as the then HR, Baroness Ashton, had proposed in the context of a revision of the EUSR guidelines) transferred, along with their associated resources, into the EEAS — the consequence being that Member States would no longer be able to approve the mandate of what are effectively the Council’s special envoys to a variety of trouble spots affecting EU and national interests; or the job holder; or their budget (which included salaries of c.€175,000 per annum plus allowances).

24.4 Not only were the MEPP and Central Asia EUSR mandates set aside and effectively replaced by the HR’s own Special Envoys but so, too, was that of the EUSR to the Southern Mediterranean; there was also, following the unexplained resignation in January 2014 of the highly-experienced incumbent, a five-month gap regarding the EUSR to the South Caucasus and the Georgia crisis, until Herbert Salber (Germany’s Deputy Permanent

233 (36769), —: Council Decision appointing the European Union Special Representative for the Middle East Peace Process at chapter 23 of this Report.
Representative to NATO, with extensive knowledge of the former-Soviet region and the conflicts in the South Caucasus) was appointed by the Council in June 2014.\footnote{These wider issues are discussed in the same separate chapter of this Report: see (36769), —: Council Decision appointing the European Union Special Representative for the Middle East Peace Process at chapter 23. That chapter of this Report should accordingly be read in conjunction with this chapter.}

24.5 In April 2015, Baroness Ashton’s successor as EU High Representative, Federica Mogherini, then nominated Peter Burian, State Secretary of the Ministry of Foreign and European Affairs of the Slovak Republic,\footnote{Also a former ambassador of the Slovak Republic to NATO, to the United States and to the United Nations.} as the next EUSR for Central Asia until 30 April 2016. The proposed mandate is essentially as before; the proposed annual budget is €810,000 (see paragraphs 24.17–24.20 below for details).

24.6 The then (and current) Minister for Europe has already written to the previous Committee, on 7 April 2015, to say that it is “important that there should be no substantial gap in EU high level representation in the region”, and express regret that it was “necessary for the UK to agree to the adoption of a Council Decision on the budget and mandate for this position during the period when Parliament is dissolved”.

24.7 The Minister now says that the UK’s main interests in Central Asia broadly fall under three strands: energy/commerce; regional stability/security; and governance/human rights — interests that are “substantial and growing, not least given Russia’s illegal actions in Ukraine and the risk of further destabilisation in Russia’s near abroad”, in a region where the EU “needs to be perceived as an effective player in region, particularly as we engage the Central Asian states in light of Afghanistan transition and as the region watches events in Ukraine closely”. As the UK’s “national network resources are limited”, continuation of the EUSR mandate “will help leverage the EU’s vastly larger resources across the region to achieve largely similar goals”. The previous EU Special Representatives all travelled extensively, contributed to EU discussions on policy towards the region, including on energy security and counter-narcotics and helped ensure the EU’s position as a significant player in Central Asia. The appointment of an EU Special Envoy for much of 2014 “marked a distinct downturn in high level attention”. Extension of the mandate of the EUSR is “important to enable continued personal, high-level engagement with the leaders of the five Central Asia states”, particularly as there are not yet EU Delegations in all five countries and there are relatively few other senior EU visitors. The Minister therefore supports the appointment of “an experienced senior diplomat with relevant language skills and broad experience”, whom he expects will “continue to provide a common focus for delivering EU messages not just on key human rights issues, but also on the benefits of regional co-operation and on potential EU assistance in helping the region to address some of its shared socio-economic difficulties”.

24.8 The proposed EUSR mandate highlights, among other things implementation of the “EU Strategy for a New Partnership with Central Asia”. As noted elsewhere in this Report, that Strategy, thus far, has been less than effectively executed.\footnote{See (36624), 5241/15, Implementation of the EU Central Asia Strategy, at chapter 53 of this Report.}
24.9 The previous Committee accordingly looked forward to receiving this Council Decision because of the need for such an intermediary if this important EU Strategy was ever going to get properly off the ground; and also because it meant that the EUSR process would be back where it belongs, under the control of the Member States.

24.10 On 22 June, the Foreign Affairs Council adopted substantial Conclusions that reaffirmed Central Asia as a region of strategic importance, confirmed that the main objectives and priority areas of the 2007 EU Strategy for Central Asia remain pertinent, and committed the EU to establishing a strong, durable and stable relationship with the five Central Asian countries and to a relationship “based on the principles of responsibility and ownership, which is aimed at fostering the stable, secure and sustainable development of the region”.

24.11 In those Conclusions, the Council welcomed the appointment of Ambassador Peter Burian as the new EUSR for Central Asia, whose role will be:

“to act as an important channel of dialogue and communication at the highest level with the central Asian countries, to promote overall Union political coordination in Central Asia and enhance the Union’s effectiveness and visibility in the region.”

24.12 So far, so good. However, we note that the budget has been reduced by 20%. We agree that it is “important we ensure EUSRs offer value for money”. However, those words referred to the previous EUSR budget, which dealt with essentially the same mandate, and which supported an EUSR whose extensive travelling had (as the Minister now notes) engendered and promoted the high-level contacts, in five countries, that are central to the job, and which the Minister now notes have fallen off and need to be revived. Given the importance of the proposed new Strategy, the implementation track record thus far and the clear job to be done, it is not immediately apparent how such a budget reduction makes sense (whereas c. €2 million has been allocated to an EUSR to a Middle East Peace Process that exists in name only). We should be grateful if the Minister for Europe would explain the rationale, and why he believes the budget is sufficient to enable Mr Burian to reinvigorate the essential high-level contacts that have seemingly withered on the vine over the past year.

24.13 In the meantime, we shall retain the Council Decision under scrutiny.

**Full details of the documents:** Council Decision appointing the European Union Special Representative for Central Asia: (36777), —.

**Background**

24.14 The EU established an EUSR for Central Asia in September 2005 to ensure coordination and consistency of external EU actions in the region.

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237 See Foreign Affairs Council Conclusions on Central Asia for the full text.
24.15 The EUSR’s mandate focused on enhancing EU effectiveness and visibility in the region. It also aimed to contribute to the strengthening of democracy, rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia. It was subsequently amended to allow the Special Representative to contribute to wider Common Foreign and Security Policy work on energy security, and to help develop bilateral energy cooperation with important producer and transit partners in Central Asia; then again, following the adoption of a new EU Strategy for Central Asia at the June 2007 European Council, which assigned to the EUSR an enhanced role in monitoring the implementation of the Strategy and added a specific tasking for the EUSR to contribute to the formulation of counter-narcotics aspects of the CFSP; then in December 2008, which added water management aspects to his responsibilities; and in 2012, the inclusion of border security, environment and climate change, and — as ISAF troops began to draw down — regional security within Central Asian borders.

24.16 Our predecessors’ most recent Report on this EUSR role, in June 2013, dealt with a straightforward 12 month extension of the mandate then relating to Mrs Patricia Flor (previously a senior FRG diplomat, who had been appointed a year previously). The then (and current) Minister for Europe (Mr David Lidington) reported that she had travelled extensively in the region since taking over and performed well, been receptive to UK views, launched a potentially valuable High Level Security Dialogue during the Central Asia Ministerial meeting in Kyrgyzstan, attended by the EU High Representative/Vice President, and been effective in raising the EU’s level of influence in Central Asia. Underlining again the strategic importance of the Central Asia region, the then Minister argued that the EU needed to be perceived as an effective player in the region; extension of the mandate was particularly important to enable continued personal, high-level engagement with the leaders of the five Central Asia states as the transition process got underway in Afghanistan, especially as there are not yet EU Delegations in all five countries and there were relatively few other senior EU visitors to the region. The overall budget had nonetheless been reduced by 6.25% to €1,050,000, which the then Minister welcomed because it was “important we ensure EUSRs offer value for money”.

24.17 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. HRVP Federica Mogherini said:

239 Political and Security Committee: the committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative for Foreign Affairs and Security Policy (HR) and the Council, monitor the international situation in areas covered by the CFSP and exercise political control and strategic direction of crisis management operations, as set out in article 43 TEU. The chair is nominated by the HR.
240 Mr Burian was at that point 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.
“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.”

The draft Council Decision

24.18 The EUSR’s mandate shall be based on the Union’s policy objectives in Central Asia, which include:

(a) promoting good and close relations between the Union and the countries of Central Asia on the basis of common values and interests as set out in relevant agreements;
(b) contributing to strengthening the stability and cooperation between the countries in the region;
(c) contributing to strengthening democracy, the rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia;
(d) addressing key threats, especially specific problems with direct implications for Europe; and
(e) enhancing the Union’s effectiveness and visibility in the region, including through a closer coordination with other relevant partners and international organisations, such as the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations.

24.19 In order to achieve the policy objectives, the mandate of the EUSR shall be to:

(a) promote overall Union political coordination in Central Asia and help to ensure consistency of the external actions of the Union in the region;
(b) monitor, on behalf of the HR, together with the European External Action Service (EEAS) and the Commission, the implementation process of the EU Strategy for a New Partnership with Central Asia, complemented by relevant Council Conclusions and subsequent progress reports on the implementation of the EU Strategy for Central Asia, make recommendations and report to relevant Council bodies on a regular basis;
(c) assist the Council in further developing a comprehensive policy towards Central Asia;
(d) follow closely political developments in Central Asia by developing and maintaining close contacts with governments, parliaments, the judiciary, civil society and mass media;
(e) encourage Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan to cooperate on regional issues of common interest;

Press Release.
(f) develop appropriate contacts and cooperation with the main interested actors in the region, and all relevant regional and international organisations;

(g) contribute to the implementation of the Union’s human rights policy in the region in cooperation with the EUSR for Human Rights, including the Union Guidelines on human rights, in particular the EU Guidelines on Children and Armed Conflict as well as on violence against women and girls and combating all forms of discrimination against them, and Union policy regarding UN Security Council Resolution 1325 (2000) on Women, Peace and Security, including by monitoring and reporting on developments as well as formulating recommendations in this regard;

(h) contribute, in close cooperation with the UN and the OSCE, to conflict prevention and resolution by developing contacts with the authorities and other local actors such as non-governmental organisations, political parties, minorities, religious groups and their leaders;

(i) provide input to the formulation of energy security, border security, countering serious crime including narcotics and trafficking in human beings, as well as water resource management, environment and climate change aspects of the Common Foreign and Security Policy with respect to Central Asia; and

(j) promote regional security within Central Asian borders in the context of the reduction of the international presence in Afghanistan.

24.20 The Political and Security Committee (PSC) will be the EUSR’s primary point of contact with the Council, and will provide the EUSR with strategic guidance and political direction “without prejudice to the powers of the HR”. The EUSR shall regularly provide the PSC and the HR with oral and written reports, and provide regular briefings to Member States’ missions and the Union’s delegations. The EUSR’s activities shall be coordinated with the relevant EEAS and Commission departments and the EUSR for Afghanistan, and liaise with other international and regional actors in the field.

24.21 The overall budget has been set at €810,000 — described as a reduction of more than 20% compared with the budget of the previous EUSR, with personnel and running expenditures decreased and travel and representation costs pared down; with the UK said to have been “active in discussions with EU officials on budget aspects, helping to keep a firm focus on value for money from EUSR budgets.”

**The Minister’s Explanatory Memorandum of 5 June 2015**

24.22 Following the general election, the Minister has now provided the following comments on Mr Burian’s appointment:

“Central Asia is a region of strategic importance to the UK and the EU. The UK’s main interests in Central Asia broadly fall under three strands: energy/commerce; regional stability/security; and governance/human rights. The first two relate directly to HMG’s foreign policy priorities on prosperity and national security, and the third to HMG’s commitment to a foreign policy that has the practical promotion of human rights at its core. These interests are substantial and growing, not least given
Russia’s illegal actions in Ukraine and the risk of further destabilisation in Russia’s near abroad. As UK national network resources are limited, the continuation of the EUSR mandate will help leverage the EU’s vastly larger resources across the region to achieve largely similar goals.

“The Government welcomed the creation of a EUSR for Central Asia and the appointment of Jan Kubis in July 2005 (JA 2005/588 of 28 July 2005) followed by Pierre Morel from 2006-2012 (2006/670/CFSP of 5 October 2006) and Patricia Flor from 2012-2014 (2012/328/CFSP of 20 June 2012). The various EU Special Representatives all travelled extensively, contributed to EU discussions on policy towards the region, including on energy security and counter-narcotics and helped ensure the EU’s position as a significant player in Central Asia. The appointment of an EU Special Envoy, Janos Herman, for much of 2014, marked a distinct downturn in high level attention.

“The EU needs to be perceived as an effective player in region, particularly as we engage the Central Asian states in light of Afghanistan transition and as the region watches events in Ukraine closely. The extension of the mandate of the EUSR is important to enable continued personal, high-level engagement with the leaders of the five Central Asia states. It is particularly important as there are not yet EU Delegations in all five countries, and there are relatively few other senior EU visitors to the region. The Government therefore supports the extension of the mandate of the EUSR for Central Asia.

“On the candidate, the UK did not run a candidate for this position. We understand that there were a number of high level candidates from several Member States and we have no objection to Peter Burian’s appointment. He is currently State Secretary of the Ministry of Foreign and European Affairs of the Slovak Republic, and is a former ambassador of the Slovak Republic to NATO, to the United States and to the United Nations.

“Following the departure of the previous EUSR Patricia Flor in early 2014, and the subsequent interim appointment by the High Representative of an EU Special Envoy for a period of some months, we are keen to see an able and effective successor appointed. To this end, it is good to see the appointment of an experienced senior diplomat with relevant language skills and broad experience.

“We expect that the EU Special Representative will continue to provide a common focus for delivering EU messages not just on key human rights issues, but also on the benefits of regional co-operation and on potential EU assistance in helping the region to address some of its shared socio-economic difficulties.”

Previous Committee Reports


## 25 Strategic Partnership Agreement between the EU and Canada

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<td>Council Decision on the signing and provisional application of the Strategic Partnership Agreement</td>
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<td>Article 37 TEU and Article 212 (2) and 218 (5) TFEU; unanimity</td>
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<td>Document numbers</td>
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### Summary and Committee’s conclusions

25.1 The present proposal concerns the signature and provisional application of a Strategic Partnership Agreement between the EU and its Member States, and Canada. Negotiations began in September 2011; the Agreement was initialled on 8 September 2014.

25.2 Cooperation between the EU and Canada has evolved considerably since the 1976 Framework Agreement — the first EU agreement with an OECD country — and now covers a broad range of sectors including environment, justice and security, migration and integration, fisheries, education, culture, human rights, northern development and indigenous issues, youth exchanges and transport security.

25.3 The aim of the Strategic Partnership Agreement (SPA) is twofold:

- **to enhance EU-Canada political ties and cooperation on foreign policy and security issues by taking their relationship to the level of a strategic partnership; and**
- **to upgrade cooperation in a large number of policy areas going beyond trade and economics.**

25.4 As the Commission puts it in its accompanying Explanatory Memorandum, the Agreement “considerably contributes to the improvement of the partnership which is based on the EU and Canada’s joint values such as respect for democratic principles and human rights and fundamental freedoms, rule of law, international peace and security” (see paragraphs 25.18-25.22 below for details).
25.5 The proposal would enable the EU to sign the Agreement and provisionally apply most of it. Noting that the UK has a strong and longstanding bilateral relationship with Canada, underpinned by the Canada-UK Joint Declaration, the Minister for Europe (Mr David Lidington) says that the SPA will:

“support our wider prosperity objectives with Canada, as well as broadening engagement, dialogue and cooperation with Canada on a number of bilateral issues to include Member States as a result.”

25.6 Much more than most such agreements between the EU and a third party, this one is based on values that are wholeheartedly shared, and is thus to be wholeheartedly welcomed from the political perspective. Familiar concerns arise, however, over some of the legal and procedural aspects.

25.7 There are two matters arising on this Decision which give rise to concerns as to competence creep. First, as with other similar mixed agreements, we support the principle that Member States should exercise competence not only over matters for which only they have competence, but also over matters for which competence is shared, leaving the EU to exercise only its exclusive competence. We ask whether the Minister (Mr David Lidington) shares this approach and if so how he intends to make this clear in the legal documents.

25.8 Second, as the Minister rightly acknowledges, the proposal gives rise to a risk that the EU would be acting (by provisionally applying parts of the Agreement) where the Member States are otherwise exercising competence. We note the Minister will update the Committee on steps to deal with UK competence concerns. In doing so we ask him to indicate whether he regards the absence of any reference in Article 30(2) of the Agreement to provisional application by Member States as meaning that provisional application on the part of the Union and the Member States is only possible in respect of matters for which the EU is exercising competence.

25.9 We further note that a recital to the Agreement recalls that some of its provisions fall within Title V of Part Three TFEU and therefore engage the UK opt-in. In principle we support such transparency as this is a matter which affects international partners. However, this recital does not specify which provisions are affected. Furthermore the proposed Decision contradicts this recital as it is framed in terms which does not recognise the UK opt-in. We look forward to the update from the Minister as to the steps he is taking to address this contradiction. In the meantime we follow our predecessor Committee in recalling that we do not consider that the UK opt-in is engaged:

- where the Member States are exercising competence; and

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242 This Title concerns the Area of Freedom, Security and Justice.
where the EU is exercising competence, but the legal instrument for it to do so lacks a formal Title V legal base, as is currently the case with this proposed Decision.

25.10 Each of these legal issues reinforces the desirability of the proposed Decision making it clear that the EU is only acting in respect of matters for which it has exclusive competence.

25.11 In the meantime, we retain the proposal under scrutiny.

**Full details of the documents:** Council Decision on the signing, on behalf of the European Union, and provisional application of the Strategic Partnership Agreement between the European Union and its Member States, and Canada: (36787), [7906/15](#) + ADD 1, JOIN(15) 10.

**Background**

25.12 On 8 December 2010, the Council adopted a Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part.

25.13 The EU and Canada have a history of extensive political and economic cooperation, formally dating back to 1976 when the EU signed a Framework Agreement with Canada — the first EU agreement with an OECD country — which provided a framework to deepen relations and enhance political association and cooperation between the Parties.

25.14 The 1990 Declaration on Transatlantic Relations, between the European Community and its Member States and Canada, further strengthened the partnership, on both the bilateral and multilateral level, in a range of areas such as economic, scientific and cultural cooperation.

25.15 Then:

— in 1996, the Canada-EU Joint Political Declaration and Action Plan were adopted in order to enhance the cooperation in pursuit of common objectives and on the basis of deeply-held, shared, principles; and

— in 2004, the Parties concluded a Partnership Agenda with the objective of advancing international security, global economic prosperity, cooperation on issues of Justice and Home Affairs, addressing global and regional challenges and fostering closer links between the citizens of the EU and Canada.

25.16 The Partnership Agenda established an intensified dialogue which allowed a more strategic, sustained and coherent approach to issues affecting Canada and the EU involving an increasingly wide range of sectors.
25.17 The cooperation between the EU and Canada has evolved with time and now covers a broad range of sectors including environment, justice and security, migration and integration, fisheries, education, culture, human rights, northern development and indigenous issues, youth exchanges and transport security.

The Strategic Partnership Agreement

25.18 The Commission explains that the SPA builds on a two-pillar structure:

— political cooperation on foreign policy and security issues of common interest (WMD, SALW, counter-terrorism, promoting international peace and security, cooperation in multilateral fora); and

— broad sectoral cooperation (economic and sustainable development, promoting free trade and enhancing investment, judicial cooperation, taxation etc.).

25.19 The Agreement is accordingly composed of provisions on the basis for cooperation (Title I), human rights, fundamental freedoms, democracy and rule of law (Title II), international peace and security and effective multilateralism (Title III), economic and sustainable development (Title IV), justice, freedom and security (Title V), political dialogue and consultation mechanism (Title VI), as well as final provisions (Title VII).

25.20 The Commission says that the SPA will enhance EU-Canada cooperation on a range of bilateral, regional and multilateral issues, and enable the Parties “to act together to project their shared values to third countries” on key issues such as “international peace and security, democracy and the rule of law, justice, freedom and security”.

25.21 The Agreement:

— “provides the basis of the cooperation which includes the principles set out in the Charter of the United Nations and respect for international law. It further enforces the Parties engagement in upholding and advancing democracy, human rights and fundamental freedoms.

— “strengthens political, economic and sectoral cooperation across a wide range of policy fields such as sustainable development, research and innovation, education and culture, migration, counter terrorism and the fight against organised crime and cybercrime. It restates the Parties commitment to safeguard international peace and security by preventing the proliferation of weapons of mass destruction and taking measures to deal with illicit trade in Small Arms and Light Weapons.

— “provides the mechanism for conducting political dialogue by organising annual Summits at Leaders level and consultations at ministerial level. It also establishes a Joint Ministerial Committee, which replaces the previous Transatlantic Dialogue, and a Joint Cooperation Committee with the objective of monitoring the development of the strategic relationship between the Parties.”
25.22 The final provisions set out conditions for provisional application of certain parts of the agreement prior to its entry into force.

25.23 In his Explanatory Memorandum of 30 June 2015, the Minister describes signature of the SPA alongside the CETA as “key to strengthening the EU’s and Member States’ relationships with a key bilateral partner”. Noting that the UK has a strong and longstanding bilateral relationship with Canada, underpinned by the Canada-UK Joint Declaration, the Minister says that the SPA will:

“support our wider prosperity objectives with Canada, as well as broadening engagement, dialogue and cooperation with Canada on a number of bilateral issues to include Member States as a result.”

25.24 The Minister goes on also to note that, as a framework political agreement, the SPA covers a wide range of policy areas including:

“upholding and advancing democratic principles, human rights and fundamental freedoms (Title II); international peace and security and effective multilateralism (Title III); economic and sustainable development (Title IV), and justice, freedom and security (Title V).”

25.25 The Minister continues thus:

“The EEAS, supported by the European Commission, are proposing to provisionally apply the SPA in its entirety (except for Article 24 on Consular Protection). This and other ongoing Third Country Agreements (TCAs) demonstrate a trend to conclude or progress agreements as EU-only when they clearly contain areas of Member State competence. Given this, and the non-inclusion of any form of JHA recital in the Council Decision, the Foreign and Commonwealth Office is continuing negotiations with the European External Action Service (EEAS) to safeguard UK competence concerns and will inform the Committees of the outcome of these negotiations in due course.”

25.26 Turning to the Justice and Home Affairs Implications, the Minister says:

“The Government considers that Article 18(2), which relates to judicial cooperation in civil and commercial matters, engages the UK’s JHA opt-in, and is minded to opt in. While the provisions in Article 18(2) are not specific about the type of cooperation that may be envisaged, we believe that on balance it would be beneficial for the UK to be involved, in any work between the EU and one of our closest Commonwealth partners. This is because there is exclusive EU external competence...”

243 The EU-Canada Comprehensive Economic and Trade Agreement.
for certain of the Hague Conventions covered by that Article, which means that only the EU can sign up to the commitment to develop cooperation with Canada as regards the negotiation, ratification and implementation of the Conventions concerned. As a party to these Conventions as part of the EU, it is possible that such cooperation may have an impact on the UK. The JHA content contained within this agreement is incidental to the predominant purpose of the agreement, and in line with current policy, the Government considers that the opt-in has been triggered.

“As the last language version of the Council Decision was published on 13 April, the deadline for opting into the JHA provisions in this agreement is 13 July. A written update will be provided in due course.

“For other provisions related to JHA: Article 6 (cooperation in combating terrorism); Article 18(1) (judicial cooperation in criminal matters); Article 19 (cooperation against illicit drugs); Article 20 (fight against organised crime); Article 21 (money laundering); and Article 22 (cybercrime), we are able to assume these in our own right as a signatory to the SPA, and so the opt-in is not engaged.”

25.27 The Minister’s Explanatory Memorandum is accompanied by a letter of the same date in which he notes that the documents were published in the Official Journal of the European Union on 13 April 2015, and that the deadline for opting into the Justice and Home Affairs (JHA) provisions in this agreement is thus 13 July.

25.28 He continues as follows:

“The European External Action Service (EEAS), supported by the Commission, would like to provisionally apply every article of the SPA except for Article 24 on Consular Protection. Negotiations on provisional application have begun at EU Working Group level and will continue into the autumn. In negotiations to date the UK has made clear that provisional application negotiations would be sensitive given the ambitious EEAS proposal for provisional application. Officials are working alongside likeminded Member States to agree compromise solutions which will satisfy our policy imperatives with regard to EU competence concerns.

“The Government considers that Article 18(2) triggers the UK opt-in and I am minded to opt in to this Article. There are a number of other Articles related to JHA, and these are provisions that we intend to assume in our own right as a signatory to the Agreement. These are: Article 6 (cooperation in combating terrorism); Article 18(1) (judicial cooperation in criminal matters); Article 19 (cooperation against illicit drugs); Article 20 (fight against organised crime); Article 21 (money laundering); Article 22 (cybercrime).

“The deadline for the UK to confirm its opt-in position to the Presidency of the European Council is 13 July. While I hope that Committee is able to examine this item by 13 July, I appreciate that it has not yet been formed, so this short timeframe may be inadequate to properly examine the documents. We will of course ensure
that any Council Decision on this is submitted for scrutiny at the earliest point possible.”

25.29 The Minister concludes by undertaking to write again about the outcome of the negotiations on provisional application as soon as they are concluded.

**Previous Committee Reports**

None.

## 26 Enabling partners to prevent and manage crises

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**Summary and Committee’s conclusions**

26.1 The starting point of this Commission/EEAS\(^{244}\) Joint Communication is that violent conflict and poor governance — fuelled by new threats such as terrorism and organised crime — are continuing, crucial developmental challenges. Coordinated external action that makes use of the EU’s diplomatic, security, development and humanitarian tools is thus essential to restore confidence and ensure that partner countries’ institutions are equipped to meet the challenges.

26.2 The link between security and development is a key underlying principle of the EU’s “Comprehensive Approach” to external conflicts and crises, and complementary to the internal security policies, maritime security and others.\(^{245}\) However, the EU’s “Comprehensive Approach” needs to be strengthened to cover gaps in the current EU response.

26.3 The objectives of EU capacity building in security and development (previously known as “Train and Equip”) are two-fold:

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\(^{244}\) European External Action Service.

\(^{245}\) For a full discussion of the EU’s approach, see Nicoletta Palozzi, *The EU's Comprehensive Approach to Crisis Management*. 
— to build the capacity of third countries to prevent crises starting; and
— to develop their capability to manage crises once they have occurred.

26.4 The Joint Communication reviews existing EU policies currently contributing to security and development work and the challenges, including in pilot test cases conducted in Africa; identifies shortcomings and remedies — improving information-sharing and other forms of cooperation between the relevant Commission and EEAS services, and with international partners; new mechanisms such as an EU-wide strategic framework for Security Sector Reform — and proposes a review of the effectiveness of current financial instruments and consideration of a new, dedicated financial instrument (see “Background” below for full details).

26.5 This Joint Communication has been developed in response to a “tasking” from the December 2013 European Council to find ways to support partner countries in improving their ability to manage crises.

26.6 The initiative will create a formal mechanism for the EU to assess third country security and development needs, to provide necessary training, and donate appropriate (i.e., non-lethal) equipment to meet capability gaps.

26.7 The Joint Communication is not subject to formal adoption by the European Council. However, the 18 May Foreign Affairs Council agreed Conclusions that “invite the EEAS and the Commission services to carry out further work in view of the Foreign Affairs Council in October/November”, and the 25–26 June “Defence” European Council is thus expected to task the EEAS, Commission and Member States to develop the initiative further.

26.8 The Minister for Europe (Mr David Lidington) says that he:

— regards this initiative as a tangible means for implementing the EU’s “Comprehensive Approach” principles of early planning; efficiency through working with partners; and aspiring to ensure long-term sustainability following EU crisis intervention, and as meeting the capacity building objectives identified in HMG’s Building Stability Overseas Strategy; 246

— has made clear that the Government would not accept any new permanent structures or head count;

— successfully opposed any notion concerning the donation of lethal equipment under this new initiative; this must remain a bilateral responsibility;

— on financing, accepts exploration of adapting the African Peace Facility (APF) 247 in the short term but on the condition that this is without detriment to existing EU supported

246 Published in 2011. See Building stability overseas strategy.

247 The APF was created to strengthen the financial capacity of the African institutions to foster peace and security on the continent in response to a request made by the African Union Summit in Maputo in July 2003.
peace-keeping operations, but also supports the “Instrument contributing to Stability and Peace” (IcSP248) being considered as part of the broader exploration of financing options and, over the longer term, further work to explore the creation of a new dedicated instrument, whilst making clear that contributions from Member States should be on a voluntary basis;

— has made it clear that the UK will not accept the expansion of Common Funding249 to fund EU capacity building, and that the EEAS and Commission need to assign appropriate existing resources to implement this initiative;

— supports a flexible geographical focus for EU capacity building but prefers it to focus on existing CSDP activity e.g. in Somalia, and UK priority areas going forward;

— wants this initiative, when fully implemented, to ensure that the skills and expertise transferred to third countries are not used in a way that adversely affects UK or EU human rights priorities;

— would like to adopt a tool for assessing the human rights risks of the EU overseas security and justice assistance work and identifying measures to mitigate such risks;

— in terms of long term sustainability, will ensure the concept delivers genuine capacity development across different third state sectors, which goes beyond training and equipping foreign security forces;

— will also ensure that any proposed actions following the June European Council relating to implementation, maximise efficiencies and take full account of existing resources.

26.9 This initiative seems to be well-conceived thus far. The Minister has outlined some proper resource constraints (no new institutions, no net additional head count, non-use of Common Funding, no support for lethal weapons, maximising efficiencies and taking full account of existing resources), which we endorse.

26.10 There is, though, clearly much more work to be done. We look forward to hearing more from the Minister in the light of the June “Defence” European Council on the details of this further “tasking”.

26.11 We would be also grateful if he would now outline what he envisages in the prospective EU-wide strategic framework for Security Sector Reform (especially given
the interest that previous Committees have taken in the programmes/missions/operations in Bosnia and Herzegovina, the Democratic Republic of Congo and Afghanistan that are apparently to be used for “lessons learned” purposes) and clarify whether or not this is to be in a form that will be subject to normal parliamentary scrutiny.

26.12 In the meantime, we shall retain the Joint Communication under scrutiny.

**Full details of the documents:** (36825), 8505/15, JOIN(15) 17: Joint Communication: *Capacity building in support of security and development — Enabling partners to prevent and manage crises.*

**Background**

26.13 In what it styles “The security-development nexus in EU policies”, the Joint Communication describes the EU’s external action objectives, as stated in the Treaties, as inter alia, “to preserve peace, prevent conflicts and strengthen international security […]” and also “to foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty”.

26.14 Though the primary objective is “the reduction and, in the long term, the eradication of poverty”, the EU’s development policy also addresses sustainable development, inequalities, social injustice and human rights violations.

26.15 The EU’s Common Foreign and Security Policy (CFSP), including the Common Foreign and Security and Defence Policy (CSDP), provides the EU with operational implementation capacities. The EU may use CSDP assets on missions outside its territory for peacekeeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The need for mutually reinforcing interventions in the areas of security and development is clear. The EU has consistently underlined that “security is a precondition for development” and that “without development and poverty eradication there will be no sustainable peace”. Creating and fostering the political, social and economic conditions for stability is essential for a country’s security and a prerequisite for its development. This security-development nexus “is central to maximising the effectiveness of the EU’s external action”.

26.16 Events in Africa, in Europe’s neighbourhood and beyond point to a dramatic and deteriorating global security situation, with more than 1.5 billion people living in fragile and conflict affected regions worldwide. Countries in fragile situations have not reached the Millennium Development Goals (MDGs), making violent conflict and poor governance continuing crucial developmental challenges. Fragility and violence have also been fuelled by new threats such as terrorism and organised crime.

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250 Article 21(2) TEU.
251 Article 208 TEU.
26.17 Coordinated external action that makes use of the EU’s diplomatic, security, development and humanitarian tools is thus essential to restore confidence and ensure that partner countries’ institutions are equipped to meet the challenges. The link between security and development is a key underlying principle of the EU’s “Comprehensive Approach” to external conflicts and crises, and complementary to the internal security policies, maritime security and others. However, the EU’s “Comprehensive Approach” needs to be strengthened to cover gaps in the current EU response. A number of significant political frameworks are relevant to both security and development, some of which are under review: the European Neighbourhood Policy, the post-MDG development framework, the Strategic Review on Foreign Policy, the EU Maritime Security Strategy and the European Agenda on Security.

26.18 On the basis of the December 2013 European Council conclusions and the April 2014 EU-African Union (AU) Summit Declaration, this Joint Communication identifies shortcomings and proposes remedial measures. While it addresses the issue of equipment to support partner countries’ security capacity building, it does not address the provision of lethal weapons: “The EU will not provide such equipment”.

The Joint Communication

26.19 Reviewing the current situation, the Commission/EEAS notes that several of the 34 CSDP missions and operations conducted so far have already been engaged in civilian and military capacity-building, e.g., the EU military advisory mission in the Central African Republic (EUMAM RCA), which is assisting the national military to move towards the goal of becoming modernised, effective and accountable armed forces; and the EU’s civilian CSDP mission in Mali (EUCAP Sahel Mali), which supports the restructuring of the Malian domestic security forces (i.e. the police, the gendarmerie, and the garde nationale).

26.20 As well as sharing the common costs among Member States, such peace and security actions are currently financed by:

— the IcSP and its precursor, the Instrument for Stability;
— the European Development Fund (EDF), which has channelled €1.2 billion since 2003 to the APF, covering, inter alia, operational costs for African peacekeeping operations (excluding salaries), training and exercises, command, control and communication

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252 Joint Communication: The EU’s comprehensive approach to external conflict and crises: JOIN(13) 30.
253 See Council Conclusions.
254 See EU-Africa Summit Declaration.
255 Athena is the mechanism that handles the financing of common costs relating to EU military operations under the EU’s common security and defence policy (CSDP). It operates on behalf of the 27 EU member states who contribute to the financing of EU military operations (Denmark has opted out of CSDP on military matters). Athena was set up by the Council of the European Union on 1 March 2004. Five active EU military operations currently benefit from Athena financing: EUFOR ALTHEA (Kosovo); EUNAVFOR ATALANTA (anti-piracy); EUTM SOMALIA; EUTM MALI; and EUFOR RCA. Athena manages the financing of common costs for these operations, such as transport, infrastructure and medical services, as well as the nation borne costs, which include lodging, fuel, and similar costs linked to national contingents. Athena is managed by an administrator and under the authority of a Special Committee made up of representatives from the member states contributing to the financing of each operation.
systems, or fact-finding missions and, since 2007, around €800 million to the AU Mission in Somalia (AMISOM).

26.21 Two pilot cases are examined:

— the EU Training Mission in Mali (EUTM Mali), which was established to help to train Malian soldiers, enabling them to form an effective and democratically accountable national armed force that can help stabilise the country;

— EUTM Somalia, which was launched in April 2010 to support and develop the Somali security sector by strengthening the Somalia Armed Forces through the provision of targeted military training.

26.22 Initial findings indicate training and equipment needs as well as a requirement for improved coordination, both at operational and strategic level.

26.23 The Commission/EEAS then examine ways of improving the delivery of capacity-building in support of security and development. The constraints on existing financial instruments are outlined, and the conclusion reached that, while financing security capacity building, including that of the military, is possible under the APF, it is subject to a number of other limitations that may prevent its effective in addressing all situations with which the EU is confronted. Nonetheless, more could be achieved within the existing framework through the application of a more coherent and a more coordinated approach.

26.24 EU support to security sector capacity building needs to be underpinned by EU external action principles. These include:

— ownership by the partner country and alignment to the partner’s long-term development strategies;

— respect for human rights and adherence to international humanitarian law; and

— coherence with other EU actions as part of a broader EU comprehensive approach to external conflict and crises.

26.25 In addition, the Commission/EEAS say that it is “important to use context analysis to prevent offer-driven capacity building support, develop a risk management methodology and ensure broad support from the international community and coordination with other actors on the ground”. A number of practical measures are suggested:

— enhance information-sharing of ongoing and planned capacity building support activities in the broader crisis prevention management areas (including support to justice and security sectors) conducted through the bilateral cooperation of Member States, the EU development and technical cooperation instruments and CSDP activities;

— extend information-sharing to the EU’s multilateral partners (including the UN, NATO and OSCE) and other third countries and strategic partners;
— draw on the introduction of the Political Framework for Crisis Approach process\textsuperscript{256} to intensify the ties between services handling development cooperation and security policy matters; make better use of development cooperation expertise, and vice-versa, including between the work of the instrument-specific management committees and the work of the CSDP Council working parties;

— organise more regular and systematic interaction between EU delegations and the CSDP mission and/or operations at partner country level.

26.26 To support and implement these commitments, the Commission and EEAS propose that they should further develop the following initiatives:

— an EU-wide strategic framework for Security Sector Reform, shared by CSDP and development cooperation policy and drawing on lessons learnt in programmes/missions/operations in Bosnia and Herzegovina, the Democratic Republic of Congo and Afghanistan in terms of the transition from CSDP to other instruments;

— a shared evaluation, monitoring and results framework, irrespective of the policy framework under which they are conducted;

— a dedicated risk management methodology.

26.27 Summing up, the Commission and the High Representative say that they:

“are committed to implementing the measures on coordination and coherence of existing instruments outlined in this Joint Communication. Under the comprehensive approach to external conflicts and crises, this will be fully effective only if matched by corresponding efforts with and among Member States on their own instruments at strategic and operational levels. A “unity of effort” is required so as to ensure the EU’s collective ability to engage at the right time and with the appropriate mechanisms and resources for a specific context in a partner country or with a regional organisation”.

26.28 Against this background, the Commission and HR propose that the practical feasibility of the three following actions should be considered:

— adapting the African Peace Facility to address its limitations;

— establishing a facility linking peace, security and development in the framework of one or more existing instruments;

\textsuperscript{256} An EU-wide document, articulating what the crisis is, and what could be the potential EU levers of power to address its root causes (as opposed to its symptoms), namely the Political Framework for Crisis Approach (PFCA). This PFCA would enact the Comprehensive Approach of the EU, as all EU stakeholders are entitled to contribute to it under the coordinating role of the EEAS. Presented to the Political and Security Committee for information purposes, this PFCA would support an orientation debate on the political willingness to utilize the CSDP lever of power, across the wider range of EU levers of power. This political willingness would be materialised by the Crisis Management Concept (CMC), which would depict a CSDP political-strategic option, in concrete terms an ad-hoc combination – or recipe, as opposed to a simple juxtaposition – of the CSDP military and the CSDP civilian instruments. See Turning Political Words into Military Deeds.
— a dedicated financial instrument;
— extending the Athena mechanism to include capacity building in partner countries.

The Government’s view

26.29 In his Explanatory Memorandum of 5 June 2015, the Minister for Europe (Mr David Lidington) comments as follows:

“We assess that this initiative could potentially increase the effectiveness of EU crisis intervention. It also provides a tangible means for implementing the EU’s ‘Comprehensive Approach’ principles of early planning; efficiency through working with partners; and aspiring to ensure long-term sustainability following EU crisis intervention. More broadly the initiative also meets the capacity building objectives identified in HMG’s Building Stability Overseas Strategy.

Whilst we have broadly supported the initiative, we have robustly safeguarded our usual caveats on Common Security and Defence Policy (CSDP). We have made clear that we would not accept any new permanent structures or head count within the institutions to make this initiative work. We have also made clear that we do not support the donation of lethal equipment under this new initiative and we successfully argued that such donations must remain a bilateral responsibility.

“The FAC conclusions invite the EEAS and Commission to explore: financing options including an adaptation of the current African Peace Facility (APF); the establishment of a facility linking peace, security and development under an existing instrument; and the creation of a dedicated instrument. We accept exploration of an adaptation to the APF as a means to fund ‘Train and Equip’ in the short term but on the condition that this is without detriment to existing EU supported peace keeping operations. The ‘Instrument contributing to Stability and Peace’ (IcSP) has also been suggested as an option but it is not explicitly stated in FAC Conclusions or the Joint Communication ‘Way Forward’. We support the IcSP being considered as part of the broader exploration of financing options work.

“As the concept is further operationalised, we will lobby the EEAS to ensure that practical feasibility of this initiative includes a clear understanding and implementation of the Official Development Assistance rules and includes an impact assessment which considers the potential political, reputational and budgetary consequences. Long-term the EEAS and Commission want to use the mid-term review of the multiannual financial framework 2014–2020 to create a financial instrument for EU capacity building. We have supported work to explore further the creation of such a new dedicated instrument whilst making clear that contributions from Member States should be on a voluntary basis.

“We have made clear that the UK will not accept the expansion of Common Funding to fund EU capacity building. The guiding principle of funding for CSDP operations is that ‘costs lie where they fall’. Member States pay for the majority of costs they
incur. However some costs that cannot be directly attributed to a Member State are regarded as “common costs” and shared out amongst Member States. The ATHENA mechanism manages the administration of common costs and is established through a Council Decision that is reviewed every three years, the last concluding in April 2015. We made clear in negotiations that the UK could support ATHENA’s use in managing funds provided from elsewhere, be it through another instrument, Member State or third nation, but we could not support use of Common Funding for capacity building equipment donations.

“We support the creation of a new facility to improve coordination on EU capacity building across EU institutions, but without additional headcount or permanent structures. The EEAS and Commission need to assign appropriate existing resources to implement this initiative. In terms of scope and methodology we support a flexible geographical focus for EU capacity building but we would prefer it to focus on existing CSDP activity e.g. in Somalia. Pilot studies were conducted in Mali and Somalia and we should push for continued focus in UK priority areas going forward. When fully implemented we want to ensure that the skills and expertise transferred to third countries are not used in a way that adversely affects UK or EU human rights priorities. We would like the EU to adopt a tool for assessing the human rights risks of the EU overseas security and justice assistance work and identifying measures to mitigate such risks. In terms of long term sustainability we want to ensure the concept delivers genuine capacity development across different third state sectors, which goes beyond training and equipping foreign security forces.

26.30 With regard to the Financial Implications, the Minister says:

“There will be financial implications for the EEAS, European Commission and Member States once proposals for finance mature. We will ensure that any proposed actions following the June European Council relating to implementation maximise efficiencies and takes full account of existing resources”.

Previous Committee Reports

None, but see Joint Communication: The EU’s comprehensive approach to external conflict and crises: (35696), 17859/13, JOIN(13) 30; Twenty-ninth Report HC 219-xxviii (2014–15), chapter 12 (14 January 2015) and the earlier Reports referred to therein.

27 The EU and Kosovo: Stabilisation and Association Agreement (SAA)

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


Legal base  (a) Articles 217, 218(6)(a)(i) and 218(8) TFEU; unanimity  
(b) Article 101 Euratom; QMV  
(c) Articles 217, 218(5) and 218(8) TFEU; unanimity

Department  Foreign and Commonwealth Office

Document numbers  (a) (36826), 8532/15 + ADDs 1–3, COM(15) 181;  
(b) (36827), 8534/15 + ADDs 1–3, COM(15) 182;  
(c) (36828), 8535/15 + ADDs 1–4, COM(15) 183

Summary and Committee’s conclusions

27.1 Kosovo became independent on 17 February 2008. The Minister for Europe (Mr David Lidington) notes that the United Kingdom was the first country to recognise Kosovo. The Government’s objective is “a stable, prosperous and multi-ethnic Kosovo, making progress towards eventual EU and NATO membership”, and both it and its predecessor have consistently wanted to see Kosovo joining other Western Balkans countries in concluding an SAA (Stabilisation and Association Agreement).

27.2 Negotiations started in October 2013, and the draft text of the agreement was initialled in July 2014. The Agreement identifies a number of aims and areas for co-operation between the EU and Kosovo: to help strengthen democracy and the rule of law; to contribute to political, economic and institutional stability; to provide an appropriate framework for political dialogue; to support Kosovo’s efforts to develop its economic and international co-operation; to support Kosovo’s efforts to complete its transition to a functioning market economy; to promote harmonious economic relations and gradually to develop a free trade area between the EU and Kosovo; and to foster regional co-operation.

27.3 The Minister characterises Kosovo as “a key driver of regional stability”, and states that it is therefore strongly in UK interests that progress and development in Kosovo is maintained. He emphasises the importance in the Government’s eyes of “a credible European future if its leaders are to sustain the path of reform”, and states that “the promise of an SAA has helped to drive continuing reform”. Kosovo “remains committed to implementation of its agreement of April 2013 on the normalisation of its relationship with Serbia”, and its new government has “remained firmly committed to the reform agenda.

257 The Stabilisation and Association Agreement constitutes the framework of relations between the European Union and the Western Balkan countries for implementation of the Stabilisation and Association Process. The agreements are adapted to the specific situation of each partner country and, while establishing a free trade area between the EU and the country concerned, also identify common political and economic objectives and encourage regional co-operation. In the context of accession to the European Union, the agreement serves as the basis for implementation of the accession process.
and is focusing on the country’s serious socio-economic problems”. The “European perspective” offered by the SAA “remains critical to this process”, because it “reassures Kosovo’s people, and helps promote stability at a sensitive time for security on Europe’s borders”. Signature and implementation of the SAA will help promote integration in Kosovo; will create pressure for Kosovo’s leaders to make hard choices on the rule of law and much needed political and economic reform; and will bring added scrutiny and assistance to help strengthen Kosovo’s weak public institutions. Conversely, the loss of Kosovo’s European perspective would be very damaging. For all these reasons, “the UK strongly supports signature, conclusion and ratification of an SAA with Kosovo”.

27.4 The “normalisation” process to which the Minister refers was reached after ten rounds of the “EU-facilitated Dialogue”, chaired by the then EU High Representative (Baroness Ashton), on 19 April 2103, when Serbia’s then Prime Minister Ivica Dačić and Kosovo’s then Prime Minister Hashim Thaçi finally reached a landmark agreement aimed at normalising relations between Serbia and Kosovo. The agreement came just before the 22 April 2013 meetings of the EU’s General Affairs and Foreign Affairs Councils. At stake was whether to open negotiations on Serbia becoming a possible EU member and an SAA between Kosovo and the EU. An agreement on normalisation of relations would open a European integration future for both; failure to agree would set this back and freeze the process. On 28 June 2013, the European Council agreed to open accession negotiations with Serbia, which began in January 2014. From the political perspective, this SAA is the quid pro quo for Kosovo.

27.5 The “EU-facilitated Dialogue” process continues. So far as whether implementing this SAA will in practice produce “pressure for Kosovo’s leaders to make hard choices on the rule of law” remains to be seen; the most immediate such hard choice concerns sustained and effective Government support, in the face of determined political opposition, for the investigative process in which the EU’s largest CSDP mission is involved, viz., establishment of a special out-of-country court regarding EULEX’s Special Investigative Taskforce. But the Minister’s judgement that failure to sign and ratify this Agreement would be damaging appears to be well-founded.

27.6 There are, however, nonetheless substantial legal and procedural concerns over some of the details. The Minister asserts that the UK opt-in is triggered. In principle we share the doubts now expressed by the EU institutions, although their position is considerably complicated by the fact that the current text of the Agreement recognises that the UK opt-in is triggered.

27.7 On the basis of the Government’s assertion that the UK opt-in is triggered, we ask the Minister, in the light of earlier Government undertakings, whether he was in a position to provide the Committee with an indication of the factors affecting the opt-in

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258 See press release of 19 April 2013 Serbia and Kosovo reach landmark deal for full background.

259 By the then Leader of the House of Lords, Baroness Ashton of 9 June 2008 affirmed by the Minister in his Written Ministerial Statement of 20 January 2011.
decision when he provided the Explanatory Memorandum and whether he can do so now.

27.8 We support the principle of transparency over the UK opt-in in the text of international agreements. The parties to those agreements are entitled to clarity as to which provisions apply (or not) to the UK or the EU. We urge the same degree of transparency in future external agreements. However, in this case, that apparent transparency is replaced by legal confusion if the consequential Decisions enabling the EU to sign and conclude the Agreement (documents (a) and (b)) were to be, on their face, inimical to the UK opt-in. That will happen if the proposals as they stand are adopted. Given the requirement for unanimity for their adoption, we expect this legal confusion to be sorted out; and ask the Minister how he proposes to do so, including the possibility of adding a legal basis to each Decision from Title V of Part Three TFEU.

27.9 Normally, where an external agreement covers a matter where competence is shared, we follow our predecessors in favouring the Member States’ exercising that competence. That cannot happen here as only the EU is entering into this SAA. However, as recital (5) to each proposed Decision makes clear, the SAA covers matters of shared competence. The Minister indicates that the UK has accepted an EU only Agreement in return for assurances that it would make clear that it is a unique case, that it does not change the current distribution of competence, and that it does not set a precedent for future EU agreements. We ask the Minister to indicate where in the text of SAA or, more appropriately, the proposed Decisions these assurances are given concrete expression. We also ask the Minister to identify those elements of the SAA which fall within shared competence.

27.10 We support the Minister’s view on the need for a CFSP legal base and note, moreover, that there was one for the original Council Decision authorising the negotiation.

27.11 In the meantime, the Council Decisions remain under scrutiny.

**Full details of the documents:** (a) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and of Kosovo*, of the other part: (36826), 8532/15 + ADDs 1–3, COM(15) 181; (b) Recommendation for a Council Decision approving the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and of Kosovo*, of the other part: (36827), 8534/15 + ADDs 1–3, COM(15) 182; (c) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and of Kosovo, of the other part: (36828), 8535/15 + ADDs 1–4, COM(15) 183.
Background

27.12 Following the Commission’s publication of its *Annual Enlargement Package* in October 2012, the December 2012 General Affairs Council (GAC) agreed conclusions on the reports on individual enlargement countries. *Inter alia*, these noted that the Council would return to the questions of Macedonia and Serbia opening accession negotiations, and of Kosovo opening negotiations on a Stabilisation and Association Agreement (SAA), under the next Presidency, with reports to be presented on these issues by the Commission and High Representative/Commission Vice President in the Spring 2013. The reports were designed to provide a basis for the Council to take stock and give direction ahead of enlargement discussions and possible decisions at the 25 June GAC and the June 2013 European Council.

27.13 The reports on Macedonia and Serbia analysed the further progress towards meeting the Copenhagen criteria for membership: particularly the areas in which the December 2012 GAC conclusions had called for further action. The Kosovo report analysed specific issues set out in those conclusions concerning Kosovo’s readiness to negotiate an SAA.

27.14 With regard to Kosovo, the then (and current) Minister for Europe said:

“In October 2012, the Commission issued a Feasibility Study for a Stabilisation and Association Agreement (SAA) between the European Union and Kosovo. The study concluded that Kosovo is largely ready to open negotiations for a SAA, but that there were four short-term priorities that needed to be met. The Commission assesses that the four priorities have been met. The Commission has submitted its proposal for a Council Decision authorising the opening of negotiations on a Stabilisation and Association Agreement. This document is classified as ‘restraint’ and so will not be provided for scrutiny; however we will write to the scrutiny committees once the draft proposal has been adopted in Council, outlining the UK’s position in the ensuing negotiations.”

27.15 As detailed in our predecessors’ Report of 21 May 2013, the heart of the matter had then been the positive developments, since April 2013, in the Serbia/Kosovo relationship, culminating in the initialling in Brussels by the prime ministers of both countries of the “First agreement of principles governing the normalisation of relations”. For the Minister, this demonstrated the powerful influence that a conditions-based EU enlargement process could bring to bear in improving neighbourly relations and promoting regional security and stability. Brokered (over no fewer than ten rounds of talks) by the then EU High Representative for Foreign Affairs and Security Policy, it was described by *The Economist* as “nothing short of historic”.260

27.16 The emphasis thereafter was on implementation, with the UK and Germany in the lead, and the focus on dismantling the “parallel structures” of Serbian governance in

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northern Kosovo. As the Minister made clear in his three subsequent letters (set out in our predecessors’ other Report\(^{261}\)), the process was expected to go down to the wire, and did.

27.17 In the third of those letters, of 10 July 2012, the Minister declared himself pleased that — “as set out in the post European Council statements to the House” — the European Council had agreed to open accession negotiations with Serbia and that a negotiating mandate for a Stabilisation and Association Agreement (SAA) with Kosovo was adopted. The Minister attached copies of the relevant conclusions,\(^{262}\) and said that these decisions “represent significant steps forward for Serbia and Kosovo on their respective EU paths”.

27.18 The Minister confirmed that the decision on whether to agree to open accession negotiations with Serbia “was a finely balanced one”. The Government had taken the decision only shortly before the European Council that Serbia had made sufficient progress against the conditionality of a “visible and sustainable improvement in relations with Kosovo” to warrant a positive decision on opening accession negotiations. Nonetheless, the process of normalisation of relations with Kosovo would need to continue throughout the accession process, with full normalisation of relations before Serbia could accede to the EU; the Government had therefore secured GAC conclusions that agreed that steps leading to the normalisation of relations between Belgrade and Pristina would also be addressed in the negotiating framework for the accession negotiations.\(^{263}\)

27.19 Turning to Kosovo, the Minister continued thus:

“A good outcome was secured also for Kosovo, with the adoption of the negotiation mandate for the Stabilisation and Association Agreement (these documents, as set out in previous correspondence, are classified). As the first milestone on the road to EU membership, this sends an important signal that Kosovo’s future is European. As set out previously, the five EU countries which have yet to recognise Kosovo opposed the negotiating of an SAA which would require Member State signature and ratification. I very much regret that they chose to adopt this position. Whilst we respect the non-recognisers’ positions, it is evident that non-recognition complicates Kosovo’s EU track.

“As the negotiating directives for the SAA are on an EU-only basis, the UK has taken a rigorous approach in ensuring that the directives are confined to areas of EU competence only and that they do not represent any shift in competence. The amendments the UK secured to the original Commission text, taken as a package and individually, are visible and strong safeguards of UK positions on matters of competence. They fortify an overarching principle of this negotiation: that an EU-only SAA is without prejudice to any future negotiations on similar agreements, or to the positions of EU institutions and Member States on competences.


“On the CFSP elements of the negotiating directives, we have secured important safeguards. The scope of CSFP matters is reduced by excluding certain elements such as those relating to non-proliferation and counter-terrorism. The negotiating directives include specific CFSP legal bases (article 37 TEU and Article 31(1) TEU). Citing Article 37 makes clear that it is the High Representative (and no one else) who will be engaging on the aspects of CFSP specified in the EU-only agreement. The Council and the Commission also agreed in a statement that the adoption of the decision to authorise the EU to negotiate an SAA with Kosovo is without prejudice to the nature and scope of any similar agreements to be negotiated in the future in particular as regards matters falling within the Common Foreign and Security Policy. This is also reiterated in the recital of in the non JHA Council Decision, ‘Whereas this authorisation to negotiate an SAA with Kosovo as an EU-only Agreement is without prejudice to the nature and scope of any similar agreements to be negotiated in future, in particular as regards the Common Foreign and Security Policy’.

“In the area of Title V JHA measures, we have secured a strong package of safeguards which protects our position fully, including through recognition of our opt-in rights in respect both of this negotiating mandate and of the future signature and conclusion stages of the agreement. We have secured language which makes clear that the outcome of negotiations on any JHA matters is not binding on the UK unless we choose to opt in. The safeguards we have secured are mutually reinforcing, and render explicit the distinct nature of JHA in relation to the SAA as a whole.

“The Council Decision on the SAA mandate was split, allowing for a separate Council Decision on JHA areas. As stated in both Council Decisions, the UK is not bound by or subject to the application of the Council Decision insofar as it relates to the Area of Freedom, Security and Justice covered by Title V of the Treaty on the Functioning of the European Union. The SAA negotiating directives now cite a substantive legal basis on JHA, (Article 79(3) TFEU) making it clear that the opt-in applies. Moreover, to address the concern that other JHA legal bases might need to be cited consequent to the outcome of the negotiations, a recital was inserted in the non-JHA Council Decision, noting that the application of the opt-in will need to be assessed at signature and conclusion stage.

“No formal start date for the SAA negotiations has been announced, but we expect they will open in the autumn. It will be important for Kosovo to keep up momentum on reform and continue to play its part in implementing the 19 April agreement with Serbia.”

The draft Council Decisions

27.20 In his Explanatory Memorandum of 18 June 2015, the Minister notes that, on 30 April 2015, the European External Action Service (EEAS) circulated the document, a

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The Government’s view

27.21 The Minister describes the Government as “a strong supporter of Kosovo’s progress towards eventual EU membership” and emphasises the importance in his eyes of signature, conclusion and ratification of an SAA to continuing reform in Kosovo and implementation of its agreement of April 2013 on the normalisation of its relationship with Serbia (see paragraph 27.04 above for detail).

27.22 The Minister then notes that the five EU Member States that do not recognise Kosovo265 insisted on an EU-only SAA:

“The UK accepted this, in return for assurances that the agreement would make clear it is a unique case, that it does not change the current distribution of competence, and that it does not set a precedent for future EU agreements. We are also seeking the citation of a CFSP legal base.”

27.23 Looking ahead, the Minister says:

“It is not yet clear when the Council will be invited to adopt the Council Decision, opening the way for signature of the SAA. The European External Action Service (EEAS) and the Commission have indicated that the Decisions are expected to be adopted before the summer. The final language versions of the Council Decisions have not yet issued. However, since the EU Institutions do not agree that the UK’s opt-in Protocol applies to this SAA, adoption may take place before the usual JHA opt-in three month deadline.”

Previous Committee Reports


265 Cyprus, Greece, Spain, Slovakia and Romania.
28 The EU and ASEAN: “A partnership with a strategic purpose”

Committee’s assessment

Politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

Joint Communication on the EU and ASEAN partnership

Legal base

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Department

Foreign and Commonwealth Office

Document numbers

(36882), 9025/15, JOIN(15) 22

Summary and Committee’s conclusions

28.1 The Joint Communication reviews the present level of EU engagement with ASEAN, puts forward the case for greater engagement, and seeks to provide a more coherent framework for co-operation, focusing on four areas:

— connectivity (including trade and investment, research and innovation and transport);

— a greener partnership for a sustainable future (including co-operation on climate change and humanitarian assistance);

— security and human rights; and

— moving towards “a partnership with a strategic purpose” by expanding co-operation on regional issues of global significance, including appointing a dedicated EU Ambassador to ASEAN and acquiring membership of the “East Asia Summit” (EAS) group of nations.

28.2 In sum, the Commission/EEAS argue that:

— both sides have an interest in seizing this opportunity;

— this will also form the backdrop for ASEAN’s review of the EAS, including its functioning and future membership;

— the EU is in a good position to contribute to the practical work of the EAS and thus heed the call from ASEAN for greater EU engagement;

266 ASEAN’s Member States are Brunei Darussalam, Cambodia, Indonesia, the Lao People’s Democratic Republic, Malaysia, Myanmar/Burma, the Philippines, Singapore, Thailand and Vietnam.

267 The East Asia Summit (EAS) is a forum held annually by leaders of, initially, 16 countries in the East Asian region. Membership expanded to 18 countries including the United States and Russia at the Sixth EAS in 2011. EAS meetings are held after annual ASEAN leaders’ meetings. The first summit was held in Kuala Lumpur, Malaysia on 14 December 2005.
— the move to an EU-ASEAN Strategic Partnership should “go hand in hand with the EU’s presence at the region’s strategic table” (see “Background” below for full details).

28.3 The Minister for Europe (Mr David Lidington) says in his Explanatory Memorandum of 29 May 2015 that closer EU engagement and partnership with ASEAN is in the UK’s interests as it will “allow us to leverage EU resources and influence our efforts to deliver UK objectives in ASEAN”. The Joint Communication is “a solid basis on which to strengthen ties between the EU and ASEAN, reaffirming EU commitment to trade relations, security and sustainability”, reflecting a growing awareness on the part of the European External Action Service (EEAS) of the opportunities offered by Asia and ASEAN — something that he encourages, as it supports the UK view that engagement with ASEAN should be increased, and allows the EU to maximise its relationship with the region. There are, he says, “no areas of concern, or elements we would seek to oppose”.

28.4 At the same time, the Minister says that “[l]anguage on joining the East Asia Summit, where we have taken a strong position, is measured and agreeable”. He also notes that there was only limited consultation with EU Member States before the publication of the Joint Communication; that it is up to Member States to decide how to respond to the Communication; and that whether the Joint Communication “may be drawn on, welcomed or endorsed as part of a package of Asia related business going to the June FAC” is still under discussion.

28.5 Then, on 18 June 2015, the Minister issued the following corrigendum:

“The original Explanatory Memorandum stated that we expected the Joint Communication to be drawn on, welcomed or endorsed as part of a package of Asia related business going to the June Foreign Affairs Council. This was reflected in the first draft of Council Conclusions, but the language has subsequently changed as negotiations have progressed, and the Joint Communication will now be implemented.

“The Explanatory Memorandum was cleared by the House of Lords Select Committee on the European Union on 9 June 2015 at the Chairman’s Sift. An override for the House of Commons European Scrutiny Committee (because the Committee were not yet sitting) was not sought because the first draft of Council conclusions welcomed the Joint Communication. Now that the Joint Communication is to be implemented, we will seek an override.

“The Council Conclusions now confirm that the Joint Communication will be implemented in close co-operation with EU Member States”.

28.6 In a separate letter of the same date, the Minister says that as the Joint Communication will be implemented following the Foreign Affairs Council on 22 June 2015 and it is unlikely that the Committee will be formed by then, he has had to override scrutiny.
28.7 The EU clearly has a long-standing relationship with ASEAN, which would appear to be reciprocated. When the Minister submitted this Joint Communication for scrutiny in May, in other respects he appeared to welcome the Joint Communication and the proposals therein. But he implied some sort of concern about its primary purpose, i.e., as an application for membership of what is now the main regional forum, the East Asia Summit (EAS). We should be grateful if the Minister would say more about his implicit concerns. In what ways, and in response to what earlier formulations, has he “taken a strong position”? And why? How is the language in the Joint Communication on joining the EAS now “measured and agreeable”? Was he fearful that, in some way, the EU High Representative for Foreign Affairs and Security Policy was seeking to over-step the mark, and take the EU into new, and inappropriate, areas as “a security and defence provider” (see the HR’s speech in the “Background” section below).

28.8 In his May Explanatory Memorandum, the Minister was also vague as to the future of this Joint Communication. There then seems to have been a sudden process over the following three weeks, during which he agreed to the implementation of the Joint Communication. We ask the Minister to clarify what happened. We also ask him to explain why this had to happen now, i.e., why he could not have indicated that a scrutiny reserve was still in operation, and that adoption should be postponed accordingly. In short, what was the rush?

28.9 The 22 June Foreign Affairs Council Conclusions (which are set out in full at the annex to this chapter of our Report) contains the following:

“The Council reiterated the EU’s offer to contribute substantially to policy and security/defense related fora led by ASEAN, including the East Asia Summit”.

28.10 We should therefore be grateful if the Minister would explain what contributing “substantially to policy and security/defense related fora led by ASEAN, including the East Asia Summit” means. The EU High Representative (Federica Mogherini) and the Commission have been instructed to “work on the implementation” of the priorities identified in the Council Conclusions and the Joint Communication. Does this include working on the EU joining the other existing 18 nation states as a full member of the East Asia Summit? If so, in what ways is the Minister content with this notion when he was not in May? Or is the substantial contribution referred to above to be made in some other way in the EAS format, short of membership?

28.11 Referring back to his original Explanatory Memorandum, we would also like the Minister explain how the Joint Communication relates to the rest of the “package of Asia related business” to which he refers (and outline what that package consists of).

28.12 In the meantime, we shall retain the Joint Communication under scrutiny.
Full details of the documents: (36882), 9025/15, JOIN(15) 22: Joint Communication to the European Parliament and the Council on the EU and ASEAN: “A partnership with a strategic purpose”.

Background

28.13 The Joint Communication describes the Asian nations as a “strong, cohesive and self-confident ASEAN proceeding with its own integration”, as good for regional stability, prosperity and security and as creating new opportunities for cooperation on regional and global challenges. Noting that ASEAN combines high rates of economic growth as well as demographic dynamism; is collectively the world’s seventh largest economy and is set to become the fourth by 2050; has a young middle class that is expected to rise to 65% of ASEAN’s total population by 2030, up from 24% in 2010; and is at the heart of the efforts to build a more robust regional security order in the wider Asia Pacific: the Joint Communication declares that a “united and self-confident ASEAN is key to ensure that regional challenges are addressed in a rules-based manner”, which is “in the direct interest of the citizens of the region, but also of the European Union”. The EU “thus has a huge stake in the success of ASEAN”.

28.14 The Joint Communication maintains that there is “a new momentum in EU-ASEAN relations and both sides have an interest in sustaining it”, and that “[m]any in ASEAN have expressed a hope for greater EU engagement and a desire for a formal ‘Strategic Partnership’”. For its part, the EU has “compelling economic, sectoral and political interests in enhancing its cooperation with this pivotal player in a region of strategic importance”.

28.15 With ASEAN “working to establish the ASEAN Economic Community (AEC) by the end of 2015 and developing its post-2015 Vision, including how it sees its relations with the EU and the other Dialogue Partners… the moment to articulate a vision for the future of EU-ASEAN relations is now”.

28.16 The Joint Communication notes that in recent years, the EU has:

— acceded to the Treaty of Amity and Cooperation in Southeast Asia;
— scaled up and redirected its cooperation, forging a more ambitious and political partnership, as set out in the Brunei Plan of Action (2013-2017), the framework for all EU-ASEAN cooperation, including the many activities of EU Member States;
— taken part in more top-level visits; and
— launched new initiatives for tangible engagement in priority areas.

JOIN(15) 22, page 2.

28.17 ASEAN has noted and appreciated the EU’s engagement; there is now a need to step up the momentum and give effect to the ASEAN and EU foreign ministers’ joint decision in July 2014 to “turn the relationship into a strategic one”.270 Taking EU-ASEAN relations “to the next level” will build on and complement “the already rich and varied bilateral ties between the EU and individual ASEAN members”; these processes “should be seen as mutually reinforcing”.

28.18 Against this background, the Joint Communication puts forward a number of proposals relating to:

— the ASEAN 2010 Master Plan on ASEAN Connectivity, whose overall objective is to bring business, people and institutions closer together by eliminating barriers; these relate to boosting trade, investment and business; transport; research, innovation and people-to-people contacts;

— a greener partnership for a sustainable future;

— cooperation on security and human rights issues.

28.19 On the security front, the Joint Communication says that the determination by the EU and ASEAN to develop a more rounded partnership, going beyond the traditional focus on economic issues, followed ASEAN’s decisions to begin to tackle security issues such as disaster management, maritime security, transnational crime and counter-terrorism — , the EU having similarly “expanded its role as a security actor and provider, including through the Lisbon Treaty provisions enabling more integrated approaches to foreign policy”. The Joint Communication notes that the East Asia Summit (EAS271):

“is increasingly becoming the leading forum for strategic cooperation in the region, with the United States, China, Japan, South Korea, India, Australia, New Zealand and the Russian Federation as members, but not yet the EU. Given the EU’s trade, investment and other links, it has a clear interest in stability in the region and thus in promoting a security architecture that is better able to manage the region’s political tensions and in which it plays a key role, including through future accession to the EAS”.

28.20 In the meantime, the EU and ASEAN:

“should exploit the convergence of interests and make political and security issues one of the most dynamic vectors of their cooperation, both under the umbrella of EU-ASEAN cooperation and through greater EU involvement in the ARF,272 currently the only regional security forum of which it is a member”.


271 The East Asia Summit (EAS) is a forum held annually by leaders of, initially, 16 countries in the East Asian region. Membership expanded to 18 countries including the United States and Russia at the Sixth EAS in 2011. EAS meetings are held after annual ASEAN leaders’ meetings. The first summit was held in Kuala Lumpur, Malaysia on 14 December 2005.

272 The objectives of the ASEAN Regional Forum are outlined in the First ARF Chairman’s Statement (1994), namely: to foster constructive dialogue and consultation on political and security issues of common interest and concern; and to
28.21 Looking further ahead, the Joint Communication outlines its vision for working towards an EU-ASEAN Strategic Partnership “going beyond the current predominantly bilateral mind-set and aiming for greater engagement on key regional and global issues”, and “deepening the dialogue and aligning positions on issues of global significance”. The Joint Communication says that, for its part, the EU is ready to play its part in a significant upgrading of relations and is committed *inter alia* to:

— engaging in a joint assessment on the prospects for a successful region-to-region FTA negotiation;

— negotiating a civil aviation agreement;

— initiating an EU-ASEAN policy dialogue on environment and sustainable development and strengthening the one on research and innovation;

— continuing dialogue and cooperation on migration and mobility issues;

— increasing its financial support for regional cooperation with ASEAN and for development cooperation with less-developed ASEAN Member States (Cambodia, the Lao PDR, Myanmar, Vietnam and the Philippines) to more than €2 billion for the period 2014-2020;

— implementing an extensive “package” of new initiatives in the area of non-traditional security (maritime, disaster relief, transnational crime, various training courses on preventive diplomacy, crisis management, mediation, the rule of law and election observation); and

— appointing a dedicated resident EU ambassador to ASEAN.

28.22 In sum:

“Both sides have an interest in seizing this opportunity. This will also form the backdrop for ASEAN’s review of the EAS, including its functioning and future membership. The EU is in a good position to contribute to the practical work of the EAS and thus heed the call from ASEAN for greater EU engagement. The move to an EU-ASEAN Strategic Partnership should go hand in hand with the EU’s presence at the region’s strategic table”.273

The Government’s view

28.23 In his Explanatory Memorandum of 29 May 2015, the Minister for Europe (Mr David Lidington) says:

“Closer EU engagement and partnership with ASEAN is in the UK’s interests as it will allow us to leverage EU resources and influence our own efforts to deliver UK

make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region. See [http://aseanregionalforum.asean.org/about.html](http://aseanregionalforum.asean.org/about.html) for full information.

273 JOIN(15) 22, page 15.
objectives in ASEAN. The Joint Communication provides a solid basis on which to strengthen ties between the EU and ASEAN, reaffirming EU commitment to trade relations, security and sustainability.

“The EEAS is increasingly more alert to the opportunities offered by Asia and ASEAN, and the Joint Communication is part of developing a strategy to engage with the region. We encourage this position as it supports the UK view that engagement with ASEAN should be increased, and allows the EU to maximise its relationship with the region.

“The Joint Communication pulls together current initiatives and suggests new ideas to enhance the relationship with ASEAN, placing it on a more strategic footing. None of the language gives us cause for concern. Language on joining the East Asia Summit, where we have taken a strong position, is measured and agreeable.

“There are no areas of concern, or elements we would seek to oppose”.

28.24 The Minister goes on to say:

“There was some, but limited, consultation with EU member states before the publication of the Joint Communication. Whilst the text cannot now change, it is up to member states to decide how to respond to the Communication and whether to endorse at Council level.

“The Joint Communication may be drawn on, welcomed or endorsed as part of a package of Asia related business going to the June FAC. This process is still under discussion”.

28.25 With regard to its Financial Implications, the Minister says:

“The Joint Communication is an advice paper, so there is no agreement to spend money. The document is silent on financial implications, and if any proposals were enacted which involved costs, we would be able to stick to the existing line of budget neutrality on the EEAS”.

28.26 The message in the Joint Communication was reinforced by the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) in her speech of 31 May in Singapore at the IISS Shangri-La Dialogue 2015, which she began thus:

“Because yes, the EU has a military dimension as well: our economic face is the one most Asians (and also most Europeans!) are more familiar with. And this is natural. It is good, also: there are more goods and services travelling between Europe and Asia than across the Atlantic. That is amazing to us as well. We are one of the major investors in this continent, both in qualitative and quantitative terms, and the biggest development donor. But our engagement with Asia goes well beyond trade, investment, and aid. It’s political. It’s strategical. And it needs to develop more also in the security field.
“Four out of ten of the EU Strategic Partners are Asian countries: China, Japan, India and the Republic of Korea. It is not by chance that I have personally travelled to the region twice in less than one month, and in the very beginning of my mandate: I was in Japan for our EU-Japan Summit just before flying here, in Seoul and Beijing a few weeks ago. And we are preparing to host the EU-China Summit in Brussels at the end of June, while a Summit with South Korea is also planned. I am here today, I will come back again in the region in August for the ASEAN Regional Forum in Kuala Lumpur, and I look forward to chairing the ASEM Foreign Ministers’ meeting in Luxembourg in November.

“So yes, we are here, even if we are clearly not part of the region, because we are partners of your region. And we believe it is our reciprocal interest to invest even more in our friendship and in the work we can jointly do for the security of our people.

“So please, please don’t look at us just as a big free trade area: the European Union is also a foreign policy community, a security and defence provider. For our own people — within our borders and in the rest of the world; in our own region — that, we know, at the moment is one of the most turbulent ones, and we are ready to take more responsibility to bring security and stability in our part of the world, together with our neighbours; and with our global partners — Asia included”.

274 On 18 June, the Minister then issued a corrigendum to his Explanatory Memorandum (see “Summary and Conclusion” above) and a letter in which he said:

“The Joint Communication will be implemented following the Foreign Affairs Council on 22 June 2015. As it is unlikely that the European Scrutiny Committee in the House of Commons will be formed by then, I am writing to inform you that I am in the position of having to override scrutiny at this time”.

278 On 22 June, the Foreign Affairs Council adopted Conclusions on the Joint Communication, which are annexed to this chapter of our Report.

Previous Committee Reports
None.

Annex: Council Conclusions on EU-ASEAN relations

1. “The EU has a genuine strategic interest in strengthening its relationship with the Association of South East Asian Nations (ASEAN), the major contributor for stability in the Asia-Pacific region. A strong and cohesive ASEAN proceeding with its own integration is beneficial for regional prosperity, stability and security, and creates new opportunities for cooperation on regional and global challenges. The Council welcomed the new momentum in EU-ASEAN relations and underlined

274 See EEAS statement for the full text.
the EU’s commitment to supporting ASEAN regional integration and further deepening relations.

2. “The Council reiterated that the move to an EU-ASEAN Strategic Partnership shall be matched by the EU’s presence at the region’s strategic table, including at a summit level, through the EU’s involvement in the East Asia Summit-process. Both the EU and ASEAN must work together to move the relationship to the strategic level, delivering on the substance as a joint responsibility. The Council welcomed the Joint HR/VP-Commission Communication: ‘The EU and ASEAN: a partnership with a strategic purpose’ that follows the guidance and decisions of the 20th ASEAN-EU Ministerial Meeting held in Brussels in July 2014 and sets out priority areas for engagement.

3. “The Council stressed the importance of EU-ASEAN cooperation on Connectivity, which is at the heart of this special region-to-region relationship. The EU has valuable assets to support ASEAN in achieving its Connectivity goals and is looking forward to stepping up mutually-beneficial cooperation also through dedicated mechanisms on sustainable and inclusive economic integration, trade and border management. The EU will provide financial support from its cooperation programmes, through the European Investment Bank, the Asia Investment Facility and the bilateral assistance programmes by EU Member States.

4. “The Council underlined the importance of promoting closer trade and investment links with ASEAN. The Council welcomed the commitment by the Commission to engage in a joint assessment with ASEAN on the prospects for a successful, comprehensive ambitious and balanced region-to-region Free Trade Agreement negotiation. In the meantime the Council encouraged the Commission to pursue the bilateral track of ambitious, balanced and comprehensive FTA negotiations with all the major ASEAN economies. The Council stressed the need to promote business links, including to the benefit of European SMEs, with EU support programmes but also the need to promote policies to improve access to credit along with a fair and transparent business and investment climate in the ASEAN region.

5. “The Council recalled the fundamental importance of protecting and promoting human rights and fundamental freedoms, as well as people to people contacts, as an essential element of EU-ASEAN relations. The Council underlined the necessity to deepen tangible cooperation with relevant ASEAN actors promoting human rights. In this context, the abolition of the death penalty, the situation of vulnerable minorities and the rights of women and girls need special attention.

6. “The Council reiterated the EU’s interest in cooperating more closely with ASEAN on transport and civil aviation, including in the perspective of a region-to-region civil aviation agreement.

7. “The Council underlined the need to align positions on issues of global significance, including the Sustainable Development Goals (SDG), which will be adopted at the UN Summit in September 2015 in New York. The Council also
stressed that the EU and ASEAN have a shared interest in developing a more effective region-to-region cooperation on climate change, notably with a view to securing a successful outcome of the 21st Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change to be held in Paris at the end of this year. The Council also called for the development of policy dialogues and the strengthening of cooperation on environment, disaster risk reduction and disaster management, resilience and sustainable development, in line with the Brunei Plan of Action and on the basis of EU’s experience in handling such issues on a continental scale. The policy dialogue should address key environmental challenges of EU interest including: biodiversity loss, deforestation, illegal trade in timber and wildlife, as well as unsustainable consumption and production patterns.

8. “The Council reiterated the EU’s offer to contribute substantially to policy and security/defense related fora led by ASEAN, including the East Asia Summit. The Council emphasised the value of EU-ASEAN Co-operation on security, recognizing that we share common challenges that have a global impact including maritime security and “non-traditional” security challenges, spurred by common interests and new capacities on both sides to address security issues in a comprehensive way. The Council commended the EU’s enhanced engagement in the ASEAN Regional Forum (ARF), resulting also in co-chairing key meetings, in convening with Brunei Darussalam the first ARF Workshop on Preventive Diplomacy and Mediation and in organising two EU-ASEAN High-Level Dialogues on Maritime security. The EU will play an active role also as regards addressing other important topics, such as non-proliferation and disarmament, counter-terrorism and trans-national crime, emergency response, cyber-security, migration emergencies and trafficking in drugs and human beings.

9. “The Council underlined that the EU shares ASEAN’s commitment to preserving Southeast Asia as a region free of nuclear weapons and all other weapons of mass destruction as enshrined in the Treaty of Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ) and the ASEAN Charter. The Council further underlined the importance of conventional arms control and the elimination of illicit arms transfers. The Council welcomed the work of the EU-sponsored South-East Asian Chemical, Biological, Radiological and Nuclear (CBRN) Centre in Manila, assisting in the development of national response plans and foster regional coordination.

10. “The Council called on the High Representative and the Commission to work on the implementation of the priorities identified above and the Joint Communication, in close cooperation with the EU Member States, building on their activities including the ASEAN awareness initiatives”.

275 Available at Council Conclusions on EU-ASEAN relations.
29 Common Security and Defence Policy: EULEX Kosovo: allegations of corruption

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

Document details  Council Decision amending the budget of the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO)
Legal base  Articles 28, 42(4) and 43(2) TEU; unanimity
Department  Foreign and Commonwealth Office
Document number  (36919), —

Summary and Committee’s conclusions

29.1 EULEX Kosovo was established in 2008 to provide support to Kosovo’s fledgling judiciary, police and customs institutions. It also has an executive mandate to investigate serious crime including high-level corruption and war crimes. The extension of its mandate until June 2016 reflected continued difficulties with the Rule of Law.

29.2 Nonetheless, some progress having been made, EULEX is to become a smaller and more focused presence, concentrating on capacity building throughout Kosovo, security and the implementation of agreements reached in the Belgrade-Pristina dialogue in the north; and beginning to phase out its executive functions in the justice sector as part of a handover of responsibility to Kosovo, while completing its work on ongoing serious cases.276

29.3 In September 2014, the Minister for Europe (Mr David Lidington) confirmed that Kosovo had agreed, in principle, to create a special court regarding EULEX’s Special Investigative Taskforce.277 EULEX would have an important role in assisting Kosovo with the operation of this court, including discussions with a potential host state concerning the relocation of judicial proceedings, in order to prosecute and adjudicate criminal charges arising from SITF investigations. Our predecessors had expected to hear from the Minister in the New Year about how these changes were working out.278

29.4 In the meantime, on 6 November 2014, he wrote concerning allegations of corruption within EULEX’s ranks made by a UK national seconded to EULEX as a prosecutor, and “secondary allegations” relating to “EULEX’s handling of this issue and of the UK staff member concerned”. He noted that the UK, along with other Member States, had quickly

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276 See (36004), —: Fiftieth Report HC 83-xliv (2013–14), chapter 15 (14 May 2014) for full details of the two-year mandate extension.
277 Special Investigative Task Force (SITF): a part of EULEX since 2011, which has been investigating the allegations in the 2010 Council of Europe Marty Report of organ trafficking and other serious crimes committed immediately after the 1999 conflict.
278 See Ninth Report HC 219-ix (2014–15), chapter 42 (3 September 2014) and its Annex for further background and the detailed budget; also the earlier Reports cited at the end of this chapter of our Report.
made it clear to the European External Action Service (EEAS) that a thorough response was needed, which not only investigated the allegations but also ensured that public confidence was maintained in EULEX’s handling of such cases; that the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) had announced that an external investigation would take place into the matter.

29.5 Subsequent to the Minister’s 6 November 2014 letter, the HR announced that she had appointed Mr. Jean Paul Jacqué as independent expert to review EULEX Kosovo mandate implementation with a focus on the handling of the corruption allegations, describing him as “a distinguished law professor with over 40 years of experience”, adding that “his tenure as Director of the Council Secretariat legal services offers him a unique expertise and perspective to review these allegations” and saying that she had asked Mr. Jacqué to revert to me within 4 months with his report and his recommendations”.

29.6 The previous Committee subsequently asked the Minister for Europe for further information about this process. Further details are set out in our predecessors’ 19 November279 and 10 December 2014 Reports.280 The Minister’s responses are summarised below and detailed in their most recent previous Report.281

29.7 This further draft Council Decision proposes a budget of €77,000,000 to cover EULEX Kosovo’s operations in the period 14 June 2015 to 15 June 2016 (see below and the Annex to this chapter of our Report for details).

29.8 The draft Council Decision raises no questions in and of itself.

29.9 We accept that, with no budget beyond 14 June 2015, the Minister was obliged to override scrutiny.

29.10 But we are disappointed that he has failed to answer any of our predecessors’ most recent requests concerning the Jacqué investigation and progress on establishing the special court. Their requests were clear cut:

— once the Jacqué investigation had produced its report:

- to summarise its findings, say if he regarded it as a “thorough response” in terms of independence, timeliness, transparency and “much-needed external scrutiny” and, if so, to illustrate how;

- to outline what further steps are then due to take place, what criminal investigations are under way or what might in other ways be reasonably holding up publication of the European Ombudsman’s own investigation;

- his general views on the general satisfactoriness of the process overall;

• what the position then is with regard to the UK national seconded to EULEX as a prosecutor who made the original allegations.

— with regard to the proposed special out-of-country court, hearing more, when he submitted the next Council Decision on EULEX Kosovo for scrutiny, about subsequent developments and his assessment at that time of the response of the Kosovar political establishment and what that meant for the prospects for taking further forward Kosovo’s Stabilisation and Association Agreement.  

29.11 Instead, all the Minister does is to refer us to a “redacted (sic) version of the report” on the EU Commission website.

29.12 We therefore ask the Minister to respond fully to our predecessors’ requests within the next ten working days. In the meantime, we shall retain the Council Decision under scrutiny.


Background

29.13 The Minister undertook to “update the Committee in due course as the situation develops”. In the first instance, our predecessors asked:

• if he was satisfied with the steps announced by the High Representative: in particular, whether the appointment of someone with M. Jacqué’s background, and a four-month mandate, constituted the “thorough response” he was seeking, in terms of independence, timeliness and the requirement for “transparency and much-needed external scrutiny” that he rightly highlighted;

• what had transpired from the contacts made by his officials with EULEX and the EEAS, in view of the prosecutor making the allegations and some of the individuals named in secondary allegations being UK nationals seconded to EULEX by the FCO; and

• more generally, whether he in any way shared the reservations some seemingly had about the real effectiveness of this costly Mission.

The Stabilisation and Association Agreement (SAA) constitutes the framework of relations between the European Union and the Western Balkan countries for implementation of the Stabilisation and Association Process. The agreements are adapted to the specific situation of each partner country and, while establishing a free trade area between the EU and the country concerned, they also identify common political and economic objectives and encourage regional co-operation*. In the context of accession to the European Union, the agreement serves as the basis for implementation of the accession process. In 2008 the EU repeated its willingness to assist the economic and political development of Kosovo “through a clear European perspective”. The EU and Kosovo chief negotiators initialled the SAA between the EU and Kosovo in Brussels on 25 July 2014.

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29.14 The previous Committee also asked what the state of play was on the establishment of a special court, in order to prosecute and adjudicate criminal charges arising from investigations by EULEX’s Special Investigative Taskforce.

29.15 The Minister said:

- it was too soon to say how the investigation will proceed or what its conclusions will be. But it is being conducted by someone with no connection to EULEX. There are also likely to be complementary investigations by the European Ombudsman and the EU’s Anti-Fraud Office (OLAF). He is confident that, together, these investigations are an adequate response “for the time being”; he looked forward to their findings, and had asked officials to monitor developments closely;

- in relation to matters affecting UK secondees, he and his officials had focused their efforts on ensuring that the welfare and rights of FCO staff are respected and that due process is followed on any disciplinary matters, with EULEX remaining in charge of pursuing any appropriate investigations. Once again, the various EU processes in train had yet to reach a conclusion, so it was too soon to say what the consequences for the UK might be; also, it would not be appropriate to comment in detail on individual cases. But officials were in regular contact with EULEX and with FCO staff seconded to the mission, and are prepared to provide assistance as appropriate;

- EULEX had been in place for many years and had made significant progress on a number of issues, such as building up the Kosovo police, dealing with cases of serious crime, and facilitating implementation of the 19 April agreement between Serbia and Kosovo on matters concerning customs and border controls. As well as the €20 million cut to EULEX’s budget for its new mandate beginning in October, UK officials had also secured an agreement that the mission must work towards a handover of responsibilities to the Kosovan authorities as it headed towards its mandate end date of June 2016, which “sets us on the right track” for further downsizing if the appropriate conditions could be met. Depending on how these plans proceeded, they would “go some way” towards addressing concerns about ongoing cost-effectiveness;

- there was no further progress to report at this stage in relation to the establishment of a special court: the prosecution’s work in building its case continues, but establishment of an out-of-country court, which relied on the Kosovo Assembly passing a number of laws, had been stymied by the political impasse following the June parliamentary elections; however, as there were “now signs that Kosovo will form a government shortly”, he expected progress would “resume in due course”.

Our predecessors’ assessment

29.16 Though the Minister was somewhat guarded in his response concerning the steps announced by the High Representative, our predecessors agreed that it was too soon to
draw any conclusions. But a month had passed since the HR’s announcement. They therefore asked the Minister to write again in two months’ time on:

- both the Jacqué investigation and the others that he anticipated, updating the Committee on how matters stood and whether they had fulfilled his criteria, viz., a “thorough response” in terms of independence, timeliness, transparency and “much-needed external scrutiny”;
- the matters affecting UK secondees, including the UK national seconded to EULEX as a prosecutor who made the original allegations;
- the establishment of the special “out of country” court, which was central to the effective execution of the remainder of the mission’s mandate and indicative of the commitment of the Kosovar political establishment to its work.283

29.17 The Minister subsequently said about the corruption allegations:

- the Jacqué investigation report, initially planned for the end of January, was now not expected until March;
- he and his officials were “continuing to encourage the EEAS to release the report as soon as it is possible for a thorough investigation to be completed”;
- the European Ombudsman had concluded her own investigation, but had decided not to comment on the issue until after any criminal investigation and the Jacqué investigation had been completed;
- there had been no further complaints or concerns raised by UK secondees in relation to the corruption allegations;
- while he could comment on individual cases, he assured the Committee that “my officials are in regular contact with EULEX and the FCO staff seconded to the mission and, where appropriate, with former staff facing ongoing issues as a result of the corruption allegations”.

29.18 With regard to the establishment of a special court, the Minister said:

“in early January the EEAS met with Kosovo Deputy Prime Minister and Minister of Justice Hajredin Kuçi to discuss the proposed constitutional and legislative amendments necessary to enable court relocation to a third state. These amendments have been agreed at a technical level. We understand the Minister will now be submitting them to the Kosovo Assembly and for consideration by the Constitutional Court, a process taking 30-60 days. By April, we anticipate that the EEAS will revert to the Political and Security Committee and propose a Council Decision to approve a new budget and any necessary modifications to the EULEX O Plan to allow EULEX to continue to play a supporting role in the arrangements

between Kosovo and the third state (EULEX’s current budget expires in June). From there, the implementation and ratification of a formal host state agreement between Kosovo and a third state, which is essential for a trial to begin, could take twelve months to complete. We may, however, see early logistical steps for the establishment of the court to start to be taken in parallel to this process.”

Our predecessors’ further assessment

29.19 The previous Committee asked the Minister to write again, once the Jacqué investigation reported: to summarise its findings; to say if he regarded it as a “thorough response” in terms of independence, timeliness, transparency and “much-needed external scrutiny”; and if so, to illustrate how; to outline what further steps were then due to take place, what criminal investigations were under way or what might in other ways be; and to provide his general views on the general satisfactoriness of the process overall.

29.20 Our predecessors also asked to know what the position then was with regard to the UK national seconded to EULEX as a prosecutor who made the original allegations.

29.21 With regard to the proposed special out-of-country court, our predecessors asked the Minister, when he next submitted a Council Decision on EULEX Kosovo for scrutiny, for his assessment of the response of the Kosovar political establishment and what that might mean for the prospects for taking further forward Kosovo’s Stabilisation and Association Agreement.284

The draft Council Decision

29.22 This relates to a proposed budget of €77,000,000 to cover EULEX Kosovo’s operations in the period 14 June 2015 to 15 June 2016.

29.23 In his Explanatory Memorandum of 8 June 2015, the Minister for Europe (Mr David Lidington) says changes in mission structure have been agreed, which will enable it to “reduce in size intelligently and operate effectively”. EULEX will focus on capacity building throughout Kosovo, on security and on the implementation of agreements reached in the Belgrade-Pristina dialogue in the north of the country. But the mission will start to draw down its executive functions in the justice sector as part of a phased handover of responsibility to Kosovo, while completing its work on ongoing serious criminal cases. Discussions on what will remain after June 2016 continue in Brussels. We have argued for transition-planning to begin as soon as possible, and for thinking to develop on the type of capacity-building and specific executive tasks which should continue after June 2016.

29.24 With regard to the Jacqué report, the Minister says:

“the report by Jean-Paul Jacqué into the handling of corruption allegations at EULEX issued on 14 April. A redacted (sic) version of the report is available on the EU Commission website.”

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29.25 Concerning the Special Investigative Task Force, which has been investigating the allegations of abuses committed by members of the Kosovo Liberation Army during and after the 1999 conflict highlighted in the 2010 Marty Report, the Minister says:

“Kosovo has agreed, in principle, to a special court to hear any trials arising from the SITF’s investigations. As previously agreed, we have supported the establishment of the SITF as an EU process. EULEX will have an important role in assisting Kosovo with the operation of this court and the proposed EULEX budget for June 2015-June 2016 covers SITF funding.”

29.26 With regard to the proposed €77,000,000 budget for the period of 15 June 2015 to 14 June 2016, the Minister says:

“This follows the eight-month transition budget of €55,820,000 that expires on 14 June 2015. The proposed budget is less than the current eight-month budget when extrapolated to one year and delivers the overall savings we expected.”

29.27 The Minister provides an overview of the proposed budget within the table reproduced at Annex 1 of this chapter of our Report, which contains a breakdown of the preceding eight-month budget. The Minister says that, for ease of reference:

“I have also included columns which extrapolate the subhead lines of the current eight-month budget to one year and highlight the variance between the proposed budget and the current (extrapolated) budget.”

29.28 The Minister also notes that:

“The UK contributes a proportion to the pre-agreed CFSP budget, not the individual programmes within it. Funds for EULEX’s budget will be found within existing resources in the CFSP budget, so this proposal does not present additional costs to the UK.”

29.29 In a separate letter of the same date, the Minister:

— says that he believes the budget delivers value for money, and that his officials will continue to keep close track on progress and expenditure;

— recalls his letter of 4 March informing the Committee that the renewal of the mandate would occur during dissolution, and says:

“Were I to wait for the Scrutiny Committees to reconvene, the mission would no longer have a budget to continue its operations. This would not be in the interest of UK foreign policy. I therefore regret that I find myself in the position of having to agree to the adoption of this Council document before your Committee will have an opportunity to scrutinise it.”
Previous Committee Reports

Annex 1: the Minister’s overview of the proposed budget (figures in €)

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<tbody>
<tr>
<td>1. Personnel</td>
<td>38,245,877</td>
<td>57,368,815</td>
<td>57,337,973</td>
<td>-30,842 (-0.05%)</td>
</tr>
<tr>
<td>2. Missions</td>
<td>1,233,424</td>
<td>1,850,136</td>
<td>2,000,200</td>
<td>+150,064 (+7.51%)</td>
</tr>
<tr>
<td>3. Running costs</td>
<td>14,093,841</td>
<td>21,140,761</td>
<td>13,505,732</td>
<td>-7,635,029 (-43.5%)</td>
</tr>
<tr>
<td>4. Capital costs</td>
<td>1,040,249</td>
<td>1,560,373</td>
<td>1,685,163</td>
<td>+124,790 (+8.0%)</td>
</tr>
<tr>
<td>5. Representation</td>
<td>69,400</td>
<td>104,100</td>
<td>84,000</td>
<td>-20,100 (-19.3%)</td>
</tr>
<tr>
<td><strong>Total (1 to 5)</strong></td>
<td><strong>54,682,791</strong></td>
<td><strong>74,613,068</strong></td>
<td></td>
<td><strong>-6,730,000 (-8.0%)</strong></td>
</tr>
<tr>
<td>6. Contingencies</td>
<td>1,137,208</td>
<td>1,705,812</td>
<td>2,386,928</td>
<td>+681,116 (+40%)</td>
</tr>
<tr>
<td><strong>Total (1 to 6)</strong></td>
<td><strong>55,820,000</strong></td>
<td><strong>83,730,000</strong></td>
<td><strong>77,000,000</strong></td>
<td><strong>-6,730,000 (-8.0%)</strong></td>
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</table>

“– Personnel Costs - (€57,337,973):

“Personnel costs account for approximately 75% of total expenditure. Proposed expenditure represents a slight decrease against the previous budget (extrapolated). This subhead also includes staff and training costs of €4,440,808 in respect of the SITF and Court Preparation Team (CPT).

“– Missions Expenditure (€2,000,200):

“This expenditure relates to the costs incurred in implementing the mandate and includes transport, per diems and accommodation. In comparison to 2014/15 (extrapolated) expenditure for the year from June 2015 will rise by €150,064 (7.5%). The key contributor is Daily Subsistence Allowance, which has increased to cover the costs of the SITF and CPT for Long-stay Mission in Brussels. We judge the proposed expenditure to be reasonable.

“– Running Costs (€13,505,732):

“This covers a range of costs such as transport, IT, communications and goods & services. Savings for the year from June 2015 compared to the previous budget (extrapolated) amount to around €7,635,029 (43.5%).

– Transport: The new budget of €3,016,051 signifies a reduction of nearly 65% on the current budget (extrapolated). The largest cost is for helicopter services (€1m). Helicopter related costs have fallen considerably, as they were €4m in the previous eight-month budget. This is because the EULEX helicopter service has been discontinued. The proposed expenditure of €1m is to cover approximately 100
hours of KFOR assets and plus any private hire costs incurred; In addition, the car fleet has been reduced to 609 from 916 vehicles in June 2014.

- **“IT running costs”:** This subhead covers IT warranties, parts, goods and services and maintenance of software, printers and copiers. Proposed expenditure of €1,593,041 represents a saving of approximately 5% when compared to the current budget (extrapolated).

- **“Communications”:** This is for GSM, landline and satellite costs, internet, maintenance and postage, and rental of hilltop sites to enable communications in the north. The new budget of €938,578 represents a saving of around 13% when compared to 2014/15 (extrapolated).

- **“Premises rent and services”:** This subhead covers a range of expenditure including inter alia office rents, heating, generators, air conditioning maintenance, cleaning and waste removal. EULEX has a mix of office and camp accommodation in Pristina and Mitrovica. Proposed expenditure of €4,149,841 represents a decrease of approximately 15% when compared to the current eight-month budget, when extrapolated.

- **“Security”:** This includes external security costs, access control systems and fire extinguishers. The proposed budget of €683,200 will generate a saving of around 6% when compared to the existing budget (extrapolated).

- **“External Assistance & Outsourced Services”:** This is for hiring a range of expertise which is not available within the mission. The majority of expenditure is for the SITF and CPT which require inter alia: translation services, development of an electronic court management system, IT development, court audio visual experts and forensic expertise. The budget proposes expenditure of €1,164,658 which will save approximately 20% compared to 2014/15 (extrapolated).

- **“Mandate-related operational costs”:** Expenditure here is for SITF witnesses and investigations, civilian protection measures, Special Prosecution Office of Kosovo (SPRK) experts, witnesses, support & expertise and small scale projects. Compared to the current budget, when extrapolated, the proposed budget of €1,149,000 for 2015/16 will be down by approximately 25%.

- **“Visibility Costs”:** This is for uniforms and protective clothing, high visibility items, flags, cards and publicity campaigns. Planned expenditure of €377,800 in 2015/16 represents an increase of around 19% when compared to the current budget (extrapolated). The increase is due to increased public information activity by EULEX against the background of work in the north, implementation of the April 2013 dialogue agreement between Belgrade and Pristina, transition/reconfiguration of the mission’s mandate, support to Kosovo’s move towards accession to the EU, and implementation of the justice system. We judge the proposed increase to be reasonable.
– “Capital Expenditure (€1,685,163): “This covers vehicles and workshop, and equipment and works for: communications, premises, medical, security, civilian protection, and equipment for SITF and CPT. Proposed spend represents an increase of just over 2% compared to the extrapolated budget for 2014/15. Notable expenditure relates to the replacement of central heating systems, new generators, installation of a sprinkler system and works on the sewerage treatment plant; SITF and CPT also require equipment (mainly ICT and software related) at a cost of €692,556. We judge this expenditure to be reasonable.

– “Representation (€84,000): “Proposed expenditure is down by 19% on the current budget when extrapolated.

– “Contingencies (€2,386,928): “The proposed 40% increase is to allow for severances and other consequences of drawing down a mission”.

30 Customs: illicit trade in tobacco products

Committee’s assessment

Legally and politically important

Committee’s decision

Not cleared from scrutiny; further information requested

Document details

(a) Proposal for a Council Decision on the conclusion of the Protocol to eliminate illicit trade in tobacco products to the World Health Organisation’s Framework Convention on Tobacco Control for provisions relating to matters falling under Title V of Part III of TFEU (the Title V Decision);

(b) Proposal for a Council Decision on the conclusion of the Protocol to eliminate illicit trade in tobacco products to the World Health Organisation’s Framework Convention on Tobacco Control for provisions relating to matters not falling under Title V (the non-Title V Decision)

Legal base

(a) Articles 82(1), 83, 87 and 218(6)(a) TFEU; EP consent; QMV

(b) Articles 33, 113, 114, 207, 218(6)(a) and 218(8) TFEU; EP consent; unanimity

Department

HM Revenue and Customs

Document numbers

(a) (36831), 8563/15 + ADDs 1–2, COM(15) 193
Summary and Committee’s conclusions

30.1 In May 2003, the World Health Assembly, the governing forum of the World Health Organisation (WHO), adopted the Framework Convention on Tobacco Control (FCTC), designed to reduce tobacco-related deaths and diseases around the world. There are 177 signatories to the Convention.

30.2 The FCTC recognises that the elimination of the illicit trade in tobacco products is an essential component of tobacco control. The parties to the Convention therefore established an Intergovernmental Negotiating Body to draft a protocol to eliminate this illicit trade. The Protocol was adopted in November 2012.

30.3 The Protocol contains provisions on the control of the supply chain of tobacco products and of equipment for the manufacture of those products. In particular, the measures in the protocol would:

- Introduce a licensing or control scheme for anyone involved in the manufacture, import and export of tobacco products and manufacturing equipment;

- Require anyone engaged in the supply chain to conduct customer due diligence; and

- Establish within five years a global tracking and tracing scheme for tobacco products.

30.4 Because document (a), the Title V Decision, contains provisions of a binding JHA nature, the UK’s opt-in applies. The UK must notify the EU institutions of its decision by 6 August 2015. The Government has stated that it will take opt-in decisions on a case-by-case basis. However, it notes that the UK is bound by the entirety of the Protocol in any event, so that a decision not to opt into the Title V Decision would mean that the UK would simply enact relevant JHA provisions as a separate party rather than on an EU-wide basis.

30.5 We recognise the importance of eliminating the illicit trade in tobacco products as part of the wider goal of controlling tobacco. In pursuance of this goal, we welcome the provisions of the Protocol.

30.6 We note the deadline of 6 August for the UK to notify its opt-in decision in respect of document (a), the Title V Decision. We would like to hear from the Minister in advance of that notification:

a) if the Government comes to the view that there are any provisions in document (b), the Non-Title V Decision, which have JHA content, whether those provisions can be migrated to document (a) or whether instead the Government will assert the opt-in in relation to document (b), in the absence of a Title V legal base, in accordance with the previous Government’s opt-in policy; and
b) if the Government is minded to opt in, what further factors have influenced that decision.

30.7 We also ask whether the Minister intends that the EU should only act by those Decisions in respect of which it has exclusive competence; and, if so, how that is made clear by the texts of the Decisions or the Declaration of Competence that accompanies the Protocol. We request that the Minister writes to us in good time for our first meeting during the September sitting to answer these questions. Meanwhile we retain these documents under scrutiny.

Full details of the documents: (a) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation’s Framework Convention on Tobacco Control, in so far as the Provisions of the Protocol which fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned: (36831), 8563/15 + ADDs 1–2, COM(15) 193; (b): Proposal for a Council Decision on the Conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation’s Framework Convention on Tobacco Control, in so far as the Provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned: (36832), 8565/15 + ADDs 1–2, COM(15) 194.

Background

30.8 The World Health Organisation’s Framework Convention on Tobacco Control was adopted in May 2003. It is an international, legally-binding treaty intended to reduce deaths and disease relating to tobacco worldwide. There are 177 parties to the FCTC, and these include the UK and the European Union. The EU acceded to the FCTC by Council Decision 2004/513/EC in June 2004.

30.9 Article 15 of the FCTC recognises that a vital part of tobacco control is the elimination of illicit trade in tobacco products, including smuggling, illegal manufacturing and counterfeiting. It requires parties to the Convention to introduce effective measures to eliminate this illicit trade. Article 33 of the FCTC allows for a conference of the parties to adopt protocols to the Convention. On these bases, the Conference of the Parties decided in June/July 2007 to establish an Intergovernmental Negotiating Body to draft a protocol to eliminate the illicit trade in tobacco products.

30.10 The illicit trade in tobacco products, and in particular cigarette smuggling both into and within the EU, causes huge losses in revenue for the Union and for Member States in unpaid taxes and duties. These losses are estimated at €10 billion per annum. Most Member States are in some way affected by this illicit trade, whether as points of entry, transit or destination. The illicit products generally originate outside the EU, so international cooperation is essential if the illicit trade it to be tackled.
30.11 Our predecessor Committee scrutinised the Council Decisions on the signing of the Protocol by the EU. The then Economic Secretary to the Treasury (Nicky Morgan), affirmed the Government’s intention to sign and implement the Protocol as soon as possible. The Government said that it was likely to maintain a default setting of opting out of the Title V aspects of the Protocol at that time, while retaining the right to opt in when the substantive measures required to implement the Protocol were debated and finalised at EU level. Our predecessor Committee endorsed that approach and looked forward to considering the opt-in possibilities at the next stage, which has now been reached.

The current documents

30.12 The Protocol to eliminate illicit trade in tobacco products is designed to create a framework for the international regulation of tobacco production and distribution and for cooperation between enforcement authorities. It requires the introduction of a licensing or control system by a competent authority for anyone involved in the manufacture, import or export of tobacco products and manufacturing equipment; it requires anyone engaged in the supply chain of tobacco, tobacco products and manufacturing equipment to conduct customer due diligence; and it provides for the establishment of a global tracking regime for all tobacco products manufactured in or imported into the territory of the parties to the Protocol (this system to be in place within five years of the Protocol coming into force).

30.13 The provisions of the Protocol fall into two categories. The first, contained in document (a), falls under Title V of Part III of the Treaty on the Functioning of the European Union. These would therefore require the UK to opt into the measures for them to have force in the UK. The second, contained in document (b), does not engage Title V.

30.14 The first category, partly or fully falling within the areas of judicial cooperation in criminal matters, the definition of criminal offences and police cooperation, represents the following measures:

- Due diligence;
- Unlawful conduct including criminal offences; and
- Law enforcement cooperation.

30.15 The other measures do not fall under Title V.

30.16 The final text of the Protocol was adopted by the Conference of the Parties in November 2012. The UK and the EU signed the Protocol in December 2013. These Council Decisions will bring the Protocol into force.

The Government’s view

30.17 In his Explanatory Memorandum of 27 May 2015, the Exchequer Secretary to the Treasury (Damian Hinds), says that the Government is considering whether the split of content between the Title V and non-Title V Council Decisions is correct. He notes that it is committed to taking opt-in decisions on a case-by-case basis. It will have regard to
whether the aspects of the Protocol which engage the opt-in are most efficiently and effectively implemented at an EU level or by domestic legislation. However, it also notes that the UK is a signatory to the FCTC and therefore is bound by its provisions in any case. Therefore a decision not to opt in would simply mean that the UK would have to enact relevant JHA provisions as a separate party.

30.18 As the UK is a signatory to the FCTC, the Minister explains that the Government is broadly supportive of the provisions of the Protocol. It notes that many of the provisions of the Protocol are already in place in the UK. The Government has already announced plans for a registration system for those who use or deal in raw tobacco, which is required by the Protocol, and intends to consult on a registration scheme for tobacco manufacturing machinery.

Previous Committee Reports


Financial services: Money Market Funds

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Document details

- (a) Proposal for a Regulation about Money Market Funds
- (b) European Central Bank Opinion on the proposed Regulation

Legal base

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

Department

HM Treasury

Document numbers

(a) (35298), 13449/13 + ADDs 1-2, COM(13) 615
(b) (36321), 12713/14, —

Summary and Committee’s conclusions

31.1 Money Market Funds are open-ended funds that invest in short-term debt securities such as Treasury bills and commercial paper. This proposed Regulation would introduce rules specific to Money Market Funds. It would deal with investment policies, risk management, valuation rules, constant net asset value funds and external support. The European Central Bank has published this Opinion on the proposed Regulation, seeking to influence negotiation of the text.
31.2 When in October 2013 the predecessor Committee first considered the proposed Regulation it heard that the Government had reservations about aspects of the proposal related to capital buffers, repurchase agreements and eligible securitisations, and credit rating agencies. When that Committee last considered the matter, in March 2015, it heard that negotiations on the proposed Regulation had not progressed under the Latvian Presidency, but that a European Parliament text likely to be adopted in April might put pressure on the Presidency to restart discussions. The Committee was told that, in relation to some details about the likely European Parliament position, this was consistent with the European Central Bank Opinion, which the Government welcomed. The predecessor Committee kept the documents under scrutiny, pending further information on developments.

31.3 The Government tells us that in April the expected European Parliament position was indeed adopted, that the Government will be seeking amendment on two points in that position, and that it seems likely that the Presidency would now recommence negotiations of the proposed Regulation.

31.4 We are grateful to the Government for the information it now gives us. We look forward to hearing about how Council consideration of the proposed Regulation is developing, particularly in relation to the reservations it has expressed to the predecessor Committee and to us. Meanwhile the documents remain under scrutiny.

**Full details of the documents:** (a) Proposal for a Regulation on Money Market Funds: (35298), 13449/13 + ADDs 1–2, COM(13) 615; (b) European Central Bank Opinion of 22.05.2014 on a proposal for a Regulation on Money Market Funds: (36321), 12713/14, —.

**Background**

31.5 Money Market Funds (MMFs) are open-ended funds that invest in short-term debt securities such as Treasury bills and commercial paper. They take one of two forms — Constant Net Asset Value (CNAV) MMFs, which seek to maintain a fixed value of units in the fund so that the redemption values of investors’ holdings do not change, and Variable Net Asset Value (VNAV) MMFs, which have a floating unit value that fluctuates with changes in the value of the underlying assets. This proposed Regulation, document (a), would introduce rules specific to MMFs. It would deal with investment policies, risk management, valuation rules, CNAV MMFs and external support. The European Central Bank (ECB) has published this Opinion, document (b), on the proposed Regulation, seeking to influence negotiation of the text.

31.6 When in October 2013 the predecessor Committee first considered the proposed Regulation it heard that the Government had reservations about aspects of the proposal related to capital buffers, repurchase agreements and eligible securitisations, and credit rating agencies. When that Committee last considered the matter, in March, it heard that:

- negotiations on the proposed Regulation had not progressed under the Latvian Presidency;
• however, the European Parliament was due to vote in Plenary on the text proposed by the ECON Committee in April, which might put pressure on the Latvian Presidency to restart discussions;

• if discussions did resume, it was likely that the Presidency would seek views on the ECON Committee’s proposed compromise, which deleted the Commission’s proposed capital buffer for CNAV MMFs and replaced it with a regime that sought to preserve some of the utility of CNAV MMFs while dealing with financial stability risks;

• the ECON Committee’s proposals were consistent with the ECB Opinion, for example on clarifying when sponsor support could be given, the impact on securities markets and market concentration and in refining the internal ratings system, which the Government welcomed;

• views in the Council on the appropriate treatment of CNAV MMFs had been polarised;

• it was not yet clear whether Member States would support a compromise which built on the ECON Committee’s proposals; and

• if progress was made in this direction, however, there was a chance that discussions could progress quickly, especially since the European Parliament was likely to be in a position to begin trilogue discussion by April.

31.7 The predecessor Committee kept the documents under scrutiny, pending further information on developments.

The Minister’s letter of 19 June 2015

31.8 The Economic Secretary to the Treasury (Harriett Baldwin) reports developments following the European Parliament voting through its mandate on 28 April, noting in particular that its proposals for CNAV MMFs are likely to have a bearing on Council discussions, where negotiations have stalled due to polarised views on the options for reform. She says that the European Parliament text proposes a number of changes to the categorisation of CNAV funds, including proposals for a ‘Low Volatility Net Asset Value (LVNAV) MMF’, an ‘EU Public Debt CNAV MMF’, and a ‘Retail CNAV MMF’.

31.9 On the LVNAV fund proposal the Minister explains that this seeks to maintain the utility of a CNAV MMF, while addressing financial stability risk. She says that the LVNAV would manage risk by:

• effectively limiting the maturity of investments to under 90 days, which will limit volatility of the underlying assets;

• reducing the use of amortised cost accounting; and
- lowering from 0.5% to 0.2% the amount that the Net Asset Value of the fund could deviate from the constant price, which would reduce the ‘cliff-edge’ effect that has caused previous stability concerns.

31.10 The Minister, noting that these proposals include placing a sunset clause on LVNAVs, which would revert them to a VNAV structure after four years, adds that sunset clauses are not intended to be applied to products that do not already exist, so the Government will be seeking to amend this element of the proposed LVNAVs.

31.11 Turning to an EU Public Debt CNAV MMF the Minister tells us that the European Parliament proposes allowing CNAV MMFs to continue operating where they are invested in EU government debt. She says that:

- during the financial crisis, government debt MMFs actually saw an increase in investment, suggesting that investors run to, not from, Public Debt CNAV MMFs during times of stress;

- it is broadly recognised, therefore, that Public Debt CNAV MMFs pose less risk to financial stability (and in fact, the US has introduced a similar exemption);

- although the yield on CNAVs invested entirely in government debt would be very low, they would provide utility for investors seeking a highly liquid cash management tool;

- the European Parliament has, however, included a requirement for EU Public Debt CNAVs to invest a minimum of 80% of debt in EU government debt;

- holding only EU government debt could be seen as protectionist and might lead to calls for reciprocity from other jurisdictions;

- it is therefore important to continue negotiations on the restriction to EU debt within a Public Debt CNAV; and

- the Government will be seeking to remove the restriction to EU debt in the proposal for a Public Debt CNAV.

31.12 As for a Retail CNAV MMF the Minister says that:

- the European Parliament proposes to allow the marketing of CNAVs to investors who are considered less prone to redeem and provoke a run;

- this includes local authorities and charities and UK local authorities are supportive of the proposal; and

- as retail investors represent only 5% of the current CNAV market, it is not obvious that a Retail CNAV MMF as proposed would pose significant financial stability concerns, particularly given the additional requirements (increased liquidity, diversification and the introduction of liquidity fees) that the MMF Regulation would introduce.
Finally the Minister tells us that:

- now the European Parliament has voted through its mandate, the Latvian Presidency has been strongly encouraged to restart negotiations;
- it is therefore expected that negotiations will recommence shortly; and
- it is currently unclear whether, and to what extent, proposals put forward by the Presidency will be based on the European Parliament text.

Previous Committee Reports


32 Financial services: benchmarks

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Summary and Committee’s conclusions

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

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

32.3 We thank the Minister for her update.

32.4 We welcome the continued focus of the Presidency in trilogues on a proportionate approach to the regulation of benchmarks. When trilogues are sufficiently advanced, we look forward to hearing further from the Minister as to:

i) the extent to which the European Parliament’s “comply or explain” initiative is likely to incorporated into a final text; and

ii) what such an initiative would involve, particularly for UK benchmark producers, the financial services industry and consumers.

32.5 In the meantime, the document remains under scrutiny.

Full details of the documents: Proposal for a Regulation on indices used as benchmarks in financial instruments and financial contracts: (35328), 13985/13 + ADDs 1–2, COM(13) 641.

Background

32.6 An account of the provisions of the current document, the draft Reasoned Opinion and the Commission’s response are set out in the following Reports of the preceding Committee: Twentieth, Twenty-third, Thirty-ninth and Forty-seventh Reports of 2013-14.

Minister’s letter of 6 July 2015

32.7 In her letter of 6 July, the Economic Secretary to the Treasury (Harriett Baldwin) says:

“The European Parliament voted to approve the ECON Committee’s report on the Regulation in a plenary vote in early June. Their version of the text introduces a ‘comply-or-explain’ regime for producers of benchmarks not designated ‘critical’. They also introduce a recognition regime for third country benchmarks based on these benchmarks demonstrating compliance with the International Organization of Securities Commissions Principles.

“Negotiations have now proceeded to trilogues, where the European Parliament and the Council of the European Union will try to reconcile their respective versions of the Regulation. Two trilogues were held in June 2015. So far discussions have focused on the issue of proportionality, and the Presidency of the Council have attempted to develop a compromise incorporating some aspects of the Parliament’s ‘comply-or-explain’ regime for smaller benchmark producers.
“The UK has supported efforts to avoid a ‘one-size fits all’ regime for benchmarks throughout the negotiation, and so we therefore support this latest effort to ensure there is appropriate proportionality incorporated into the final agreement.

“Luxembourg assumed the Presidency of the Council on 1 July, and they will proceed towards negotiating an agreement on the file; they have scheduled the first trilogue with the Parliament for 15 July.”

Previous Committee Reports


33 European Globalisation Adjustment Fund

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Summary and Committee’s conclusions

33.1 The European Globalisation Adjustment Fund is designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation, in situations where these redundancies have a significant adverse impact on the regional or local economy. In addition to Member States’ ability to apply for support from the Fund, the Commission may apply annually for finance for “technical assistance” of up to 0.5% of the Fund’s current ceiling.

33.2 With this draft Decision the Commission is proposing a European Globalisation Adjustment Fund contribution of €630,000 (£457,800) for technical assistance to administer the Fund, which would be used for administrative expenditure.
33.3 The Government reiterates in its standard terms the need for EU budgetary restraint, including in relation to the European Globalisation Adjustment Fund. It then comments that, in line with this approach, it will seek to ensure value for money in respect of proposals for technical assistance.

33.4 The Commission has applied for a contribution from the European Globalisation Adjustment Fund for technical assistance annually since 2010. On a number of occasions the then Government expressed to the predecessor Committee reservations about the need for such contributions. So before we consider this document again we should like to hear more precisely the current Government’s view of the value for money in regard to this present proposal. Meanwhile the document remains under scrutiny.


Background

33.5 The European Globalisation Adjustment Fund (EGF) is designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation, in situations where these redundancies have a significant adverse impact on the regional or local economy. It was established in 2006 and has been renewed for the 2014-20 budgetary period by Regulation (EU) No. 1309/13 (the EGF Regulation), which sets out the rules governing the use (mobilisation) of the EGF.

33.6 The annual budgetary ceiling for the EGF is €150 million (£109 million) in 2011 prices. In addition to Member States’ ability to apply for support from the Fund, the Commission may apply annually for finance for “technical assistance” of up to 0.5% of the current ceiling.

The document

33.7 With this draft Decision the Commission is proposing an EGF contribution of €630,000 (£457,800) for technical assistance to administer the Fund. It says that the contribution would be used for administrative expenditure including:

- data monitoring and gathering, including data on applications received;
- information provision;
- IT improvements;
- meetings and events; and
- public procurement costs.
33.8 For 2015 0.5% of the annual EGF fund is €750,000 (£545,000) and presently the entire amount remains available.

The Government’s view

33.9 In his Explanatory Memorandum of 27 May 2015 the Financial Secretary to the Treasury (Mr David Gauke) first says in standard terms that:

- the Government has been clear that it wants to see real budgetary restraint in the EU over the coming years;
- reform of EU spending is a priority, but recent action taken by the Government, including the European Council agreement on the 2014-2020 Multiannual Financial Framework, delivers important progress;
- this secured a very substantial reduction in the size of the EGF over the period 2014-2020;
- the Government is committed to continue to work hard to limit EU spending, reduce waste and inefficiency, and deliver the best possible deal for taxpayers; and
- as part of this, it is essential that EU expenditure is closely scrutinised on the basis of value for money.

33.10 The Minister then comments that, in line with this approach, the Government will seek to ensure value for money in respect of proposals for EGF technical assistance.

Previous Committee Reports

None.

34 2015 General Budget and EU Solidarity Fund

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| Document details       | (a) Draft Amending Budget in connection with proposed use of the EU Solidarity Fund  
(b) Proposal for a Decision on the mobilisation of the EU Solidarity Fund (Floods in Romania, Bulgaria and Italy) |
| Legal base             | (a) Article 314 TFEU and Article 106a EURATOM, co-decision, QMV |
European Scrutiny Committee, First Report, Session 2015-16

Department HM Treasury

(a) (36796), 8015/15, COM(15) 161
(b) (36797), 8016/15, COM(15) 162

Summary and Committee’s conclusions

34.1 The Interinstitutional Agreement on budgetary matters provides the possibility of finance for the EU Solidarity Fund, which releases emergency financial aid following a major disaster in a Member State or candidate country. The Commission proposes a Decision to approve four applications, two from Romania and one each from Bulgaria and Italy, for financial aid from the Fund.

34.2 The draft Decision is accompanied by a Draft Amending Budget for the 2015 General Budget, which seeks €66.5 million (£48.3 million) beyond the agreed budget for 2015 to finance the mobilisation of the Fund in relation to the four applications for assistance.

34.3 The Government reiterates its support for the principle and objectives of the EU Solidarity Fund and its approach to EU budgetary restraint. It then says that its view is that the Commission should always look first to reallocate funds from within existing agreed budgets to meet emerging in-year pressures, rather than coming to Member States to request additional money.

34.4 While the Government tells us of its support for the EU Solidarity Fund, we note that it does not say whether it agrees with the Commission’s assessment of these four applications. Nor does it make plain whether it thinks that in this case a reallocation of funds within the existing 2015 General Budget is possible rather than recourse to a Draft Amending Budget.

34.5 Before we consider this matter again we should like to hear further from the Government on these two points. Meanwhile the documents remain under scrutiny.

Full details of the documents: (a) Draft Amending Budget No. 4 to the General Budget 2015 accompanying the proposal to mobilise the European Union Solidarity Fund for Romania, Bulgaria and Italy: (36796), 8015/15, COM(15) 161; (b) Proposal for a Decision on mobilisation of the EU Solidarity Fund (Floods in Romania, Bulgaria and Italy: (36797), 8016/15, COM(15) 162.

Background

34.6 The Interinstitutional Agreement on budgetary matters provides the possibility of finance for (“mobilisation of”) the EU Solidarity Fund (EUSF), which releases emergency financial aid following a major disaster in a Member State or candidate country.

34.7 During the course of a financial year the Commission presents to the Council and European Parliament Draft Amending Budgets (DABs) proposing increases or reductions
for revenue and expenditure in the current EU General Budget — there are normally about ten DABs each year.

**The documents**

34.8 The Commission proposes a Decision, document (b), to approve four applications for financial aid from the EUSF outlined as follows:

- Romania: following flooding in Romania during April/May 2014 as a result of a major disaster in Serbia, Romania submitted a successful bid under the ‘neighbouring country’ provision citing direct damage of €167.9 million (£122 million). The Commission proposes an award to Romania of €4.2 million (£3.1 million) in EUSF grants;

- Romania: after heavy flooding in south-western parts of the country in July/August 2014, Romania suffered direct damage of €171.9m (£125m). Following an approved application for extraordinary regional damage, the Commission proposes an award to Romania of €4.3 million (£3.1 million) of EUSF funding;

- Bulgaria: during July and August 2014, Bulgaria suffered from flooding as a result of intense and heavy rainfall. Direct damage has been assessed at €79.3 million (£57.6 million) in the affected area of Severozapaden, meeting the criteria for ‘regional disaster’. The Commission proposes an award to Bulgaria of €2 million (£1.45 million) from the EUSF; and

- Italy: flooding and landslides affected five regions in Italy during autumn 2014, with direct damage assessed at €2.24 billion (£1.63 billion). The application was assessed as a ‘regional disaster’ by the Commission with EUSF funding of €56 million (£40.7 million) proposed.

34.9 The draft Decision is accompanied by Draft Amending Budget No. 4 for the 2015 General Budget (DAB 4/2015), document (a), which seeks €66.5 million (£48.3 million) beyond the agreed budget for 2015 to finance the mobilisation of the EUSF in relation to the four applications for assistance. The Commission says that, since none of the applications met the criteria for a ‘major disaster’, aid has been applied at the lower rate of 2.5% of total direct damage. Based on the maximum possible funds available under the EUSF, including unspent funds from last year, the Commission notes that there are sufficient EUSF funds available and proposes to finance the mobilisation by increasing the agreed 2015 EU General Budget.

34.10 This is the first proposal in 2015 for a mobilisation of the EUSF.

**The Government’s view**

34.11 In his Explanatory Memorandum of 27 May 2015 the Financial Secretary to the Treasury (Mr David Gauke) says first that:
while the Government supports the principle and objectives of the EUSF, it has been consistently clear that it wants to see real budgetary restraint in the EU in order to avoid unaffordably high costs to the UK;

- to deliver this goal, the Government is committed to continuing to work hard to limit EU spending, reduce waste and inefficiency, and ensure that where EU funds are spent they deliver the best possible value for money for taxpayers; and

- the Government’s view is that the Commission should always look first to reallocate funds from within existing agreed budgets to meet emerging in-year pressures, rather than coming to Member States to request additional money.

### Previous Committee Reports

None.

### 35 European Globalisation Adjustment Fund

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#### Document details

Proposal for a Decision to authorise payment from the European Globalisation Adjustment Fund to Finland

#### Legal base

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

#### Department

HM Treasury

#### Document numbers

(36917), 9609/15, COM(15) 232

### Summary and Committee’s conclusions

35.1 The European Globalisation Adjustment Fund is designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation. This draft Decision is to approve an application from Finland for a contribution from the Fund, in relation to redundancies in the telecommunications sector.
35.2 The Government tells us of its aim of ensuring budgetary restraint and discipline and that it will seek to ensure that all the Fund criteria have been respected in proposals for assistance.

35.3 We note the Government’s comments on this application. However, it does not say as to whether it finds this application acceptable. Moreover, the Government has not addressed questions by the predecessor Committee in relation to ten earlier applications to the Fund, which remain under scrutiny. That Committee asked to what extent the Government’s efforts to ensure that all Fund criteria are respected have resulted in limits to or even rejections of applications by the Council and whether these efforts are supported by any other Member States.285

35.4 So we will not consider this document again until the Government tells us of its view of the acceptability of the present application and answers the questions posed by the predecessor Committee. Meanwhile this document also remains under scrutiny.


Background

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

The document

35.6 This draft Decision is to approve an application from Finland for a contribution from the EGF. Case EGF/2015/001 FI/Broadcom relates to 568 redundant workers in the telecommunications sector who would benefit from support with a proposed EGF contribution of €1,365,000 (£980,000) — 60% of the total budget. The Commission accepts the Finnish authorities’ justification for the application, that is:

- the EU market for mobile chipset development has undergone serious disruption as a result of major structural changes in world trade patterns due to globalisation;
- while the number of product development personnel has increased in the USA and Asia, it has declined steeply in the EU from 5,000 workers to only a few hundred;

• this decline has been reflected in personnel employed in the Finnish electronics and electrical industry; and

• this has had a significant adverse impact on the regional economy of Northern Ostrobothnia, where the majority of redundancies occurred.

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

The Government’s view

35.8 In his Explanatory Memorandum of 17 June 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that:

• the Government has been clear that it wants to see real budgetary restraint in the EU over the coming years;

• reform of EU spending is a priority;

• the Prime Minister’s negotiation of the European Council agreement on the 2014–2020 Multiannual Financial Framework delivered important progress by securing the first real-terms cut on the previous Framework;

• this negotiation also secured a very substantial reduction in the size of the EGF over the period 2014–2020;

• the Government is committed to continue to work hard to limit EU spending, reduce waste and inefficiency, and deliver the best possible deal for taxpayers; and

• in line with this approach, the Government will seek to ensure that all EGF criteria have been respected in proposals for EGF assistance.

Previous Committee Reports

None.

36 Europol

Committee’s assessment

Legally and politically important

Committee’s decision

(a) Not cleared from scrutiny
(b) Not cleared from scrutiny; further information requested; (a) and (b) drawn to the attention of the Home Affairs Committee
Document details
(a) Proposal for a Regulation on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA

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

Department
Home Office

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

Summary and Committee’s conclusions

36.1 Europol is the EU’s law enforcement agency, based in The Hague, which supports Member States in tackling serious international crime and terrorism.286 Originally established on the basis of an intergovernmental Convention, Europol became an EU agency in 2010. The current legal framework governing Europol is set out in a 2009 Council Decision.

36.2 The Lisbon Treaty requires Europol to be established on the basis of a Regulation, adopted by the Council and the European Parliament, which determines its structure, operation, field of action and tasks, and includes (for the first time) provision for scrutiny of its activities by the European Parliament, together with national parliaments.287 The Commission proposed a Regulation — document (a) — in March 2013. The European Parliament agreed its First Reading amendments to the proposed Regulation in February 2014. Shortly afterwards, in June 2014, the Justice and Home Affairs Council agreed a “general approach” — a vital step in determining the Council’s negotiating position with the European Parliament during trilogue discussions which began last autumn.

36.3 The proposed Regulation is based on provisions contained in Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) concerning the area of freedom, security and justice. As such, it is subject to the UK’s Title V opt-in, meaning that the UK will only be bound by the proposal if it has chosen to opt in. The Government decided not to opt into the proposal put forward by the Commission — document (a) — so had no right to vote on the Council general approach set out in document (b), but has played an active role in negotiations and has indicated that it intends to opt into the Regulation, once adopted, if it succeeds in securing its negotiating objectives.

286 Europol’s website provides further details about its mandate, activities and resources.
287 Article 88 TFEU.
36.4 In this chapter, we focus once again on the provisions of the proposed Regulation which deal with scrutiny of Europol’s activities by the European Parliament, together with national Parliaments. We report the reply we have received from the Vice-President of the European Commission, Frans Timmermans, and the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos to a letter our predecessor Committee wrote last November which expressed concern at the far-reaching and excessively prescriptive arrangements proposed by the European Parliament.

36.5 We are heartened by the response we have received from the Vice-President of the European Commission, Frans Timmermans, and Commissioner Avramopoulos which supports our view that the arrangements for parliamentary scrutiny of Europol proposed by the European Parliament are inconsistent with the EU Treaties.

36.6 We expect arrangements for Parliamentary scrutiny of Europol’s activities to be a significant issue in ongoing trilogue discussions between the European Parliament, Council and Commission. As we have made clear in our earlier Reports, it is essential that Member State Governments defend the interests of national parliaments during the trilogue negotiations and ensure that they are not diluted as part of the trade-offs required to secure a deal with the European Parliament. A satisfactory outcome on this issue will be a key factor in considering the merits of any Government recommendation for a post-adoption opt-in to the Regulation. Such a recommendation would undoubtedly warrant an opt-in debate on the floor of the House.

36.7 We look forward to receiving regular progress reports on the trilogue negotiations. Meanwhile, pending further developments, documents (a) and (b) remain under scrutiny. We draw the Commission’s observations to the attention of the Home Affairs Committee.

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

**Background**

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

36.9 The Government’s decision not to opt into document (a) stemmed from a concern that the Commission’s proposal to strengthen the obligation on Member States to share law enforcement information with Europol and to initiate a criminal investigation when requested by Europol might threaten the operational independence of the UK’s law enforcement authorities.
36.10 The Commission proposal also included provision for the functions of Europol and the European Police College (CEPOL) to be merged within a single European Agency for Law Enforcement Cooperation and Training. As both the Council and the European Parliament opposed the merger, the Commission has abandoned this element of its proposal. Europol and CEPOL will continue to operate as independent EU agencies.

36.11 The Government considers that the changes contained in the Council’s general approach — document (b) — are “promising” and have helped to clarify some of the ambiguities in the Commission’s original proposal concerning the extent of Member States’ obligation to share information with Europol and the role of Europol in initiating criminal investigations.

36.12 We have welcomed the Government’s commitment to securing a satisfactory outcome on the provisions on parliamentary scrutiny of Europol’s activities. To reinforce the strength of our concerns, our predecessors wrote last November to the then Italian Presidency (Minister for the Interior, Angelino Alfano), the Chair of the European Parliament’s LIBE Committee (Claude Moraes, MEP) and its Rapporteur for the draft Europol Regulation (Mr Agustin Diaz de Mera Garcia-Consuegra, MEP), as well as to the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos whose reply is reported in this chapter.288

36.13 Our letters drew attention to an Opinion delivered by the Home Affairs Committee on the arrangements proposed for parliamentary scrutiny of Europol, as well as our own legal opinion explaining why we consider that national parliaments cannot be the subject of binding obligations under the EU Treaties or EU secondary legislation.289

36.14 We suggested that the changes proposed by the European Parliament in its First Reading amendments were contrary to the spirit of mutual cooperation enshrined in Protocol (No. 1) on the Role of National Parliaments in the European Union which provides (in Article 9):

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

36.15 By contrast, the European Parliament has sought to go much further, unilaterally establishing a form of scrutiny and oversight by a Joint Parliamentary Scrutiny Group and imposing obligations on national Parliaments which would, in our view, be inconsistent with Article 4(2) TEU which requires the EU to respect Member States’ “national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local government”. We considered the changes to be far-reaching and excessively prescriptive and suggested that they would give the European Parliament a dominant role in overseeing Europol’s activities.


36.16 We understand that the Dutch Tweede Kamer has raised similar concerns, highlighting the “far-reaching changes” on parliamentary scrutiny of Europol proposed by the European Parliament and making clear that “discussion about how to establish efficient and effective procedures for scrutiny of Europol’s activities should take place between the European Parliament and national parliaments”.290

36.17 We have asked the Presidency, Commission and European Parliament to take our concerns fully into account during trilogue negotiations and to resist any attempt to prescribe and impose a new model of scrutiny on national parliaments.

The letter from Commissioners Timmermans and Avramopoulos of 20 April 2015

36.18 In their joint letter, the Vice-President of the Commission (Frans Timmermans) and the Commissioner for Migration, Home Affairs and Citizenship (Dimitris Avramopoulos) refer to a 2010 Communication published by the Commission concerning procedures for the scrutiny of Europol’s activities by the European Parliament, together with national Parliaments.291 They note that the Commission has “on several occasions made its position clear on the modalities” for joint scrutiny of Europol’s activities. The letter continues:

“During the consultations on the Communication and the debates that followed, several solutions were discussed in the different fora where the stakeholders met. The Commission expressed support for the setting up of an inter-parliamentary forum in order to establish a formal mechanism for information exchange and coordination between national Parliaments and the European Parliament. Nonetheless, the Commission considered that it lies within the power of both the European Parliament and the national Parliaments to coordinate their work and enhance their cooperation, and that they should be encouraged to take that initiative as well as ownership of their own procedures.

“For these reasons, the Commission agrees with the House of Commons that the model of scrutiny of Europol’s activities as proposed by the European Parliament through a supranational body would go beyond what is provided by the Treaty.

“Therefore, the Commission maintains this position and considers that, in order to respect the independence of national Parliaments and of the European Parliament as well as their freedom to organise themselves, it is not for the proposed Regulation to set the rules and modes of such cooperation.”

36.19 The Commissioners conclude by expressing their hope that “these clarifications address the concerns raised by the House of Commons” and look forward to “continuing our political dialogue in the future”.

290 Letter of 12 February 2015 from the Chair of the Standing Committee on Security and Justice in the Tweede Kamer to the Rapporteur of the LIBE Committee, Mr Díaz de Mera García-Consuegra.

37 European Public Prosecutor’s Office

Committee’s assessment
Legally and politically important

Committee’s decision
(a) and (c) Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs, Justice, Northern Ireland Affairs and Scottish Affairs Committees; (b) Cleared from scrutiny

Document details
Proposal for a Regulation on the establishment of the European Public Prosecutor’s Office (EPPO):
(a) original Commission proposal;
(b) first alternative Council text;
(c) second alternative Council text

Legal base
Article 86 TFEU; EP consent; unanimity

Department
Home Office

Document numbers
(a) (35217), 12558/13 + ADDs 1–2, COM(13) 534;
(b) (36044), 9834/14, —; (c) (36931), 9372/15,—

Summary and Committee’s conclusions
37.1 In July 2013 the Commission proposed a Regulation to establish a European Public Prosecutor’s Office (EPPO) with the objective of combatting fraud on the EU budget (document (a)). This provided a supranational model for an EPPO. It would have exclusive competence to investigate and prosecute offences against the EU’s financial interests, meaning that the relevant national authorities would be excluded from so doing without the permission of the EPPO. The EPPO would comprise: a central European Public Prosecutor (EPP) assisted by Deputies. In each Member State there would be at least one
European Delegated Prosecutor (EDP). The EDPs would carry out the investigations and prosecutions under the authority and management of the EPP.

37.2 The proposal is subject to a special legislative procedure requiring the consent of the European Parliament and unanimity in the Council. After the Council has exhausted all options for obtaining unanimity, a group of at least nine Member States may enter into enhanced cooperation. The UK is not participating in the proposed Regulation in accordance with the previous Government’s Coalition Agreement. The European Union Act 2011 requires any future participation to be sanctioned through a referendum.

37.3 As the establishment of an EPPO could adversely affect the UK and EU bodies such as Eurojust and OLAF, the preceding Committee had concerns about the proposal. On its recommendation, the House agreed to issue a Reasoned Opinion. This annexed a relevant Opinion from the Justice Committee of the Scottish Parliament. The total number of Reasoned Opinions from national Parliaments exceeded the “yellow card” threshold under the Subsidiarity Protocol\(^{292}\) but the Commission did not withdraw the proposal. It remains under scrutiny, not least because it has not been entirely superseded by the subsequent texts (documents (b) and (c)).

37.4 Documents (b) and (c) are partial, alternative Presidency texts to the original EPPO proposal (a). They are, to some extent, revisions of the original Commission proposal which take into account the concerns of Member States, including those expressed by national Parliaments in Reasoned Opinions. Document (b) was scrutinised by the preceding Committee but is now superseded by new document (c).

37.5 New document (c) retains the new collegiate model for an EPPO which was first innovated by document (b). At EU level, a Central Office will comprise a College of European Prosecutors and Deputies and its Permanent Chambers. The national level will consist of the EDPs — national prosecutors acting on behalf of EPPO. The College will be responsible for monitoring the EPPO’s activities and for strategic matters, including the consistent application of prosecution policy. It also provides for concurrent competences for an EPPO and national prosecution services to investigate offences against the EU budget.

37.6 Specifically, document (c) contains the text for Articles 1 to 16 but also a redrafted version of Articles 17 to 33. Recitals have not yet been negotiated and redrafted, but Member States have made extensive suggestions in footnotes for recitals to provide clarity on their interpretation of definitions and key concepts or features covered in the text.

37.7 The new Government now provides its view of the text. In summary, it reports that “broad conceptual support” expressed by participating Member States to Articles 1-16 at the JHA Council of 15 June. The relationship between an EPPO and non-participating Member States (including the UK) and EU bodies such as Eurojust and OLAF has still not

\(^{292}\) Protocol No 2 to the EU Treaties on the application of the principles of subsidiarity and proportionality.
been addressed. Developments on the text at this Council meeting were also the subject of a Written Ministerial Statement by the Home Secretary (Mrs Theresa May).293

37.8 We thank the Minister for his Explanatory Memorandum on the new Council text, document (c).

37.9 We note that the important question of how an EPPO will interact with other EU bodies, third countries and non-participating Member States, has still yet to be addressed in Council. We ask the Minister to continue to keep us informed of developments, particularly on this significant question. We are particularly interested in:

a) whether the relationship between the EPPO and non-participating Member States might also be underpinned by the principle of sincere co-operation; and

b) whether national Parliaments of non-participating Member States will also be able to invite the European Chief Prosecutor to appear before them—or does the understanding that “Member State” means “participating Member State” extend to national Parliaments in this respect?

37.10 In the meantime, we clear document (b) from scrutiny as it has been superseded by document (c). We retain documents (a) and (c) under scrutiny and draw this Report to the attention of the Home Affairs, Justice, Northern Ireland Affairs and Scottish Affairs Committees.

Full details of the documents: (a) Proposal for a Regulation on the establishment of a European Public Prosecutor’s Office: (35217), 12558/13 + ADDs 1–2, COM(13) 534; (b) Proposal for a Regulation on the establishment of the European Public Prosecutor’s Office — State of Play/Orientation debate: (36044), 9834/14, —; (c) Proposal for a Council Regulation on the establishment of a European Public Prosecutor’s Office: (36931), 9372/15, —.

Background and previous scrutiny

37.11 An account of the provisions of the original Commission proposal (document (a)) and the Government’s view is set out in our predecessors’ Fifteenth Report of 2013–14 which also includes the draft Reasoned Opinion.294 For document (b), a similar account is set out in our Fourth Report of 2014–15.295

37.12 We note that during the previous scrutiny of these proposals the devolved administrations of Scotland and Northern Ireland have been concerned about the potential impact of the establishment of an EPPO on the independence and functions of their own prosecutorial and investigative systems.

293 HC Deb, 23 June 2015, col. 19W5 (Commons written ministerial statement).


The current document (c)

37.13 Article 2 and Article 4 have been revised to reflect developments in negotiations on the Directive on the fight against fraud to the Union’s financial interests by means of criminal law (commonly known as the PIF Directive). 296

37.14 Article 5 now states that EPPO practitioners will look to the Regulation for their primary powers but where the Regulation does not cover a matter they should use powers available to them under national law. The principle of sincere cooperation will now apply to competent national authorities of participating Member States to ensure they actively assist the EPPO. In return, footnote 6 carries a suggested recital explaining that this principle should also apply to the EPPO. This is in order to ensure that it informs competent national authorities of any information it receives or finds about an offence which is outside its legal remit.

37.15 A new Article 6a has been added to create a reporting process. Every year the EPPO will issue a public Annual Report which will be transmitted to the Council, the Commission, the European Parliament and national Parliaments. The European Chief Prosecutor will appear before the European Parliament, the Council, and national Parliaments (at their request) once a year to give an account of the EPPO’s activities.

37.16 The Latvian Presidency has focused negotiations on Articles 7 to 15, which deal with the internal structure of the EPPO. The new text retains the two-tiered structure already described. The rules on appointment and dismissal (including replacement and substitution) in Articles 13, 14 and 15 are drafted on the basis that the primary power to appoint and dismiss the College should lie with the Council of Ministers, while the power to appoint and dismiss the EDPs should lie with the College.

37.17 Section 4 on competence and jurisdiction — Articles 17, 18 and 19 — draws on Article 4 but cannot be settled until the PIF Directive’s list of offences affecting the financial interests of the Union are agreed. The Presidency records that there is continuing debate on whether there should be a dynamic or static reference to the PIF Directive, and the inclusion of any form of ancillary offence in the EPPO Regulation.

37.18 Articles 20 to 25 (there is no Article 22) cover reporting and basic rules on how to conduct investigations, with Articles 26 to 29 covering investigative powers and other measures. The text and footnotes for Articles 30 to 33 reflect the state of play at the end of the Italian Presidency in December 2014 as they have not been rewritten during the Latvian Presidency.

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The Government’s view of document (c)

37.19 The Minister for Immigration (James Brokenshire) in his Explanatory Memorandum of 30 June first outlines the provisions of the next text (see paragraphs 37.13-37.18 of this chapter). He then provides some overall comments on the text:

“The Government is clear that the UK will not participate in any EPPO proposal. There is agreement among the Member States that any reference to ‘Member State’ in this text refers to a participating Member State only.

“All Member States recognise and acknowledge that the interests of non-participating Member States must be respected, but the negotiation have yet to consider in detail any necessary safeguards in that respect. The final form that an EPPO might take, and how it would interact with non-participating Member States, remains unclear. Despite non-participation, the Government is fully engaged in this negotiation and is constantly reviewing the proposal. Where issues raised may impact on the UK, we actively remind others of our concerns.

“The Government also notes that once the PIF Directive is agreed this will clarify the criminal offences affecting the financial interests of the Union for which the EPPO shall have competence. We are fully engaged in the separate negotiation of the PIF Directive.”

37.20 The Minister continues to note the concerns of the devolved administrations on the establishment of an EPPO. He says:

“Scotland maintains policy concerns in terms of the independence of the Lord Advocate at the head of its systems of prosecution and investigation of crime. Northern Ireland has similar policy concerns in terms of the independence of the DPP for Northern Ireland at the head of the PPS for Northern Ireland. It has also confirmed its prosecutorial and investigative functions are separate and that prosecutors in Northern Ireland do not have powers in relation to search, seizure, interception, surveillance, monitoring financial transactions or covert video surveillance.”

37.21 On the question of next steps, the Minister says:

“The Latvian Presidency held an expert level meeting on 18 and 19 June to discuss the outcome of the Council and then handed the dossier over to the incoming Presidency, Luxembourg. Detailed discussions on Articles 17 to 19 will start in the first week of July.”

Previous Committee Reports

38 Free movement of workers from Croatia

Committee’s assessment
Politically important

Committee’s decision
Not cleared from scrutiny; further information requested; drawn to the attention of the Northern Ireland Affairs, Scottish Affairs and Welsh Affairs Committees

Document details
Commission Report on the Functioning of the Transitional Arrangements on Free Movement of Workers from Croatia (First phase: 1 July 2013 to 30 June 2015)

Legal base
-

Department
Home Office

Document numbers
(36922), 9653/15 + ADD 1, COM(15) 233

Summary and Committee’s conclusions

38.1 Croatia became a member of the European Union on 1 July 2013. The Act setting out the conditions for Croatia’s accession to the EU includes a number of transitional measures which allow the application of EU rules in certain areas to be phased in over a period of years.297 One of the areas concerns the free movement of workers. Transitional arrangements allow Member States to restrict access to their labour markets for up to seven years from the date of Croatia’s accession to the EU. The Commission Report reviews the operation of these transitional arrangements during the first two years of Croatia’s membership of the EU. Member States wishing to maintain restrictions on labour market access beyond this initial two-year period are required to notify the Commission of their intention to do so by 30 June 2015.

38.2 The Commission Report concludes that future potential flows of Croatian workers to other EU Member States are likely to be small and, even in the main destination countries, are unlikely to lead to labour market disturbances. It says that restrictions on labour market access are one of a number of factors influencing labour mobility — employment opportunities, and historical, linguistic and cultural ties are also important. In any event, labour market restrictions in some Member States may have a limited effect as they do not apply to those who are self-employed or are “posted” to another Member State to provide services. The age, educational profile and high employment rate of Croatian workers suggest that they are likely to make a positive economic contribution.

38.3 The Minister for Immigration (James Brokenshire) explains that the labour market restrictions in place in the UK consist of a worker authorisation requirement which limits the employment of Croatian nationals to skilled work. He confirms that the Government will decide whether or not to extend these restrictions for a further three year period, to 30 June 2018, before the deadline of 30 June 2015, but does not indicate what the Government’s decision will be.

38.4 The deadline for notifying the Commission of any remaining restrictions on access to the UK labour market has expired. We ask the Minister whether the Government has decided to extend the existing restrictions for a further three-year period.

38.5 We note that the Government has consulted the Devolved Administrations on the Commission Report. We would welcome further information on the views they have expressed on the Government’s decision to lift or maintain current labour market restrictions for Croatian nationals.

38.6 Pending the Minister’s reply, the Commission Report remains under scrutiny. We draw it to the attention of the Northern Ireland Affairs, Scottish Affairs and Welsh Affairs Committees.


Background

38.7 Detailed provisions on the transitional arrangements governing the free movement of workers following Croatia’s accession to the EU on 1 July 2013 are contained in Annex V of the Act of Accession. The seven-year transitional period during which Member States may impose restrictions on access to their labour markets is divided into three phases:

- During the first phase, from 1 July 2013 to 30 June 2015, access to the labour market is governed by national measures in each Member State.

- During the second phase, from 1 July 2015 to 30 June 2018, Member States may continue to apply national measures to regulate access to their labour markets, but are required to notify the Commission of their intention to do so before the end of the first phase. Restrictions on labour market access can be lifted at any time during this phase.

- During the third phase, from 1 July 2018 to 30 June 2020, Member States may only apply national measures to regulate access to their labour markets if they notify the Commission that the lifting of these measures would cause, or create the risk of, “serious disturbances” of their labour markets.

38.8 All transitional arrangements end on 30 June 2020. For those Member States choosing to apply EU free movement rules during the seven-year transitional period, there is a
safeguard procedure which allows the rules to be suspended if there is evidence of labour market disturbances “which could seriously threaten the standard of living or level of employment in a given region or occupation”.298 For those maintaining national restrictions, there are provisions to protect individuals already legally working in a Member State at the date of Croatia’s accession to the EU, or admitted subsequently, and who have been in employment for an uninterrupted period of at least 12 months. In such cases, the workers concerned continue to enjoy a right of access to the labour market of the Member State in which they are employed, but not to the labour markets of other Member States.

38.9 Croatia is entitled to apply equivalent reciprocal measures restricting access to its own labour market until the end of the seven-year transitional period (or for a shorter period if restrictions on labour market access in other Member States are lifted sooner).

The Commission Report

38.10 The Commission Report is intended to inform the Council’s review of the functioning of the transitional provisions on the free movement of workers which must be completed before the end of the first phase.299 It describes the transitional arrangements currently in place, the actual and potential flow of Croatian workers to other Member States, and their expected impact on the economy and the labour market of the destination countries.

Member States applying restrictions during the first phase

38.11 The Report notes that thirteen Member States — including the UK — are applying restrictions on access to their labour markets during the first phase (these generally take the form of a work permit requirement) and that Croatia has likewise introduced reciprocal restrictions. The Commission makes clear, however, that the restrictions do not affect the “fundamental right” of EU citizens to move and reside freely within the EU under Article 21 of the Treaty on the Functioning of the European Union (TFEU), nor do they apply to self-employed workers or those providing services within the EU.300 Similarly, there are no transitional arrangements limiting, for a temporary period, the application of EU rules on the coordination of social security schemes.

Labour mobility between Croatia and other Member States

38.12 Croatia has a small population (4.2 million in 2014) representing only 0.8% of the total EU population. Whilst the outflow of its own nationals to other Member States is significant for Croatia, representing around 10% of its working-age population and 2.8% of all mobile EU citizens of working age (15–64), most of these outward flows pre-date

298 The decision to suspend the application of EU free movement rules is taken by the Commission, but may be amended or annulled at the request of a Member State by the Council, acting by a qualified majority.

299 See para 2(3) of Annex V to Croatia’s Act of Accession.

300 The right to reside is already subject to various limitations and conditions set out in EU secondary legislation. Croatia’s Act of Accession also includes some limited transitional arrangements restricting the posting of workers from companies based in Croatia to certain service sectors in Austria and Germany.
Croatia’s accession by ten years or more and are concentrated in Germany (68% of mobile Croatians), Austria (17%), Italy (5%), the UK (3%) and Slovenia (2%).

38.13 Since acceding to the EU on 1 July 2013, the Commission Report indicates that there is some evidence of increasing mobility from Croatia, particularly to Member States which already host a large number of Croatians (Austria, Germany, Italy and Slovenia), despite the fact that countries have maintained national restrictions.\(^{301}\) Inflows of Croatian nationals to the UK remain limited. Amongst Member States that have opened their labour markets, inflows of Croatian workers “remain limited in both absolute and relative terms” \(^{302}\).

38.14 Whilst there are, as yet, no comprehensive data on post-accession migratory flows, the Commission suggests that there has not, so far, been “any major diversion of flows” as a result of differences in access to the labour market across EU Member States. Those leaving Croatia since 1 July 2013 have continued to move to traditional destination countries. Comparing the flows of migrants to those generated by the previous enlargements in 2004 and 2007, the Commission concludes:

“The scale of mobility after Croatia’s accession has been small in absolute terms and in relation to the population of the receiving countries.” \(^{303}\)

38.15 The Commission expects the outflow of workers from Croatia to other Member States to remain “relatively limited” as a percentage of the EU labour force and of EU migrant labour in the host Member States. In its analysis of the push and pull factors which shape labour migration, the Commission notes that Croatia has the third lowest GDP per capita in the EU, the third highest unemployment and youth unemployment rates, and a larger than average proportion of people at risk of poverty or social exclusion. However, per capita GDP and gross household disposable income are increasing, as is the employment rate, and wages were the second highest amongst central and eastern European Member States in 2013.

38.16 The factors most likely to influence future mobility are the availability of jobs, higher wages and better working conditions, but geographical proximity, cultural and historical links and existing “networks” of compatriots in other Member States are also likely to play a part in the choice of destination country. Drawing on an analysis of these factors, as well as survey evidence, the Commission suggests that “post-accession mobility from Croatia is likely to be small, whatever the legal regime on access to work”. It cites forecasts indicating that net migration from Croatia to the other 27 Member States (“EU-27”) during the period 2013–19 will be within a range of +166,000 (if existing labour market restrictions are maintained) and +217,000 (if all Member States open their labour markets on 1 July 2015), constituting between 0.03% and 0.04% of the total EU-27 population. The Commission anticipates that Germany, Austria and Italy are likely to receive more than

\(^{301}\) The increase is more marked amongst those who are self-employed and to whom the labour market restrictions do not apply.

\(^{302}\) See p.6 of the Commission Report.

\(^{303}\) See p.6 of the Commission Report.
80% of these net flows, regardless of whether they decide to lift or maintain restrictions on labour market access.

**The economic and labour market impact of migration**

38.17 The Commission observes that the impact of migration in the main destination countries depends, to a large extent, on the characteristics of those who have recently migrated. In the case of Croatia, they tend to be “predominantly young” — 62% of recent movers were aged between 15 and 34 — relatively well-educated and economically productive, with a “higher employment and lower inactivity rate than average”.304 These factors point to “a potential positive impact” for the destination countries, although the Commission acknowledges that it is too soon to estimate the actual economic, labour market and fiscal impacts of mobility from Croatia since 1 July 2013. It suggests that most studies of earlier waves of migration have found, however, that labour migration within the EU has a positive economic and fiscal impact, and that the impact on wages and unemployment (at least in the long-run) in the host Member States is marginal.

38.18 Turning to the impact on Croatia, the Commission observes that the outward flow of predominantly young and well-educated people could worsen both its demographic profile and growth prospects. It suggests, however, that “bottlenecks” and skills shortages within particular sectors can be attributed to inadequate planning and “a lack of technical and workplace competencies” rather than emigration. The Commission underlines the importance of labour mobility as “an economic adjustment mechanism”, highlights “the potential benefits of people being employed in another Member State compared to remaining unemployed at home”, and notes that migration is often “circular”, enabling migrants to return home with valuable experience and skills.305 In addition, remittances are estimated to have contributed 1.6% of Croatia’s GDP in 2013, to have “helped decrease the level, depth and severity of poverty in Croatia”, and to have boosted savings and investment and contributed to stabilising the economy.306

**The Minister’s Explanatory Memorandum of 24 June 2015**

38.19 The Minister notes that the Commission Report “is purely informative and does not have any binding legal effects”.307

38.20 He explains that the national measures applicable in the UK during the first phase of the seven-year transitional period are contained in the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 and subsequent amending Regulations, and consist of a worker authorisation requirement. He continues:

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304 See p. 8 of the Commission report.
305 See p.11 of the Commission report.
306 Ibid.
307 See para 1 of the Minister’s Explanatory Memorandum.
“Their effect is to restrict Croatian nationals’ employment to skilled work, which may be subject to a labour market test, for the first 12 months of their employment in the UK.”

38.21 The Minister says that the Government will decide whether or not to extend these restrictions on labour market access for a further three year period, to 30 June 2018, before the deadline of 30 June 2015. He does not indicate what the Government’s decision will be.

**Previous Committee Reports**

None.

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308 See para 15 of the Minister’s Explanatory Memorandum.
39 EU participation in prevention of terrorism measures

Committee’s assessment
Legally and politically important

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

Document details
(a) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196); (b) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)

Legal base
(a) Articles 82, 83(1), 84, 87(2) and 218(5) TFEU; QMV (b) Articles 83(1) and 218(5) TFEU; QMV

Department
Home Office

Document numbers
(a) (36942), 9975/15 + ADD 1, COM(15) 292
(b) (36941), 9969/15 + ADD 1, COM(15) 291

Summary and Committee’s conclusions

39.1 The purpose of these proposed Council Decisions is to authorise the EU to sign the Council of Europe Convention on the Prevention of Terrorism 2005 — document (a) — and a recently agreed Additional Protocol — document (b). Both proposals are subject to the UK’s Title V (justice and home affairs) opt-in, meaning that the UK will only be bound by them if it decides to opt in.

39.2 The Minister for Security (Mr John Hayes) questions whether the Commission has established that the EU has exclusive competence in the areas covered by the Convention and Additional Protocol and explains that the Government is undertaking its own competence analysis. He indicates that the Government is “minded” not to opt into the proposed Council Decision authorising the EU to sign the Additional Protocol — document (b).

39.3 We understand that the basis for the Commission’s claim to exclusive external competence is that participation in the Convention and Additional Protocol may affect common EU rules or alter their scope. We do not consider that the Commission has provided a sufficiently comprehensive and detailed analysis of the relationship between the Convention and Additional Protocol on the one hand, and existing EU rules on the other, to establish that the EU has exclusive external competence. Nor are we satisfied that there is sufficient certainty regarding “the foreseeable future development” of these rules to establish that the Convention and Additional Protocol would be capable
of undermining the uniform and consistent application of EU rules and the proper functioning of the system which they establish.309

39.4 We note that the Government is undertaking its own competence analysis and ask the Minister to share the outcome with us. If this analysis were to reveal that there are areas in which the EU has exclusive external competence, we ask the Minister for an assurance that he will press for the proposed Council Decisions to be amended to make clear that the EU is only acting in respect of matters for which it has exclusive competence. We also ask him to explain how a finding that the EU has exclusive external competence for elements of the Convention and/or Additional Protocol would affect the UK’s opt-in decision.

39.5 The Minister indicates that the Government is “minded” not to opt into the proposed Decision on signature of the Additional Protocol — document (b) — in order to ensure that the UK is not bound by EU competence, but provides no such indication of the Government’s intentions in relation to the Convention — document (a). We note that one of the factors influencing the Government’s opt-in decisions is the risk that UK participation in either or both proposed Decisions might undermine the UK’s “block opt-out” of a range of EU police and criminal justice measures adopted before the Lisbon Treaty took effect on 1 December 2009, including some of the measures which provide the foundation for the Commission’s claim to exclusive competence. We consider this to be a valid concern. It would appear perverse to opt out of measures establishing EU competence in the internal sphere, only to reinstate EU competence by opting into similar measures in the external sphere. We ask the Minister to ensure that the reasons for the Government’s opt-in decisions in relation to both instruments are fully explained to Parliament.

39.6 In principle, we agree with the Minister that, in areas where competence is shared, Member States should act in their own right. We do not consider that the Commission has demonstrated how or why action by the EU in the areas covered by the Convention and Additional Protocol would produce clear “added value”. We ask the Minister to report back to us on the progress made by the Government in limiting or eliminating EU involvement in both instruments.

39.7 Pending further information, the proposed Council Decisions remain under scrutiny.

**Full details of the documents:** (a) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196): (36942), 9975/15 + ADD 1, COM(15) 292; and (b) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196): (36941), 9969/15 + ADD 1, COM(15) 291.

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309 See para 33 of the judgment of the Court of Justice in Case C-66/13, [Green Network](#).
Background

39.8 On 16 June, the Security Minister wrote to advise us that the Government had decided not to opt into a Council Decision authorising the Commission to negotiate, on behalf of the EU, an Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism 2005 (“the Convention”) and that the UK had participated in “fast track” negotiations on the Additional Protocol in its own right. The Minister accepted that the EU had shared competence for matters contained in the Additional Protocol, and that the Commission was entitled to seek Council approval authorising it to negotiate on behalf of the EU. The UK and a number of other Member States objected, however, to the Commission’s assertion that the EU had exclusive competence, meaning that only the EU, not Member States, could take part in the negotiations. The Council nevertheless proceeded to adopt a Decision authorising the Commission to negotiate, without defining the areas in which the EU is (and is not) competent to act. The Minister expected the issue of competence to be addressed when the Commission proposed Council Decisions authorising signature of the Additional Protocol.310

39.9 In our reply to the Minister, we deprecated the haste with which the Decision authorising the Commission to negotiate on behalf of the EU was adopted by the Council, without resolving the existence or extent of EU competence in relation to counter-terrorism measures. In the circumstances, we agreed that it would have been inappropriate for the UK to opt into the Council Decision.

39.10 The Commission has now put forward proposals authorising the EU to sign both the Convention and the Additional Protocol. These Council of Europe instruments are intended to strengthen efforts at national and international level to prevent and combat terrorism and to address the phenomenon of foreign terrorist fighters. The Convention was adopted in the aftermath of the 9/11 terrorist attacks in the United States of America. State Parties to the Convention are required to establish as criminal offences action which may lead to the commission of a terrorist offence, such as public provocation or incitement of terrorism, recruitment for terrorism and the provision of training for terrorism. These offences must be accompanied by “effective, proportionate and dissuasive penalties” and implemented in a way which respects human rights obligations, in particular the right to freedom of expression, association and religion. There are specific provisions on protection, support and compensation for victims of terrorism. The Convention also includes rules on jurisdiction and on international cooperation in investigating and prosecuting terrorist offences.

39.11 Negotiations on an Additional Protocol to the Convention were concluded within the Council of Europe in April this year. The purpose of the Additional Protocol is to give effect to UN Security Council Resolution (UNSCR) 2178 (2014) which was adopted in September 2014 and seeks to strengthen the legal framework for preventing terrorism and tackling foreign terrorist fighters.311 The Additional Protocol extends the categories of acts

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310 See letter of 16 June 2015 from the Security Minister to the Chair of the European Scrutiny Committee.
311 UNSCR 2178 (2014).
which are to be made serious criminal offences to include participation in an association or
group for the purpose of terrorism, receiving training for terrorism, and travelling abroad
(or funding or otherwise facilitating such travel) for the purpose of terrorism. State Parties
are also required to designate an around-the-clock contact point to exchange information
on foreign terrorist fighters.

39.12 There is a mixed picture on signature and ratification of the Convention by EU
Member States (the Additional Protocol is not yet open for signature). One Member State
has neither signed nor ratified the Convention. Six, including the UK, have so far signed,
but not ratified, the Convention. The remaining 21 EU Member States have ratified it.
Although the EU is entitled to become a Party to the Convention and Additional Protocol,
it has not yet done so.312

39.13 Within the EU legal framework, a Framework Decision adopted in 2002, and
amended in 2008, requires Member States to establish various acts as terrorist offences,
including those set out in the Council of Europe Convention on the Prevention of
Terrorism, and to ensure that they are punishable by “effective, proportionate and
dissuasive penalties”.313 A statement agreed by EU Justice and Home Affairs Ministers in
January 2015, following the Charlie Hebdo attacks in Paris, underlined the importance of
the judicial aspect of combating terrorism and the need to “consider further legislative
developments with regard to the common understanding of criminal activities related to
terrorism in light of UNSCR 2178 (2014)”.

39.14 The Convention takes account of existing EU rules covering areas also governed by
the Convention by means of a “disconnection clause” which provides that EU rules prevail
in relations between EU Member States.315

39.15 The UK no longer participates in the 2002 Framework Decision, as amended,
following its decision to opt out en masse of a range of EU police and criminal justice
measures agreed before the Lisbon Treaty entered into force on 1 December 2009. The
UK’s block opt-out took effect on 1 December 2014. In choosing to opt out of the
Framework Decisions, the Government explained that they created “a useful standard for
terrorist offences” and “a more hostile environment for terrorists” across Europe, but
added that the offences concerned “could be achieved by Member States acting
individually”.

The proposed Council Decisions

39.16 The first proposed Council Decision — document (a) — provides for the EU to sign
the Convention, subject to a further Decision authorising the EU to conclude (ratify) the
Convention. It cites four Articles in the Treaty on the Functioning of the European Union (TFEU) as the basis for the EU’s competence to sign the Convention:

- Article 82 TFEU sets out a number of areas in which the EU may adopt legislative measures to strengthen judicial cooperation in criminal matters, including resolving conflicts of jurisdiction, providing support for judicial training, and establishing minimum rules on the rights of victims of crime;
- Article 83(1) TFEU provides for the adoption of minimum rules concerning the definition of criminal offences and sanctions in areas of “particularly serious crime with a cross-border dimension”, including terrorism;
- Article 84 TFEU authorises the EU to adopt measures to “promote and support the action of Member States in the field of crime prevention”, but excludes any harmonisation of national laws; and
- Article 87(2) TFEU provides for measures in the field of police cooperation, including training and the exchange of information to prevent, detect and investigate criminal offences.

39.17 The second proposed Council Decision — document (b) — provides for the EU to sign the Additional Protocol to the Convention, and is similarly subject to a further Decision authorising the EU to conclude (ratify) the Additional Protocol. It cites only Article 83(1) TFEU as the basis for the EU’s competence to act.

39.18 The procedures for authorising the EU to sign the Convention and Additional Protocol are set out in Article 218(5) TFEU. Both proposed Decisions require approval by a qualified majority of the Council. Further Council Decisions (not yet published) ratifying the EU’s participation in the Convention and Additional Protocol will, in addition, require the consent of the European Parliament.

39.19 In its explanatory memorandum accompanying the proposals, the Commission notes that “there is a large body of EU instruments governing the various areas covered by the Convention” and that the EU has competence to sign and become a Party to the Convention “to the extent that the Convention falls within Union competence”.317

39.20 The Commission sets out the basis on which the EU has exclusive competence in relation to international agreements. Article 3(2) TFEU provides that such competence arises in cases where participation in an international agreement “may affect common rules or alter their scope”. The Commission continues:

“An international agreement may affect common rules or alter their scope where the area covered by the agreement overlaps with Union legislation or is covered to a large extent by Union law. Moreover, to assess whether an area is covered to a large extent by Union law account must be taken not only of Union law as it currently

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317 See p.2 of the Commission’s explanatory memorandum accompanying document (a).
stands in the area concerned, but also of its future development, in so far as that is foreseeable” (our emphasis).318

39.21 The Commission notes that the EU has already adopted measures in areas covered by the Additional Protocol. It says that relevant criminal law provisions are contained in the EU Framework Decision on Terrorism, whilst recognising that the Additional Protocol would “widen the scope of the offences that must be criminalised”.319 Provisions on enhanced information exchange can be found in a variety of EU instruments, notably a Framework Decision on the exchange of information and intelligence between national law enforcement authorities (the so-called “Swedish initiative”), the Prüm Decisions enhancing cross-border cooperation to combat terrorism and cross-border crime, and a Council Decision on the exchange of information and cooperation concerning terrorist offences.320 According to the Commission, these instruments regulate the exchange of information for the purpose of terrorist-related investigations and also establish national contact points. As a consequence, “the conclusion of the Additional Protocol may therefore affect common rules or alter their scope”.321

39.22 The UK participates in the Swedish initiative, is currently undertaking a “business and implementation case” with a view to deciding whether to seek to opt into the Prüm Decisions, but does not take part in the Council Decision on information exchange.322

39.23 Turning to “the foreseeable future development” of EU law, the Commission notes that the Council has called for a possible revision of the Framework Decision on Terrorism in 2016 to take account of the provisions of UNSCR 2178 (2014) concerning foreign terrorist fighters. The Commission also intends to launch an impact assessment of the Framework Decision with a view to updating its provisions to reflect the outcome of negotiations on the Additional Protocol to the Convention.

39.24 The Commission recognises that both proposed Council Decisions will not apply to the UK unless the Government notifies its intention to opt in.

The Minister’s Explanatory Memorandum of 29 June 2015

39.25 The Minister explains that the UK participated fully in the development of the Additional Protocol, which was adopted by the Council of Europe on 19 May, and has domestic legislation in place which is compliant with the requirements of both the Convention and the Additional Protocol.323 He recalls that the UK objected to the

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318 See p.4 of the Commission’s explanatory memorandum accompanying document (b). The Commission relies on a Court of Justice ruling in Case C-66/13, Green Network.
319 See p.4 of the Commission’s explanatory memorandum accompanying document (b).
321 See p.5 of the Commission’s explanatory memorandum accompanying document (b).
322 See Command Paper 8897, published in July 2014. The Government has undertaken to present to Parliament in September 2015 the results of a business and implementation case on UK participation in Prüm. The final decision on UK participation will depend on the outcome of a vote to be held in Parliament before the end of 2015.
323 For example, the Terrorist Acts 2000 and 2006, the Serious Crime Act 2015 and the Counter-Terrorism and Security Act 2015. See paras 25 and 26 of the Minister’s Explanatory Memorandum.
Commission’s assertion of exclusive external competence when it sought a mandate from the Council to negotiate the Additional Protocol earlier in the year. He continues:

“The Government remains of the view that substantive criminal law, including in relation to CT [counter-terrorism] measures, is not harmonised at EU level, and therefore cannot be said to be largely covered by common rules. While there are existing EU minimum standards in this area, minimum standards are not common rules and are therefore incapable of generating exclusive external EU competence in accordance with Article 3(2) TFEU. We accept that there is shared competence in this area, and it is therefore for the Council to decide whether to authorise the Commission to negotiate, sign and conclude the Additional Protocol on behalf of the EU. In the case of the negotiating mandate, the Council agreed to authorise the Commission to negotiate to the extent that there was EU competence. As the UK did not opt in to this Decision, we had no vote.”

39.26 Turning to the Convention, the Minister notes that it covers a range of policy areas, as reflected in the legal bases cited in the proposed Council Decision. He adds:

“The Government is undertaking a competence analysis of the Convention to decide whether there is any exclusive EU competence arising from it. We remain of the view that the main EU legislation in policy areas covered by the Convention is minimum standards in substantive criminal law (related to Counter-Terrorism), which give rise only to shared competence for Member States to exercise. In the event that we consider there to be any exclusive EU competence arising from EU legislation in the areas covered by the Convention, the Government would push for this Decision to cover only the areas of exclusive EU competence.”

39.27 The Minister considers that the proposed Council Decision relating to the Additional Protocol — document (b) — does not comply with the principle of subsidiarity. He explains:

“As signature and ratification of the Additional Protocol is a matter of shared competence, for Union action to be justified it would be necessary for the Commission first, to demonstrate the proposed action cannot be sufficiently achieved by the Member States, either at a central level or at regional or local level; and secondly, to demonstrate that the proposed action could be better achieved at Union level. Neither of those criteria is satisfied.”

39.28 The Minister does not rule out the possibility that some exclusive EU competence may arise from common EU rules covering the same area as the Convention. This is significant as the principle of subsidiarity does not apply in areas where the EU has exclusive competence to act. If the Government does identify areas of exclusive EU competence, following its competence analysis of the Convention, then the Minister says

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324 See para 23 of the Minister’s Explanatory Memorandum.
325 See para 24 of the Minister’s Explanatory Memorandum.
326 See para 18 of the Minister’s Explanatory Memorandum.
he will push for the first Council Decision — document (a) — only to cover those areas, in accordance with the subsidiarity principle.

39.29 Both of the proposed Council Decisions are subject to the UK’s Title V (justice and home affairs) opt-in. The deadline for the UK to notify its opt-in decisions is 17 September 2015. The Minister sets out the factors which the Government will consider in reaching a decision. They include:

- the extent to which opting in would give the EU additional competence, in relation to the UK, in areas of EU law and policy by which the UK is no longer bound, following its decision to opt out en masse of a range of EU police and criminal justice measures adopted before the Lisbon Treaty entered into force on 1 December 2009. The UK’s “block opt-out” of these measures took effect on 1 December 2014; and

- the outcome of the Government’s assessment of EU competence in areas covered by the Convention and Additional Protocol, particularly if this reveals that existing EU legislation provides the EU with exclusive external competence.

39.30 The Minister reiterates the Government’s view that:

“[…] in areas of shared competence it is Member States which should exercise competence externally, unless the Commission were to put forward a compelling reason for the EU to exercise competence. The Government sees no compelling reason for the EU to exercise shared competence in the Commission’s Explanatory Memorandum.”327

39.31 The Minister again recalls that the Government decided not to opt into the Council Decision authorising the Commission to negotiate the Additional Protocol on behalf of the EU so as to ensure that “the UK is not bound by EU competence” in the areas covered by the Additional Protocol. As the Government’s assessment of the Additional Protocol has not changed since then, the Minister indicates that he is “minded” not to opt into the Decision on signature — document (b).

39.32 Finally, the Minister expects the Government to decide whether or not to sign the Additional Protocol and to ratify it along with the Convention “in due course”.

Previous Committee Reports

None.

327 See para 21 of the Minister’s Explanatory Memorandum.
40 A uniform format for visas

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

Legal base Article 77(2)(a) TFEU; ordinary legislative procedure; QMV
Department Home Office
Document numbers (36954), 10314/15 + ADD 1, COM(15) 303

Summary and Committee’s conclusions

40.1 The purpose of the proposal is to make changes to a Regulation adopted in 1995 establishing a uniform format for visas. The changes proposed are intended to improve the security features of visas so that they are less prone to counterfeiting and fraud. All Member States are bound by the 1995 Regulation. Since then, the legal base for adopting EU measures concerning the format of visas has changed. Under the revised legal base, the UK is not bound by any changes to the 1995 Regulation unless it decides to opt into them. The 1995 Regulation has been modified twice, in 2002 and in 2008. The UK took part in the first modification, which incorporated a photograph into the visa sticker. The second modification adjusted the numbering on the visa sticker to make it compatible with the Visa Information System (VIS). As the UK does not participate in VIS, it did not opt into the second modification.

40.2 The latest proposal is subject to the UK’s Title V (justice and home affairs) opt-in, meaning that the UK will only be bound by it if the UK opts in before the expiry of the three-month opt-in deadline or seeks to do so after the proposal has been adopted.328

40.3 The Minister for Immigration (James Brokenshire) explains that the UK has participated fully in work to improve the security features of the uniform format visa and sets out the factors the Government will take into account in deciding whether or not to opt into the changes proposed in the Regulation.

40.4 We note that there is some uncertainty as to the deadline for opting into the proposed Regulation and welcome the Minister’s undertaking to inform us of the date at the earliest opportunity.

40.5 The recitals to the proposed Regulation indicate that it is subject to the UK’s Title V opt-in Protocol. The recitals also indicate that, for Member States acceding to the EU

328 See Protocol 21 to the EU Treaties on the position of the UK and Ireland in respect of the area of freedom, security and justice.
since 2004 and for third countries associated with Schengen (Iceland, Norway, Switzerland and Liechtenstein), the proposed Regulation constitutes a Schengen-building measure. We ask the Minister to explain the reason for the difference in the source of the obligations created by the proposed Regulation and to confirm that the opt-in procedures set out in the Title V Protocol, rather than the opt-out procedures in the Schengen Protocol, apply in this case.

40.6 We also ask the Minister to address the consequences of a decision by the UK not to opt into the proposed Regulation and to provide an assessment of the risk that the UK might be ejected from the 1995 Regulation on the grounds that it would no longer be operable for other Member States. In addition, given that the factors informing the Government’s opt-in decision include the risk that a uniform format visa may pose to the security of the UK and the limited ability to adapt the format to meet the UK’s own domestic requirements, does the Minister consider that it would be desirable for the UK to continue to participate in the uniform format visa, and what are the advantages for the UK?

40.7 Pending the Minister’s reply, which we expect to receive in good time to consider before the Government notifies its opt-in decision, the proposed Regulation remains under scrutiny.


Background

40.8 A uniform format for visas issued by EU Member States was introduced in 1995, based on Article 100c(3) of the then EC Treaty. At the time, it was envisaged that establishing a uniform format would pave the way to the harmonisation of visa policy which, in turn, would support the establishment of the internal market as an area without internal frontiers in which the free movement of people is ensured.\(^{329}\) All Member States participated in the adoption of the 1995 Regulation.

40.9 The first substantial modification of the 1995 Regulation was agreed by the Council in 2002.\(^{330}\) By that time, the UK had secured a Protocol to the EU Treaties ensuring that the UK would not be bound by EU measures concerning visas, asylum and immigration unless it chose to opt in. As the changes proposed were intended to improve the security features of the uniform format visa, the UK decided to opt in. By contrast, the UK did not opt into the second modification, agreed in 2008, as the changes largely affected Member States participating in the Visa Information System (VIS), an EU database processing data and

\(^{329}\) See Regulation (EC) No 1683/95.

decisions relating to applications for short-stay visits to the Schengen free movement area.\textsuperscript{331}

40.10 The UK does not participate in the Schengen free movement area and, as a consequence, cannot take part in VIS. The UK similarly does not participate in the other elements of EU visa policy, including the rules determining whether nationals of third countries require a visa to enter the Schengen area for short stays of up to three months.

**The proposed Regulation**

40.11 In its explanatory memorandum accompanying the proposal, the Commission notes that there have been a number of recent forgery cases affecting Spanish, Austrian, German, Czech and Italian visa stickers. These have exposed the need for a new design with better security features which will be less susceptible to counterfeiting and fraud. A specimen illustrating the changes proposed is set out in an Annex to the Regulation (ADD 1). The proposed Regulation will be supplemented by a Commission implementing decision establishing detailed technical specifications for the new visa stickers. In order to reduce the risk of fraud, these technical specifications are to be kept secret and cannot be published. The Commission says that the changes it has proposed are urgent and can be implemented without increasing the cost of a visa.

40.12 The proposal is based on Article 77(2)(a) of the Treaty on the Functioning of the European Union (TFEU) which authorises the EU to adopt measures concerning the common policy on visas. The recitals to the proposal indicate that it is subject to the UK's Title V opt-in. They also indicate that, for Member States acceding to the EU since 2004 and for third countries associated with Schengen (Iceland, Norway, Switzerland and Liechtenstein), the proposal constitutes a Schengen-building measure. The distinction between measures subject to the UK's Title V Protocol and those which fall within the scope of a separate Protocol concerning the Schengen *aquis* is significant. If the Title V Protocol applies, the UK is not bound by the proposal unless it decides to opt in. If the Schengen Protocol applies, on the grounds that the proposal builds on existing Schengen measures in which the UK already participates, then the UK is bound to take part in the proposal unless it notifies its decision to opt out. In both cases, procedural arrangements are in place to ensure that a decision by the UK not to participate in a subsequent amending measure does not make the original measure (in this case, the 1995 Regulation, as amended) inoperable for the other Member States.

**The Minister’s Explanatory Memorandum of 9 July 2015**

40.13 The Minister notes that the current visa sticker has been in circulation for 20 years and “has become compromised in view of a number of serious incidents of counterfeiting and fraud”. The proposed Regulation therefore seeks to establish a new common design incorporating modern security features. The Minister explains that the UK has been participating in the development of work to improve the security features of the uniform

\textsuperscript{331} See Regulation (EC) No 856/2008.
format visa and has sought to ensure that the proposed design “meets the highest possible technical standards, is interoperable across the EU and deliverable by our suppliers”. He adds:

“The security of the EU visa and the UK visa is a key strategy in tackling illegal migration. However, the Regulations do impact on our ability to amend or introduce our own visa independent of the EU.”

40.14 The proposed Regulation is subject to the UK’s Title V (justice and home affairs) opt-in. The Minister reiterates the Government’s commitment to “taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process”. In reaching a decision, the Government will have particular regard to:

- The risk that a uniform format visa poses to the security of the UK;
- Whether the changes proposed meet the UK’s own standards of quality and security, as well as the scope for the UK to change the format to meet its own requirements; and
- The limits placed on the UK’s ability to make changes to the format of the visa.

40.15 The Minister anticipates that there may be “a small increase in costs” in producing a new version of the visa, but considers that this is likely to be offset by savings elsewhere (for example, contractual changes with the supplier and paper consolidation across all visa products). If the Council agrees the changes proposed, further work will be needed to define the technical specifications for the new uniform format visa. The Minister expects phased introduction of the changes to begin from January 2017.

**Previous Committee Reports**

None.

### Data Protection in the EU

**Committee’s assessment**

Legally and politically important

**Committee’s decision**

Not cleared from scrutiny; further information requested; drawn to the attention of the Justice Committee.

**Document details**

(a) Proposal for a General Data Protection
European Scrutiny Committee, First Report, Session 2015-16

Legal base

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

Document numbers

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

Summary and Committee’s conclusions

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

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

41.3 Since then, despite the failure of a partial general approach (PGA) in June 2013 and the Snowden disclosures concerning the surveillance of the communications of EU citizens (to which documents (c) and (d) relate), four PGAs have been agreed. The latest was at the 12-13 March JHA Council. The Government opposed the first two PGAs “in principle” (on third country transfers of data, extraterritoriality and on obligations on data controllers when processing data). However, it departed from this approach, without warning and without requesting a scrutiny waiver, in supporting the third (on Chapter IX provisions—research and freedom of speech). It has since acknowledged this amounted to a scrutiny override.

41.4 At the March JHA Council on a PGA relating to Chapter II (general principles) and Chapters VI and VII (the one-stop shop mechanism), the UK abstained. We now report on the letter of 18 March in which the previous Government sets out the outcome of that
European Scrutiny Committee, First Report, Session 2015-16

Council, but which was not received in sufficient time before dissolution for our predecessor Committee to consider.

41.5 We also report on the letter of 15 July of the new Secretary of State for Justice (Michael Gove). This updates the Committee on the outcome of the June JHA Council. This letter was preceded by two Written Ministerial Statements on the same topic: one from the Home Secretary (Mrs Theresa May)335 and the other from Parliamentary Under-Secretary of State for Justice (Dominic Raab)336. The latter also informs the House of the scrutiny override which occurred at that Council.

41.6 We note the update from the previous Government on the outcome of the March JHA Council and thank the new Secretary of State for Justice for his letter of 15 July updating us on the outcome of the June JHA Council. We would appreciate early receipt of updates in future to enable us to consider them more fully.

41.7 We consider that the Minister’s update on the agreement of the General Approach is of a very general nature and does not refer in any detail to the text of the General Approach. We ask that the text be deposited with us and that, in his next update on the progress of trilogues the Minister explain in detail, with reference to that text, the nature of the “serious reservations” that persist. We have in mind, in particular, concerns relating to the Right to be Forgotten, the One-Stop Shop Mechanism and the nature of the liability of data controllers and processors and sanctions.

41.8 We understand that the Government was not in a position to seek a scrutiny waiver for the June JHA Council from the preceding Committee prior to dissolution and could not do so nearer the time of the Council, before our Committee was formed. But in this instance we question, given the seriousness of the Government’s concerns about the General Approach text whether supporting it was the right approach, even if it represents the lesser of two evils compared with the European Parliament’s position. We remain to be convinced that this unusual approach of supporting an unacceptable text will lead to greater negotiating influence over that text in trilogues than would follow from abstention or opposition. We would not want to see such an approach emulated more widely in Government. We therefore request that the Minister provide us with evidence, as the trilogues progress, of the influence that the UK has been able to exert through supporting the General Approach.

41.9 We note that the Minister is silent on the matter of document (b), the proposal for a Police and Criminal Justice Data Protection Directive. We request an update, in due course, on progress on that proposal under the Luxembourg Presidency.

41.10 We also ask that the Minister update us on the progress of negotiations of the “Safe Harbor” Agreement (see documents (c) and (d)) which regulates the transfer of data from EU citizens to US companies. We note that the European Commissioner for

335 HC Deb, 23 June 2015, col 19WS.
336 HC Deb, 16 July 2015, col 65WS.
Justice, Věra Jourová, had hoped negotiations would conclude by 28 May 2015. Does the Minister anticipate that the substance and timing of any negotiations will now need to take account of:

i) the anticipated decision of the CJEU in the case of Schrems (C-362/14) in which it is being argued that the current “Safe Harbor” Agreement violates Articles 7 and 8 of the EU Charter of Fundamental Rights (right to private and family life and the protection of personal data); and

ii) the replacement of the scheme for the collection of metadata by US intelligence agencies, including that of EU citizens transferred under Safe Harbor, under Section 215 of the U.S. Patriot Act 2001 with corresponding provisions of the new U.S. Freedom Act 2015?

41.11 Pending the Minister’s response, we are drawing this Report to the attention of the Justice Committee and retaining all documents (a)–(d) under scrutiny.

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

Background and previous scrutiny

41.12 The background to documents (a) and (b), a detailed account of their provisions and the Government view of them is provided principally in the previous Committee’s Fifty-ninth Report of 2010–12. The Twenty-sixth Report of 2012–13 sets out our predecessors’ summary and conclusions on the opinion obtained from the Justice Committee. An account of the background and contents of documents (c) and (d) and the Government view of them was set out in the Thirty-sixth Report of 2013–14.

Previous Minister’s letter of 18 March 2015

41.13 In this letter, the previous Minister of State for Justice and Civil Liberties (Simon Hughes) says that he writes to provide an update on the outcome of the March JHA and to anticipate the June JHA.

March JHA Council

41.14 The former Minister says that the primary focus of discussions was Chapter II (general principles) and Chapters VI and VII (the one-stop shop mechanism).

41.15 Addressing Chapter II, he says:

“On Chapter II, a caveated partial general approach was agreed at JHA Council albeit with some serious reservations from a number of Member States that placed heavy conditions on their willingness to compromise, including the ability to return to the text if need be. The UK abstained in this vote on the basis that the Government had not been given a scrutiny waiver from either Committee.”

41.16 Turning to Chapters VI and VII on the one-stop shop mechanism, he reminds the preceding Committee that previously the then Government had been able to marshal support from other Member States to both a quantitative filter (a percentage of national data protection authorities would have to agree to a referral to the European Data Protection Board (EDPB) and a qualitative filter (only reasoned concerns would trigger referral). But at this JHA Council there was only support for a qualitative filter: a data protection authority would have to make a ‘relevant and reasoned objection’ before referral. He adds that the UK, supported by Ireland and Poland, expressed disappointment at the lack of the quantitative filter because it would lead to “an overly complex arrangement that will slow things down and complicate decision making”. He hopes that an Irish proposal that the one-stop shop be reviewed two years after implementation, although not accepted at the meeting, might gain the future support of Member States, “given our substantial reservations about the current one-stop shop model”.

June JHA Council

41.17 He then anticipates the possibility of a General Approach supported by the majority of Member States at the June JHA Council, despite “growing concern that there remains a lot of work to do on the text before such an agreement can take place”. However he adds:

“Overall, I feel as if the current Council text is moving in the right direction. There is now a much more proportionate and risk-based approach as compared to the original Commission proposals and consequently I believe that the burdens will be less onerous than we originally feared. In addition, this Council text is much more balanced in its approach than the text which was agreed by the European Parliament last year, and it will remain a negotiating priority for the UK to preserve that balance in the text that goes forward for trilogue discussions later in the year. However, there still remains much to be worked upon in the coming weeks, including sections on the ‘right to be forgotten’ and on sanctions in addition to the possibility of returning to some of the other areas on which a partial general approach has been achieved in that past few months.

“The UK, in common with most Member States believes that much more work needs to be done on the text. We are mindful also of the fact that the dossier remains
under scrutiny in both Houses. At this time, because of the amount of outstanding work, it is not clear what the text that we will be asked to agree will look like and I would not wish to speculate. I am therefore not in a position to seek either a waiver or to lift the file from scrutiny, but I have asked my officials to keep your clerk updated during the election and post-election period. I will of course update your successor committee on progress of the file as soon as it is formed.”

Minister’s letter of 15 July 2015

41.18 The new Lord Chancellor and Secretary of State for Justice (Michael Gove) writes to update us on the outcome of the 15 June JHA Council. He explains that Lord Faulks, attending on his behalf, voted in favour of the General Approach which he recognises to be a breach of the scrutiny reserve resolution, occurring before our new Committee had been formed. In addition the Minister acknowledges that this was done despite the Government’s “serious reservations”. In this context, the Minister provides detailed reasons for the Government’s actions which we reproduce in full:

“Voting in favour of the General Approach, despite our serious reservations, will seek to maximise our influence during trilogue negotiations with the European Parliament. That means a greater chance of clarifying the exclusion of national security from the scope of this Regulation; continuing to resist attempts by the European Parliament to insert clauses that could damage intelligence and law enforcement co-operation with the US; minimise the burden on businesses; and ensuring the text does not damage growth or freedom of expression. Given this override of scrutiny, and in line with the Cabinet Office guidance, a statement will be issued to the House.

“There have been some improvements to the Council text in terms of reducing the overall level of burden on business, although there are still areas of concern. I am also concerned about ‘the right to be forgotten’ where, even though the text purports to give assurances that freedom of expression is not restricted, the UK has strong reservations that, in practice, freedom of expression may be undermined. Spain also support our concern that the title is misleading. I also fear the One Stop Shop model is likely to lead to costly, protracted decision-making that is neither in the interests of individuals, nor businesses, which are also the concerns of Ireland and Poland.

“During the Justice and Home Affairs Council meeting, Austria and Slovenia were the only two member states who voted against the Regulation. They believe that the Council text is a compromise too far and the changes are at the expense of individuals and prefer the European Parliament text. The European Parliament version of the text, which was agreed in March 2014, was heavily influenced by the fallout from Snowden and is widely perceived as anti-business as well as undermining vital processing that is legitimately possible at present.

“Going forward the trilogue discussions will take into consideration the European Parliament text, which is significantly worse than the draft text agreed at Council. It
introduces a higher burden (“explicit”) for consent in all cases where this is the lawful ground for processing. Explicit consent also places additional restrictions on the processing of scientific and medical research that is likely, at best, to make vital processing in this sector, very difficult and at worse illegal. In addition, the European Parliament text has included a clause (the “anti-FISA clause”) that will further restrict third country data transfers. Under this clause, if a business is ordered by a foreign court or authority to hand over personal data, the European Parliament text will prevent this, unless there is an existing Mutual Legal Assistance Treaty or similar international agreement in place, or unless the business has the permission of a European data protection authority. I oppose this, as I regard it as unworkable in practice and also because attempts to use it would put businesses in a difficult position having to decide which law to break.

“It is the Government’s overall aim to minimise the negative effects of the new Regulation on business and freedom of expression. The Regulation must promote rather than hinder the Digital Single Market and the competitiveness of the EU in a global digital market. The UK does not have an opt-out from the Regulation and agreement will be reached by Qualified Majority Voting (QMV), on which our position remains reserved.”

Previous Committee Reports


42 Statistics

Committee’s assessment (a)-(b) Politically important
Committee’s decision (a)-(b) Not cleared from scrutiny; further information requested

Document details (a) Draft Regulation concerning harmonised indices of consumer prices (b) European Central Bank Opinion on document (a)

Legal base (a) Article 338 TFEU; co-decision; QMV; (b) —

Department Office for National Statistics

Document numbers (a) (36570), 16612/14 + ADD 1, COM(14) 724 (b) (36804), 6651/15, —

Summary and Committee’s conclusions

42.1 The Harmonised Index of Consumer Prices provides a measure of inflation used for effective economic policy-making, and particularly in the area of monetary policy. The aim of this draft Regulation is to rationalise the existing legal framework and implement some new provisions to reflect developments in consumer prices statistics. Our predecessor Committee, whilst acknowledging the Government’s favourable view of the proposal, noted concern about delegated acts aspects of the draft Regulation. Accordingly, the document remained under scrutiny.

42.2 In this Opinion the European Central Bank, which is a key user of the index, sets out its views on the draft Regulation.

42.3 The Government tells us that the Opinion largely reflects its own position, that in negotiations of the draft Regulation it will take into account the Opinion, but only in so far as UK overall objectives are not undermined, that these negotiations are continuing and that further timetabling issues are still to be determined by the Presidency.

42.4 The Government has also told us that at the end of June a compromise Council text was to be agreed for negotiation with the European Parliament. The Government comments that this text addresses a number of UK concerns, in particular the use of delegated acts.

42.5 We note the present situation in relation to this proposal. When the Government next reports to us on the progress of negotiations, particularly in relation to delegated acts, we should also like to hear how the Opinion is playing into those negotiations. Meanwhile the documents remain under scrutiny.

Full details of the documents: (a) Draft Regulation on harmonised indices of consumer prices and repealing Council Regulation (EC) No. 2494/95: (36570), 16612/14 + ADD 1, COM(14) 724; (b) European Central Bank Opinion of 13 March 2015 on a draft Regulation on harmonised indices of consumer prices and repealing Council Regulation (EC) No. 2494/95: (36804), 6651/15, —.
Background

42.6 The Harmonised Index of Consumer Prices (HICP), otherwise known as the Consumer Prices Index, provides a measure of inflation used for effective economic policy-making, and particularly in the area of monetary policy. The aim of this draft Regulation, document (a), is to rationalise the existing legal framework and implement some new provisions to reflect developments in consumer prices statistics and the EU legal framework over the last 20 years.

42.7 Our predecessor Committee, whilst acknowledging the Government’s favourable view of the proposal, noted concern about delegated acts aspects of the draft Regulation. In March it heard that, although there had so far been no significant developments, it was possible that discussions would be completed and the proposal brought to the Council before we were to first meet in the present Parliament. Accordingly, it reminded the Government that if this occurred it would have to explain the circumstances.

The new document

42.8 In this Opinion, document (b), the European Central Bank (ECB), which is a key user of the HICP, sets out its views on the draft Regulation, as requested by the Council and the European Parliament.

42.9 In its Opinion the ECB:

- is supportive of the review and modernisation of the EU framework for compilation of HICP statistics, which it considers to be of crucial importance to the maintenance of price stability in the eurozone;
- agrees with the Commission view that the quality and consistency of the HICP should not fall behind current requirements; and
- highlights that in the process of adopting implementing and delegated acts and in considering any future changes to the regulatory framework, the Commission should continue to consult the ECB (as it is obliged to do).

42.10 The ECB also makes 15 recommendations for amendment of the draft Regulation and, where it has done so, sets out specific drafting proposals.

The Government’s view of the new document

42.11 In his Explanatory Memorandum of 9 June 2015 the Minister for Civil Society, Cabinet Office (Mr Rob Wilson), says that:

- the ECB Opinion supports the Commission’s efforts to review and modernise the HICP legal framework and largely reflects the Government position;
• the ECB assertion that it should be consulted on implementing and delegated acts is a reasonable one, as such consultation can help ensure the statistics are fit for purpose; and

• in negotiations the Government will take into account the Opinion, but only in so far as UK overall objectives are not undermined.

42.12 The Minister mentions also that the Council Working Party on Statistics had a first substantive discussion of the draft Regulation on 22 January, that negotiations are continuing and that further timetabling issues are still to be determined by the Presidency.

The Minister’s letter of 23 June 2015

42.13 The Minister writes further to his last letter to the predecessor Committee informing us of recent developments on the proposal. He says that the Latvian Presidency had now indicated that it considered initial negotiations on the proposal to be concluded and had proposed that the matter be put to Coreper on 29 June to agree a general approach for negotiations with the European Parliament. He elaborates that:

• the final Presidency proposal for a Council negotiating position, as agreed by Member States at Council Working Party level, addressed the concerns expressed by the UK and other Member States related to the issue of delegated acts;

• the Government had sought a text that provided adequate safeguards to ensure that when preparing delegated acts the Commission would be obliged to consult experts from Member States and should carry out an assessment of the burdens on respondents and on production costs;

• the compromise proposal explicitly provided those safeguards and further limited the use of delegated acts to changes to specific non-essential elements and also provided assurance that such acts should not impose significant additional burdens on Member States; and

• the compromise also fully retained those measures which provide for improved efficiencies and quality in price statistics.

Previous Committee Reports


43 Reforms to the EU’s trade mark regime

Committee’s assessment
Legally important

Committee’s decision
Cleared from scrutiny; drawn to the attention of the
Summary and Committee’s conclusions

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

43.2 The Regulation provides for an EU wide trade mark, 340 administered by the Office for Harmonisation in the Internal Market (OHIM), 341 a self-financing executive and regulatory agency of the EU. A CTM provides protection in all Member States. Alongside this, national trade marks, providing protection in the Member State of registration, are available from Member States’ own national intellectual property offices (IPOs). 342 This dual system allows businesses to decide how they wish to protect their trade marks to meet their business strategy — in one Member State, in several Member States or across the entire EU. According to the Government, business users are broadly happy with the current regime.

43.3 These proposals make extensive, albeit largely technical, changes to the two trade mark regimes, by aligning them more extensively, improving co-operation between IPOs and OHIM, and updating the governance of OHIM. Our first report on these proposals sets out the details.

43.4 When our predecessor Committee last considered these proposals it cleared them from scrutiny in anticipation of a vote on a general approach in the Council, subject to the conditions that (a) the text to be agreed would make no provision for the transfer of OHIM surpluses to the EU general budget; and (b) the percentage of OHIM revenue to be redistributed to Member States would result in no decrease of such money being redistributed to the UK. The Government, whilst supportive of the outcome of

340 Currently called a “Community trade mark” but to be renamed a “European trade mark”.
341 To be renamed the European Union Trade Marks and designs Agency.
342 With the exception of the Benelux countries which offer a combined regional trade mark.
negotiations in the Council, did not vote in favour of a general approach in the Council because it retained provision enabling OHIM’s surplus to be paid into the EU general budget.

43.5 The Minister for Intellectual Property (Baroness Neville-Rolfe) now provides an update on the outcome of the trilogue negotiations with the European Parliament.

43.6 We thank the Minister for the further update. We are grateful for the full and timely information both she and her predecessor have provided this Committee and its predecessor.

43.7 We note that the Minister generally considers the outcome of the negotiations satisfactory in most respects, but that the UK will not vote in favour of the package as it permits the surpluses of OHIM, derived from its fee income, to be distributed to the EU budget.

43.8 We now formally remove the conditions from our earlier clearance of these documents, although we anticipate that the UK will continue to express its opposition to the redistribution of OHIM surpluses. As the Regulation and Directive are likely to be formally adopted later this year we draw them to the attention of the Business, Innovation and Skills Committee.

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

The Minister’s letter of 2 July 2015

43.9 In her letter the Minister confirms that a first reading agreement for the adoption of both proposals was reached between the Council and the European Parliament. They will be formally adopted later this year, and are expected to come into force in early 2016. The UK will then have three years to transpose the Directive, which will require changes to the Trade Mark Act 1994.

43.10 She characterises the overall outcome as “a good one for the UK” — except for the provisions in the proposed Regulation to permit the transfer of budget surpluses of OHIM to the EU general budget, to which she objected on the grounds that this surplus is derived from trade mark and design registration fees which should be retained for the benefit of users of intellectual property.

43.11 On a previously outstanding point raised by our predecessor concerning the potential change in the amounts redistributed by OHIM to IPOs, the Minister explains that currently Member States are only able to bid for funds to implement common projects. Therefore the redistribution of OHIM revenue would be, effectively, new funding. She further explains:
“The final text does include using part of OHIM revenue to offset costs incurred by national offices resulting from procedures related to the EU trade mark system. This is capped at 5% of OHIM revenue, but in the event of a budgetary surplus may be increased up to 10%. The agreed text includes a condition introduced by the European Parliament, that offsetting of costs should not cause a budgetary deficit for OHIM. This provision is likely to have implications in determining the years in which payments to national offices may be payable.”

43.12 Other issues arising from the trilogues are the following:

- The European Parliament succeeded in restoring the use of the delegated legislation procedure \(^{343}\) for some of the powers conferred on the Commission to adopt EU subordinate legislation. Nevertheless the final text includes fewer than 20 delegated legislation powers. The majority of non-technical delegated legislation powers including, crucially, a power for the Commission to set the level of fees, has been removed.

- There will be a variation in application fees reflecting the fact that a separate application will have to be made for each class of goods or services to be protected by the trade mark. The result is a slight reduction for applications concerning one class of goods or services, but an increase for three classes. The Minister describes the overall outcome as “a sensible balance between reducing the costs to businesses and maintaining the integrity of the system”.

- The UK had previously opposed mandatory cooperation between OHIM and IPOs. In what the Minister describes as “a significant negotiating win” the requirement will be for OHIM and IPOs to cooperate to promote convergence of practices and tools in the field of trade marks, but permits IPOs to opt-out, restrict or temporarily suspend their cooperation in projects.

- The outcome of trilogue negotiations has resulted in slightly less managerial independence for OHIM than the UK was aiming for in negotiations. There will be two Commission representatives and a European Parliament representative on the Management Board, with votes. Previously there was one Commission representative who did not have a vote. European Parliament representation is consistent with the Common Approach to decentralised agencies, and the other concessions are balanced by (a) the fact that the Commission will have less control over candidates for the post of President of OHIM, (b) the Executive Board will not be reduced in size (which would have increased the risk of Commission influence) and (c) the fact that all Member States have a seat, with voting rights, on the Management Board.

- The outcome also protects the Council’s earlier approach to goods in transit, namely that it would be a defence in any action against infringing goods in transit

\(^{343}\) Article 290 TFEU; under this procedure a proposal by the commission for EU subordinate legislation can be blocked by the European Parliament (by a majority of its members) or the Council acting by qualified majority.
through the EU for the owner to prove that the trade mark is not protected in the
country of destination.

- The package will still involve a change in name of OHIM to the European Union
  Intellectual Property Office albeit that this was not a priority for Member States
  and not favoured by OHIM itself.

- The Minister regards the small number of other more detailed technical changes
  resulting from the trilogue as improvements.

**Previous Committee Reports**

Report HC 219-xiii (2014–15), chapter 7 (15 October 2014); Eighth Report HC 219-viii

### 44 Package and assisted travel arrangements

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared from scrutiny

**Document details**

(a) Commission Communication: *Bringing the EU package travel rules into the digital age*
(b) Draft Directive on package travel and assisted travel arrangements

**Legal base**

Articles 114 and 169 TFEU; Ordinary legislative procedure; QMV

**Department**

Business, Innovation and Skills

**Document numbers**

(a) (35257), —, COM(13) 513
(b) (35192), 12257/13 + ADDs 1–3, COM(13) 512

**Summary and Committee’s conclusions**

44.1 Council Directive 90/314/EEC created important rights for those purchasing package
holidays, but the Commission pointed out that the structure of the travel market was much
simpler in 1990; that it had become unclear to what extent modern travel services were
covered; and that there were significant differences in transposition by Member States,
leading to an uneven regulatory environment and to constraints on cross-border trading. It
therefore put forward in July 2013 a proposal for a new Directive to clarify and modernise
the protection available for different forms of travel; to ensure that purchasers are better
informed; and to remove some outdated elements.
44.2 Our predecessors’ Report of 9 October 2013 set out the content of the proposal in some detail, and noted that, although the Government was generally supportive of the Commission’s overall objectives, it did nevertheless have some concerns. In view of this, the Committee held the two documents under scrutiny, pending further information, and was followed by a further Report on 26 November 2014, which described the progress which had subsequently been made in the main areas of concern. It also said that, although that Committee did not agree that scrutiny should be lifted, it was willing to grant a waiver so as to enable the Government to vote for the proposal at the forthcoming Competitiveness Council, when a general approach, allowing progress to the trilogue stage of negotiation, was expected to be agreed.

44.3 Since then, there have been a number of further updates, and we have now been told that the European Parliament has agreed a position similar to the general approach reached by the Council, which the Government believes strikes the right balance between the benefits of extended consumer protection and the additional burdens imposed on business.

44.4 This is a complicated and detailed proposal dealing with a complex area of activity, and its contents and their implications were set out at some length by our predecessors in their Reports of 9 October 2013 and 26 November 2014. Our own involvement has very much coincided with the end game in Brussels, and we note that the Council and European Parliament have reached an agreement on the scope of the measure regarded by the Government as striking the right balance. In view of this, we see no need to hold these documents under scrutiny, and we are therefore clearing them.


**Background**

44.5 Council Directive 90/314/EEC created important rights for those purchasing package holidays, ensuring that they receive essential information, making organisers and/or retailers responsible for the package, and regulating what happens if there are changes to the content. It also ensures that travellers receive a refund of pre-payments, and are repatriated in the event of the insolvency of an organiser and/or retailer.

44.6 However, the Commission pointed out (document (a)) that the structure of the travel market was much simpler in 1990, and that it had become unclear to what extent modern travel services were covered by the Directive. It also noted significant differences in its transposition by Member States, and that this had led to an uneven regulatory environment and had placed constraints on cross-border trading.

44.7 It therefore put forward in July 2013 the draft Directive at document (b) to clarify and modernise the protection available to travellers; to cover different types of arrangement; to
ensure that purchasers are better informed about the services and remedies available; and to remove some outdated elements from the present Directive, whilst maintaining its essential characteristics. The detailed contents were set out at some length in the first Report produced by our predecessors on 9 October 2013, which also noted that the UK is one of the main markets for leisure travel and holiday arrangements, but that the Government believed action at EU level was needed to enable consumers to shop across borders, and to provide the required degree of legislative certainty. Consequently, although the Government had a number of detailed concerns, and would wish to consult stakeholders, it was generally supportive of the Commission’s overall objectives.

44.8 Our predecessors next reported to the House on 26 November 2014, when they noted that the Government had provided an update on how the negotiations has progressed in the areas which had been identified as most in need of improvement, and that it believed significant progress has been achieved in all but two areas, thus addressing most of the UK’s main concerns. In view of this, it asked if scrutiny could be lifted (or a waiver provided) in order to enable the UK to support the proposal at the Competitiveness Council on 3-4 December, when the Italian Presidency would be attempting to agree a general approach.

44.9 Our predecessors said that, given the impact of the package on both business and consumers, they hesitated to release the documents from scrutiny, but, as they had no wish to constrain the Government’s negotiating position, they were willing to grant a waiver. They also asked the Government to keep them informed, and subsequently received updates on 14 December 2014 and 26 February 2015, the last of these indicating that, although there were still certain differences between the positions of the Council and the European Parliament, a satisfactory conclusion to the trilogue phase was expected by the end of May.

**Minister’s letter of 15 June 2015**

44.10 We have now received a letter of 15 June 2015 from the Minister of State for Skills at the Department for Business, Innovation and Skills (Nick Boles), confirming that the European Parliament has now agreed a position on the scope of the measure similar to that in the Council’s general approach, which the Government believes strikes the right balance between the benefits of extended consumer protection and the additional burdens imposed on business.

**Previous Committee Reports**

45 Paris Protocol: Tackling global climate change beyond 2020

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

Legal base: —
Department: Energy and Climate Change
Document numbers: (36686), 6588/15 + ADDs 1–2, COM(15) 81

Summary and Committee’s conclusions

45.1 In order to limit increases in the global average temperature as compared with pre-industrial levels to 2°C, the Parties to the 1994 United Nations Framework Convention on Climate Change (UNFCCC) have sought to reduce greenhouse gas emissions. However, since it had become clear that the measures taken so far, notably the Kyoto Protocol, would not achieve the required reductions, it was agreed in 2011 that a new legally binding agreement applicable to all Parties should be negotiated. This is now due to be finalised in Paris in December 2015 (and to come into operation in 2020).

45.2 This Commission Communication sets out the steps which the EU now needs to take in advance of the Paris conference, and addresses a number of related issues. It says that there must be a long-term goal of reducing global emissions in 2050 by at least 60% compared with 2010 levels, with the setting of clear, specific, ambitious and fair legally binding commitments, taking into account different national circumstances, and it notes that the European Council has endorsed a reduction by 2030 of at least 40% in all EU domestic emissions compared with 1990 — a target which it describes as ambitious and fair, and in line with a cost-effective path to a reduction of at least 80% by 2050.

45.3 The Communication adds that, for the Protocol to be effective, it needs to have broad geographical coverage; a comprehensive coverage of sectors and emissions; involve the highest possible level of ambition in line with the Parties’ capabilities and circumstances; and contain robust mitigation commitments. It also says that, in addition to ambitious emission reduction targets (set out in Intended Nationally Determined Contributions (INDCs)), the Protocol should provide for a global review every five years; strengthen transparency and accountability in order to assess whether targets and commitments have been met; encourage climate-resilient sustainable development; and encourage policies which mobilise substantial public and private sector investment in low-emission climate-resilient development.

45.4 The Government believes the 2015 Agreement should deliver ambitious and fair commitments from all countries, and has welcomed the Communication as a helpful input to the debate, noting that the new EU Climate and Energy Framework to 2030 was agreed
by the European Council in October 2014, in which the UK played a leading role. It was initially concerned that in some areas the document did not reflect agreed EU policy, and would thus cause confusion within the international community, but it says that these concerns have been addressed, and that there is now a clearer understanding internationally of the document’s status. It also notes that the INDC for the European Union and its 28 Member States, which reflects the agreed conclusions of October 2014 European Council, was agreed by consensus at the Environment Council on 6 March, and submitted to the UNFCCC on the same date.

45.5 Since this Communication sets out the Commission’s suggested approach to the forthcoming conference in Paris which is expected to result in a comprehensive and legally binding international agreement on the reductions in greenhouse gas emissions needed to contain global temperatures, it is obviously of some importance, and we are therefore reporting it to the House. However, on the core issue — the reduction to be offered by the EU by 2030 — the Communication reflects a strategy put forward by the Commission in January 2014, and subsequently endorsed by the European Council. Bearing in mind also that that document was debated in European Committee A in April 2014, we do not see any need to hold the current document under scrutiny, and are therefore clearing it.

**Full details of the document:** Commission Communication: *The Paris Protocol — A blueprint for tackling global climate change beyond 2020:* (36686), 6588/15 + ADDs 1–2, COM(15) 81.

**Background**

45.6 In the light of the findings of the Intergovernmental Panel on Climate Change (IPCC) that increases in the global average temperature as compared with pre-industrial levels should be limited to 2°C in order to avoid severe and irreversible damage, the Parties to the 1994 UNFCCC have sought to achieve the necessary reductions in greenhouse gas emissions. This led to the adoption in 1997 of the Kyoto Protocol, under which developed countries undertook to reduce their emissions by 2012 (since extended to 2020). However, as it had become clear that, for a variety of reasons, this would not achieve the required reductions, it was agreed in 2011 that a new legally binding agreement applicable to all Parties should be negotiated, and this agreement is now due to be finalised in Paris in December 2015 (and to come into operation in 2020). In the meantime, the Parties have also agreed to submit their INDCs to the UNFCCC well in advance of Paris (and by the first quarter of 2015 for those ready to do so), and to set up a Green Climate Fund to assist developing countries mitigating climate change and in adapting to its impact.

**The current document**

45.7 The Commission says that, in order to promote collective action consistent with the IPCC’s findings, the Paris Protocol must set a long-term goal of reducing global emissions in 2050 by at least 60% compared with 2010 levels, with the setting of clear, specific, ambitious and fair legally binding commitments, taking into account different national
circumstances. It adds that the detailed arrangements needed to achieve this objective should be developed through a technical work programme, to be completed in 2017; that Parties which make the mitigation commitment needed to join the Protocol should have access to financial and other resources; and that mitigation commitments should be legally binding on all Parties, thus giving the clearest signal of their determination to fight climate change.

45.8 It also notes that the Protocol will enter into force as soon as countries accounting for 40 gigatonnes\(^{344}\) of carbon dioxide equivalent emissions in 2015 (representing about 80% of current global emissions) have deposited their instruments of ratification. It adds that all G20 nations, representing 75% of global emissions, as well as other high and middle income countries, are expected to ratify and implement it in a timely manner, but it stresses the particular importance of the EU, China and the United States showing political leadership by doing so as soon as possible.

45.9 The Commission has accordingly set out in this Communication the steps which the EU now needs to take in advance of the Paris conference, and to address a number of related issues.

**Reductions in emissions**

45.10 The Commission notes that, despite a 45% increase in its GDP, the EU’s emissions between 1990 and 2013 declined by 19%, and that latterly the European Council has endorsed the target set out in its policy framework for climate and energy in the period from 2020 to 2030\(^{345}\) for a reduction by then of at least 40% in all domestic emissions compared with 1990 — a target which it describes as ambitious and fair, and in line with a cost-effective path to a reduction of at least 80% by 2050. However, it says that there is no merit in proposing at this stage a higher conditional target, but that this could be considered if warranted by the outcome of the negotiations.

45.11 The Commission goes on to put the EU’s position into a global context, pointing out that its proportion of emissions — currently 9% — is falling, whereas China and the United States now account for 25% and 11% of emissions respectively. It notes that these countries have followed the EU in announcing indicative post 2020 targets, and that these thus cover close to half of global emissions.

45.12 It adds that, for the Protocol to be effective, and to achieve a level playing field:

- it needs to have broad geographical coverage, with the Parties, except the least developed countries, putting forward their INDCs as early as possible in 2015;

- there should be comprehensive coverage of sectors and emissions (including land use, international aviation and shipping, and fluorinated gases);

\(^{344}\) 1 gigatonne = \(10^9\) tonnes.

• Parties should show the highest possible level of ambition in line with their responsibilities, capabilities and circumstances, with those having the greatest capabilities putting forward the most ambitious mitigation commitments; and

• there needs to be robust mitigation commitments, ideally involving economy-wide absolute targets combined with emissions budgets.

**Other measures**

45.13 In addition to securing ambitious emission reduction targets, the Commission says that the Protocol should:

• provide for a global review every five years to strength mitigation commitments in line with the latest science;

• strengthen transparency and accountability in order to assess whether emissions reduction targets and related commitments have been met, with the establishment of a common set of rules and procedures for annual reporting, regular verification and international expert reviews of emission inventories;

• encourage climate-resilient sustainable development by promoting international cooperation and supporting policies which decrease vulnerability and improve the capacity of countries to adapt to the impacts of climate change; and

• promote efficient and effective implementation and cooperation by encouraging policies which mobilise substantial public and private sector investment in low-emission climate-resilient development.

**Impact on other EU policies**

45.14 The Commission notes that EU Foreign Ministers have endorsed a Climate Diplomacy Action Plan which it developed jointly with the European External Action Service, and that the EU will be further stepping up its climate diplomacy ahead of the Paris Conference through political dialogue at meetings of the G7 and G20 and the UN General Assembly, through development cooperation, and linking climate change to its potential long-term consequences, including security challenges. In addition, it suggests that the negotiation can be actively supported by other EU policies, including scientific research, technology development and innovation; trade policy; environmental policy; and disaster risk management.

45.15 The Commission concludes by saying that the EU needs to:

• submit its own INDC by the end of the first quarter of 2015;

• encourage major economies to take the lead by submitting timely and ambitious INDCs, and similar action by as many other Parties as possible;

• make the promotion of ambitious global change a central diplomatic priority;
• ensure the stability and predictability of the financial support it provides to others for low-emission and climate-resilient development;

• press for the liberalisation by the end of 2015 of trade in environmental goods and services;

• ensure that climate action is consistent with UN Sustainable Development goals and funding post 2015; and

• ensure that the second commitment period of the Kyoto Protocol is ratified before the end of 2015 by the EU, its Member States, and as many Parties as are need to endure its entry into force.

45.16 It also says that it will start by mid-2015 to present legislative proposals to implement the 2030 climate and energy framework, and that it will continue to mainstream climate change action into other relevant policy areas.

The Government’s view

45.17 Our predecessors initially received an Explanatory Memorandum of 11 March 2015, but the then Chairman wrote saying that the Committee considered this placed too much emphasis on the procedures involved at the expense of the policy aspects, and asked for a revised version.

45.18 This has now been provided in an Explanatory Memorandum of 25 June 2015 from the Secretary of State for Energy and Climate Change (Amber Rudd), who says that the UK believes the 2015 Agreement should deliver ambitious and fair commitments from all countries to reduce emissions; track progress, build trust and facilitate increased ambition for the future; and provide support to those who need it, particularly the poorest and most vulnerable to develop climate resilience. She also welcomes the Communication as a helpful input to the debate both on the Paris Agreement and the INDC of the EU and its 28 Member States, and notes that the new Climate and Energy Framework to 2030, including an emissions reductions target of at least 40% domestic on 1990 levels by 2030, was agreed by the European Council in October 2014, in which the UK played a leading role. (The Minister adds that the UK set out its own vision of the Paris 2015 Agreement in September 2014 through its Paris 2015 publication: Paris 2015 — Securing our prosperity through a global climate change agreement.346)

45.19 At the same time, the Minister cautions that the Communication is a Commission document, which in some areas did not reflect agreed EU policy, and was published a month ahead of the due date for the INDC submission, giving rise to initial UK concerns that it would cause some confusion within the international community. However, she says that these concerns have been addressed through engagement and explanation by many EU Member States (including the UK), and she considers that there is now a clearer understanding internationally that the document was not the EU’s INDC submission —
which was, at the time, still under discussion — and that, although a contribution to the discussion, did not reflect an agreed EU policy on the Paris Protocol.

45.20 The Minister adds that the INDC for the European Union and its 28 Member States, which translates the agreed conclusions of October 2014 European Council into a submission for the UNFCCC, was agreed by consensus at the Environment Council on 6 March, and submitted to the UNFCCC on the same date. She also says that the Government’s view is that the INDC, involving a reduction by 2030 of at least 40% domestic greenhouse gas emissions compared with 1990, is an ambitious contribution from the EU, and will put it on a cost effective trajectory to the 80–95% reductions on 1990 levels by 2050 recommended by the IPCC.

45.21 The Minister concludes by saying that the Government will continue to work with the Commission and all other Member States to ensure that the EU continues to take an ambitious position to secure a deal in Paris that best serves UK interests, with the position being further elaborated in Council Conclusions, agreed by consensus.

Previous Committee Report(s)
None.

46 2015 EU accountability report on financing for development

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; drawn to the attention of the International Development Committee; relevant to the debate recommended elsewhere on the Commission Communication “A Global Partnership for Poverty Eradication and Sustainable Development after 2015”

Document details
Commission Staff Working Document

Legal base
—

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

Document Numbers
(36801), 10294/15 + ADD 1, SWD(15) 128

Summary and Committee’s conclusions

46.1 The EU Accountability Report on Financing for Development (FFD) is an annual Commission publication detailing EU and Member States’ progress towards past development finance commitments.
46.2 The Report finds that 23 of 41 targets have been met or are “on track” to be met. The Commission’s assessment is that a further nine are only partially “off track” and could still be met. The Commission assesses strong progress on domestic resource mobilisation, private finance for development, combining public and private finance for development, and using development finance effectively.

46.3 The Ministers at the Departments for International Development (Baroness Verma), Environment, Food and Rural Affairs (Rory Stewart) and Energy and Climate Change (Lord Bourne) note that the EU record on international public finance for development in particular is less good, with only four of 14 targets on track. They also highlight the collective commitment for developed countries to spend 0.7% Gross National Income (GNI) as Official Development Assistance (ODA):

“seen by many as the most important FFD commitment, [it] is assessed as very off track (and it is clear that it will not be met by the target date of 2015). However, importantly the UK is recognised as having met the target alongside Sweden, Denmark and Luxembourg.”

46.4 This year’s Report, which reviews the entire series of reports from 2002 to 2013 together with new information on progress in 2014, comes at a crucial juncture in the negotiations on the design of the new global framework for sustainable development, which will be centre stage at the UN Financing for Development Conference, in Addis Ababa, in July 2015 and the UN Summit on the new Sustainable Development Goals in September 2015 (which will in turn “read-across” to the Conference of the Parties to the UN Framework Convention on Climate Change in Paris in December).

46.5 Elsewhere in this Report we consider the latest stage of the Committee’s consideration of the Commission Communication: A Global Partnership for Poverty Eradication and Sustainable Development after 2015, which sets out the Commission’s views on the delivery of a new global partnership for poverty eradication and sustainable development after 2015. The same Ministers have provided us with their views on the Conclusions agreed on 26 May 2015 “Development” Foreign Affairs Council, which set out the EU’s high-level position for the ongoing FFD negotiations, and which they describe as providing “helpful clarity in the run up to the Financing for Development Conference”.

46.6 In that part of our Report, we conclude that the time has now come for the major developments in the Commission Communication and the Council Conclusions to be debated in European Committee B. We have recommended that this debate should be held immediately after the House returns from the “conference” recess, so that the House can be provided with, and discuss, the Government’s analysis of the outcome of

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347 See (36644), 5902/15 at chapter 2 of this Report for the Ministers’ full view on these Council Conclusions (which themselves run to 64 paragraphs over 23 pages).
both the Addis Ababa “Financing for Development” conference and the discussions at the United Nations in September.348

46.7 We think that this chapter of our Report should be “tagged” to that debate.

46.8 If any Council Conclusions are adopted on this Commission Staff Working Document before then, we should be grateful if the Minister would provide the Committee with a copy.

46.9 In the meantime, we now clear this Commission Staff Working Document from scrutiny.

**Full details of the documents:** Commission Staff Working Document: “2015 EU Accountability Report on Financing for Development”: (36801), 10294/15 + ADD 1, SWD(15) 128.

**Background**

46.10 The EU Accountability Report on Financing for Development (FFD) is an annual publication by the European Commission. It responds to the Council’s mandate to the Commission to monitor progress and report annually on the EU’s collective aid commitments. It initially focused on commitments of official development assistance (ODA) made at the 2002 International Conference on Financing for Development in Monterrey. The Council later expanded the original monitoring mandate to cover more areas, including domestic revenue mobilisation, aid effectiveness, aid for trade, and fast-start climate finance.

46.11 The Commission notes that this year’s report comes at a crucial juncture in the negotiations on the design of the new global framework for sustainable development: financing issues will be discussed, as part of the overall Means of Implementation, at the UN Financing for Development Conference, in Addis Ababa, in July 2015; while a UN Summit is expected to agree on the new Sustainable Development Goals in New York in September 2015. These will in turn have a “read-across” to the Conference of the Parties to the UN Framework Convention on Climate Change in Paris in December:

> “Implementing what will be an ambitious and comprehensive new development agenda will undoubtedly require an unprecedented effort by all, and securing the required means of implementation — including financing — for the agenda will be crucial to its success.”349

46.12 The entire series of reports from 2002 to 2013 was reviewed for this report, together with new information on progress in 2014. The Commission describes the overall picture as encouraging: 23 out of 41 EU commitments have been met or are “on track” to be met; another nine are only partially “off track”; and the EU is “off track” to meet the remaining

348  Ibid.
349  SWD(15) 128, p.11.
nine commitments. The EU is described as doing well in private finance for development (see section 4), combining public and private finance (section 6), and using development finance effectively (section 7). It has made less progress on public finance (section 5) where it has fallen short of “ambitious” ODA targets.

46.13 In their Explanatory Memorandum of 10 July 2015, the Parliamentary Under-Secretaries of State at the Departments for International Development (Baroness Verma), Environment, Food and Rural Affairs (Rory Stewart) and Energy and Climate Change (Lord Bourne) note that, as a factual technical document containing information on EU institutions’ and Member States’ progress towards previous FFD commitments, which does not articulate Member State views or EU policy, there are no policy implications per se in relation to the EU Accountability Report. They expect that the Luxembourg EU Presidency will adopt Council Conclusions on the Accountability Report, but the timing is not yet clear; they undertake to keep the Committee informed of any forward looking commitments or proposals.

The Government’s view

46.14 The Ministers note that the UK has been a longstanding supporter of this Report, which they describe as “a valuable transparency tool”, and “a regular accountability mechanism for the EU’s 0.7% ODA commitment, as well as other important pledges in relation to FFD”. They also welcome the Commission’s decision to bring forward publication of the 2015 Report, to make the information available in advance of the Addis Ababa FFD Conference.

Previous Committee Reports

None.

47 Gender equality and women’s empowerment in development 2010–15

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See “Highlights” for full detail.
Summary and Committee’s conclusions

47.1 Gender equality is one of the eight Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015.351

47.2 The antecedents of this report go back to a 2007 Commission Communication, the overarching aim of which was to promote progress in achieving: equal rights (political, civil, economic, employment, social and cultural) for women and men, girls and boys; equal access to, and control over, resources for women and men; and equal opportunities to achieve political and economic influence for women and men. The strategy envisaged a twin-tracked approach: increasing the efficiency of gender mainstreaming and specific actions for women’s empowerment in partner countries. Priorities included: gender equality issues in the regular political dialogue with partner countries; integrating gender equality analysis and objectives into country strategies and indicators for measuring performance and impact; and building institutional capacity both within the EU and partner countries.

47.3 This was followed by the EU 2010–2015 GAP (Plan of Action on Gender Equality and Women’s Empowerment in Development). The GAP contains nine objectives, 37 actions and 53 indicators which the European Commission, the European External Action Services (EEAS) and the 117 EU Delegations that have external cooperation activities EU Delegations, and EU Member States, are committed to implement and to report annually, to the deadlines agreed for each indicator for which they are responsible.

47.4 In March, the previous Committee found that the general thrust of this report — the third thus far on the key issue of implementation — was all too familiar: slow progress in some countries, sectors or Member States, which reflected a lack of ownership and commitment at the middle management level, combined with a lack of understanding about its implications and know-how on its implementation. The story was thus of the Commission/European External Action Service (EEAS) “talking the talk”, but failing to “walk the walk”. Looking ahead to the post-2015 development agenda, a successor GAP should indeed focus on results. But, before then, the Commission and EEAS needed to focus on implementation of what had been agreed thus far. Given the timing, the Council Conclusions on this report would assume a particular importance. The then Minister was accordingly asked to provide a copy in due course, and her (or her successor’s) assessment...

351 For a full discussion of Gender Equality and Women Empowerment, see the April 2003 UN Millennium Project Background Paper of the Task Force on Education and Gender Equality Promises to Keep: Achieving Gender Equality and the Empowerment of Women.
of how they took the vital issue of GEWE (Gender Equality and Women Empowerment) forward in the right way, and with genuine commitment.

47.5 The Parliamentary Under-Secretary of State at the Department for International Development’s (Baroness Verma) assessment is set out below (see “Background”). Overall, she says that they reflect all of the UK’s broad priorities for the EU’s work on Gender Equality. Development Commissioner Mimica has stressed his personal commitment to the fight against gender-based violence, and the promotion of human rights, and committed to produce an “institutional shift” in the Commission’s approach to gender.

47.6 The Minister professes herself pleased that the Conclusions note the concern of Member States on the slow progress in the implementation of the current GAP, and characterises “the strong emphasis on results” as “a useful impetus”, as well as “the need for sufficient resources to support implementation of the next GAP”.

47.7 We reproduce the key paragraphs of the (eight pages of) Council Conclusions at the Annex to this chapter of our Report. We note in particular that the Council “urges the Commission to implement the report’s recommendations” and “looks forward to a final report on the implementation of the current GAP”. So do we, and expect a full assessment from the Minister of the extent to which the Council’s exhortations have been taken on board, and what further action she then judges to be necessary.

47.8 The Council Conclusions also refer to a report on the Evaluation of the EU Support to Gender Equality and Women’s Empowerment in Partner Countries for the period 2007-2013, with regard to which the Council “urges the Commission and the EEAS to implement its main recommendations, notably in the successor to the current GAP, starting with a fully-fledged management response”, and expresses its concern “with the performance of most EU Delegations which are not sufficiently taking gender equality into consideration”. We are not aware of this Report, and ask the Minister to clarify whether or not it should have been submitted for scrutiny, and to let us know what those recommendations are.

47.9 The Minister says that she will continue to press for the commitments in the Council Conclusions to be reflected in the successor to the current GAP, which she says will be “presented” to the October “Development” Foreign Affairs Council. We presume that this implies some form of preliminary consideration, and not that concrete proposals are to be adopted prior to any form of parliamentary scrutiny. If we are mistaken, then we ask the Minister to write to us immediately to explain why and how this has come to pass.

47.10 In the meantime, we are drawing the Minister’s response to the attention of the House because of the importance of the subject matter.

47.11 For the same reasons, we also draw these developments to the attention of the International Development and Women and Equalities Committees.

Background

47.12 Adopted by the Council in 2010, the GAP contains nine objectives, 37 actions and 53 indicators. All are time bound. European Commission services and the European External Action Services (EEAS) at Headquarters and Delegations level, as well as EU Member States, are all committed to its implementation and to report progress annually. Indicators are selected each year for reporting, their selection depends on factors such as their target date for completion. The indicators are all expected to track actions that in turn feed into the nine objectives deemed necessary to strengthen the capacity of the European Union and EU Member States to improve gender equality mainstreaming in and contribute to women’s empowerment through development cooperation. The indicators deal with those areas considered essential ingredients of effective mainstreaming, including: political dialogue, programme and project design and implementation, measurement, peace and security etc.

47.13 In January 2014, when submitting the third of these GAP annual reports for scrutiny, the then Minister (Lynne Featherstone) was pleased that, as in previous years, the report highlighted not only the achievements made in promoting gender equality through development cooperation, but also the persisting challenges and areas where more work needed to be done. However, the report’s conclusion that, overall, progress was “extremely slow” between July 2012 and June 2013, was very disappointing. Though the EU institutions and a number of Member States remained highly committed to prioritising gender equality in global negotiations, including as part of the post 2015 development agenda, to “ensure the credibility of the EU’s position in these negotiations”, it was “very important that the EU delivers on its own commitments to integrate gender equality in its development programmes”.

The 2014 GAP implementation annual report

47.14 The report covers the period July 2013–June 2014. It found that “overall, this report shows some progress in areas such as political dialogue, coordination, partnerships and on the post-2015 agenda”. But, disappointingly, “progress remained very slow on issues such as gender analysis, monitoring (indicators) and financial tracking”. The authors said that reports from EU Delegations “clarify that where change is really occurring, it’s because of management and political leadership at the level of Delegation and Headquarters’ middle- and top-management”. The EU had “clear and strong commitments on GEWE352”, however, slow progress on the GAP in some countries, sectors or Member States “may reflect a lack of ownership and commitment at the middle management level, combined

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352 Gender Equality and Women's Empowerment.
with a lack of understanding about its implications and know-how on its implementation”. Thus, the Commission said:

“Setting out a clear vision for GEWE and what is sought to be achieved concretely (e.g. through the results framework, post 2015 agenda, sector programmes, political dialogue) might help improve the incentives, understanding and leadership needed for institutional change in the longer term. The new GAP may wish to consider a narrative that clearly states this and consider high level leadership to raise its profile.”

47.15 When the report was submitted for scrutiny in February, the then Minister (Baroness Northover) underlined the Government’s commitment to putting girls and women at the centre of international development, it being one of the six priorities specified in the 2011-2015 Department for International Development’s (DFID) Business Plan. The UK had been a key member of the EU Gender Experts Core Group since its inception, and was a member of the Task Force to guide the drafting of a new “robust and ambitious” successor to the GAP.

47.16 In the meantime, the then Minister said that meeting the targets set out in the current GAP and in its successor would require “stronger, more visible support from EU senior management, improved technical capacity, systematic use of robust gender analysis and gender-disaggregated data, a stronger focus on results, and greater and more consistent engagement with women and girls (beneficiaries) at all stages of the programming cycle”. Action needed to be taken “both in Brussels and in EU Delegations to improve coordination and commitment to delivering results on gender”. The Minister wanted to see “faster and deeper progress than has been evident so far” and had “made this clear to the Commission including through Ministerial and senior DFID staff visits to Brussels over the last three months, as well as through active participation in the drafting of the successor to the GAP”.

47.17 The then Minister was accordingly pleased that:

“both the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President (HRVP) of the European Commission (Federica Mogherini) and the European Commissioner for International Cooperation and Development (Neven Mimica) have indicated that they will make gender a top priority for their terms in office. This top level leadership is something the UK pushed hard for in our early interactions with the new Commission. We will continue to build on this through further Ministerial engagement, as well as technical inputs via the Task Force and bilateral engagement with Commission officials.” (see paragraphs 46.24–46.27 below for the Minister’s detailed comments).

The previous Committee’s assessment

47.18 Our predecessors recalled that the general thrust of the report was all too familiar: slow progress in some countries, sectors or Member States, which reflected a lack of ownership and commitment at the middle management level, combined with a lack of
understanding about its implications and know-how on its implementation — reasons why they had recommended a European Committee debate on the 2013 report.\footnote{For the full record of the debate, see \textit{Gen Co Deb}, European Committee B, 6 March 2014, cols. 3-24.}

47.19 This 2014 GAP report assumed a particular importance because, on the post-2015 agenda — which they consider elsewhere in their previous Report\footnote{See (36070), 10412/14: Commission Communication: \textit{A Global Partnership for Poverty Eradication and Sustainable Development after 2015}, at chapter 27 of that Report. Now also see our further Report on this Commission Communication at chapter 2 of this Report.} — the position of the Union gives a strong emphasis to gender equality, both as an objective in itself and as a crosscutting issue; as was recognised in the Council Conclusions of last May on the 2013 GAP report, which called upon the EU and its Member States to “develop an ambitious and robust successor to the current GAP, focused on results and taking into account the post 2015 agenda”.

47.20 The Council Conclusions on this 2014 GAP report would likewise assume a particular importance. The story thus far was of the Commission/European External Action Service (EEAS) “talking the talk”, but failing to “walk the walk”. It would be surprising if the new HR and Development Commissioner did not make gender a top priority; it was no doubt such with their predecessors. A successor GAP should indeed focus on results. But, before then, the Commission and EEAS needed to focus on implementation of what had been agreed thus far. Top level leadership was vital. This essential element should be reflected in the Council Conclusions. The then Minister was accordingly to provide a copy in due course, and her (or her successor’s) assessment of how they took the vital issue of GEWE forward in the right way, and with genuine commitment.

47.21 In the meantime, the report was cleared from scrutiny.

47.22 These developments were also drawn to the attention of the International Development Committee.\footnote{Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 27 (18 March 2015).}

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

47.23 The Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) encloses a copy of the Council Conclusions,\footnote{See \textit{Council Conclusions} dated 20 May 2015 on \textit{Gender in Development}.} whose content (she says) the UK influenced “through both official and Ministerial channels”. As a result, the Conclusions reflect “all of the UK’s broad priorities for the EU’s work on Gender Equality, including more concrete commitments regarding effective implementation of the next GAP”.

47.24 In particular, the Minister says, the UK managed to insert language on the following into the Conclusions:
“Women’s and girls’ rights, gender equality and the empowerment of women and girls will be at the core of the post-2015 agenda, both as a stand-alone goal and as a cross-cutting issue, as well as a target and indicator of all the Sustainable Development Goals.

“Women’s and girls’ rights, gender equality and the empowerment of women and girls as a policy priority for all EU’s external action as well as its development cooperation, should be strengthened and coherent in all areas without exception.

“The importance of strategic monitoring, evaluation and follow-up and the need to clarify and strengthen reporting, including statistics, accountability arrangements and management responses to achieve results. In particular, defining clear targets and meaningful indicators, measured by data disaggregated by sex, age and other factors, as well as to improve tracking of budgetary allocations and expenditures and results measurement are priorities to ensure the Gender Action Plan is properly implemented.

“The importance of securing sufficient financial and human resources in order to fully deliver on the EU’s commitments.”

47.25 The Minister also says:

“The Council Conclusions reaffirm the commitment of the EU and its Member States to the elimination of all forms of discrimination against women and girls. During a discussion at the Development Foreign Affairs Council in May, Development Commissioner Mimica stressed his personal commitment to the fight against gender-based violence, and the promotion of human rights, and committed to produce an ‘institutional shift’ in the Commission’s approach to gender. The Conclusions also reflect UK work with other Member States, including France, to secure impetus on Sexual and Reproductive Health Rights, Female Genital Mutilation and Child and Early Forced Marriage.”

47.26 On the question of Implementation, the Minister says:

“We are pleased that the Conclusions note the concern of Member States on the slow progress in the implementation of the current GAP, including on issues such as gender analysis, statistics, monitoring, financial tracking, delivery and impact. We believe that the strong emphasis on results is a useful impetus as well as the need for sufficient resources to support implementation of the next GAP.”

47.27 Looking ahead, the Minister says:

“We shall continue to press for these commitments to be reflected in the successor to the current GAP, which we now expect will be presented to the Development Foreign Affairs Council in October.”
Previous Committee Reports


Annex: extract from the 20 May 2015 Council Conclusions on Gender in Development

“21. The Council takes note of the fourth report on the implementation of the EU Action Plan on Gender Equality and Women’s Empowerment in Development 2010-2015, covering the period from July 2013 to June 2014. The Council welcomes the progress being made in areas such as political dialogue, coordination, partnerships and the strong EU position on the post-2015 agenda. However, the Council expresses concern with regard to the very slow and incomplete implementation of the Action Plan and lack of progress on issues such as gender analysis, statistics, monitoring, financial tracking, delivery and impact. The Council urges the Commission to implement the report’s recommendations and looks forward to a final report on the implementation of the current GAP.

“22. The Council also welcomes the report on the Evaluation of the EU Support to Gender Equality and Women’s Empowerment in Partner Countries for the period 2007-2013. The Council takes note of the findings and conclusions of the report and urges the Commission and the EEAS to implement its main recommendations, notably in the successor to the current GAP, starting with a fully-fledged management response. The Council is concerned with the performance of most EU Delegations which are not sufficiently taking gender equality into consideration, for example by not implementing compulsory gender equality assessments in Results Oriented Monitoring.

“23. The Council calls for revitalised commitment and leadership from the Commission and the EEAS on the EU’s ambition for achieving gender equality and women’s and girls’ empowerment. The Council underlines the need to make gender a priority, encourage best practices, strengthen accountability and transparency, and ensure all programming decisions are evidence based and linked to results. In particular, the Council calls on the Commission and EEAS to take more significant action to strengthen the role and responsibility of EU Delegations and to prioritise and invest in high quality gender analysis as the basis for country level strategies, programming and policy and political dialogue.

“24. The Council underlines the importance of strategic monitoring, evaluation and follow-up and the need to clarify and strengthen reporting, including statistics, accountability arrangements and management responses to achieve results. In particular, the Council stresses the need to define clear targets and meaningful indicators, measured by data disaggregated by sex, age and other factors, as well as to improve tracking of budgetary allocations and expenditures and results measurement.
In doing so, close and consistent linkages should be sought with the post-2015 agenda and the new EU International Cooperation and Development Results Framework. The Council stresses that more emphasis must be given to gender in the EU Results Framework and calls on the Commission to report against sex and age disaggregated indicators.

“25. The Council calls for an enhanced and more strategic and human rights based approach, containing key transformative priorities for tackling gender inequality and addressing existing gaps for gender equality and the empowerment and full realisation of fundamental freedoms and human rights of all women and girls. The Council looks forward to an ambitious and robust successor to the current GAP, covering the period from 2016 to 2020. The Council stresses the need to build upon the progress of the current GAP, while keeping its three-pronged approach, apply lessons learned and fully address remaining shortfalls and challenges, as well as to focus on results. The Council calls on the Commission to ensure that the successor to the current GAP reflects all of the EU’s external action. The Council welcomes and further encourages the inclusive approach being adopted by the EU and its Member States, and looks forward to the ongoing work being carried out by the Taskforce in view of preparing the new GAP.

“26. The Council calls on the Commission to secure sufficient financial and human resources in order to fully deliver on the EU’s commitments on women’s rights, gender equality and the empowerment of women and girls. The Council further reiterates the need to transform institutional cultures and to strengthen political leadership and increase capacity, coordination, coherence, complementarity and accountability in order for the EU and its Member States to lead by example.”

### 48 Financial information on the European Development Fund

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Summary and Committee’s conclusions

48.1 The European Development Fund (EDF) supports actions in the African, Caribbean and Pacific (ACP) countries and the Overseas Countries and Territories (OCTs) social and human development as well as regional cooperation and integration. It is concluded for a multi-annual period (usually five years) and is implemented within the framework of an international agreement between the European Union and the partner countries.

48.2 The EDF amounted to 3% of the annual EU budget in 2008–13. It is financed by direct contributions from EU Member States according to a contribution key and is covered by its own financial rules. The total financial resources of the 11th EDF amount to €30.5 billion for the period 2014–20.357

48.3 Last November, the then Committee considered a Communication that reflected concerted UK efforts to address the issue of accurate forecasting. The then Minister (Lynne Featherstone welcomed the Commission having now provided forecasting for Member States’ contributions for the four year period 2014–18 (see paragraph …. below and our predecessors’ Report of November 2014 for details358).

48.4 In October 2014, the Commission provided estimates for Member State contributions for 2016 of €3,600 million (£2,588.4 million), of which the UK share would be €533.52 million (£383.6 million), for 2017 and 2018 at €3,650 million (£2,624 million) and €3,670 million (£2,639 million) respectively.

48.5 This further Communication outlines how the financial implementation of the 10th EDF for 2014 has led to a change from the October 2014 forecast for funds needed in the second tranche of EDF funding for 2015 to deliver EDF programmes in 2015. The Commission and EIB (European Investment Bank359) have requested total contributions from Member States for 2015 of €3,400 million (£2,445 million), of which €3,200 million (£2,301 million) will be managed by the Commission and €200 million (£143.8 million) by the EIB; a €200 million (£143.8 million) decrease in the funds managed by the Commission. The UK share of the 2015 spending will be €503.88 million (£362.2 million).

48.6 The Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) says “as a Member State who has pushed the Commission to ensure its forecasting improves and its request for funds better reflect the needs of its spending profile”, she welcomes this development. But she is not complacent: she and her officials continue to press the Commission for improved forecasting, “in order to ensure excessive cash balances are not lying unutilised for lengthy periods of time” (see paragraphs 47.17–47.20 below).

48.7 Though the sums are relatively small — a €200 million (£143.8 million) reduction in all, and a reduction of €29.64 million (£21.31 million) in the UK contribution — we

357 See Where does the money come from?
359 See EIB at a glance.
agree with our predecessors’ assessment, that accurate forecasting matters; and accordingly, like them, welcome continued progress on this front.

48.8 We hope to see more such progress when the October 2015 Communication, which will update last year’s forecasts for 2014–18, is presented for scrutiny. On that occasion, we would appreciate the Minister providing an update on the Commission’s new risk methodology to which she refers, and upon which she is seeking “further understanding”, and a clearer explanation of the role this plays in improving the accuracy of the forecasts in question.

48.9 In the meantime, we clear this Commission Communication.

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

**Full details of the documents:** Commission Communication — *Financial Information on the European Development Fund:* (36933), 9946/15, COM(15) 295.

**Background**

48.11 The European Development Fund (EDF) supports actions in the African, Caribbean and Pacific (ACP) countries and the Overseas Countries and Territories (OCTs) social and human development as well as regional cooperation and integration.

48.12 The EDF consists of several instruments:

— grants managed by the Commission;

— risk capital and loans to the private sector, managed by the European Investment Bank under the Investment Facility; and

— the FLEX mechanism, which seeks to remedy the adverse effects of instability of export earnings.

48.13 Last November, the then Committee considered a Commission Communication that updated the forecasts given in the Commission’s June 2014 Communication and provided estimates of EDF commitments, payments and contributions for the period 2014 to 2018. The then Minister (Lynne Featherstone) welcomed the more accurate Commission forecasting:

“The UK has made concerted efforts to address the issue of accurate forecasting for the EDF. As a result, the EC gave legal commitments to increase the forecasting period for Member States’ contributions from two to four years, to minimise variations in Member States’ annual contributions, and to manage more closely balances in the EDF account to ensure that funds, and any interest earned, will remain in Member State accounts until needed. The UK welcomes that in this Communication, the EC has provided forecasting for Member States’ contributions for a four year period (2014–2018).”
The previous Committee’s assessment

48.14 With the EDF amounting to 3% of the annual EU budget in 2008–13; to €30.5 billion for the period 2014–2020; and with the UK contribution in 2014 amounting to €479.40 million, accurate forecasting matters. It was accordingly gratifying that Commission performance, which had improved significantly over the years, under pressure from both Member States and the European Court of Auditors, continued to do so, with further improvements having been made with regard to EDF 11. The previous Committee looked forward to hearing more of the same the following summer.360

The Commission Communication

48.15 This Communication outlines how the financial implementation of the 10th EDF for 2014 has led to a change from the October 2014 forecast for funds needed in the second tranche of EDF funding for 2015, in order to deliver EDF programmes in 2015.

48.16 In her Explanatory Memorandum of 29 June 2015, the Minister (Baroness Verma) recalls the Commission’s October 2014 Communication, which provided estimates for Member State contributions for 2016 of €3,600 million (£2,588.4 million), of which the UK share would be €533.52 million (£383.6 million); and for 2017 and 2018 at €3,650 million (£2,624 million) and €3,670 million (£2,639 million) respectively. She explains that:

— the updated Commission forecast revises overall Member State contributions for 2015, from €3,600 million (£2,588 million), as proposed last November, to €3,400 million (£2,445 million);

— this is due to a €200 million (£143.8 million) reduction requested by the Commission for 2015;

— the UK contribution for 2015 will therefore be €503.88 million (£362.2 million); a reduction of €29.64 million (£21.31 million), which will be reflected in the UK’s second instalment for 2015.

The Government’s view

48.17 The Minister describes “concerted efforts” to address the issue of accurate forecasting for the EDF; officials have “consistently lobbied hard via the Council Working Group to improve financial oversight and accountability of EDF forecasting”, which has included ensuring that the Commission “assesses the need for funds and aligns this with Member States contribution payment profiles, in line with DFID policy on guarding against payment of funds in advance of need”. She outlines a new methodology adopted by the Commission that “responds to Member State calls (including UK) during the EDF11 regulation negotiations for more rigorous management of resources”; is therefore confident that the Commission has reduced its call for Member States contributions based

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on their best estimate of their cash requirements for 2015, and supports the revised forecast.

48.18 Though content with the proposed Communication, the Minister says that she and her officials continue to:

— press the Commission for improved forecasting, “in order to ensure excessive cash balances are not lying unutilised for lengthy periods of time”; and

— “seek further understanding” of the Commission’s new risk methodology.

48.19 The Minister then notes that, in response to the most recent European Court of Auditor’s report on activities of the 8th, 9th and 10th EDFs, she is reassured that the Commission “has an action plan in place to strengthen financial management and control systems, and they have committed to presenting regular progress updates to Member States”.

48.20 All in all, the Minister says:

“We have been strong in our support of the importance of good financial discipline. In Council Working Group the UK supported the EC’s\textsuperscript{361} revised forecast and pushed against any amended proposal that would allow payment to the EC in advance of need and hold balances in excess of forecasted spending. We expect to see continual improvements in future forecasts, which we believe will, over time, reduce the variability of in-year and in future years.”

48.21 With respect to her own Department, the Minister says:

“DFID can accommodate the change to the UK contribution for 2015 and will have enough time to adjust financial planning accordingly. The DFID financial management framework is robust, and incorporates monthly analysis and formal quarterly reviews of actual, planned and forecast expenditure”.

48.22 With regard to the Timetable, the Minister says that, Member States having discussed and supported this Communication in Council Working Group on 26 June 2015, she expects it to be adopted by written procedure by 6 July 2015:

“Should the House of Commons Scrutiny Committee not be able to comment on this Council Decision ahead of it coming to Council, the UK will support the Council Decision. As a Member State who has pushed the Commission to ensure its forecasting improves and its request for funds better reflect the needs of its spending profile it is important the UK backs the Council decision that reflects Commission action on both counts. The decision will also lead to a reduced call on UK funds in 2015.”

\textsuperscript{361} European Commission.
Previous Committee Reports


Inland waterways: freight

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

Document details  Proposal for a Council Decision to allow Austria, Belgium and Poland to participate in a convention about contract law for inland waterways freight

Legal base  Articles 2(1), 81(2) and 218(6) (a) TFEU; QMV

Department  Transport

Document numbers  (36582), 17025/14 + ADD 1, COM(14) 721

Summary and Committee’s conclusions

49.1 This proposal, now adopted, provides authorisation for Austria, Belgium and Poland to join ten other Member States (not including the UK) to accede to the Budapest Convention on the Carriage of Goods by Inland Waterways. Although the EU cannot itself accede, because the Convention is limited to state parties, its provisions on the choice of law applicable to contracts falling under the Convention is a matter of exclusive EU competence. Therefore these Member States require EU authorisation.

49.2 This matter does not have any significant UK policy implications, but does raise legal issues:

• as to whether the UK opt-in is engaged;\textsuperscript{362} and

• the appropriate legal base.

49.3 Because the UK Government has sought to opt-in, the fact that the other Member States supported the Commission’s contention that the UK opt-in is not engaged (and therefore the UK is automatically bound by the Decision) creates no practical difficulty. Having failed to secure recitals to the Decision which acknowledge that the UK’s opt-in is engaged, we therefore support the Government’s approach of abstaining and tabling a minute statement asserting that the UK opt-in is engaged whenever an EU legal

\textsuperscript{362} Protocol 21 on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice.
The instrument uses a legal base from Title V of part Three TFEU concerning the Area of Freedom, Security and Justice.

49.4 We remain unconvinced by the Minister’s explanation as to why he considers Article 218 (6) TFEU to be an appropriate legal basis for the EU to authorise Member States to enter into an international agreement, when it cannot itself become a party. We consider that the judgment of the Court of Justice in case C-399/12 indicates otherwise. However, we note that no other Member State has questioned this legal base so litigation to resolve this issue is unlikely until a future similar case with sufficient interests at stake arises.

49.5 As the proposal has now been adopted we formally clear it from scrutiny.

**Full details of the documents:** 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**

49.6 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. These provisions affect the rules laid down in Regulation 593/2008 on the law applicable to contractual obligations (the Rome I Regulation), and therefore this is a matter for which the EU has exclusive competence. As a consequence Member States cannot now lawfully ratify or accede to this part of the Convention without EU authorization.

49.7 The proposed Decision to give such authorisation includes a legal basis found in Title V TFEU which would ordinarily engage the UK opt-in. However the Commission and the Council Legal Service take the view that as the UK has opted in to the Rome I Regulation giving rise to exclusive EU competence over this international agreement the opt-in no longer applies to any decision relating to it. The Government, with the support of our predecessor Committee, disagree and therefore sought recitals recognising that the UK opt-in is engaged.

49.8 The legal base issue involves Article 218(6) TFEU. This provision sets out the procedure for the Council to conclude an international agreement. The question is whether this also applies to any decision authorising Member States to enter into an international agreement. This matter has not been directly considered by the Court of Justice, but in case C-399/12, it decided that Article 218(9) TFEU — the procedure to establish an EU position with a body created by an international agreement — was an appropriate legal base for the EU to authorise Member States to take a position where the EU could not accede to the

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363 Article 3 (2) TFEU.
international agreement and therefore was not itself a member of the body. In doing so, at paragraph 54 of its judgment, it contrasted Article 218(9) with the preceding provisions of Article 218 which “have as their object the negotiation and conclusion of agreements by the European Union”.

The Minister’s letter of 8 July 2015

49.9 The Minister’s letter confirms that the Decision was adopted at the Justice and Home Affairs Council of 15-16 June 2015, with the UK abstaining. On the issue of the legal base he indicates:

“This Government is not persuaded that the Court would uphold a challenge to the use of Article 218(6) TFEU as the legal basis of the Council Decision. I maintain the view expressed by my predecessor (in his letter of 19 March 2015) that it is likely the Court would find that Article 218(6) has application in situations where the European Union is not a party to the agreement in question in cases where EU has exclusive external competence. I do not believe that the judgment of the Court of Justice of the European Union in Case C-399/12 contradicts that view. I consider the Court’s comments in paragraph 54, although ambiguously phrased, are not so much concerned with distinguishing Article 218(9) from other paragraphs in article 218, but are focussed on rebutting the narrower argument made by the German government about interpreting Article 218(9) in light of other provisions in Article 218.”

49.10 On the subject of the UK opt-in he reports:

“As you will recall, the EU institutions do not accept that the UK Government has the right to engage its opt-in in cases when the Commission states it has exclusive competence, even though a Title V Justice and Home Affairs legal base is being used. Throughout negotiations we sought an amendment to the language of the recitals to the proposed Decision in order to reaffirm the UK’s opt-in, but this has not been forthcoming.

“At the JHA Council meeting the UK abstained from the vote because we did not consider that it would be appropriate to override the Parliamentary scrutiny reserve on a matter that has little importance to the UK. However, we tabled a Minute Statement reaffirming our position that we are entitled to use the opt-in whenever a Title V legal base is used. As you will know, this is consistent with the UK approach on such proposals where we are unable to secure the desired outcome.”

Previous Committee Reports

50 Port State Control

Committee’s assessment
Legally and politically important

Committee’s decision
Cleared from scrutiny

Document details
Draft Council Decision concerning the EU’s position on annual decisions under an international agreement on Port State Control

Legal base
Articles 100(2) and 218(9) TFEU; —; QMV

Department
Transport

Document numbers
(36791), 8001/15 + ADDs 1–2, COM(15) 159

Summary and Committee’s conclusions

50.1 The Paris Memorandum of Understanding on Port State Control concerns inspections of foreign flag ships in a Port State’s waters to ensure compliance with relevant maritime conventions. Port State Control is seen as a second line of defence against substandard shipping due to a serious failure of ship owners and some flag States. The Paris Memorandum of Understanding on Port State Control Committee, which comprises all 27 members (including coastal Member States) of the Memorandum of Understanding, meets annually in May to discuss and agree, by consensus, matters of Port State Control policy.

50.2 Since 1995 the EU has had legislation on Port State Control. The current legislation makes various references to the Paris Memorandum of Understanding and its procedures on Port State Control. As a result the EU has acquired exclusive competence in relation to those elements of the Memorandum and further agreements made under its auspices, to the extent that this EU legislation is affected. As the EU is not a member of the Memorandum of Understanding, Member States are not able to assume obligations likely to affect the EU legislation unless they are authorised to do so by means of a Council Decision.

50.3 In previous years a coordination meeting with Member States has been held prior to meetings of the Port State Control Committee, under the auspices of a Council Shipping Working Party, followed by a Commission non-paper detailing the agreed positions on certain agenda items during the committee meeting.

50.4 Earlier this year the Commission proposed a change of approach. It put forward this draft Council Decision on the positions to be adopted on behalf of the EU at the annual Port State Control Committee meetings during the period 2015–18. Its proposal for a multiannual Council Decision was made up of two parts: Annex I setting out guiding principles and Annex II setting out a process for the adoption of the specific positions each year relevant to each year’s committee meeting. The Commission proposed that it should prepare non-papers setting out an envisaged EU position for discussion and agreement in the Council Shipping Working Party ahead of each annual meeting.
50.5 The Government tells us that Member States were unhappy with this proposal and that in May the Council adopted a compromise text which made the Council Decision applicable only to the May 2015 meeting of the Port State Control Committee and only addressed positions to be adopted on behalf of the EU with respect to the five papers to be considered at that meeting which fell within exclusive EU competence. The Government also tells us that, although it welcomes the compromise text, it abstained from the Council agreement, because the matter was still under scrutiny.

50.6 **Given both that an acceptable Council Decision emerged and that the Government did not breach the Scrutiny Reserve Resolution we clear this document from scrutiny.**

**Full details of the documents:** Draft Council Decision on the position to be adopted, on behalf of the European Union, in the Port State Control Committee of the Paris Memorandum of Understanding on Port State Control: (36791), 8001/15 + ADDs 1–2, COM(15) 159.

**Background**

50.7 The Paris Memorandum of Understanding (Paris MoU) on Port State Control (PSC) has existed since 1983 when 14 likeminded countries (including the UK) signed a memorandum on the undertaking of PSC inspections on foreign flag ships in their waters to ensure compliance with relevant maritime conventions. PSC is seen as a second line of defence against substandard shipping due to a serious failure of shipowners and some flag States. The Paris MoU now comprises 27 members (the Russian Federation, Canada, Iceland, Norway and the coastal Member States of the EU). The Paris MoU PSC Committee (PSCC), which comprises all members of the Paris MoU, meets annually in May to discuss and agree, by consensus, matters of PSC policy.

50.8 Following a major pollution incident off the coasts of the Shetland Islands in 1993 the Commission proposed a Directive on PSC, which became Directive 1995/21/EC. Following the ‘Erika’ pollution incident in 1999, off the coast of Brittany, the Commission presented the **Third Maritime Safety Package** which included a recast Directive on PSC, Directive 2009/16/EC, which makes various references to the Paris MoU and its procedures on PSC.

50.9 Although the EU is not a member of the Paris MoU, under Article 218(9) TFEU Member States are not authorised to assume obligations likely to affect EU rules unless they are authorised to do so by means of a Council Decision.

**The document**

50.10 In previous years a coordination meeting with the EU members has been held prior to meetings of the PSCC, under the auspices of a Council Shipping Working Party, followed by a Commission non-paper detailing the agreed positions on certain agenda items during the PSCC.

50.11 The Commission has now proposed a change of approach. It considers the actions of the PSCC to come under exclusive EU competence, which the EU has acquired pursuant to
Article 3(2) TFEU, in so far as the decisions made by the committee may affect or alter the scope of EU rules.

50.12 The Commission therefore put forward this draft Council Decision on the positions to be adopted on behalf of the EU at the annual PSCC meetings during the period 2015–18. Its proposal for a multiannual Council Decision was made up of two parts: Annex I setting out guiding principles and Annex II setting out a process for the adoption of the specific positions each year relevant to each year’s PSCC. The Commission proposed that it should prepare non-papers setting out an envisaged EU position for discussion and agreement in the Council Shipping Working Party ahead of each annual PSCC meeting.

The Government’s view

50.13 In his Explanatory Memorandum of 26 May 2015 the Parliamentary Under-Secretary of State, Department for Transport (Mr Robert Goodwill) first notes that:

- Article 4 TFEU provides that transport is a shared competence of the EU; and
- as both the current and former Directives directly refer to and copy out the rules of procedures for PSC into the Directives, it has been accepted by previous Governments that some of the actions of the PSCC are capable of coming under exclusive EU competence pursuant to Article 3(2) TFEU, since the decisions made at the PSCC meetings may affect or alter the scope of EU rules.

50.14 The Minister then reports that:

- Member States gave the Commission proposal its initial consideration at a Shipping Working Party meeting on 22 April;
- a number raised significant concerns about the proposal — some concerns were based on questions about the status of the Paris MoU and therefore the applicability of Article 218(9) TFEU, while others were about the scope of the draft Council Decision in that it would cover positions to be adopted by Member States at PSCC meetings for the next four years;
- the Government shared these concerns particularly as debate in the PSCC is generally technical in nature and too difficult to reduce to a set of general principles;
- as a result of the discussions in the Shipping Working Party, the Presidency was asked to rewrite the proposed Council Decision in such a way that it was limited to areas where exclusive EU competence could be demonstrated;
- the Presidency therefore proposed a compromise text which substantively revised the proposed Council Decision — in particular the compromise text made the Council Decision applicable only to the May 2015 meeting of the PSCC and only addressed positions to be adopted on behalf of the EU with respect to the five
papers to be considered at the PSCC which would result in decisions which are deemed to have direct legal effect on EU rules; and

- the compromise text was agreed by the Council on 18 May.

50.15 The Minister comments that:

- the Government welcomes the compromise text of the Council Decision;
- the issues debated at the PSCC, and the various Paris MoU technical groups which meet throughout the year, are highly technical in nature;
- therefore, the position of the EU and its Member States would be difficult to reduce to a set of general principles that can be used every year;
- the Government also considers that a multiannual Council Decision on this matter would set an unhelpful precedent;
- the changes to the Paris MoU covered by the Council Decision would only make minimal changes in the UK’s enforcement activities and do not have any policy implications; and
- the Government did not consider, however, that the proposal justified a scrutiny override, and it therefore abstained when the Council agreed to the compromise proposal on 18 May.

50.16 The Minister adds that:

- the Commission remains committed to the principle of a multiannual Decision, arguing that this is a more pragmatic approach given that the parameter of discussions at the Paris MoU is fairly stable and that the documents only become available a short time before the meeting; and
- it may, therefore, bring forward further such proposals, which would of course be subject to further parliamentary scrutiny.

Previous Committee Reports

None.

51 International Maritime Organization and EU law

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amendments to International Maritime Organization instruments

**Legal base**

Articles 100(2) and 218(9) TFEU; —; QMV

**Department**

Transport

**Document numbers**

(36837), —, COM(15) 146

## Summary and Committee’s conclusions

51.1 Amongst International Maritime Organization (IMO) instruments are the International Convention for the Prevention of Pollution from Ships (MARPOL), the 2009 Guidelines for exhaust gas cleaning systems and the International Convention for the Safety of Life at Sea (SOLAS). Aspects of these instruments are incorporated into EU legislation.

51.2 Whilst the EU is not a member of the IMO, by virtue of Articles 3(2) and 218(9) TFEU Member States are not authorised to assume obligations likely to affect EU rules unless they are authorised to do so by means of a Council Decision.

51.3 The Commission presented this draft Council Decision on the position to be adopted, on behalf of the EU, at the IMO with respect to the adoption of amendments to MARPOL Annexes I and II, the 2009 Guidelines for exhaust gas cleaning systems and SOLAS regulations II-2/20.3.1.2.1. It considered the adoption of these amendments to come under exclusive EU competence. On 7 May the Council adopted the proposal as a Council Decision in order to provide Member States with a mandate to participate in deliberations on the amendments in IMO committee meetings in May and June.

51.4 The Government tells us that the proposed amendments would affect EU legislation and that it accepts that a Council Decision was required, that it is content that the scope of the Council Decision has been specifically defined in the recitals and therefore does not carry the risk of extending EU competence, that although it had no concerns with the draft Council Decision, it did not consider that the proposal justified a scrutiny override and that the UK therefore abstained when the Council agreed to the Council Decision.

51.5 Given both that an acceptable Council Decision was agreed and that the Government did not breach the Scrutiny Reserve Resolution we clear this document from scrutiny.

### Full details of the documents:

Draft Council Decision on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 68th session of the Marine Environment Protection Committee and the 95th session of the Maritime Safety Committee on the adoption of amendments to MARPOL, SOLAS and the 2009 Guidelines for exhaust gas cleaning systems: (36837), —, COM(15) 146.

### Background

51.6 Amongst International Maritime Organization (IMO) instruments are:
• the International Convention for the Prevention of Pollution from Ships (MARPOL);
• the 2009 Guidelines for exhaust gas cleaning systems; and
• the International Convention for the Safety of Life at Sea (SOLAS).

51.7 The purpose of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements is to incorporate international standards for ship-source pollution into EU law and to ensure that polluters are adequately penalised. Directive 2012/33/EU, the Sulphur Directive, concerns the sulphur content of marine fuels. Amongst other matters it covers IMO emission abatement methods for exhaust gas cleaning systems. Directive 2009/45/EC on safety rules and standards for passenger ships incorporates detailed SOLAS rules on ventilation of Class B, C and D passenger ships and of new Class A passenger ships (class being defined by the sea areas in which a ship is authorised to operate).

51.8 Whilst the EU is not a member of the IMO, by virtue of Articles 3(2) and 218(9) TFEU Member States are not authorised to assume obligations likely to affect EU rules unless they are authorised to do so by means of a Council Decision.

The document

51.9 The Commission has presented this draft Council Decision on the position to be adopted, on behalf of the EU, at the IMO with respect to the adoption of amendments to MARPOL Annexes I and II, the 2009 Guidelines for exhaust gas cleaning systems and SOLAS regulations II-2/20.3.12.1. It considers the adoption of these amendments to come under exclusive EU competence.

51.10 The amendments to MARPOL Annexes I and II and to the 2009 Guidelines for exhaust gas cleaning systems were to be adopted at the 68th session of the IMO Marine Environment Protection Committee (MEPC 68) to be held between 11 and 15 May. The amendments to SOLAS were to be adopted at the 95th session of the IMO Maritime Safety Committee (MSC 95) to be held between 3 and 12 June.

**MARPOL Annexes I and II**

51.11 The amendments to MARPOL Annexes I and II are part of a wider package of amendments in order to make the Polar Code on Pollution Prevention Measures mandatory. The Polar Code has been developed to supplement existing IMO instruments in order to increase the safety of ship’s operations and mitigate the impact on the people and environment of remote and vulnerable Polar Regions.

51.12 Directive 2005/35/EC, the purpose of which is to incorporate international standards for ship source pollution into EU law and to ensure that polluters are adequately penalised, applies in high seas — some areas of the polar waters covered by the Polar Code are considered as high seas. The Directive applies to discharges of polluting substances, that is
substances covered by MARPOL Annexes I (oil) and II (noxious liquid substances in bulk). In accordance with Article 4 of the Directive, Member States must ensure that ship-source discharges of polluting substances, including minor cases of such discharges, into *inter alia* high seas are regarded as infringements if committed with intent, recklessly or with serious negligence.

51.13 Amendments are proposed to Part II-A of the Polar Code, in which Chapters 1 and 2 deal with prevention of pollution by oil and control of pollution by noxious liquid substances in bulk. These amendments, due to be adopted at the MEPC 68 session, would introduce changes to MARPOL, which the Commission believes would affect EU law, through the application of Directive 2005/35/EC.

**2009 Guidelines for exhaust gas cleaning systems**

51.14 These Guidelines seek to provide clarity on the testing of emission abatement technology (known as “scrubbers”) which cannot be appropriately tested while the ship is “at rest” in a harbour. The amendments to be adopted by MEPC 68 provide for calculation-based methods as an alternative to the existing provisions of the Guidelines. The Guidelines, set out in Resolution MEPC 184(59), are referred to in Annex II of Directive 2012/33/EU and, as the amendments due to be adopted at MEPC 68 would introduce changes to the 2009 Guidelines, the Commission believes they would affect EU law, through the application of Directive 2012/33/EU.

**SOLAS regulations II-2/20.3.1.2.1**

51.15 The amendments proposed to SOLAS regulations II-2/20.3.1.2.1 would allow the operation of ventilation fans with a decreased number of air changes when there is an appropriate air quality control system in place. They would apply to, among other vessel types, passenger ships. These amendments, to be adopted at MSC 95, would introduce changes which the Commission believes would affect EU law, through the application of Directive 2009/45/EC.

**The Government’s view**

51.16 In his Explanatory Memorandum of 26 May 2015 the Parliamentary Under-Secretary of State, Department for Transport (Mr Robert Goodwill), introduces his comments by saying that the Government supports the adoption of all the proposed IMO amendments and noting that member states of the IMO must apply the SOLAS and MARPOL rules to ships on international voyages, but that the EU has elected to also apply some of the SOLAS rules to domestic passenger ships.

51.17 On the amendments to MARPOL Annexes I and II to be adopted at MEPC 68 the Minister says that these changes would affect EU law through the application of Directive 2005/35/EC and that the Government accepts that for these amendments a Council Decision is required.
51.18 The Minister says that the Government also accepts that a Council Decision is required for the amendments to the 2009 Guidelines for exhaust gas cleaning systems, as the changes to be adopted at MEPC 68 would affect EU law though the application of Directive 2012/33/EU.

51.19 For the amendments proposed to the SOLAS regulations the Minister says that the relevant EU legislation requires compliance with the provisions of SOLAS to be amended, (by direct reference to a SOLAS regulation), and so the amendments to SOLAS have a direct impact on the obligations under EU legislation. For this reason the Government accepts that a Council Decision is required.

51.20 The Minister comments further that the Government is content that the scope of the Council Decision has been specifically defined in the recitals and therefore does not carry risk of extending EU competence beyond the measures currently at hand.

51.21 The Minister tells us that:

- the Council adopted the Council Decision on 7 May;
- this provided Member States with a mandate to participate in the relevant deliberations of MEPC 68 in May and MSC 95 in June; and
- although the Government had no concerns with the draft Council Decision, it did not consider that the proposal justified a scrutiny override, and the UK therefore abstained when the Council agreed to the Council Decision.

Previous Committee Reports

None.

52 EU/Turkey coordination of social security systems

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Document details

Draft Council Decision on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey with regard to the provisions on the coordination of social security systems

Legal base

Articles 48 and 218(9) TFEU; QMV
Summary and Committee’s conclusions

52.1 The purpose of this Council Decision is to implement provisions on the coordination of social security systems contained in the EU/Turkey Association Agreement. The Decision remains under scrutiny, despite having been adopted in December 2012, pending the outcome of a legal challenge brought by the United Kingdom in the Court of Justice contesting its validity. This follows unsuccessful challenges to two similar Council Decisions, one concerning social security arrangements within the European Economic Area (encompassing EU Member States and Iceland, Liechtenstein and Norway), the other the implementation of an EU/Switzerland Agreement on the Free Movement of Persons.

52.2 The nub of the dispute between the Commission and Council, on the one hand, and the UK Government, on the other, concerns the appropriate legal base for measures determining the social security rules applicable to certain third country nationals. The choice of legal base is significant as it determines whether the UK’s Title V (justice and home affairs) opt-in, set out in Protocol No. 21 to the EU Treaties, applies to a particular measure and whether or not, as a consequence, the UK is bound by it.

52.3 In this chapter, we summarise the Court’s judgment and the Government’s reaction.

52.4 This is the third case concerning the legal base for EU measures on the coordination of social security arrangements for certain third country nationals which the UK has lost. The Government does not appear to accept that these defeats have any wider implications for its policy of asserting that the UK’s Title V (justice and home affairs) opt-in can apply to measures which do not cite a Title V legal base.

52.5 In evidence to Sub-Committee E (Justice, Institutions and Consumer Protection) of the European Union Committee in the House of Lords last January, the then Lord Chancellor and Secretary of State for Justice (Chris Grayling) suggested that, in a series of cases brought by the UK to challenge the omission of a Title V (justice and home affairs) legal base, the Court of Justice had “ducked the issue” by failing to give “a definitive judgment” on the application of the UK’s opt-in Protocol to measures containing “partial” or “incidental” JHA content. It had simply ruled that the measures in question lacked any JHA content.

52.6 The Court’s judgment in the EU/Turkey case makes clear that the UK’s opt-in Protocol “is not capable of having any effect whatsoever on the question of the correct

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364 The Commission has given an undertaking not to implement the Decision (by seeking approval of the EU/Turkey Association Council) until the Court has given its ruling.

365 The main elements of the Court’s rulings in these cases are summarised in our Twenty-ninth Report of Session 2013–14, agreed on 8 January 2014, and our Forty-fifth Report, agreed on 2 April 2014, listed at the end of this chapter.

366 Public oral evidence session held on 14 January 2015.
legal basis”.367 Moreover, the Court also refers to its earlier judgment in Case C-137/12 (concerning the legal base for EU accession to the Council of Europe Convention on conditional access services) which expressly clarifies that “it is the legal basis for a measure — the appropriateness or otherwise of which falls to be assessed […] on the basis of objective factors such as main or predominant purpose of the measure and its content — which determines the Protocols to be applied, and not vice versa”.368 We take this as a clear statement that a Title V legal base, rather than the more tenuous assertion of partial, incidental or ancillary JHA content, is a necessary pre-requisite for the application of the UK’s Title V opt-in.

52.7 This latest Court of Justice ruling concludes recent litigation on the correct legal base for EU measures determining the rules on the coordination of social security systems applicable to certain third country nationals. We now release the Council Decision from scrutiny, but draw our observations to the attention of the Work and Pensions Committee.

Full details of the documents: Draft Council Decision on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey with regard to the provisions on the coordination of social security systems: (33815), 8556/12, COM(12) 152.

Background

52.8 The Agreement, concluded in 1963, establishing an Association between the then European Economic Community and Turkey was intended to pave the way for Turkish membership of the EEC by, amongst other things, “progressively securing freedom of movement of workers”.369 The Agreement was supplemented, in 1970, by an Additional Protocol which required the Association Council (a body comprising representatives of Turkey, the Member States and the Commission) to adopt social security measures for workers of Turkish nationality moving within the Community and members of their family living with them.370

52.9 These measures were to provide for:

- the aggregation of periods of insurance or employment completed in individual Member States for the purpose of determining entitlement to health care and to old age pensions, death benefits and invalidity pensions;

- the payment of family allowances in respect of family members resident within the Community; and

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367 Para 37 of the judgment in Case C-81/13 (Turkey). See also para 49 of Case C-656/11 (EU/Switzerland).
368 Para 74 of Case C-137/12.
369 Article 12 of the Association Agreement.
370 Article 39 of the Additional Protocol.
• the transfer (or export) of old age pensions, death benefits and invalidity pensions (meaning that payment can be made in Turkey if the beneficiary has left the paying State).

52.10 In 1980, the EU/Turkey Association Council adopted Decision No 3/80 to give effect to the social security provisions of the Association Agreement, but a further implementing Regulation (proposed in 1983 but never adopted) was required. Notwithstanding the absence of implementing rules, the Court of Justice determined that two provisions of Decision No. 3/80 were directly effective and could therefore be relied on in proceedings brought in national courts.\(^{371}\) The provisions concerned the application of the principle of equal treatment and the payment (export) of certain benefits and pensions to beneficiaries resident in Turkey.\(^{372}\)

52.11 The Council Decision proposed by the Commission would repeal and replace Decision No. 3/80 and implement “in one single step” the provisions on social security coordination contained in the Association Agreement and Additional Protocol, thereby ensuring legal certainty. It would also “permit Turkey to align its policies on social security coordination with those of the EU in preparation for future accession to the EU”.\(^{373}\) The Council Decision is based on Article 48 of the Treaty on the Functioning of the European Union (TFEU) which authorises the EU to adopt “such measures in the field of social security as are necessary to provide freedom of movement for workers”.

52.12 The legal challenge brought by the UK concerns the appropriate legal base for EU measures determining the social security rules applicable to certain third country nationals. In recent cases concerning the coordination of social security arrangements between the EU and Switzerland, and within the European Economic Area, the Court of Justice rejected the argument advanced by the UK that the relevant Council Decisions should be based on a Title V (justice and home affairs) legal base — Article 79(2)(b) TFEU which defines the rights of legally resident third country nationals within the framework of the EU’s common immigration policy. It ruled that Article 48 TFEU, a non-Title V Treaty provision, was the appropriate substantive legal base for both Decisions. As a consequence, the UK is bound by the Decisions.

52.13 The Court issued its judgment in the EU/Turkey case on 18 December 2014. A more detailed overview of the legal issues at stake in this case, and in the earlier EEA and Switzerland cases, can be found in our earlier Reports listed at the end of this chapter.

The Court’s judgment

52.14 In its judgment\(^{374}\), the Court notes that the contested Decision was adopted on the basis of Articles 48 and 218(9) TFEU, the latter establishing the procedures for its adoption by a qualified majority of the Council. The Court describes the legal context by reference to

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\(^{371}\) See Case C-485/07, Akdas.

\(^{372}\) Articles 3(1) and 6 of Decision No. 3/80.

\(^{373}\) See recital (7) to the draft Decision and p. 3 of the Commission’s accompanying explanatory memorandum.

\(^{374}\) Case C-81/13.
the relevant provisions of the Association Agreement, the Additional Protocol and Decision No. 3/80 concerning the application of Member States’ social security schemes to legally resident Turkish workers and their families. It explains that the UK, supported by Ireland (a co-beneficiary of the Title V opt-in Protocol), contended that Article 48 TFEU “is a provision ancillary to the principle of free movement within the EU for employed and self-employed workers who are nationals of Member States” and cannot, therefore, extend to the coordination of social security systems for Turkish nationals. The UK considered Article 79(2)(b) TFEU to be the appropriate legal base for a measure which concerns “the definition of the rights of third country nationals residing legally in a Member State”. The UK added that the choice of a different legal base, outside Title V of Part Three of the TFEU, would deprive the UK of the right, enshrined in Protocol No. 21, not to take part in, and be bound by, the draft Decision. The UK also contended that the adverse judgments already given by the Court in the EEA and EU/Switzerland cases should not apply by analogy to the facts in this case, as “the purpose of the EEC/Turkey Agreement and the Additional Protocol is not to extend the internal market to Turkey or to secure the free movement of persons between the Union and that non-Member State”.375

52.15 By contrast the Council, supported by the Commission, argued that Turkish workers were “no longer in the same situation as that of nationals of other non-member countries” by virtue of provisions in the Association Agreement and Additional Protocol providing for freedom of movement of workers to be secured by progressive stages. The partial coordination of social security systems contained in the Decision was intended to achieve that objective, not to develop a common immigration policy, as envisaged in Article 79 TFEU.376

52.16 The Court’s judgment reiterates settled case law establishing that “the choice of the legal basis for a European Union measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure”.377 It adds that the context of the measure — in this case the Association Agreement and Additional Protocol — may also be relevant to the choice of legal base, and concludes:

“Thus, the contested Decision constitutes a further stage in progressively securing freedom of movement for workers between the European Union and Turkey and in developing the links created by their Association Agreement.”378

52.17 The Court rejects the UK’s contention that Article 79(2)(b) TFEU is the appropriate substantive legal base, as the Decision “pursues a purpose other than that of the common immigration policy” and must reflect the specific context of which it forms part.379 The

375 See paras 19-27 of the judgment.
376 See paras 29-32 of the judgment.
377 Para 35 of the judgment.
378 Para 45 of the judgment.
379 Para 46 of the judgment.
Court makes clear that “Protocol No. 21 is not capable of having any effect whatsoever on the question of the correct legal basis for the adoption of the contested Decision”. 

52.18 The Court accepts that the objectives of the Association Agreement differ from those considered previously in its judgments concerning the EEA Agreement and the EU/Switzerland Agreement on the Free Movement of Persons and concludes that Article 48 TFEU should not constitute the sole legal base for the Decision, since:

“As a rule, it is only in the sphere of the internal policies and actions of the European Union or of the external actions relating to third countries which can be placed on the same footing as a Member State of the European Union […] that Article 48 TFEU empowers the European Union to adopt measures in this area.”

52.19 The Court considers whether Article 217 TFEU, which empowers the EU to conclude Association Agreements establishing “reciprocal rights and obligations, common action and special procedure” with third countries, should have been cited as a legal base for the Decision. It concludes that the Decision should cite both Article 48 TFEU and Article 217 TFEU “since it has been adopted in the framework of an Association Agreement and is aimed at the adoption of measures coordinating social security systems”. As the omission of Article 217 TFEU has no effect on the content of the Decision or the procedure for its adoption, the Court rules that its absence constitutes “a purely formal defect which does not entail its annulment”.

The then Minister’s letter of 22 February 2015

52.20 As a consequence of an administrative oversight within the Department for Work and Pensions, we only received the letter from the former Minister for Employment (Esther McVey) in May. The Minister explains the background to the Commission’s proposal, in 2012, for a Council Decision to repeal Decision No. 3/80 of the EU/Turkey Association Council and to implement the provisions on social security coordination contained in the Association Agreement and Additional Protocol:

“Decision 3/80 established the rules for implementing the social security provisions in the Additional Protocol. In 2011 the Court of Justice of the EU (CJEU) in Akdas (C-485/07) decided that Decision 3/80, although never actually implemented, had direct effect. It meant that certain non-contributory benefits or social assistance that are not exportable within the EEA under the EU Regulations may be payable to Turkish nationals living in Turkey under the EU-Turkey Agreement.

“The 2012 proposal is therefore intended to correct the unintended imbalance created by Akdas. The European Commission considered that to achieve this, the proposal required an Article 48 TFEU legal base. Although the draft Council

380 Para 37 of the judgment.
381 Para 59 of the judgment.
382 Para 63 of the judgment.
383 Para 67 of the judgment.
Decision was adopted by QMV on 6 December 2012, the UK and Ireland again entered a minute statement objecting to the Article 48 legal base and on this occasion were joined also by the Netherlands. The Commission gave an assurance that the Decision would not be put forward for adoption in the EU-Turkey Association Council until the CJEU had ruled in the EU-EEA Agreement (C-431/11) and EU-Switzerland Free Movement of People Agreement (C-656/11) cases.

“For the reasons already contested in those two cases, the United Kingdom, again supported by Ireland, brought a third legal action in the CJEU (Case C-81/13) over the use of Article 48.”

52.21 As in the earlier cases, the Minister explains that the Court found that Article 48 TFEU was the correct legal base “in so far as the Decision extended rights under the EU-Turkey Agreement to EU nationals”, but also ruled that this legal base should have been used in conjunction with a second legal base, Article 217 TFEU, which “empowers the EU to guarantee commitments towards third countries”. The Court added that Article 79 TFEU — the legal base proposed by the Government — was only to be used “for the purposes of a common immigration policy aimed at ensuring efficient migration flows”. Since the omission of Article 217 TFEU from the Council Decision “had no effect on the content of the measure”, the Minister notes that the Court did not require the measure to be annulled.

52.22 Now that the Court has confirmed the validity of the Council Decision, the Minister sets out the next steps:

“[…] the Decision adopted by QMV in December 2012 is the EU’s negotiating position which it will take to the EU-Turkey Association Council. We wait to see if Turkey will accept the repeal of Decision 3/80 with the subsequent loss of rights for their nationals achieved from the Akdas judgment. The Government will carefully consider any further developments and remains committed to protecting the United Kingdom’s best interests.”

**Previous Committee Reports**


**53 EU Pre-accession Assistance to Serbia**

**Committee’s assessment** Politically important
Summary and Committee’s conclusions

53.1 The Instrument for Pre-accession Assistance (IPA) is the means by which the EU supports reforms in the “enlargement countries” with financial and technical help. For the period 2007–13, the IPA budget was €11.5 billion; its successor, IPA II, will seek to build on the results already achieved, with a budget of €11.7 billion for the period 2014–20. The EU enlargement strategy and the revised IPA regulation are paying increasing attention to financial and economic governance in the accession countries.

53.2 Since 2007, the EU’s IPA financial support to Serbia has amounted to approximately €170 million per year. Governance, identified by the Commission as the most challenging area, received a quarter of the IPA funding. Accession negotiations with Serbia were formally opened on 1 January 2014.

53.3 On 13 January 2015, the European Court of Auditors (ECA) published this Special Report on the effectiveness of EU pre-accession support to Serbia. The report covers the period 2007–13. It looks in particular at the key area of governance. It concluded that, overall, the Commission was managing pre-accession support to Serbia, including the IPA projects, effectively; but projects suffered from weaknesses regarding their design, implementation and sustainability.

53.4 The previous Committee noted the implications not only for assistance to Serbia at this critical juncture but also for the wider enlargement process. It therefore asked the then (and current) Minister for Europe (Mr David Lidington) to provide it with a copy of the Council Conclusions and to illustrate how the wider lessons of this Special Report had been noted and endorsed in them (see paragraphs 52.08-52.15 below for details).

53.5 We agree with the Minister that the Council Conclusions (which we reproduce at the Annex to this chapter of our Report) fit the bill. We note in particular that the Council:

— emphasises the crucial nature of the phase of the integration process that the EU and Serbia has now entered;

384 The other candidate countries are Albania, Macedonia, Montenegro, Serbia and Turkey. Potential candidate countries (those without formal Candidate Status but with an agreed EU perspective) are Bosnia and Herzegovina and Kosovo. See http://ec.europa.eu/enlargement/instruments/overview/index_en.htm for full information.
welcomes the fact that the Commission is putting increasing emphasis on governance issues in planning its further financial and non-financial assistance to Serbia; and

underlines the relevance of the findings of this audit for the wider Enlargement process.

53.6 We look forward to seeing evidence of these messages being taken on board by the Commission/EEAS, both with regard to Serbia and other countries involved in the enlargement process, when the 2016 “enlargement package” is submitted for scrutiny this autumn, and in reports on IPA II implementation.

53.7 In the meantime, we now clear this European Court of Auditors’ Special Report from scrutiny.

Full details of the documents: European Court of Auditors’ (ECA) Special Report No. 19/2014 — EU Pre-accession Assistance to Serbia: (36615), —.

Background

53.8 The European Court of Auditors (ECA) carries out audits, through which it assesses the collection and spending of EU funds. It examines whether financial operations have been properly recorded and disclosed, legally and regularly executed. It also, via its Special Reports, carries out audits designed to assess how well EU funds have been managed so as to ensure economy, efficiency and effectiveness.385

53.9 The Special Report sets out six concrete recommendations to enable the Commission to address these weaknesses (which the Commission has taken steps to take forward in the latest IPA programmes), and four actions in relation to the Commission’s structured dialogue with Serbia on governance issues.386

53.10 The then (and current) Minister for Europe (Mr David Lidington) welcomed the Report and its recommendations, and the level of independent scrutiny it provided of EU pre-accession support to Serbia. As “a strong supporter of EU Assistance programmes such as IPA”, the then Minister also welcomed efforts to draw lessons from past experiences in order to inform and improve future implementation, and ensure the effective use of EU funding. He further welcomed the increased focus in the new IPA-II framework on priorities identified in the EU’s Enlargement Strategy; for Serbia, he expected to see this focus on “democracy and the rule of law, including the key area of governance, and on competitiveness and growth”. Reforms in these areas would “be vital for Serbia as it looks to progress in its accession negotiations”. He also regarded the emphasis on a sector-based approach being adopted in IPA II as a positive step, which should help with coordination between development agencies; increase ownership in beneficiary countries; encourage greater efficiencies among Member States, as their efforts would be guided by a common

policy framework; and thus provide for enhanced complementarity and a more effective results-orientated impact on the pre-accession process.387

The previous Committee’s assessment

53.11 The previous Committee agreed with the Minister’s suggestion that this ECA Special Report has much wider implications for the enlargement process than just Serbia’s progress. As it had noted when considering the Commission’s 2015 “enlargement package”, 388 2014 was seen as a year of fitful progress. In Albania and Macedonia, the opposition was boycotting parliament and thus blocking reforms. In Kosovo, a government had yet to be formed after the June elections. In Bosnia and Herzegovina (BiH), the Commission’s reference to a lack of collective will suggested that it did not expect longstanding political inertia to be resolved by October’s elections. Problems with “rule of law/good governance” issues predominated in Montenegro — so much so that the Commission indicated that it might slow down the accession process. In the case of Turkey, there was a litany of concerns about the erosion of fundamental freedoms and the separation of powers. Serbia was the country about which the Commission appeared to be most hopeful — even though it was the least supportive of what was regarded as a benefit of the accession process, viz., alignment with the EU’s foreign policy priorities, with the new Government preferring to sustain active relations with Russia, including welcoming President Putin in Belgrade as recently as 16 October 2014.389

53.12 The Minister for Europe had welcomed the Commission’s “fair and balanced assessment of progress and challenges in EU enlargement countries and of the enlargement process itself”, which he said was “closely aligned with the Government’s priorities on enlargement, highlighting the importance of addressing the fundamentals first and the need for firm but fair conditionality”, and which “focuses correctly on the central challenges of the rule of law, judicial reform and the fight against organised crime and corruption; economic governance and competitiveness; the importance of strengthening democratic institutions and public administration reform, and protecting fundamental rights; and the need for good neighbourly relations and dispute resolution”.390

53.13 With regard to this Special Report, the Minister said that the Council expected to respond in the form of Council Conclusions in March 2015, which he expected would welcome the report as “a useful tool for improving the effectiveness of EU pre-accession assistance to Serbia under IPA II”. The then Committee expressed the hope that those Council Conclusions would also underline this Special Report’s wider implications, given


389 Thus, on 21 April 2015, European Council President Donald Tusk noted in his statement following his with Prime Minister of Serbia Aleksandar Vučić: “We also discussed foreign and security challenges. I underlined the importance of Serbia’s foreign policy approach being guided by its number one strategic objective: to join the European Union. I expressed the EU’s expectation that Serbia progressively aligns with the European Union’s positions in the process up to accession”: see press release.

the emphasis that was now purportedly being placed in the accession process on “up front”
conditionality, centring not on commitments by candidate countries, but on a track record
of successful implementation of programmes that addressed those “central challenges” that
the then Minister had rightly highlighted.

53.14 The previous Committee therefore asked the Minister to provide a copy of those
Council Conclusions in due course, and to illustrate how the wider lessons of this Special
Report had been noted and endorsed in them.

53.15 In the meantime, the Special Report was retained under scrutiny.391

The then Minister’s letter of 7 April 2015

53.16 The then (and current) Minister confirms that the 15 March 2015 Council
Conclusions did indeed welcome the Special Report as a useful tool for improving the
effectiveness of EU pre-accession assistance to Serbia under IPA II, and endorse the
recommendations made in the report. He also professes himself satisfied that the wider
implications of the Report’s findings are reflected in the conclusions “which specifically cite
relevance to the wider EU Enlargement process in the first paragraph” and “also invite the
Commission to inform the IPA Management Committee, which my department attends,
regularly on the issues raised by the Special Report and to ensure they are addressed
systematically”. This, the then Minister says, “will provide an ongoing mechanism to
ensure that wider lessons are followed up on”.

Previous Committee Reports

Thirty-fourth Report HC 219-xxxiii (2014–15), chapter 5 (25 February 2015); also see
13 (7 January 2015) and Sixteenth Report HC 219-xvi (2014–15), chapter 4 (29 October
2014).

Annex: Council conclusions on Special Report No. 19/2014 by the
Court of Auditors: “EU Pre-Accession Assistance to Serbia”

1. “The Council thanks the Court of Auditors for its Special Report No 19/2014 and
takes good note of the conclusions and recommendations therein. The Council
notes that the objective of the audit was to assess whether the Commission is
managing pre-accession assistance (IPA) to Serbia effectively and, in greater
depth, its support for the key area of governance. While it was not the aim of the
audit to address the performance of the Serbian authorities in dealing with the
areas covered by IPA, the Special Report comes at a timely moment, in a crucial
phase of the integration process of Serbia after the opening of accession
negotiations in January 2014. The audit covered projects from the 2007-13
programming period, with a particular focus on the results and on whether

governance and the fight against corruption were cross-cutting issues for projects where good governance was not a primary objective. The Council underlines the relevance of the findings of this audit to the management of pre-accession assistance for the beneficiaries, and the wider Enlargement process.

2. “The Council welcomes in particular the conclusion of the Court that, overall, the Commission is managing pre-accession support to Serbia effectively and that the financial assistance, along with other forms of support, effectively helps Serbia to implement social and economic reforms and to improve governance in the country. The Council also welcomes that based on the experience gained in other IPA beneficiaries the Commission is putting increasing emphasis on governance issues in planning its financial and non-financial assistance to Serbia. Furthermore, the Council welcomes that IPA financial assistance is based on a coherent strategic framework and the approach to select projects relevant to prepare Serbia for accession is gradually improving. At the same time, the Council notes the conclusion that the audited projects produced their planned outputs, but also suffered from weaknesses regarding their design, implementation and sustainability. The Council notes positively the Court’s observation that, when drawing up the latest IPA annual programmes, the Commission took steps to address the shortcomings identified by the Court in the earlier projects, including the need for more systematic coordination of IPA projects with those of other donors.

3. “In this regard, the Council takes good note of the Court's specific recommendations to the Commission to improve the programming, design, implementation and sustainability of IPA projects in Serbia. The recommendations on the management of non-financial assistance include support to the Serbian authorities to further rationalise their national strategies, to finalise a fully-fledged public finance management roadmap, to improve the consultation mechanism of civil society organisations in the IPA programming, to assess systematically the need for specific anti-corruption or other good-governance measures during project design, and to take steps to integrate the Commission's audit work on the national pre-accession structures into the countrywide assessment of public finance management.

4. “The Council thanks the Commission for its reply attached to the Special Report No 19/2014 and takes positive note in particular of the statement that some of the specific recommendations addressed in the sector evaluations have already been reflected in the new IPA Regulation (EU) No 231/2014, the common implementing Regulation (EU) No 236/2014 and draft framework agreements to be concluded with each individual beneficiary. The Council also takes positive note that the decentralised implementation system process has been built up for the management of pre-accession funds, and that the Commission’s commitment on a public expenditure and financial accountability assessment is going to be carried out. The Council invites the Commission to inform the IPA Management Committee regularly on the issues raised by the Court of Auditors’ Special Report
and to ensure that they are addressed systematically, including through EU-Serbia Stabilisation and Association Committee meetings, as appropriate.

5. “Finally, in line with the Council conclusions of 11 December 2012, 17 December 2013 and 16 December 2014, the Council recalls that pre-accession assistance should, inter alia, increase flexibility and simplify procedures, while ensuring sustainability, visibility, accountability and full transparency of actions undertaken, strengthen ownership, have enhanced coherence between the financial assistance and the overall progress made in the implementation of the pre-accession strategy and improve results and impact. The role of civil society should also be enhanced both in programmes implemented through government bodies and as direct beneficiaries of EU assistance.”392

392 See http://www.parlament.gv.at/PAKT/EU/XXV/EU/05/98/EU_59898/imfname_10538476.pdf.
54 The EU and Central Asia

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

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

54.1 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, trade and investment;
- transport and energy; environmental sustainability and water management; and
- common security threats and challenges (see our predecessors’ earlier Reports for full details393).

54.2 The Strategy envisaged a formal review. But 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.

54.3 In 2014, the European Court of Auditors (ECA) produced a highly-critical report on how the Commission and the European External Action Service (EEAS) had planned and managed €674 million (£479 million) of development assistance to the Central Asian republics in the period 2007–12. 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.

54.4 Related to this was a separate ECA Report on EuropeAid's evaluation and Results-Orientated Monitoring Systems (which was debated in European Committee B) and the

prospect of the Commission’s long-overdue *EU Development and Cooperation Results Framework* (see “Background” below for further details).

**The Joint Staff Working Document**

54.5 In January 2015, the Commission and the High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) issued this further report. It provides an overview of progress to date on the implementation of the EU Central Asia Strategy, 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 (see our predecessors’ 25 February 2015 Report for details).394

54.6 The previous Committee said that it raised three issues:

— the quality of the Commission and EEAS evaluation systems (about which the previous Committee had been pressing the Government for a year, based on several European Court of Auditors Special Reports);

— who represented the EU in roles such as this (an EU Special Representative (EUSR), appointed by the Council, or a Special Envoy appointed by the HR); and

— how an upcoming review of this Strategy was to be handled in terms of parliamentary scrutiny.

54.7 Most recently, it asked the Minister for Europe (Mr David Lidington) to keep it fully informed on that policy review. The Minister now explains that, rather than a “top level substantive strategy review … just two years since the previous review in 2012”, Council Conclusions have been agreed that “form a narrative assessment that provides guidance on implementation of the underlying strategy, reaffirming its core validity, while adjusting where needed emphasis on specific areas”. The 2007 EU Central Asia strategy itself thus remains unchanged and there are no specific new policy proposals within the Council Conclusions.

54.8 Adopted by the 22 June Foreign Affairs Council, the Council Conclusions reaffirm Central Asia as a region of strategic importance, confirm that the main objectives and priority areas of the 2007 EU Strategy for Central Asia remain pertinent, and commit the EU to establishing a strong, durable and stable relationship with the five Central Asian countries and to a relationship “based on the principles of responsibility and ownership, which is aimed at fostering the stable, secure and sustainable development of the region”.

54.9 A core focus remains on promoting good governance and respect for the Rule of Law, as well as promoting educational links and addressing continuing serious challenges to human rights in the region.

394 Ibid.
54.10 As well as encouraging greater trade and investment, the aim is gradually embedding the region more firmly into international rules-based systems.

54.11 The Council Conclusions additionally highlight the importance of assessing approaches in the region and tailoring these to suit specific national circumstances, given the significant political, economic and broader differentiation between the states in the region. This should not, however, (the Minister notes) come at the expense of continued work on established and useful regional initiatives where common approaches are required (for example cross-border security challenges such as migration, border management, water management and action against drugs trafficking).

54.12 All in all, the Minister “continues to believe that the EU Central Asia Strategy provides a useful framework for EU engagement in the region”. Looking ahead, as the existing Strategy based on the Council Conclusions is implemented, and the EEAS and Commission put forward proposals on this basis, the Minister “will continue throughout to seek to encourage focus on what concrete outcomes can be achieved by proposed projects and programmes and how this can best be evaluated”.

54.13 Elsewhere in this Report we consider two key related developments:
— the latest Commission/EEAS proposals on an EU International Cooperation and Development Results Framework, whose contents are the latest stage in a long-overdue process, which has already involved two European Committee debates;395 and
— a draft Council Decision on the EU Special Representative (EUSR) for Central Asia,396 for whom these Council Conclusions envisage a central role in taking the Strategy forward.

54.14 Given the findings of the ECA Special Report (c.f. paragraph 53.03 above) and the fact that programming for 2014–20 will be €1.1 billion (£781 million) (56% more that in 2007–13), effective implementation will be ever more crucial. The Council Conclusions make the right noises: in implementing the Strategy, the EU “will take into account the lessons learnt and the changes in the region as well as the altering geopolitical situation around it”, and “[i]n view of the growing differentiation in the region and in order to address the important areas highlighted in these Conclusions”, “encourages” the EEAS and the Commission to “come forward with proposals for effective implementation of the Strategy in accordance with the needs for a renewed partnership with the region”.

54.15 However, time alone— or, perhaps, a further European Court of Auditors’ Special Report in due course — will tell whether the results live up to these prescriptions and exhortations.

54.16 In the meantime, we now clear this Joint Staff Working Document.

395 See (36775), 7604/15, at chapter 17 of this Report.
396 See (36777), — at chapter 24 of this Report.
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

54.17 At the time of the mid-2012 “lighter-touch implementation review”, the Minister for Europe (Mr David Lidington) produced his own assessment (see our predecessors’ previous Reports 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 underline 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.

54.18 In 2014, a European Court of Auditors’ Special Report examined how the Commission and the European External Action Service (EEAS) had planned and managed €674 million (£479 million) of development assistance to the Central Asian republics in the period 2007–12. It 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 predecessors’ 25 February 2015 Report for details).

The previous Committee’s assessment

54.19 Our predecessors noted with satisfaction that a related debate on a European Court of Auditors’ Special Report on EuropeAid’s evaluation and Results-Orientated Monitoring

397 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: see https://ec.europa.eu/europeaid/policies/european-development-policy/agenda-change_en for further information.

Systems had been held, and agreed with all the points made by the relevant Department for International Development Minister (Mr Desmond Swayne), who led it. During the debate, the Minister said that:

— unless an organisation could evaluate what it had done and work out what had worked, what had not and whether those lessons could be learned and applied to future projects, it would become increasingly inefficient;

— the key question was whether the EU had been doing its homework as a result of those processes: in this regard, the EU had “been panned by the auditors”;

— DFID’s own assessment of the European Union as an effective deliverer of aid was “more a matter of luck than of judgment”; 

— even where “people and our partners” accepted that matters needed to be dealt with, the key question was: “how high up the agenda they are”; for the Government, such matters as vital, but it had to work through allies, with respect to Nordic countries and others who think these are important issues and raise them up the agenda, and there was a barrier to overcome in that others had different priorities; and

— the Court of Auditors had done a sterling job; the relevant procedures were not adequate and were not being adequately carried out — “a woeful situation, which we must get right”.

54.20 Though pleased also to hear in that debate that there were, after all, to be Council Conclusions regarding the long-overdue EU Development and Cooperation Results Framework, our predecessors emphasised that it was what those Council Conclusions said that would make the difference, especially as it was plain that far from all Member States were as keen as the UK on putting the Commission/EEAS feet to the fire. Our predecessors therefore asked the Minister to provide the Committee with a copy of the Council Conclusions that were finally adopted and his views on how effectively they moved this vital process forward.

54.21 Our predecessors looked 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 they welcomed not only because of the need for such an intermediary if this important EU Strategy was ever going to get properly off the ground, but also because the EUSR process was back where it belonged, under the control of the Member States.

54.22 Finally, our predecessors welcomed the Minister for Europe’s assurance that the Committee would be kept fully in the picture on the upcoming work on the next iteration

399 Gen Co Deb, European Committee B, 9 March 2015, cols. 3-16.
400 Col. 4.
401 Col. 4.
402 Col. 5.
403 Col. 6.
404 Col. 8.
of this Strategy. Though he did not say so specifically, our predecessors presumed that his assurance included depositing the final version for scrutiny before it was submitted to the Council for adoption.

54.23 In the meantime, our predecessors continued to retain this present implementation review under scrutiny.405

The Minister’s letter of 22 June 2015

54.24 The Minister says that, during the dissolution of Parliament, discussions took place in Brussels working groups, and encloses a copy of the draft Council Conclusions — in confidence at this stage as it is marked limité, but in the expectation that this marking will be removed following adoption, after which his officials will provide an unclassified version. Thus, in “accordance with standard scrutiny procedures”, the Minister says that the draft Council Conclusions have “not been deposited for formal scrutiny as the content and method of adoption do not fall within depositable categories”; he would, however, “be glad to provide any further information you may require on UK or EU engagement in Central Asia”.

54.25 In the meantime, the Minister says that, as far as the substance of discussions and the resulting Council Conclusions is concerned, “the underlying strategy both in text and substance will not change at all as a result of the Conclusions”, which he says coincides with his assessment, as set out in his letter of 27 March, “that top level substantive strategy review should not be the goal at this stage, just two years since the previous review in 2012”. Rather:

“the Council Conclusions form a narrative assessment that provides guidance on implementation of the underlying strategy, reaffirming its core validity, while adjusting where needed emphasis on specific areas.”

54.26 Overall, the Minister continues to believe that “the EU Central Asia Strategy provides a useful framework for EU engagement in the region”.

54.27 He continues as follows:

“The Conclusions update the position on a number of recent developments such as the appointment of a new EU Special Representative for Central Asia, Peter Burian, on which the Committee has already been briefed, and the conclusion of negotiations and initialling of the Enhanced Partnership and Cooperation Agreement with Kazakhstan, discussions on which continue in Brussels working groups. Once these are concluded I will be writing to the Committee to seek clearance for the Council Decision on signature.”

54.28 The Conclusions additionally:

“highlight the importance of assessing approaches in the region and tailoring these to suit specific national circumstances, given the significant political, economic and broader differentiation between the states in the region. This should not however come at the expense of continued work on established and useful regional initiatives where common approaches are required (for example cross-border security challenges such as migration, border management, water management and action against drugs trafficking).”

54.29 A core focus remains on:

“promoting good governance and respect for the Rule of Law, as well as promoting educational links and addressing continuing serious challenges to human rights in the region.”

54.30 Work on promoting further integration of markets and an improved investment climate is also highlighted, “with the potential to play a significant role in gradually embedding the region more firmly into international rules-based systems”.

54.31 As the existing Strategy, based on the Council Conclusions, is implemented, and the EEAS and Commission put forward proposals on this basis:

“we will continue throughout to seek to encourage focus on what concrete outcomes can be achieved by proposed projects and programmes and how this can best be evaluated.”

54.32 In conclusion:

“the 2007 EU Central Asia strategy itself remains unchanged and there are no specific new policy proposals within the Council Conclusions.”

54.33 On 22 June, the Foreign Affairs Council adopted Conclusions that are as in the draft sent to us by the Minister. They thus reaffirm Central Asia as a region of strategic importance, confirms that the main objectives and priority areas of the 2007 EU Strategy for Central Asia remain pertinent, and commit the EU to establishing a strong, durable and stable relationship with the five Central Asian countries and to a relationship “based on the principles of responsibility and ownership, which is aimed at fostering the stable, secure and sustainable development of the region”.

54.34 As well as calling for the strengthening of trade and energy links between the EU and Central Asian countries and reinforcing cooperation on security and stability, including sustainable management of natural resources, the Council “emphasises the fundamental importance of democratisation, respect for human rights and the rule of law, and socio-economic development, all of which are essential elements of the Strategy”.

54.35 The Council welcomes the appointment of Ambassador Peter Burian as the new EU Special Representative for Central Asia, whose role is:
“to act as an important channel of dialogue and communication at the highest level with the central Asian countries, to promote overall Union political coordination in Central Asia and enhance the Union’s effectiveness and visibility in the region.”

54.36 In implementing the Strategy the EU “will take into account the lessons learnt and the changes in the region as well as the altering geopolitical situation around it”. With this in mind, the Council says:

“In view of the growing differentiation in the region and in order to address the important areas highlighted in these Conclusions, the Council encourages the EEAS and the Commission to come forward with proposals for effective implementation of the Strategy in accordance with the needs for a renewed partnership with the region.”

Previous Committee Reports


55 The EU and Bosnia and Herzegovina: Stabilisation and Association Agreement

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406 See Foreign Affairs Council Conclusions on Central Asia for the full text.
55.1 The EU Bosnia and Herzegovina Stabilisation and Association Agreement (the SAA) was signed in 2008 but not ratified by the EU. All Member States have ratified it but the Council has refrained from taking this Decision to enable the EU to conclude (ratify) it, thereby delaying its entry into force. The Report of our predecessor Committee of 4 March 2015 sets out the background of this Decision in more detail, indicates that our predecessor Committee cleared this document from scrutiny and sought further information as to transparency in the legal documents as to the extent to which the EU and the Member States were exercising competence.

55.2 The then (and current) Minister for Europe (Mr David Lidington) wrote on 13 April 2015 to indicate that, contrary to a view previously expressed, the Government accepts that the UK opt-in is not engaged in respect of the provisions of the SAA on Mode IV Services. By letter dated 17 June, he has responded to the request from the previous Committee as to transparency in the legal texts as to the exercise of competence.

55.3 Although not mentioned in the letter of 17 June the SAA came into force on 1 June 2015.

55.4 We are grateful for the letters from the Minister.

55.5 In respect of the UK opt-in we note that the Government would have intended to opt in to the provisions on Mode IV Services in the SAA and therefore the fact that it now accepts that the UK opt-in is not engaged has no practical significance. Although we agree that the issue is not of practical significance, we nevertheless find the Minister’s reasons for accepting that the UK opt-in is not engaged unsatisfactory for the reasons set out below. We do not pursue this further because our view, as was that of our predecessor, is that the UK opt-in has never been engaged for a different reason, namely that the proposal (now an adopted Decision) lacks a legal base from Title V of Part Three TFEU. However, we highlight that this unsatisfactory analysis, coming on top of the misunderstanding as to the nature of the proposed Decision, (raised in our predecessor Committee’s Report of 4 March) indicates that this matter has not been considered carefully enough by the Minister and his advisers.

55.6 The Minister’s letter of 17 June concerning the exercise of external competence is of wider significance in that it acknowledges that the Government takes a “pragmatic approach on a case-by-case basis which may ultimately mean a lack of clarity on the face of the agreement or the face of the Council Decision as to who exactly is entering which obligations and on what basis”. The lack of clarity demonstrated in this case arises in respect of many other EU external agreements.

55.7 We note that the Minister is comforted “by the position that the balance of competence is set out in the treaties and cannot be modified by a Third Country
Agreement or a Council Decision”. However no such comfort can be taken in respect of mixed agreements covering an area of shared competence as is the case here. This is because the Treaties envisage that in such cases competence can be exercised by either the EU or the Member States. Our preference, as was that of our predecessor, is that Member States should exercise their competence in these circumstances. Leaving the matter unclear gives rise to potential competence creep by giving an opportunity for the Commission to argue in the future that the EU has, in fact, exercised the shared competence. Therefore this is a matter which we shall continue to review carefully in future.

**Full details of the documents:** Council and Commission Decision on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part: (36653), —.

**The Minister’s letter of 13 April 2015**

55.8 In his letter the then (and current) Minister for Europe states:

“I am now writing to inform the Committee that the Council Secretariat has subsequently confirmed that this (latest) version of the Council Decision is not a new proposal but a revised version of the original pre-Lisbon Treaty Council Decision text of 2008. Accordingly, since this is not a new Council Decision text, the UK is unable to assert the opt-in.

“Political stagnation in BiH meant that adoption of the original measure in 2008 had been postponed until now in light of progress on the EU’s new initiative on BiH. However, as the content of the current Council Decision does not differ substantively from the original version it is unlikely that the Council Secretariat would agree to issue a new proposal.

“Given that it is the Mode IV provisions of the agreement that trigger the JHA opt-in, and our proposal was in any case to opt in to these provisions, the fact that we have not been able to formally assert the opt-in in regard to the Council Decision on Conclusion, has no practical implications as far as the UK’s commitment to this agreement is concerned.”

**Our analysis of the letter of 13 April 2015**

55.9 The Minister accepts that the UK is unable to assert the opt-in because the proposal is not new but a revised version of a 2008 text. We accept that this would mean that the deadline for opting in at the negotiation stage was missed. However, in these circumstances, the opt-in would still be engaged with the consequence that the UK would
remain a non-participant. Indeed the UK opt-in Protocol\(^{410}\) envisages that if the UK does not opt-in at the negotiation stage then it can do so once the proposal has been adopted. This is very different to the Minister’s apparent acceptance that the result of missing the original deadline to opt-in at the negotiation stage means that the UK is unable to assert the opt-in at all, and therefore automatically participates in the measure.

55.10 The position is not affected by the fact that the original proposal predates the coming into force of the Lisbon Treaty. The Treaties in force in 2008 afforded the UK an opt-in in respect of matters concerning visas, asylum and immigration, which are the areas which overlap with Mode IV services. The Lisbon Treaty expanded the UK opt-in to include other matters but did not change the essence of the UK opt-in for matters which were covered by it beforehand.

**The Minister’s letter of 17 June 2015**

55.11 In this letter the Minister addresses the outstanding issues relating to the transparency of the exercise of external competence:

“In your letter, you also asked for an explanation of (a) how the text makes it clear that the EU is only concluding the SAA in respect of matters for which it has exclusive competence and (b) how the legal instruments identify those elements of the SAA in respect of which the EU is exercising competence. I am afraid neither the text of the SAA itself nor the Council Decision sets out article by article whether it is only the EU that is entering the obligation or whether it is the EU and the Member States, or indeed only the Member States. Rather, as Article 1 of the Council and Commission Decision makes clear the European Union approves the whole of the SAA between the EU and its member states on the one side and Bosnia and Herzegovina on the other. Separately, the member states approve the whole of the SAA (and not just those parts covered by member state competence).

“On your second question, specifying where competence lies article-by-article risks negotiations in the Council becoming intractable and untimely. We therefore always take a pragmatic approach on a case-by-case basis which may ultimately mean a lack of clarity on the face of the agreement or the face of the Council Decision as to who exactly is entering which obligations and on what basis. In this context, we are guided by the position that the balance of competence is set out in the treaties and cannot be modified by a Third Country Agreement or a Council Decision.”

**Previous Committee Reports**


56 Restrictive measures against Syria

Committee’s assessment
Legally and politically important

Committee’s decision
(a)–(d) Cleared

Document details
(a) Council Implementing Decision 2015/383 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria
(b) Council Implementing Regulation 2015/375 implementing Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria
(c) Council Decision amending Decision 2013/255/CFSP concerning restrictive measures against Syria
(d) Council Implementing Regulation implementing Regulation 36/2012 concerning restrictive measures in view of the situation in Syria

Legal base
(a) Article 30(1) TEU; QMV
(b) Article 32(1) of Regulation 36/2012; QMV
(c) Article 29 TEU; unanimity
(d) Article 32(1) of Regulation 36/2012; QMV

Department
Foreign and Commonwealth Office

Document numbers
(a) (36716),— ; (b) (36717),— ; (c) (36879), —;
(d) (36880),—

Summary and Committee’s conclusions

56.1 Measures (a) and (b) impose, for the first time, restrictive measures on seven individuals and six entities. When our predecessor Committee first considered them at its meeting of 18 March it asked for clarification as to when these individuals and entities had been given notice of the reasons for their listing in order to assess the justification for the override of scrutiny. In his letter of 27 March 2015 the then (and current) Minister for Europe (Mr David Lidington) confirms that as new listings the notice was not given until after the adoption of the measure.

56.2 Measures (c) and (d) renew the Syrian sanctions regime until 1 June 2016, extend it to trade in cultural property illegally removed from Syria, add one new listing, remove three listing (one person who has died and two who successfully challenged their original

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411 General Muhamad Maalla, Head of the Syrian Military Intelligence Branch 293 since April 2015.
412 Ghazali Rustum.
listing) and update the statement of reasons from ten other listings. Those who have successfully challenged their listing before the General Court are Mazen Al-Tabbaa and Bassam Sabbagh.

56.3 We are grateful to the Minister for his letter.

56.4 We welcome the fact that the Council regularly reviews targeted sanctions and continue to urge the Government to ensure that they are legally robust, given the high number of successful sanctions challenges.

56.5 We clear all these documents and raise no objection to the overrides in relation to all these documents.


The Explanatory Memorandum and letter of 20 May 2015

56.6 The Explanatory Memorandum provided for documents (c) and (d) sets out some evidence that the Syrian sanctions regime is “successfully targeting the Assad regime, thereby limiting its ability to perpetuate the conflict” and indicates that “The continuation of targeted sanctions will put pressure on the regime to negotiate a peace settlement”. It also provides details as to why the measures respect fundamental rights.

56.7 The Minister’s letter of 20 May 2015 explains the reasons for the override.

Previous Committee Reports


414 Joined cases T-329/12 and 74/13.
415 Case T-652/11.
416 Explanatory Memorandum.
417 Minister’s letter.
57 The EU Sahel Strategy

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; further information requested

Document details
Joint Staff Working document: EU Sahel Strategy Regional Action Plan

Legal base
—

Department
Foreign and Commonwealth Office

Document numbers
(36759), 7243/15, SWD(15) 61

Summary and Committee’s conclusions

57.1 The Sahel region is defined in this context as Mali, Mauritania and Niger. The EU has been concerned by the deteriorating political, security, humanitarian and human rights situation in the Sahel region since the early 2000s. This situation predated the Libyan crisis, but has been further exacerbated by its consequences.

57.2 In 2011, the EU promulgated the EU Strategy for Security and Development in the Sahel. It has four key themes:

- that security and development in the Sahel cannot be separated, and that helping these countries achieve security is integral to enabling their economies to grow and poverty to be reduced;

- that achieving security and development in the Sahel is only possible through closer regional cooperation. This is currently weaker than it needs to be, and the EU has a potential role to play in supporting it;

- all the states of the region will benefit from considerable capacity-building, both in areas of core government activity, including the provision of security and development cooperation; and

- that the EU therefore has an important role to play both in encouraging economic development for the people of the Sahel and helping them achieve a more secure environment in which it can take place, and in which the interests of EU citizens are also protected.418

57.3 Since the crisis in Mali in 2012, the EU’s response has included establishment of an EU Special Representatives (EUSR) to the Sahel, two CSDP training missions in Mali and one in Niger (see “Background” for details).

418 See EEAS Strategy for Security and Development in the Sahel for full information.
57.4 The EU’s Regional Action Plan for the Sahel is summarised below (see paragraphs 56.20–56.28 for details). It is designed as an implementation mechanism for the 2011 EU Strategy, and focuses future EU activity in the Sahel region on four priority areas:

- preventing and countering radicalisation;
- creating appropriate conditions for youth;
- migration and mobility; and
- border management, fight against illicit trafficking and transnational organised crime.

57.5 In a letter of 20 April 2015, the Minister for Europe (Mr David Lidington) explained that Action Plan would be the subject of Conclusions at the day’s Foreign Affairs Council. He goes on to say:

“The Action Plan has been drafted by the EU institutions and the most recent draft was discussed in COAFR\(^{419}\) on 15 April 2015. Its purpose is to be an implementation mechanism for the EU’s Strategy for Security and Development in the Sahel, agreed in 2011. It is not the subject of a Council Decision, however the Committees have deemed the Action Plan ‘politically important’ and have requested an Explanatory Memorandum.

“Given that the document is still evolving, it will not be in final form in order to pass through the normal scrutiny process before it is approved by the FAC. I therefore regret that I will find myself in the position of having to agree to the adoption of the Council document before your Committee will have an opportunity to scrutinise it.”

57.6 In his 29 June 2015 Explanatory Memorandum, the Minister describes the Action Plan as a helpful instrument in seeking to deliver concrete action in support of the EU’s objectives in the Sahel region; and the four priorities identified in the Action Plan as sensible, and covering a wide range of potential work that can be undertaken by Member States working independently and collectively, and by the European institutions. As a “living document”, it will need to adapt to the evolving challenges in the Sahel. Overall, he supports this approach.

57.7 The rationale for this EU activity is as compelling as ever. What matters now, as always, is implementation. An Action Plan is a necessary condition; but, as has been demonstrated many times in the past, by no means a sufficient one. It is commendable that, as has not always been the case hitherto, the Commission and EEAS recognise the importance in particular of ongoing efforts towards shared assessments and joint programming processes, through a consistent monitoring system.

\(^{419}\) The Working Group of EU Member State officials plus Commission and EEAS that develops and controls EU policy on Africa.
“Such a monitoring system will survey the delivery of actions and initiatives, providing proper reporting for documentation and management information, taking into account lessons learnt from the ground and local partners’ suggestions, which will help focus EU’s actions in the Sahel even more, ensure that synergies and complementarities between the different instruments and Member States’ actions are pursued to their maximum and ensure a smooth transition from short term crisis response measures to long term action.”

57.8 The Council Conclusions (see paragraph 56.29 below for details) adopt and welcome this Action Plan, as a reaffirmation of:

“the EU’s continued engagement in the Sahel region and its support to sustainable and inclusive political and socio-economic development, the strengthening of human rights, democratic governance and the rule of law as well as resilience, as a response to the multidimensional crisis in the Sahel.”

57.9 They also note that the Council “will revert to the matter as appropriate, and at least once a year”. This suggests that there will be some sort of annual report; in which case, we ask the Minister to ensure that it is deposited for scrutiny, along with his views on its contents and on what action is then most appropriate.

57.10 This Action Plan, and its underlying Strategy, are related to the similar Strategy and subsequent Action Plan on the neighbouring Gulf of Guinea. On that occasion, both were deposited for scrutiny — the latter in March, along with the draft Council Conclusions whereby it was to be adopted and to which (as in this case) it was annexed. In this case, however, the previous Government refused to deposit the 2011 Strategy on the grounds that it contained only political commitments; and even now has, it seems, deposited the Action Plan as an exception. These considerations were discussed at length by the previous Committee in correspondence and in evidence sessions with the then Minister for Europe, and in its Report on Reforming the European Scrutiny System in the House of Commons.

57.11 We share our predecessors’ view. In the case of EU sanctions regimes, confidentiality is inevitable: negotiations are difficult and, once concluded, action needs to be taken speedily in order to avoid circumvention. None of these considerations apply with policy documents of this nature. The argument that this should apply only to policy that is implemented via a Council Decision is spurious. The policy in question relates to vital EU, and UK, interests; and how it is implemented, all the more so. If Member States are to remain properly in control of EU external action, proper parliamentary scrutiny of the documents in question must be undertaken. We


look to the newly-reappointed Minister for Europe to make this a reality, and to do so positively and out of conviction, not under sufferance.

**Full details of the documents:** (36759), 7243/15, SWD(15) 61: Joint Staff Working Document: *EU Sahel Strategy Regional Action Plan.*

**Background**

57.12 In March 2011, the EU adopted a comprehensive approach to the Sahel region, using the EU Strategy for Security and Development as reference, and based on the assumptions that development and security are mutually supportive and that the issues faced in the Sahel require a regional answer. This strategy includes four lines of actions:

- Development, good governance and internal conflict resolution;
- Political and diplomatic action;
- Security and the rule of law;
- Countering violent extremism and radicalisation.422

57.13 Since the beginning of the crisis in Mali in 2012, when the military overthrew the government and, then, a coalition of separatist Tuareg rebels and militant Islamist armed groups with links to Al-Qaeda in the Islamic Maghreb pushed the national army out of the north of the country, the Council has reiterated the EU’s resolve to accelerate and enhance the implementation of this Strategy in order to help tackle the regional consequences of the crisis and to enhance the coherence of the EU approach, with a particular focus on Mauritania, Niger and Mali.423

57.14 In late 2012, it was agreed to create a military intervention force (now known as AMISA), under the auspices of the Economic Community of West African States (ECOWAS), which would attempt to retake the north. However, in January 2013, the prospect that the entire country might fall to the rebels before AMISA could become operational provoked an urgent French military intervention.

57.15 Then, on 18 February 2013, at the request of the Malian authorities, and in accordance with UN Security Council Resolution 2085 (2012), the EU launched a training mission for Malian armed forces, EUTM Mali. That mission (to which 28 States, including 23 Member States, are contributing military personnel) aims to support the training and reorganisation of the Malian Armed Forces and to help improve its military capacity, in order to allow, under civilian authority, the restoration of the country’s territorial integrity. The mission would not be involved in combat operations (and has not been). This Mission is now into its second mandate of training and advising the Malian armed forces.

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422 See [Strategy](#) and EU Foreign Affairs Council [Conclusions](#). Also see EU [Fact Sheet](#).
57.16 On 15 April 2014 the Council established a further CSDP civilian mission to support the internal security forces in Mali — EUCAP Sahel Mali, as an additional contribution to the EU’s overall support to stability, institutional reform and the full restoration of state authority throughout the country. The mission will support the Malian state to ensure constitutional and democratic order and the conditions for lasting peace as well as to maintain its authority throughout the entire territory. The mission will deliver strategic advice and training for the three internal security forces in Mali, i.e. the police, Gendarmerie and Garde Nationale, and coordinate with international partners, with a view to:

— improving their operational efficacy;
— re-establishing the chain of command;
— reinforcing the role of the judicial and administrative authorities in the management and supervision of their missions, and
— facilitating their redeployment to the north of Mali.

57.17 EUCAP Sahel Mali was launched on 15 January 2015, with a 24 month mandate and a Year One budget of €11.4 million, from the overall CFSP Budget. The UK would also separately fund a political adviser.424

57.18 EUCAP Sahel Mali is designed to mirror the CSDP Mission in neighbouring Niger — EUCAP Sahel Niger — which has been building the capacity of the civilian security sector there since 2012 and which, after a slow start, is said to have turned itself around and to be now delivering effectively.425

57.19 The mandate of the EUSR for the Sahel (established in 2013) is based on the EU’s policy objectives, i.e., to contribute actively to regional and international efforts to achieve lasting peace, security and development in the region.426 The EUSR’s job involves enhancing the quality, intensity and impact of the EU’s multi-faceted engagement in the Sahel region, including the EU Strategy for Security and Development in the Sahel, and participating in coordinating all relevant instruments for EU actions. Initial priority was given to Mali and to the regional dimensions of the conflict there. The EUSR’s specific tasks, subsequent performance and related issues are discussed in our predecessors’ earlier Reports.427

426 EUSRs promote the EU’s policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law. They support the work of the High Representative of the Union for Foreign Affairs and Security Policy (HR), in the regions concerned, and provide the EU with an active political presence in key countries and regions, acting as a “voice” and “face” for the EU and its policies.
The EU Sahel Strategy Regional Action Plan 2015–20

57.20 The Commission and EEAS argue that security and development in the Sahel region are crucial to the European Union — that extreme poverty, internal tensions, institutional weaknesses, demography, frequent food crises, fragile governance and rule of law, poor human rights records, irregular migration and related crimes such as human trafficking and smuggling of migrants, radicalisation and violent extremism are serious challenges to the region and have potential spill-over effects outside the region, including the EU.

57.21 Against this background, the Regional Action Plan (RAP) aims at the implementation of the EU Sahel Strategy, building on its objectives and taking into account acquired experience, by identifying actions and initiatives over the next five years; thereby providing a framework for EU action in the Sahel region, and applying a comprehensive approach in order to ensure that the policies, instruments and tools work together for the same objectives to generate better results, in full coordination with Member States.

57.22 Though the Sahel Strategy itself remains valid, and its original strategic objective should be confirmed and commitment towards implementation renewed, with a division of labour between EU institutions and Member States, RAP underlines the need to focus on: 1) Preventing and countering radicalisation, 2) Creating appropriate conditions for Youth, 3) Migration and mobility, 4) Border management, fight against illicit trafficking and transnational organised crime. “Action Areas” are detailed under each of these priorities.

57.23 RAP implementation should remain flexible in order to factor-in changes in the Region, reflect the strategies of local partners and build on existing programmes and activities. The identification of concrete initiatives in the region will be guided by their potential to contribute to achieving the objectives. Complementarity will be sought with other relevant EU strategies and action plans; in particular, the Joint Africa-EU Strategy, the EU Strategy on the Gulf of Guinea, the Joint Communication on closer cooperation and regional integration in the Maghreb, and the Rabat Process Rome Declaration and Programme.

57.24 The implementation will involve a range of instruments and mechanisms/modalities in a division of labour between the EU and its Member States, aimed at strengthening the

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428 The RAP mentions in particular the Global Alliance for Resilience Initiative (AGIR) launched in Ouagadougou in December 2012; creation of the GS in 2014 by the Heads of State of Burkina Faso, Chad, Mali, Mauritania, and Niger to address the main challenges in Sahel, particularly in the field of security and development; the Bamako ministerial platform launched after the joint high level visit to the region in 2013 (UN, African Union, World Bank, EU, to coordinate the Sahel strategies; the Nouakchott Process in 2013 to promote collective security in the Region under the AU auspices; and the revitalisation of the Lake Chad Basin Commission to tackle common border issues, in view of the increased threat to the Sahel region from Boko Haram activities.

429 The Strategic Partnership established in 2007 in Lisbon; see Bringing Africa-EU relations to a new level: the Joint Africa-EU Strategy.


431 For the previous Committee's consideration of this Joint Communication, see (34612), 5118/13: Thirtieth Report HC 86-xxx (2102–13), chapter 10 (6 February 2013). Also see Joint Communication Supporting closer cooperation and regional integration in the Maghreb.

432 Issued by the fourth EU-Africa Ministerial Conference on migration and development on 27 November 2014; see Rome Declaration.
EU Comprehensive Approach. Addendum II and III illustrate on-going as well as planned activities; in view of the dynamic and volatile context, this matrix will need to be regularly updated.

57.25 The 11th EDF 2014–2020 indicative budget for the five Sahel countries amounts to €2.47 billion (£1.76 billion), and could contribute to the implementation of the RAP. The IcSP (Instrument for contributing to Peace and Stability), with its focus on global, trans-regional threats and emerging threats, and its objective of responding to situations of crisis or emerging crisis and supporting conflict prevention, crisis preparedness and peacebuilding, will continue to be needed. So, too, the ongoing CSDP missions EUCAP SAHEL Niger and Mali and EUTM Mali. The work of the EUSR has been vital for enhancing the quality and impact of the EU’s engagement in the Sahel.

57.26 In order to improve monitoring of RAP implementation, a mechanism will be developed through which all EU and Member States activities could be made visible in order to highlight how they contribute to achieving the objectives of the Sahel Strategy.

57.27 In terms of methodology, the Commission and EEAS emphasise the importance in particular of ongoing efforts towards shared assessments and joint programming processes, through a consistent monitoring system. Such a monitoring system will survey the delivery of actions and initiatives, providing proper reporting for documentation and management information, taking into account lessons learnt from the ground and local partners’ suggestions. It will help focus EU’s actions in the Sahel even more, ensure that synergies and complementarities between the different instruments and Member States’ actions are pursued to their maximum and ensure a smooth transition from short term crisis response measures to long term action. This system should imply the mobilisation of Council relevant groups, including in particular the PSC and COAFR, and considering the coordinating role of the EUSR for the Sahel.

57.28 Proper risk management entails a strategic approach through which substantial risks and their possible impact on the programmes and their progress are identified in due time. For this purpose the RAP will integrate the regional and country conflict risk assessments and options for preventive action of the EU Conflict Early Warning System as part of the monitoring and reporting on the progress of the RAP.

57.29 On 20 April 2015, the EU Foreign Affairs Council adopted the following Conclusions:

“The Council adopts today the annexed Sahel Regional Action Plan 2015-2020 which provides the overall framework for the implementation of the European Union (EU) Strategy for Security and Development in the Sahel, as adopted and revised in its Conclusions on 21 March 2011 and 17 March 2014, respectively. The adoption of the Action Plan comes at a crucial time for the countries in the Sahel. The Council welcomes the Action Plan, which reaffirms the EU’s continued engagement in the Sahel region and its support to sustainable and inclusive political and socio-economic development, the strengthening of human rights, democratic governance and the rule of law as well as resilience, as a response to the multidimensional crisis
in the Sahel. The enhancement of security in the region through the fight against terrorism, illicit trafficking, radicalisation and violent extremism, remains the key objective of the EU. In the context of its comprehensive approach, including the contribution of the EU Institutions, the EU Special Representative (EUSR) for the Sahel as well as of EU Member States, the EU reiterates its commitment to support regional and country-led and owned initiatives in the framework of the Action Plan, using all its relevant instruments, in particular the regional and national indicative programmes under the European Development Fund as well as Member States’ programmes, and also including the CSDP Missions EUTM Mali, EUCAP Sahel Niger and EUCAP Sahel Mali, and the Instrument contributing to Stability and Peace.

“2. The original strategic objective of the EU Sahel Strategy, emphasising the development-security nexus as well as the four pillars for its implementation, remains fully relevant and provide a comprehensive framework for EU action in the Sahel. The Action Plan provides a solid basis for pursuing the objectives of the Strategy and for reinforcing the EU’s focus around four domains highly relevant to the stabilisation of the region, namely prevention and countering radicalisation, creation of appropriate conditions for youth, migration, mobility and border management, the fight against illicit trafficking and transnational organised crime. The EU underlines in particular the importance of fostering closer synergies between countries of the region as well as between the Sahel and neighbouring countries. Given the proximity of the Sahel to the EU and its immediate neighbourhood, it notes the need, in order to better tackle cross-border issues, to explore further a common space for dialogue and cooperation between the Sahel, the Maghreb and the EU in relevant sectors such as security and migration. This should be done in the framework of the existing mechanisms and dialogues such as the Rabat and Khartoum processes on migration and development.

“3. The EU reiterates its readiness to continue working closely with the countries of the Sahel region to support their efforts to achieve peace, security and development. The implementation of the Action Plan will be carried out with the full ownership and under the primary responsibility of the countries concerned, and in coordination with key international and regional organisations and other partners, in particular the United Nations (UN), the African Union (AU), the Economic Community of West African States (ECOWAS), the West African Economic and Monetary Union (WAEMU), the G5 Sahel, the Lake Chad Basin Commission and the World Bank, as well as with civil society. In this respect, the EU underlines the importance of continuing this close international and regional coordination, including between the EUSR for the Sahel, the UN Secretary-General’s Special Envoy for the Sahel, the Special Representative of the UN Secretary-General for Mali and the AU High Representative for Mali and the Sahel, aiming at creating synergies in the implementation of respective strategies.

433 See Council Conclusions of 9 February 2015 on Counter-Terrorism.
“4. The Council invites the High Representative and the Commission and Member States to start implementing the Sahel Regional Action Plan. The Council will revert to the matter as appropriate, and at least once a year.”434

57.30 In his Explanatory Memorandum of 29 June 2015, the Minister for Europe describes the EU Regional Action Plan for the Sahel as “a helpful instrument in seeking to deliver concrete action in support of the EU Sahel Strategy”, which “aims to harness the EU’s comprehensive approach and use a range of instruments to achieve the EU’s objectives in the Sahel region”. He notes that the authors concede that the Action Plan is a living document, which will need to adapt to the evolving challenges in the Sahel.

57.31 Overall, “the UK supports this approach”. The four priorities identified in the Action Plan are “sensible and cover a wide range of potential work that can be undertaken by Member States working independently and collectively, and by the European institutions”. The Action Plan also contains “helpful UK-inspired language” on Resilience:

“Building long-term resilience to climatic and environmental shocks is vital if Sahel communities are to be able to stand on their own two feet in the future.”

57.32 So far as the Financial Implications are concerned, the Minister says that, though the Action Plan commits no additional resources to the Sahel:

“it could serve as the underpinning for specific requests for uplifts to support individual activity, e.g. for expanded CSDP work on border security. Such negotiations will be held on a case by case basis, and in the case of CSDP uplift, in the context of wider discussions on the CSFP budget.”

Previous Committee Reports


58 Human rights in Iran

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

Summary and Committee’s conclusions

58.1 The EU has been engaged since December 2006 in a “dual track” strategy — engagement and restrictive measures — regarding Iran’s nuclear activities, not simply implementing in the EU, but also strengthening in that context, successive UN Security Council Resolutions. But it has only been since 2011 that it has sought to challenge the Iranian regime’s human rights performance via a package of travel restrictions and asset freezes against the main perpetrators.

58.2 This Council Decision and Council Implementing Regulation “roll over” this package for a further 12 months, to 13 April 2016, and (following a review of the measures) “delist” two individuals, because there are no longer grounds for listing, and a duplicate listing.

58.3 The continuation of these measures is consistent with the previous and the present Government’s policy of holding to account those guilty of human rights abuses in Iran. In 2014, there continued to be no concrete improvements under President Rouhani’s government, with the highest number of executions in Iran in the past 12 years and the highest rate of executions per capita in the world. This dreadful situation continues; The Times reported on 17 April 2015 that Iran had hanged at least 43 people in the previous three days, “as the regime purges its bulging prison population”. The Times correspondent went on to note that, as of that date, at least 270 people had been put to death, compared with about 750 in 2014 — “the highest since the mass purges of the 1980s”. As he concluded:

“The spike in hangings underlines fears that Mr Rouhani’s tentative détente with the West, culminating in a landmark nuclear deal two weeks ago, has had no impact on Iran’s dismal human rights record.”

58.4 There are thus good grounds for “rolling-over” the existing regime for a further twelve months. However, we do have continuing concerns over one aspect of the handling of the “review/rollover” process.

58.5 The Minister for Europe (Mr David Lidington) and his officials rightly take the review process very seriously. So, too, does the Committee. The then Committee
received on 30 March a letter from the then (and current) Minister, noting that the measures would have lapsed on 12 April 2015, during the Parliamentary dissolution, had they not been renewed before that date, and expressing regret at thus finding himself having had to agree to the adoption of this Council Decision and Council Implementing Regulation before the Committee had had an opportunity to scrutinise the documents.

58.6 When, on 30 April 2014, our predecessors considered the last such “rollover”, they said that while any override of scrutiny is regrettable, they were not convinced that, on that occasion, it was unavoidable. They therefore asked the Minister to explain why last year’s renewal was put forward so late in the day; and to outline in detail what steps were taken in Brussels, at what level, to “chase up” those concerned in advance of a renewal date that had been known a year previously. He subsequently explained that the European External Action Service (EEAS) had not initiated the review of these measures until 3 February 2014; acknowledged that he and his officials had misjudged the time that would be necessary to complete this process; and undertook both to ensure that the 2015 review was initiated in January and to write once more to the EU High Representative (Baroness Ashton) about the late publication of documents and how this impeded “our democratic Parliamentary scrutiny process”.

58.7 Now, the Minister again describes this latest scrutiny override as “unavoidable”. On this occasion, however, we further understand that:

- the first stage of this year’s review began in mid-January, and was concluded on 19 February;

- the requisite letter notifying individuals whose Statement of Reasons the Council had decided to update was agreed on 24 February and sent shortly thereafter, with a 6 March deadline for the submission of any observations by those concerned;

- in the meantime, the UK Representation to the EU made efforts to have early sight of the draft legal instruments, and stressed the importance of our Parliamentary scrutiny procedures;

- two of the addressees submitted observations, necessitating further RELEX Working Group discussions, which resulted in the Council Secretariat circulating the draft legal instruments on 17 March for discussion at a RELEX meeting on 23 March;

- this meant that it was not possible to draft an Explanatory Memorandum before the then Committee’s last meeting on 24 March;

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435 RELEX: foreign relations counsellors from Member State permanent representations, who prepare the legal, institutional and budgetary aspects of CFSP/CSDP Decisions and Regulations.
• given that Parliament was due to be dissolved on 30 March, and that the EU was pushing for adoption in early April, the Minister agreed to override scrutiny on 30 March, and notified the Committee; and

• the draft instruments were approved by the Council via Written Procedure in early April.

58.8 Given this “timeline”, on this occasion and in these circumstances, we do not object to the overriding of scrutiny.

58.9 We are also aware that:

• the Minister has raised this issue not only with Baroness Ashton but also with her successor, High Representative Mogherini, including through a letter on 9 December 2014, in which he emphasised the importance of providing documents well in advance to ensure sufficient time for UK Parliamentary scrutiny;

• FCO officials subsequently visited Brussels and, with the UK Representation to the EU, raised this issue with senior EEAS officials; and

• as of last Spring, also planned to brief EEAS Working Group Chairs, arrange workshops on UK Parliamentary scrutiny, and meet key EU officials on a regular basis — all to ensure that all those involved with the process of document production have a good understanding of UK Parliamentary scrutiny and that scrutiny timetables are taken into account wherever possible.

58.10 We would accordingly like the Minister to write to us, within ten working days, outlining what steps have actually been taken, with and by whom, since last March; what evidence there is of sustained, improved performance by the EEAS; and what further steps he proposes to take.

58.11 In the meantime, we now clear the documents from scrutiny.

**Full details of the documents:** Council Decision amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran: (36771), —; Council Implementing Regulation implementing Regulation (EU) No. 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran: (36772), —.

**Background**

58.12 The EU has been engaged since December 2006 in a “dual track” strategy — engagement and restrictive measures — regarding Iran’s nuclear activities, not simply implementing in the EU, but also strengthening in that context, successive UN Security Council Resolutions.
Council Decision 2011/235/CFSP

58.13 However, while UN, EU and US measures were thus in place in response to the nuclear issue, there had been a limited international response to human rights violations and, at the same time, regular calls from a variety of directions, including human rights defenders and NGOs, to impose sanctions.

58.14 Thus, on 21 March 2011, the Foreign Affairs Council adopted the following Conclusions:

“1. The European Union is deeply concerned that the human rights situation in Iran continues to deteriorate. The EU is alarmed by the dramatic increase in executions in recent months and the systematic repression of Iranian citizens, including human rights defenders, lawyers, journalists, women’s activists, bloggers, persons belonging to ethnic and religious minorities and members of the opposition, who face harassment and arrests for exercising their legitimate rights to freedom of expression and peaceful assembly. The EU reiterates its strong condemnation of the use of torture and other cruel, inhuman and degrading treatment.

“2. The EU calls on the Iranian authorities to live up to the international human rights obligations that Iran has entered into, so as to protect and promote all human rights and fundamental freedoms to which the Iranian people are entitled. In particular it calls on Iran to release immediately all political prisoners and to halt executions.

“3. The European Union attaches great importance to the improvement of the human rights situation in Iran and will increase its efforts to that end. The European Union will also continue to speak out in support of individuals and civil society organizations which stand up for the human rights which all Iranians should enjoy.

“4. The EU is ready to discuss human rights issues with the Iranian authorities and to keep channels of communication open to that end.

“5. The European Union will continue to address human rights abuses in Iran, including by swiftly introducing restrictive measures targeted against those responsible for grave human rights violations.”436

58.15 Council Decision 2011/235/CFSP accordingly provides the basis for restrictive measures targeted against:

“persons complicit in or responsible for directing or implementing grave human rights violations in the repression of peaceful demonstrators, journalists, human rights defenders, students or other persons who speak up in defence of their legitimate rights, including freedom of expression, as well as persons complicit in or responsible for directing or implementing grave violations of the right to due
process, torture, cruel, inhuman and degrading treatment, or the indiscriminate, excessive and increasing application of the death penalty, including public executions, stoning, hangings or executions of juvenile offenders in contravention of Iran’s international human rights obligations.”

**Council Regulation 359/2011**

58.16 This Council Regulation provides for the adoption of restrictive measures against those persons judged to be responsible for serious human rights violations in Iran, as listed in the annex to the Council Decision, and consists of a freezing of the funds and economic resources of those persons.

58.17 In 2013, the Council decided to prolong the EU restrictive measures by 12 months in response to continuing serious human rights violations, and to add nine persons and one entity responsible for serious human rights violations to the list of those subject to a travel ban and an asset freeze — judges, prosecutors, authority figures in state media, and the Cyber Police. This brought the number of persons targeted to 87. This “package” was renewed for a further 12 months in April 2014.437

**The Council Decision and Council Implementing Regulation**

58.18 This Council Decision and Implementing Regulation renews the EU’s restrictive measures in view of the human rights situation in Iran until 13 April 2016.

58.19 In his Explanatory Memorandum of 15 June 2015, the Minister for Europe explains, as on previous such occasions, that the procedures for designating individuals under Council Decision 2011/235/CFSP and Council implementing Regulation 359/2011 (“the Principal Decision and Regulation”) which this Decision and Regulation amend respectively are considered to be compliant with fundamental rights.

58.20 Thus:

— provision is made for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic needs of listed persons or their dependents and where necessary for extraordinary expenses; which decisions by competent authorities of Member States in this regard would be subject to challenge in Member States’ courts;

— in addition, Member States may grant exemptions from the travel ban where travel is justified, *inter alia*, on the basis of urgent humanitarian need;

— the Principal Decision and Regulation respect fundamental rights, notably the right to an effective remedy and to a fair trial and the right to the protection of personal data;

— both the Principal Decision and Regulation state that the Council shall provide
designated persons and entities with an opportunity to present observations on the
reasons for their listing;

— where observations are submitted, the Council shall review its decision in the light of
those observations and inform the person or entity concerned accordingly; and, in
addition, shall keep the measures under review; and

— the Courts of the European Union must, in accordance with the powers conferred on
them, ensure the review of the lawfulness of all European Union acts in respect of
fundamental rights, including respect for the rights of the defence and the right to
effective judicial protection.

The Government’s view

58.21 The Minister says:

“It is still UK government policy to hold to account those guilty of human rights
abuses in Iran. The human rights situation in Iran remains dire. The Government
continues to release statements condemning the human rights situation in Iran, and
lead action by the international community.

“The EU sanctions regime is one way in which we hold the government of Iran to
account for human rights abuses. It was important to agree the renewal of the
listings, provided they continued to meet the criteria.

“The Council agreed that there was no longer grounds for listing two individuals
under the regime (HEYDARI, Nabiollah and REZVANI, Gholomani). Neither of
these are politically important listings, and so delisting these individuals does not
compromise the overall benefit gained from the sanctions regime towards our
human rights objectives.

“In addition, one duplicate listing was deleted from the list (ELAHI, Mousa Khalil)
following the Council’s review.”

58.22 In the letter to the Committee of 30 March the Minister pointed out that the
measures would have lapsed during Parliamentary dissolution (on 12 April 2015) had they
not been renewed in advance of their renewal date, and expresses regret that he found
himself having to agree to their adoption before the Committee had an opportunity to
scrutinise the documents.

Previous Committee Reports

None, but see (35962), — and (35963), —: Forty-seventh Report HC 83-xlii (2013–14),
chapter 10 (30 April 2014).
59 The EU External Conflict and Crises Strategy

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; further information requested; drawn to the attention of the Foreign Affairs Committee

Document details
Joint Staff Working Document: *Taking forward the EU’s Comprehensive Approach to external conflict and crises — Action Plan 2015*

Legal base
—

Department
Foreign and Commonwealth Office

Document numbers
(36802), 7913/15, SWD(15) 85

Summary and Committee’s conclusions

59.1 In December 2013, the EU High Representative for Foreign Affairs and Security Policy (HR Federica Mogherini), and the European Commission put forward a Joint Communication on the Union’s comprehensive approach to external conflicts and crises. The aim of the comprehensive approach is “enhancing the coherence, effectiveness and impact of the EU’s policy and action, in particular in relation to conflict prevention and crisis resolution”.

59.2 The Joint Communication was retained under scrutiny by our predecessor Committee on 8 January 2014, and cleared from scrutiny via European Committee debate on 12 March 2014. However, the Government rejected our predecessor Committee’s recommendation that such an important and infrequent document should be debated on the floor of the House.

59.3 In May 2014, the European Council gave full support to the concept of the comprehensive approach, and agreed what the Commission describes as an “ambitious” set of conclusions, including on the way forward. In order for the principles of the comprehensive approach to be taken from theory into practice, the Council invited the HR and the Commission to prepare an Action Plan. This was received on 10 April 2015.

59.4 The new Commission under President Jean-Claude Juncker has emphasised the importance of working across teams. This emphasis gives further impetus to the development of a comprehensive approach.

59.5 The Action Plan identifies four areas of priority for 2015:

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438 (36802)
439 Common Security & Defence Policy debate 12 March 2014
• The definition of a common strategic vision through the development of guidelines for Joint Framework Documents (JFDs). These are potentially a pivotal part of a comprehensive approach and could “set out the EU’s and Member States’ objectives and priorities for a particular country or region and the tools needed”;440

• The mobilisation of the different strengths and capacities of the EU. In this area, the focus will be on three initiatives: capacity building; transition; and rapid deployment;

• Country and regional cases. These have been chosen to bring forward different aspects of the comprehensive approach, and to include countries with and without a CSDP presence, as well as areas where joint efforts are already taking place. They are: the Sahel, Central America and the Caribbean, Afghanistan and Somalia; and

• Implementation and reporting. The Action Plan will be implemented by the EEAS, the Commission and Member States; the country and regional cases will see EU delegations and Member States’ embassies play a key role. In addition, there will be an oral briefing on the Action Plan to the European Council in mid-2015 and a report in the first quarter of 2016.

59.6 We welcome the formulation of an Action Plan to take forward the comprehensive approach. It is important that EU policy in relation to conflict prevention and crisis resolution should be as ‘joined-up’ as possible. It is in line with the more general approach of the Juncker Commission that the Union should not be constrained in individual silos, but that there should be working across teams.

59.7 We also welcome the recognition that foreign affairs and security policy are the responsibility of Member States as well as of the EEAS and the Commission. Although the comprehensive approach must be undertaken at EU level and does not engage issues of subsidiarity, it is important that coordination of action by Member States should not impair Member States’ freedom of action. In addition, coordination of action should not become duplication of effort, and the comprehensive approach should be pursued as complimenting United Nations or NATO operations.

59.8 It is important that the Council is given regular and full updates on the implementation of the Action Plan, and in this regard it is to be welcomed that the Commission has agreed to an oral briefing this year and a hopefully fuller report in the first quarter of next year. We ask the Minister to write to us after the first of these briefings, with his views on developments thus far, and also to keep us fully and promptly informed of UK involvement in the comprehensive approach.

Background

59.9 The Joint Communication on the comprehensive approach presented by the High Representative and the Commission was prepared in advance of the December 2013 European Council meeting. This was the first such meeting to focus on the Union’s Common Foreign and Security Policy and general defence matters since 2007. The purpose of the comprehensive approach is to bring together the EU’s diplomatic, economic, development, civilian and military tools in a coordinated manner to address external conflicts and crises. The Commission has been at pains to stress that the comprehensive approach is about process rather than ends; in essence, not “what to do” but “how to do it”.

59.10 Our predecessor Committee considered the Joint Communication in its Thirty-ninth Report of Session 2014–15, published on 24 March 2015. The Committee noted that the Communication had been assessed as politically important, and had recommended that the Government find time for it to be debated on the floor of the House. This recommendation was not acted upon, and the Communication was debated in a European Committee on 12 March 2014.

59.11 The Foreign Affairs Council endorsed the concept of a comprehensive approach at its meeting on 12 May 2014. It agreed a set of Council Conclusions which called for an Action Plan for implementation of the comprehensive approach to be developed by the EEAS and the Commission by the end of the first quarter of 2015.

59.12 In February 2015, there was a “defence informal” meeting in Riga at which the Minister for Reserves, Mr Julian Brazier MP, represented the UK. HR Mogherini identified five areas of focus: higher levels of defence spending, improved cooperation in capability development, exploitation of dual-use research, developments of the “train and equip” concept, and improved EU-NATO cooperation. Several of these are relevant to the comprehensive approach.

The document

59.13 The Action Plan was due to be promulgated by the end of the first quarter of 2015. It was published on 10 April 2015, and the Explanatory Memorandum submitted by the Foreign and Commonwealth Office on 5 May 2015.

59.14 The Action Plan is founded on three main principles. Firstly, the comprehensive approach, as stated above, is a working method, a way of bringing together EU actions in the field of conflict prevention and crisis resolution. The Commission underlines that the purpose of the comprehensive approach is not to reiterate the policy framework contained in the Joint Communication, nor to list challenges and opportunities across the spectrum of EU foreign and security policy. Rather:
“The purpose of the Action Plan is [...] to identify a selected number of key issues that were flagged in the Joint Communication and the Council Conclusions and which should be taken forward as a priority in 2015.”

59.15 Second, and flowing from that, the best way to test the comprehensive approach is to apply it to real situations. Therefore, in line with the Council conclusions, the Action Plan identifies a small number of country or regional cases to which particular aspects of the comprehensive approach could be applied.

59.16 Thirdly, the implementation of the Action Plan is the responsibility of the European External Action Service, the Commission and Member States. In order for it to be truly ‘comprehensive’, it should be taken forward by the whole range of EU actors.

59.17 As described in paragraph 59.5, the Action Plan prioritises four actions for 2015.

59.18 The first action is the definition of a common strategic vision. This is to be achieved through the development of guidelines for Joint Framework Documents. The Commission considers that JFDs could be a centrepiece of the comprehensive approach, strengthening joint analysis and creating a common strategic vision for the EU. It has set out the following core principles in the development of JFDs:

- They should be developed jointly by the EU and by Member States;
- EU delegations and Member States’ embassies on the ground should be central to the process;
- A shared context analysis, based on existing knowledge, should be a fundamental building block.

The Commission also emphasises that the guidelines for JFDs “should be clear on process as well as its links to other strategic documents like regional strategies, the Political Framework for Crisis Approach (PFCA) documents, the programming documents for EU development instruments etc”.

59.19 The second action is the mobilisation of the different strengths and capacities of the EU. The full potential of the comprehensive approach will only be realised when the EU and Member States bring to bear all their available and relevant policies and instruments in a unified way to achieve commonly identified objectives. The Commission notes that lessons have been learned about consistency and coherence from support to security sector reform projects, CSDP capacity-building missions and operations and the EU support to the African Peace and Security Architecture.

59.20 In this field, the Action Plan identifies three initiatives for priority attention. The first is capacity-building in support of security and development. This is intended to building on the “train and equip” initiative identified as a priority by HR Mogherini at the defence
informal in February 2015, and is intended to assist partner countries and regional
organisations to manage or prevent crises independently.

59.21 The second initiative is transition; that is, the switch from one form of EU
government, such as CSDP, to another, for example, bilateral or multilateral engagement
by Member States. Strategies to manage this kind of transition are essential in planning
new missions and reviewing existing ones. The Commission intends that planning such
strategies should be a collaborative effort between the EEAS and Commission services,
Member States and host authorities.

59.22 The third initiative is rapid deployment. Some recent deployments, such as that to
Libya (Operation Odyssey Dawn), have demonstrated some of the solutions which can
draw capacities and resources from across Member States and the Union itself, and these
should be examined and developed further for the rapid deployment of joint field missions.

59.23 The third action is the identification of a number of country cases which
demonstrate different aspects of the comprehensive approach, including countries with
and without a CSDP presence. The Commission also notes that the six-monthly EU
Conflict Early Warning System process may identify further regions which could benefit
from the comprehensive approach.

59.24 The Action Plan names four countries or regions in this context. The first is the
Sahel, for which the EU is developing a Regional Action Plan (covering Mali, Mauritania,
Niger, Burkina Faso and Chad) to implement the Strategy for Security and Development in
the Sahel adopted by the European Council in March 2011. The RAP is being developed by
the EEAS, the Commission and the EU Special Representative for the Sahel, M. Michel
Dominique Reveyrand-de Menthon. It is intended that the RAP will offer opportunities for
the EU and Member States to implement the comprehensive approach.

59.25 The second region is Central America and the Caribbean, for which the EU has had a
Strategy on Citizen Security since July 2014. The HR and the Commission are in the
process of drawing up an action plan to address the security challenges of high homicide
rates and international criminal activity.

59.26 The third country is Afghanistan. The EU and Member States reiterated their long-
term commitment to Afghanistan in a Joint Communication issued in June 2014, Elements
for an EU Strategy in Afghanistan 2014–16, which the Commission views as a concrete
example of the comprehensive approach. The Strategy comprises financial aid, electoral
assistance, an EU Special Representative (Hr Franz-Michael Skjold Mellbin) and a policing
mission.

59.27 The fourth country identified is Somalia. The EU operates in Somalia through the
Somali Compact, adopted by the international community in cooperation with the Federal
Government of Somalia in 2013. It is engaged in three CSDP missions, development and
humanitarian aid and coordinated diplomatic actions under the auspices of the EUSR for
the Horn of Africa, Mr Alex Rondos. The Commission views Somalia as an excellent
opportunity for implementing the comprehensive approach, to develop shared analysis,
define a common EU strategic vision to align existing documents with the Somali Compact, mobilise the different strengths and capacities of the EU and continue engagement with the African Union.

59.28 The fourth action prioritised for 2015 is implementation and reporting. The Action Plan is to be implemented by the EEAS and relevant Commission services together with Member States. In the regional and country cases in particular (paragraphs 59.24–59.27 above), EU delegations and missions and the embassies of Member States will play a key role in the creation of the comprehensive approach. In terms of reporting, the European Council will receive an oral briefing on the progress of the Action Plan in mid-2015 and a report in the first quarter of 2016.

The Government’s view

59.29 The UK has for a long time supported the development of the EU’s Comprehensive Approach and took a leadership role in creating the Action Plan. It notes in its Explanatory Memorandum that the Plan “contains some positive proposals, in line with UK objectives”, and highlights early planning, better joint institution analysis and the nexus between training and equipping as particularly important.

59.30 The Government looks forward to using the updated Action Plan, due to be produced by the EEAS in 2016, as an opportunity to ensure the inclusion of more practical and operational elements. These will include the ‘mainstreaming’ of the Comprehensive Approach, and better joint working across institutions in Brussels.

Previous Committee Reports


60 Implementation of the European Neighbourhood Policy in 2014

Committee’s assessment Politically important
Committee’s decision
Cleared from scrutiny; drawn to the attention of the Foreign Affairs Committee (together with the Joint Consultation Paper — Towards a new European Neighbourhood Policy443)

Document details
Joint Communication on implementation of the European Neighbourhood Policy in 2014 and country reports

Legal base
—

Department
Foreign and Commonwealth Office

Document numbers
(36812), 8129/15 + ADDs 1–15, JOIN(15) 9

Summary and Committee’s conclusions

60.1 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 strengthen 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.

60.2 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).

60.3 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.

60.4 The ENP review of 2011 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, in which the “Arab Spring” was a major factor. There have been two subsequent developments.

60.5 First, on 4 March 2015, via a joint press conference, the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) and Enlargement Commissioner Johannes Hahn, announced the publication of a Joint Consultation Paper — *Towards a new European Neighbourhood Policy* — and thus launched a further review. The HR noted that the region has changed greatly in the last ten 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, with the region “in flames, both to the East and South”, the EU needed “to use all the potential of our bilateral relations with partners in the region to have an effective impact on our region”. She and Commissioner Hahn would, in the next months, work together “to have better and more effective instruments to work in our neighbourhood”.

60.6 Secondly, on 24 April, the Commission published its 2014 Report on implementation of the ENP, along with the customary country reports. The Joint Communication and its accompanying documents assess how the EU and partner countries have progressed in implementing jointly agreed reform objectives, including particular challenges both sides have faced. They are helpfully summarised, and commented upon, in his 15 June 2015 Explanatory Memorandum by the Minister for Europe (Mr David Lidington). The picture is, as ever, very varied: the Minister’s general conclusion is that “the success of the policy is directly dependent on the ability and commitment of governments to reform and to deepen relations with the EU”. His comment on the Eastern Partnership report could be applied to a great deal of EU support to ENP and other partners generally — “the report focuses on a lot of the process rather than on the impact of this work. It would benefit from a more critical analysis of why, or why not, programmes have worked and how this learning, and therefore new priorities, will be reflected over the next year (see “Background” below for details).

60.7 The “Background” below also recalls the previous Committee’s consideration at its last meeting of what was something of a novelty: a paper designed to launch a widespread consultation exercise on the future shape of the European Neighbourhood Policy (ENP).

60.8 This consultation exercise should engage “a wide range of actors” — Member States, ENP partners, parliaments, including the European Parliament, civil society and

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445 See Press Release for full details.
think tanks, the social partners, business and academic communities, the Council of Europe, the OSCE and the major international financing institutions. Although the Commission acknowledged that it had no plans to reach out specifically to EU national parliaments, it indicated that it would nonetheless 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. With Parliament about to be dissolved, there was no time for the previous Committee to investigate the possibilities further. The previous Committee nonetheless welcomed this. It also recommended that its successor should consider seeking the Opinion of the new Foreign Affairs Committee, should there be time to do so before the end-June consultation deadline.

60.9 In the event, that has not proved possible. We nonetheless draw both these developments to the attention of the Foreign Affairs Committee, and will wish to seek its Opinion in the autumn on the next Joint Communication, following on from the consultation exercise, and proposing the way forward.

60.10 In the meantime, we now clear the Joint Communication and the accompanying country progress reports.


**Background**

60.11 In the introduction to the Joint Consultation Paper, styled “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.”

60.12 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.”

60.13 Enlargement Commissioner Johannes Hahn said at the press conference 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”; and

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

60.14 The HR and Commissioner professed themselves determined to consult as widely as possible, particularly in the partner countries, between then and the end of June — looking for “concrete ideas that will suit us and our partners, and that will deliver results the public can understand”. The results of the consultation would contribute to a further Communication in the autumn of 2015, setting out concrete proposals for the future direction of the ENP.

60.15 The Minister for Europe (Mr David Lidington) welcomed publication of the Joint Communication, as an important opportunity to refocus ENP. He favoured “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 saw the ENP as facing these key challenges:

• the “one-size-fits-all” approach: the ENP incorporated some differentiation but needed 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 was 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; and

• how to incentivise reform: the EU quite rightly insisted on substantive political and economic reforms in exchange for access to its markets; but there were questions as to whether the EU had been effective enough in incentivizing the necessary reforms.

60.16 The Minister accordingly agreed broadly with the Joint Consultation Paper’s key themes: Differentiation, Focus, Flexibility, Ownership and Visibility. In responding, the UK would 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. 446

The previous Committee’s assessment

60.17 Whether or not “our region” was “in flames, both to the East and South”, this Joint Consultation Paper was plainly timely. Very large sums of money are involved — the ENP draws its funding primarily from the European Neighbourhood Instrument (ENI), to which over €15 billion (£10.6 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 (£163.8 billion); the EU issued 3.2 million Schengen visas to ENP partners in 2012; and in 2007-2013, provided partners with over €12 billion (£8.5 billion) in grant money for the implementation of the ENP. As the previous Committee noted when considering the 2013 implementation exercise, it was inconceivable that the EU would not have some such policy: but, at the end of the day, no-one had any real idea of how effective this expenditure of over €12 billion (£8.5 billion) had been.

60.18 The EU was 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. 447 So what emerged from this consultation would 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.

60.19 And, prior to the publication of the results of this consultation exercise, EU leaders were set to return to that most basic of foreign policy issues: defence. 448

60.20 Under “Next Steps”, the Joint Consultation Paper aimed “to consult as widely as possible both with partners in the neighbouring countries and with stakeholders across the EU”, noting 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

448 See (25696), 17859/13 in the then Committee’s Thirty-ninth Report HC 219-xxxvii (2014–15), chapter 19, (24 March 2015) for the Committee’s latest consideration of the preparations for the June “defence” European Council.
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.”

60.21 The previous Committee noted the Enlargement Commissioner had already engaged in a debate with the European Parliament only five days after publication of the joint consultation paper. However, its understanding was that, beyond that, the reference to consultation with parliaments in the paper referred to parliaments in the partnership countries, including taking a “roadshow” to each one and visits to each country’s parliament; and that the Commission had no plans to reach out specifically to EU national parliaments. However, the previous Committee further understood 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.

60.22 The previous Committee welcomed this. It also recommended that its successor should consider seeking the Opinion of the new Foreign Affairs Committee, should there be time to do so before the end of the consultation period.

60.23 In the meantime, it retained the Joint Consultation Paper under scrutiny, pending receipt of further information from the next Minister for Europe on the outcome of the consultation. In so doing, it noted that, should this be in the form of a further depositable document, it would expect a timely Explanatory Memorandum in the usual way; and that, if for whatever reason it was in another format, then it relied upon him to provide a full and timely summary, with his or her assessment and views thereon.

The 2014 Implementation Report

60.24 In his Explanatory Memorandum of 15 June 2015, the Minister for Europe notes that developments in 2014 — both positive and negative — underlined that the success of the policy is directly dependent on the ability and commitment of governments to reform and to deepen relations with the EU.

60.25 The Minister explains that, to support the Communication, the EEAS and Commission have produced two regional reports assessing the Eastern and Southern regional elements of the ENP, which are helpfully summarised thus (his comments being in italics):

Southern Neighbourhood

“The Communication on the Southern Neighbourhood rightly notes that parts of the region continue to be affected by severe political, economic and humanitarian crises, armed conflict and a significant deterioration in security. It correctly adds that implementation of reforms and regional integration are proving difficult.
“The report outlines EU institutions’ efforts to encourage cooperation within the region through EU work with regional bodies, including the Union for the Mediterranean, the 5+5 Dialogue, the Arab League and the Organisation of the Islamic Conference (OIC). It gives a summary of the EU’s counter-terrorism work in the region and the three CSDP missions with mandates in the region. It then summarises regional trends and the EU’s programmatic and other assistance in five main areas: human rights and democracy; civil society; economic development, trade and investment; migration; and sector-specific cooperation (such as science and education).

“It records which countries were allocated ‘top-up’ funding under the more-for-more mechanism, under which some European Neighbourhood Instrument (ENI) funds are allocated according to progress with governance and economic reforms. In 2014 in the South these ‘top-up’ allocations went to Tunisia (€50m), Morocco (€20m), Jordan (€15m) and Lebanon (€15m).

The UK broadly supports these areas of work. We have encouraged the EU to keep seeking to measure the impact of its programmes, and for regional-level programmes to consider how they add value to country-level support. As part of the review of the European Neighbourhood Policy, we are encouraging more flexibility to allocate and re-allocate resources to evolving priorities and for more of a contribution from the ENP to resolving conflict.

Eastern Partnership

“The EaP report begins by explaining the Eastern Partnership (EaP) initiative and then it outlines the key progress made over the course of 2014. It correctly highlights the achievements over this period including the signing and provisional application of the new EU Association Agreements with Georgia, Moldova and Ukraine and the provisional application of the Deep and Comprehensive Free Trade Area (DCFTA) with Georgia and Moldova. The report also explores the important support that the EU has given to Ukraine, Moldova and Georgia in light of increased pressure on them following their decision to sign these Association Agreement. It then goes on to analyse progress in the key priority areas for the EU bilateral elements of the EaP: political association and economic integration; justice, freedom and security issues, migration and mobility; and sector cooperation. The progress in multilateral cooperation along the key platforms of democracy, good governance and stability; economic integration and convergence with EU sector policies; energy security; and people-to-people contacts are then analysed, followed by an update on flagship initiatives and the EaP visibility work.

“On political association and economic integration the report highlights the signature of the Association Agreements and the DCFTAs. It sets out the ‘scoping exercise’ to identify the legal basis for future EU-Armenia relations; the development of a Strategic Modernisation Partnership with Azerbaijan and the continued policy of critical engagement towards Belarus. It then discusses the work of the human
rights dialogues. However, this section talks about the process of this work rather than assessing the impact that it has had. The report then notes the macro financial assistance (MFA) to Ukraine along with the financial assistance provided to partners under the European Neighbourhood Instrument (ENI), as well as looking at CSDP cooperation and larger economic trends.”

“The report goes into some detail on sector cooperation, covering SMEs, regional development, agriculture, energy, transport, environment, climate action, education, youth and culture, knowledge and innovation, fisheries, statistics and EU programmes and agencies. This section gives a useful overview of how wide ranging and in-depth the EU’s relationship and engagement with partner countries is. In the section on transport the report highlights the initialling of the comprehensive air services agreement between the EU and Ukraine which is pending signature. This delay is due to Spain refusing to sign the agreement because it extends to Gibraltar, the UK continues to defend Gibraltar’s inclusion in this agreement and to highlight Spanish intransigency on the issue.

“The report ends with a lengthy section on the multilateral elements of the EaP, which are arranged through four thematic ‘platforms’: democracy, good governance and stability; economic integration and convergence with EU sector policies; energy security; and people-to-people contacts. In these platforms, which are further divided into panels in some areas, the partners are able to come together and meet experts from Member States as well as exchange best practices with each other on matters of mutual interest. The report then looks at the progress of flagship initiatives as well as relationships with stakeholders including international financial institutions and other stakeholders such as the Euronest Parliamentary Assembly. Finally it finishes with a section on the EaP visibility.

“However, the report misses the crucial point that the aim is not to simply make the EaP more visible per se but more strategic and meaningful so that citizens of partner countries can understand what the work, and values, of the EU actually mean for them in a tangible way.

“Overall the report is an accurate reflection of the EaP activities in the region, especially when read in conjunction with the Country progress reports. However, the report focuses on a lot of the process rather than on the impact of this work. It would benefit from a more critical analysis of why, or why not, programmes have worked and how this learning, and therefore new priorities, will be reflected over the next year.”

60.26 The Minister then summarises and comments on the individual country reports as follows:

**Armenia**

“Armenia signed the Accession Treaty to the Eurasian Economic Union (EEU) in October 2014. In preparation for signing the treaty it implemented a roadmap with administrative and legislative measures in 20 areas of government policy. As a
consequence of Armenia’s decision to join the EEU, the previously negotiated Association Agreement with the EU was not initialled. However Armenia and the EU continued their political and trade dialogue in 2014, in areas where this was compatible with Armenia’s new international EEU obligations. In November 2014 the EU and Armenia launched a scoping exercise on possible areas of cooperation for future relations. The EU-Armenia Visa-Facilitation and Readmission Agreements came into force in January 2014. The UK did not opt in to either agreement.

“Armenia adopted a Human Rights Action Plan in February 2014, which was an important step. However there are still areas where more needs to be done, such as the introduction of comprehensive anti-discrimination legislation. Ensuring implementation and enforcement of legislation is also necessary. There are several reforms which have remained stuck at the drafting stage and shortcomings stated in previous progress reports, such as the lack of trust in the judicial system and the fight against corruption persisted.

“While there were notable meetings between the Presidents of Armenia and Azerbaijan, in Sochi, Paris and at the NATO Summit in Wales, there was little progress on resolving the Nagorno-Karabakh conflict. Despite the work of the OSCE Minsk Group, which we fully support, 2014 saw the largest number of casualties in the conflict since the 1994 ceasefire. Despite Foreign Minister Nalbandian’s attendance at President Erdogan’s swearing-in ceremony in August 2014, there was no real progress in relations between Turkey and Armenia.

“Ahead of the parliamentary elections in 2017, it is important for Armenia to implement their ODIHR recommendations, and to tackle the lack of trust in the electoral system.

Azerbaijan

“There were no significant developments in 2014 regarding negotiations with Azerbaijan on a Strategic Modernisation Partnership with the EU. However there was good progress on the EU’s Strategic Energy Partnership with Azerbaijan to improve European energy security and the diversification of energy supplies. The commitment to implementing the Southern Gas Corridor continued to be of utmost importance for EU-Azerbaijan dialogue. There was also tangible progress with regard to several bilateral agreements, such as the entry into force of the Visa Facilitation Agreement and the Readmission Agreement and the preparation to implement the Mobility Partnership.

“ Azerbaijan held the chairmanship of the Committee of Ministers in the Council of Europe between May and November. However at the same time, they introduced restrictive legislation for NGOs, further decreasing the space for civil society. The human rights situation deteriorated further with a number of prominent human rights defenders detained, and there was no progress on judicial independence.
“While there were notable meetings between the Presidents of Armenia and Azerbaijan, in Sochi, Paris and at the NATO Summit in Wales, there was little progress on resolving the Nagorno-Karabakh conflict. Despite the work of the OSCE Minsk Group, which we fully support, 2014 saw the largest number of casualties in the conflict since the 1994 ceasefire.

“In the coming year, it is recommended that Azerbaijan respects its commitments as a member of the Council of Europe, particularly with regards to implementation of rulings by the European Court of Human Rights. It is also important to create a more conducive political environment for civil society, in particular making the related legal framework less restrictive, allowing civil society organisations to carry out their activities.

**Egypt**

“Following political upheaval in 2013, formal EU-Egypt dialogue on the ENP remained *de facto* suspended and the action plan was extended until March 2015, pending negotiation (started in 2014) of a new action plan. The EU continued its outreach activities including visits by the High Representative for Foreign Affairs and Security Policy and the EU Special representative for Human Rights, an Experts Electoral Mission and a Election Observation Mission for the constitutional and presidential elections respectively.

“The report notes that 2014 was marked by political, security and economic challenges and Egypt made limited progress in implementing the action plan. The political transition continued to unfold and important steps in the transitional roadmap were achieved. It notes limited progress in the areas of democratic governance and human rights. Freedom of association and assembly were restricted and there was less space for the activities of civil society. It also notes the economic situation remained difficult, but reforms to the subsidy system are underway and an article IV consultation of the International Monetary Fund took place in November. The report also notes the difficult regional and internal security context Egypt faced during 2014, including from Ansar Beit al- Maqdis who pledged allegiance to ISIL.

“The report recommends that Egypt improve in the following key areas: fully enacting and implementing the 2014 constitution — particularly to ensure the rule of law and improve human rights and fundamental freedoms; complete the 2013 transitional roadmap by organising genuine democratic parliamentary elections so that parliament can enact legislation, amending the law on assembly, creating conditions for an active and independent civil society, reapplying a moratorium on the death penalty, applying due legal process and ensure prisons conditions comply with international standards, ending the practice of military courts judging civilians, investigating cases of alleged violence and protecting women’s rights and gender equality, ensuring the right of asylum is in line with international law, taking steps to ensure macroeconomic stability and ensuring a social safety net system protects the most vulnerable.
"We agree that Egypt’s long-term security and prosperity depends on growing real democratic reforms through for example, accountability through elections, civil society, and media debate, release of journalists and non-violent activists and the protection of citizens rights to play their part in Egypt’s future.

**Georgia**

"Georgia made further progress in 2014 in implementing the ENP Action Plan and the Association Agenda with notable achievements in the areas of human rights and fundamental freedoms and in the visa liberalisation process. Constitutional reforms were initiated with some progress in the fight against corruption. Anti-discrimination legislation was adopted and cooperation with civil society continued. Georgia and the EU signed the Association Agreement (AA), including a Deep and Comprehensive Free Trade Area (DCFTA) on 27 June 2014 which was provisionally applied on 1 September. Georgia ratified the AA on 18 July; the UK did so on 8 April 2015. The AA/DCFTA provides a set of priorities for Georgia to take forward in order to move closer to EU standards and norms.

"The EUs Special Adviser on Constitutional Legal Reforms and Human Rights in Georgia, Thomas Hammerburg concluded his mandate in 2014 and issued recommendations for introducing effective checks and balances into the political/constitutional system. A National Human Rights Strategy and Action Plan were adopted and the prison system and protection of children’s rights improved.

"Local elections in June and July 2014 were considered to have generally complied with international standards although freedom of assembly and association were not fully ensured during the election campaign. The role of Parliament was strengthened and the power of the President reduced; however tensions were apparent between the Prime Minister and President without clear clarification of their respective responsibilities. Institutional reform of the Prosecutor’s Office is an urgent issue to address and judicial independence remains fragile. Continued implementation of the recommendations of the OSCE/ODIHR Trial Monitoring Report would allow for significant progress to be made in reform of the judicial system. The report could also include reference of the need for reform of the Ministry of Internal Affairs, to encourage transparency and better regulation there.

"Developments in Georgia’s breakaway regions of South Ossetia and Abkhazia were of increasing concern. The signature of a ‘Treaty on Alliance and Strategic Partnership’ between the Russian Federation and Abkhazia and negotiation of a similar agreement with South Ossetia was severely criticised by Georgia as a breach of its territorial integrity. ‘Borderisation’, the construction of fences and other obstacles on the administrative boundary line continued.

"In the coming year, the report recommends that Georgia makes progress on a range of ongoing legislative, judicial and legal reforms; participate constructively in the
Geneva International Discussions on the breakaway regions and continue with work to implement the provisions of the AA/DCFTA.

**Israel**

“We broadly agree with the report’s assessment of developments in 2014. Despite differences on some issues, EU-Israel relations continued to develop over 2014. There were a number of high-level political visits, regular technical-level meetings of bilateral subcommittees and visits by senior officials and technical discussions through the Twinning and TAIEX instruments. Developments on the Action Plan continue to be positive.

“Whilst the report also gives a good summary of the remaining areas of challenge, we would wish to see further focus on the serious EU concerns about the conduct of the occupation and concerns in relation to Israel’s responsibilities in the Occupied Palestinian Territories. We would wish to see greater focus on issues such as increased demolitions (and confiscation of humanitarian assistance including EU funded assistance); the reintroduction of punitive demolitions; and the continued severe restrictions of exports/transfers of goods from Gaza to Israel and the West Bank.”

**Jordan**

“We consider the report to be generally accurate and to reflect the challenges Jordan faced in 2014, in particular the continuing impact of the Syria crisis and from the growing threat of Da’esh.

“Jordan has shown great resilience in the face of these challenges, including dealing with a huge influx of refugees (currently over 620,000) from Syria. This has exerted enormous pressure on services leading to tension with host communities. The report does not mention the periodic closing of the border by the Government of Jordan and the resulting build up of refugees left stranded on the other side. During the reporting period Jordan has also played an active role in the international anti-ISIL coalition.

“As the report sets out, EU-Jordan cooperation continued to be strong with the EU having provided more than €300k to support Jordan since the start of the Syria crisis. In October 2014 the EU and Jordan agreed at the Association Council to start a regular security dialogue to identify ways to strengthen cooperation on counter terrorism. In the same month a joint declaration establishing a Mobility Partnership between the EU, participating Member States, and Jordan was signed. Also at the Association Council the EU and Jordan agreed that given the dramatic change in regional context it was time to assess future EU-Jordan relations and agree a new action plan.

“We agree with the recommendations in the report on further political reform. It is important that Jordan continues to act upon the key recommendations of the 2013 EU
Election Observation Mission report. We agree that the cancellation of the de facto moratorium on the death penalty with the execution of 11 prisoners was a major setback. The report also does not give enough prominence to the deteriorating conditions for Freedom of Expression in Jordan which is deeply concerning for the future political trajectory of the country. We suggested that the report includes a specific recommendation for Jordan to take steps to address this decline, but it was not included in the final report. We also disagree with the report's judgement on economic progress which we felt was overly optimistic given there has not been substantial progress towards IMF programme goals.

**Lebanon**

“We consider the report on Lebanon to be accurate and support the recommendations. We agree with the report’s assessment on Lebanon’s resilience in the face of enormous challenges. These include dealing with overspill from the Syria conflict, and internal pressures including a sustained presidential vacuum; and the subsequent impact on democratic processes. The report highlights the fact that in hosting nearly 1.2 million refugees from the Syria crisis, Lebanon is home to the largest per capita population of refugees in the world. This is having an enormous impact on service delivery and Lebanon’s delicate social balance.

“The EU continued to strengthen its relationship with Lebanon during 2014. The EU is a founder member of the International Support Group for Lebanon which helped coordinate international efforts towards Lebanon during the year. In November the launch of the Lebanon Crisis Response Plan was a welcome step to ensuring a more coherent and effective approach for channelling donor contributions in 2015.

“Overall we agree with the report’s recommendations. As the report highlights Lebanon has been without a President since May 2014 which is limiting the effective function of the Government. The report correctly recommends that electing a President and restoring the functions of institutions is a priority for Lebanon. We would flag though the need for urgent action to address concerns raised by the 2014 Convention Against Torture (CAT) report which highlighted that torture was a pervasive practice within Lebanon routinely used by the security services.

**Moldova**

“2014 was an important year for the EU’s relationship with Moldova. On 27 June 2014, Moldova and the EU signed the Association Agreement, including a Deep and Comprehensive Free Trade Area (Association Agreement/Deep and Comprehensive Free Trade Area); and from 28 April 2014 Moldovan citizens who hold a biometric passport were able to travel to the Schengen area visa-free for short stays not exceeding 90 days in any 180 day period. Around 360,000 people took advantage of this opportunity in 2014.
Parliamentary elections were held on 30 November 2014. These elections were generally well administered, although the late deregistration of the Patria Party raised questions about timing and circumstances. The OSCE/ODIHR-led international monitoring mission found that ‘the elections offered voters a wide choice of political alternatives’ and the technical conduct of the elections was ‘in line with international standards and norms’. The results election reflected the plurality of and divisions in Moldovan society with votes divided between pro-European and pro-Russian parties.

Some important benchmarks for the 2011-16 Justice Sector Reform Strategy had been implemented, by the end of 2014 but as in previous years, corruption remains a major issue. Reform of the Public Prosecutor’s office has stalled and the package of Anti-Corruption laws is at risk of being declared unconstitutional in the Constitutional Court.

Moldova’s economy was put under pressure in 2014 by trade embargoes imposed on Moldova exports by the Russian Federation. This was further compounded by the situation in Ukraine. As a result, after impressive growth in 2013, GDP growth slowed down in the first half of 2014. EU trade represented 53.2% of total exports and 48.2% of total Moldovan imports.

The fragility of Moldova’s banking sector was exposed in 2014. The National Bank of Moldova placed three commercial banks under special administration which represented about 30% of total banking assets (Banca de Economii, Banca Sociala and Unibank). The previous IMF programme ended in April 2014 and no new agreement was concluded for the remainder of 2014.

On the Transnistria protracted conflict, formal 5+2 settlement talks stalled in 2014 with only two rounds of negotiations in the ‘5+2’ format taking place and several rounds being postponed.

Morocco

The UK agrees with the EU’s overall assessment and recommendations. Morocco has continued to pursue a number of welcome reforms, including on migration and asylum, OPCAT ratification and budget transparency. Additional new laws needed to implement the 2011 Constitution, including on justice, regionalisation and right to petition, remain in the pipe-line. It will be important to ensure the new laws reflect fully the democratic principles of the 2011 Constitution. The UK shares the EU’s concern over Access to Information and anti-corruption draft laws in terms of their alignment with international practice.

On the economic front, Morocco has pursued sound macroeconomic policies and continued to implement a substantive reform of its subsidy system. As the EU highlights, it will be important to ensure this is complemented by targeted support and the provision of safety nets for the poorest. High youth unemployment remains a concern and we look forward to the Government’s new employment strategy,
which the EU has pledged to support. We continue to encourage further progress in the negotiations towards a DCFTA, and look forward to Morocco finalising its impact studies on the issue so that talks can resume.

**The Occupied Palestinian Territories**

“We agree with the overall report. Throughout 2014, the EU and the UK supported the US led push for a comprehensive settlement of the Israeli-Palestinian conflict; we were disappointed that greater progress was not made. The humanitarian situation in Gaza deteriorated significantly — the summer conflict took a terrible toll. The EU and the UK responded generously and support continues to be vital to reconstruction efforts. The EU’s role as a major donor of the Palestinian Authority (PA) also continued.

“The PA continued to implement reforms in many areas of the Action Plan, however, we agree that there is still significant work to be done. It is worth noting that in a number of areas where the report highlights the need for progress, the PA has limited control. The Israeli occupation also continues to hinder the PA’s ability to deliver services to the Palestinian people in many areas and to implement reforms. The lack of progress in reconciliation between Fatah and Hamas continues to hinder the PA’s ability to implement reforms. We also judge the lack of PA involvement in Gaza has been a contribution to the slow pace of reconstruction — along with severe restrictions on movement and access; a lack of a durable ceasefire; and international donors failing to make good the pledges made at the Reconstruction Conference held in Cairo.

“We agree with the assessment that some serious human rights concerns remain although there has been progress towards improving human rights, accountability and transparency in the Occupied Palestinian Territories. We were disappointed that there was not greater progress on reform of the security sector.

“The UK continues to provide practical support to facilitate the continued professionalisation of the Palestinian Security Forces in line with international standards, including work to help protect human rights, uphold the rule of law, and support female victims of violence.

**Tunisia (in French only)**

“The report notes that 2014 was a year of significant political progress in Tunisia. It began with the adoption of a new Constitution and ended with the holding of transparent and credible Presidential and Parliamentary elections, the results of which were quickly accepted by political parties and the electorate. The report highlights the success of the independent electoral authority, ISIE, in organising elections in a tight timeframe.

“It identifies the two main challenges to Tunisia’s stability: the economy, which, despite progress in some areas, continues to suffer significant problems; and security,
with security forces targeted by extremist groups throughout the year. The report points to the threat to Tunisia’s security caused by the deterioration in 2014 in the situation in Libya and the high number of Tunisians in extremist groups abroad.

“The report lists the priorities for Tunisia for the coming year. On the economy these include putting in place a programme of macro-economic, fiscal and structural reforms, improving the business climate, including by adopting an investment code, and making progress on the DCFTA. On security, it notes that security sector reform should include reform of the police, and border security, and that a new anti-terrorism law should be adopted. Other priorities listed include human rights, judicial issues, and air transport. We agree with these priorities, though if the list is intended to indicate an order of importance we would argue that economic reforms should come before political reforms.

“The report indicates that EU-Tunisia relations have progressed at a steady pace in 2014. We would like to see this accelerate in 2015, not least in light of the Bardo terrorist attack, which highlighted the threat from extremism to Tunisia’s political achievements.

“In this context we welcome the EU’s stated determination to step up security and counter-terrorism cooperation with Tunisia. We would also wish to see a more measurable evaluation of the effectiveness of the EU’s contribution in helping to deliver change.

**Ukraine**

“The report on Ukraine is detailed and well-balanced, providing a comprehensive report on progress made on implementation of the EU-Ukraine European Neighbourhood Policy Action Plan in 2014. Although not a general review of the political and economic situation in Ukraine, the report also sets out important political developments, including the ongoing illegal annexation of Crimea by the Russian Federation and the conflict in eastern Ukraine.

“The report makes clear that the EU does not, and will not, recognise this annexation and that the sovereignty, territorial integrity and independence of Ukraine must be respected. This government remains concerned at the decline of the human rights situation in the areas controlled by Russia or Russian back separatists.

“The report gives detail on political dialogue and reform; economic and social reform; trade-related issues, market and regulatory reform and cooperation on justice; freedom and security; transport, energy, environment, the information society, research and development as well as people to people contacts, education and health. This Government agrees with the report’s assessment that in 2014 Ukraine presented a mixed picture of developments on deep and sustainable democratic reform. The report highlights positive developments in the Government of Ukraine’s adoption of a number of important legislative reforms on elections,
human rights, anti-corruption and decentralisation, noting that some reform had been slower in rule of law elements including the judiciary and the police. The Government of Ukraine must continue to increase the visibility and pace of reforms to build confidence amongst the people of Ukraine and the international community.

“This Government welcomes the ratification of the Association Agreement by the Ukrainian and European Parliaments, and the provisional application of the relevant provisions of this agreement as of November 2014. In the light of Ukraine’s deteriorating economic situation, this government welcomes the provisional application of the DCFTA which will come into force on 1 January 2016 as a way of deepening EU-Ukraine trade.”

60.27 Looking ahead, the Minister says that, although the Joint Communication will be discussed by the working groups on Eastern Europe and Central Asia (COEST) and Mashrek/Maghreb (MAMA), he does not expect the Council to issue a formal response in the format of Council Conclusions.

Previous Committee Reports


61 Integrated Border Management Assistance Mission in Libya (EUBAM Libya)

Committee’s assessment

Politically important

Committee’s decision

Cleared from scrutiny (decision reported on 14 May 2014); further information requested

Document details

Council Decision providing for six-month mandate extension

Legal base

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

Department

Foreign and Commonwealth Office

Document number

(36822), —

Summary and Committee’s conclusions

61.1 EUBAM Libya (the European Union Integrated Border Management Assistance Mission in Libya) was established in May 2013, with a two-year mandate. The aim is to
support the Libyan authorities to develop capacity for enhancing the security of their 
borders in the short term and a broader Integrated Border Management (IBM) strategy in 
the longer term. The total two-year cost is €56.5 million (£40.1 million).

61.2 Despite the dire security situation, which was far worse than when it was set up in 
May 2013, the European External Action Service (EEAS) nonetheless proposed in May 
2014 a two-year extension, until Spring 2017. Instead, the Mission was down-sized in 
August 2014 and the residue relocated to neighbouring Tunis; and the EEAS began a 
further Review.

61.3 Last autumn, the Minister for Europe (Mr David Lidington) reported that the Review 
was to “be released” in December and “formally considered in January”, with “a final 
decision on the future of the mission being taken in February”. The options included 
mission closure (one for which the previous Committee had pressed): but it also included 
others (including putting it in “sleeper” mode, in which EUBAM Rafah has been for the 
past seven years449). He undertook to write with more details on the future of this mission 
“once this document has been discussed”.

61.4 The previous Committee noted the systemic reluctance to contemplate closing a 
mission because of subsequent unfavourable developments; the consequential wider 
implications of the outcome of this review; and the Minister’s oft-professed commitment 
to enhanced scrutiny of CFSP; and said that it would be important that it had an 
opportunity to consider the likely findings, and that it therefore expected to hear further 
from him in January, and well before any final decision was taken.450

61.5 This draft Council decision extends the mandate of EUBAM Libya by a further six 
months, from 21 May 2015 to 21 November 2015. Mission activities will be funded by the 
existing “Year 2” budget of €26,200,000 (£18,605,000) which will now cover the period 22 
May 2014 to 21 November 2015.

61.6 The Minister for Europe recalls that in October 2014, the mission began down-sizing 
from 57 to a core team of 17, and explains that:

— following Political and Security Committee (PSC) discussions on 14 January 2015 in 
which Member States indicated support for suspension of EUBAM Libya, the mission 
was directed to cease planning on all training capacity delivery;

— on 17 February, the PSC decided that the mission should further down-size, from 17 
staff to 3, by 31 March 2015;

— and the mission is now “on hold”.

449 The European Union Border Assistance Mission at the Rafah Crossing Point – code name EUBAM Rafah – was 
launched on 24 November 2005, to monitor the operations of the border crossing point between the Gaza Strip and 
Egypt, after Israel and the Palestinian Authority concluded an Agreement on Movement and Access on 15 November 
2005. The Rafah Crossing Point was last opened with the presence of EUBAM monitors on 9 June 2007. Since then, 
the mission has remained on standby, awaiting a political solution.

61.7 The Minister explains that the 21 April Foreign Affairs Council considered the future of EUBAM in the context of wider discussions on Libya, and:

— against the background of the options for EUBAM within the ISR, Member States were divided;

— some pushed for closure, while others argued that this would send the wrong message about the extent of the EU’s intentions at a time when the EU was looking to support a possible Government of National Unity;

— the Foreign Secretary accepted the finally-agreed compromise option, whereby the mission should continue with a six month mandate, whilst remaining in its current suspended state;

— before the mandate expiry on 21 November 2015, Member States will reconsider the mission’s future against the background of developments in the political and security situation; and the EU’s wider strategy to address the migration issue in the Mediterranean; and

— this short-term extension will “allow the EU to progress thinking on appropriate action to support Libya and enable us to take a more considered view on the long-term future of EUBAM”.

61.8 The Minister also notes:

“UN-led negotiations to agree a Libyan political settlement are at a crucial point. UN SRSRG Leon⁴⁵¹ issued his fourth/final draft of the agreement on 8 June. Only a stable and representative Government of National Accord (GNA) can deal with the political and security challenges that Libya faces, including control of its borders. However, if the process drags on, migration [and terrorist] threats will continue to worsen. The UK and international partners are working to urge both sides to come to an agreement. We, the EU and wider international community are prepared to support a GNA in confronting Libya’s challenges.”

61.9 We deal elsewhere with other EU responses to “the political and security challenges that Libya faces, including control of its borders”, which in the CSDP context means the new EU naval operation, EUNAVFOR Med. In our separate Report on this mission and the Commission’s proposals for dealing with the illegal immigrants who make it to Europe’s shores, we are recommending that both be debated on the floor of the House. That will give the House an early opportunity to question the Government about the prospects for the sine qua non for progress in all of these areas, i.e., a Government of National Accord in Libya.

⁴⁵¹ On 14 August 2014, United Nations Secretary-General Ban Ki-moon appointed Bernardino León (onetime EU Special Representative to the Southern Mediterranean) as his Special Representative and Head of the United Nations Support Mission in Libya (UNSMIL).
61.10 Looking further ahead, there are clear parallels here with the EU’s other border assistance, EUBAM Rafah, whose latest mandate extension we consider elsewhere in this Report.\(^{452}\) That mission has now been “in its current suspended state” since 2007, essentially because it has always been decided at each juncture that ending the mission “would send the wrong message about the extent of the EU’s intentions”. The obvious danger is that EUBAM Libya is now on that same road, with the outcome of the November review essentially pre-determined, i.e., in limbo until a GNA is formed. We therefore ask that the Minister informs the Committee as soon as it returns from the Conference recess, i.e., by 8 October, about the EEAS’ and his latest thinking in relation to whatever the situation on the ground and future prospects for a GNA then are.

61.11 In the meantime, we now clear the draft Council Decision.

61.12 Though the Minister makes no mention of his having overridden scrutiny, in the circumstances — there being no Committee at that time — we do not take issue with his having done so.


**Background**

61.13 Council Decision 2013/233/CFSP of May 2013 established this civilian CSDP Mission, the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya). The mission’s mandate was for 24 months. It would consist of up to 165 people (at full operational capability). The aim is to support the Libyan authorities to develop capacity for enhancing the security of their borders in the short term and a broader Integrated Border Management (IBM) strategy in the longer term. The mission would: support Libyan authorities, through training and mentoring, in strengthening the border services in accordance with international standards and best practices; advise the Libyan authorities on the development of a Libyan national IBM strategy; and support the Libyan authorities in strengthening their institutional operational capabilities.

61.14 The budget for the first year of the mission was €30,300,000 (£21,525,000). A further Council Decision set out a budget of €26,200,000 (£18,608,000) covering the period 22 May 2014 to 21 May 2015, i.e., the second year of EUBAM Libya’s two-year mandate.

61.15 When the previous Committee considered that draft Council Decision on 14 May 2014, it noted that the latest Commons Library Standard Note on Libya of 11 April 2014 said that, since the end of the 2011 civil war, Libya had been awash with militia and state sponsored armed groups who, having originally helped overthrow Muammar Gaddafi,

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were now reluctant to disarm and were intent on grabbing a share of power and the country’s immense oil wealth; and who, in the face of a weak and disparate government, had taken the place of an effective army and police force, and also dispensed aid and humanitarian assistance to a beleaguered population.453

61.16 This wider background underlined the importance of an EEAS Strategic Review of the Mission, about which the Minister said he was unable to provide any information because, despite pressing it to do so, the EEAS had yet to release it.

61.17 The previous Committee concluded that, given that the mission was already to cost over €50 million, with little prospect of any sustainability, the question must arise as to whether the EU should cut its losses unless there was a dramatic change over the next 12 months.454

61.18 On 28 August 2014, the Minister reported that EUBAM Libya had decided on 4 August to withdraw staff from Libya due to the security situation: the core staff had temporarily relocated to Tunis and a small number were temporarily co-located with the European External Action Service (EEAS) in Brussels. This, he said, was against a background in which fighting had escalated, particularly in Tripoli and Benghazi, which had closed the main international airport in Tripoli and led to the majority of the diplomatic community, including the UK, closing their Embassies and withdrawing staff. The political situation remained equally uncertain: after “relatively peaceful elections” on 25 June, a new House of Representatives had been sitting in Tobruk, due to the security situation in Tripoli: but not all members had taken up their seats, and some members of the expired General National Congress had convened sessions in Tripoli, declaring it as the sole legislative authority.

61.19 In its response, the previous Committee reminded the Minister of the outstanding request in its previous Report.

61.20 The Minister then wrote on 3 October 2014, to say that the Strategic Review had in fact come out at the end of May, and had recommended that the mission be extended for two years: however, discussions on this proposal had then been “overtaken by events in Libya”. The deterioration of the political and security situation meant that, despite the holding of UN sponsored peace talks on 29 September, EUBAM Libya was unlikely to be able to return to Libya in the immediate future; he had therefore agreed to support an EEAS proposal to downsize it as soon as possible from a full Mission to a core team of 17–20 staff, working from Tunis, pending a second Strategic Review; this “should assess all possible options, including closure, for the future of the mission and is due to take place before the end of the year”.

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453 See Commons Library Standard Note on Libya of 11 April 2014.
61.21 The Minister then reported in early December 2014 that he expected a review document “to be released” that month and “to be formally considered in January”, with “a final decision on the future of the mission being taken in February”. The Review would:

“set out conditions for the potential return of the mission as well as presenting the pros and cons of options for the future of the mission, including: maintaining the mission as it currently is; putting the mission into “sleeper mode” with the capacity to re-start operations quickly when the situation in Libya becomes more permissive; closing the mission; and re-location of the mission to either Tunisia or Egypt, with more of a containment focus working with their national authorities.”

61.22 The Minister undertook to write with more details on the future of this mission “once this document has been discussed”.

The Minister’s Explanatory Memorandum of 19 June 2015

61.23 The Minister confirms that this Council Decision was adopted by the 21 May 2015 Foreign Affairs Council.

The Government’s view

61.24 The Minister says that, unfortunately, publication of the EEAS Interim Strategic Review (ISR) was delayed to allow for discussions on Libya at the Foreign Affairs Council meetings in February and March; and presentation by the EEAS of a revised Political Framework for Crisis Approach (PFCA) on 10 April, which outlined options for EU support to a National Unity Government (NUG) in Libya:

“By the time the Interim Strategic Review (ISR) was finally released on 13 April, Parliament had dissolved for the election. I was therefore unable to inform the Scrutiny Committees of the findings, as intended.”

61.25 Turning to the Strategic Review itself, the Minister says:

“Mission Activity: The ISR noted that key conditions for a successful mission had not been met: political transition and a stable security situation. Against this background, delivery of EUBAM’s mandate had been extremely difficult and the mission has not achieved its objectives. Following relocation to Tunis, the mission operated at a reduced capacity, with the majority of staff initially working remotely from Europe. Mission activity focused on contingency planning by senior management. Regional planning and liaison visits to EUCAP Sahel Niger and EUBAM Rafah enabled the mission to provide regional expertise and advice on

455 The crisis in Mali, instability in Libya and Boko Haram terrorism in Nigeria are all threatening Niger’s security and development. In addition, the country is faced with the illegal trafficking of drugs, weapons and people on its territory. Some of this organised crime serves to fund terrorist groups which are using Niger’s vast desert regions as trafficking routes or safe havens. Established in August 2012, EUCAP Sahel Niger contributes to the development of an integrated, coherent, sustainable, and human rights-based approach among the various Nigerien security agencies in the fight against terrorism and organised crime. See EEAS factsheet on EUCAP Sahel Niger for full information.
border management. EUBAM Libya maintained limited contact with key Libyan border management officials, but this was hampered by uncertainties surrounding political allegiances. At an operational level, strengthening of border management capacity via the provision of advice, mentoring and training stopped due to the political and security conditions. A limited series of study visits was undertaken in Europe for customs and naval coastguard personnel, which concluded in January 2015. However, the mission is unable to achieve key objectives identified in the last strategic review to co-locate advisers in key ministries; and develop Libya’s Maritime Search & Rescue and Customs organisations.

“Other Challenges: In addition to the issues I have noted, the ISR also mentions a number of other considerations that have arisen as a result of relocation to Tunis:

a. “The Mission’s legal status in Tunis is still unclear, with the Tunisian authorities indicating unofficially that they would prefer not to explore this issue;

b. “Additional security concerns in light of the terrorist attack in Tunis on 18 March;

c. “Remote presence makes it difficult for EUBAM to assess conditions and support UNSMIL;

d. “Down-sizing has reduced expertise and corporate knowledge and could limit the mission’s ability to reactivate quickly, should conditions be conducive.

61.26 “Options: The ISR highlighted a number of options for EUBAM:

a. “Pre-Ceasefire:
   • “Closure;
   • “Maintaining the mission’s current ‘on hold’ status for one year.

b. “Post-Ceasefire:
   • “Resumption of activities via a phased approach and planning refresh.”

61.27 The Minister then outlines Recent Decisions/Developments thus:

“At the FAC on 21 April, Member States considered the future of EUBAM in the context of wider discussions on Libya. Against the background of the options for EUBAM within the ISR, Member States were divided. Some pushed for closure, while others argued that this would send the wrong message about the extent of the EU’s intentions at a time when the EU was looking to support a possible Government of National Unity. Member States finally agreed on a compromise option whereby the mission should continue with a short four to six month extension to the mandate — an approach to which the Foreign Secretary gave his support. Subsequently, on 21 April the PSC agreed on a six month extension, with the mission remaining in its current suspended state. In advance of the forthcoming expiry of the mandate on 21 November, Member States will reconsider the mission’s
future against the background of developments in the political and security situation; and the EU’s wider strategy to address the migration issue in the Mediterranean. We judge that this short-term extension will allow the EU to progress thinking on appropriate action to support Libya and enable us to take a more considered view on the long-term future of EUBAM.

“UN-led negotiations to agree a Libyan political settlement are at a crucial point. UN SRSG Leon issued his fourth/final draft of the agreement on 8 June. Only a stable and representative Government of National Accord (GNA) can deal with the political and security challenges that Libya faces, including control of its borders. However, if the process drags on, migration [and terrorist] threats will continue to worsen. The UK and international partners are working to urge both sides to come to an agreement. We, the EU and wider international community are prepared to support a GNA in confronting Libya’s challenges.”

**Previous Committee Reports**

## 62 CFSP: EU support for security sector reform in the Democratic Republic of Congo

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### Summary and Committee’s conclusions

62.1 Following elections in the DRC in 2006, the Council agreed on 12 June 2007 to:

- establish a police mission leading on Security Sector Reform and its justice interface in the Democratic Republic of Congo (RDC in French; thus EUPOL RDC); and

- via a new and revised mandate, continue to build on the progress made during the previous two years on supporting the integration of the different armed factions in the DRC, and thus assisting Congolese efforts to reconstruct a properly-functioning army (EUSEC RDC).

62.2 A strategic review in 2012 concluded that the Security Sector Reform process could no longer be best delivered by means of CSDP missions and recommended moving towards a more long term approach, where the EU’s contribution would be delivered via bilateral programmes and under the European Development Fund (EDF). It was accordingly agreed that both missions would be closed in September 2014. In both cases, the Minister for Europe (Mr David Lidington) said that the challenge would be to ensure that progress was sustained after closure in 12 months’ time.457

62.3 However, in June 2014, the Minister provided a compelling explanation of why EUSEC RDC should be extended until June 2015, followed by a “mini-mission” until June 2016 (see “Background” below).

62.4 This further draft Council decision amends and extends the EUSEC RD Congo mission accordingly. The current mandate expires on 30 June 2015. The proposed mandate will amend the size and scope of the mission, and extend it to 30 June 2016, by initiating a “mini-mission” that will run until then. Mission activities will be funded by the existing

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456 The operating language is French; thus the official titles in EU documentation.
budget of €2,700,000, which will cover the period 1 July 2015 to 30 June 2016, and also allow for a follow-on liquidation period 1 July 2016 to 30 September 2016.

62.5 The mission will:

— continue with the implementation and monitoring of the reform of the FARDC (the DRC Armed Forces) by maintaining strategic advice, including at the General Inspectorate, taking into account human rights and gender mainstreaming, whilst ensuring close coordination with the relevant actors for the transition process and hand-over of tasks; and

— work with the military authorities towards sustainability of the military education system, focusing on schools for officers and non-commissioned officers, whilst preparing for the transition process and handover of tasks where appropriate.

62.6 We clear the Council Decision, and do not take issue with the over-ride of scrutiny on this occasion in view of the need for the mission to continue this transition process from 1 July 2015 and the absence of a Committee at that time.

62.7 As well as providing further detail on this Council Decision, the “Background” section below also recalls our predecessors’ sustained interest in the absence of any effective evaluation of these missions over many years of activity. We note that our predecessors were promised a final report on EUPOL DRC. We should be pleased to receive it forthwith, together with the Minister’s views on: the cost-effectiveness of the expenditure on supporting police restructuring over the years; the quality of the report; the wider lessons that the report identifies and the steps taken to incorporate them into mission planning, control and evaluation; and what work is now to be done and by whom in this area in the years ahead.

62.8 The Minister notes that, despite the progress made on the SSR agenda to date, and EUSEC’s successes, much remains to be done before the DRC has a security sector that responds to the needs of its citizens and fully respects human rights. Much the same could be said about this mission’s many counterparts elsewhere, both civilian and military, over the years. With this in mind, we note that the very substantial CSDP Conclusions adopted by the 18 May 2015 Foreign Affairs Council\(^{458}\) included the following at paragraph 15:

“In line with the EU’s Comprehensive Approach and in order to maximize the impact, efficiency and consistency of EU support, the Council invites the High Representative and the Commission to develop, in consultation with the Member States, an EU-wide strategic framework for Security Sector Reform by mid-2016. This policy concept should bring together CSDP and all other relevant CFSP tools as well as development co-operation instruments and Freedom, Security and

\(^{458}\) See CSDP Council Conclusions.
Justice actors, while respecting their respective legal bases, primary objectives and decision making procedures.”

62.9 We should also be grateful if the Minister would therefore also explain to us what the framework is that the Council has in mind and — given the centrality of Security Sector Reform in the EU’s CFSP and the importance of ensuring Member State control thereof, and thus of proper parliamentary scrutiny — outline how he envisages proper parliamentary scrutiny of what would appear to be a key policy document being taken forward.


**Background**

62.10 Our predecessors’ 2012 Report recalls and summarises (and the other Reports referred to therein detail) their and their predecessors’ intensive scrutiny of these long-running missions, endeavouring to do vital work in a deeply-troubled and strategically important country in the face of great difficulties, but struggling to demonstrate ways in which the considerable expenditure involved thus far has been effective.459

62.11 EUSEC DRC aims to assist the DRC authorities to set up a defence apparatus capable of guaranteeing the security of the Congolese people, while respecting democratic standards, human rights and the rule of law, as well as the principles of good governance and transparency. The mission is tasked to work in close cooperation and coordination with other actors in the international community, in particular the United Nations and its Stabilization Mission in the DRC — MONUSCO — to promote security sector reform.

62.12 The key objectives of EUPOL are: to support the Congolese National Police (PNC) and the Ministry of Interior and Security in the implementation of police reform; enhance the operational capacity of the PNC, through mentoring, monitoring, advising and training; and support the fight against impunity in the fields of human rights and sexual violence.

62.13 The then Committee noted that, by the time they had been completed, these missions would have been running, in one form or another, for between six and eight years, and cost over $50 million. They had struggled for most of their existence: only in the past three years had they begun to show even the sort of limited results that the Minister had now provided. Even so, much of what the Minister reported was in the form of activity analysis, rather than an assessment of what the difference these years of EU assistance had made to the security and human rights of DRC’s citizens *vis à vis* the security forces to whom it had been provided.

62.14 The then Committee also noted that the complexity of the fragile state environment in the DRC was widespread; once the missions had been closed, a thorough assessment of the effectiveness of EU assistance was therefore needed, so as to identify the outcomes, and what worked and what did not; and thus the lessons that needed to be applied to existing and future missions in the many conflict-affected and post-conflict countries where the multi-actor approach was now the norm. This was too valuable a case study for this not to happen. The then Committee therefore asked the Minister to report in a year’s time, with information on:

- the results of the last year’s work of each mission;
- what subsequent assistance was being planned (by whom, over how long, costing how much, etc.); and
- what the position was then regarding the sort of assessment that we regarded as essential.

62.15 The Minister subsequently explained (in a letter of 2 June 2014) that, since the closure decisions were made, significant developments on the ground had led to a review of this decision — particularly the sustained high levels of conflict in eastern DRC, which had brought renewed international attention and a range of initiatives that provided an important opportunity to address the complex cycles of conflict there. Efforts to stabilise the eastern part of the country required (he said) a reformed army, police and justice sector that could provide effective security across the whole of the country.

62.16 EUPOL would close as originally planned in September 2014 and work requiring further support was in the process of being handed over to other development actors, including a police reform programme managed by DFID (the Department for International Development) and a policing component within a wider SSR support programme run by the European Development Fund (EDF).

62.17 But plans for continued work on defence reform were more complex: the Commission would run a military reform programme within the EDF programme for the period 2015–20, costing €50 million from the middle of 2015; the EEAS had therefore proposed, and the Minister supported, a final nine month extension of EUSEC’s work from September 2014 to June 2015 to cover the gap; EUSEC, as it now stood, would then close.

62.18 The Minister also identified two areas of work that the Commission could not fund, as they fell outside of ODA definitions: strategic advice on reform; and support to military schools. A further two years of CSDP work would establish a realistic prospect of full hand over to the Congolese of the re-opened military academy for officers, which was building the leadership of the future with support on recruitment curriculum formation (with Belgium), recruitment of teachers, English language (with UK) and the exams/graduation process. The EU’s plan now, which the Minister supported, was that “a very small CSDP mission should continue to operate from mid-2015 to mid-2016 to fill the gap”. Initial estimates were that the mission would require 7–10 staff and cost approximately €1.3
million per year. As planning for this “micro-mission” emerged, the Minister said, his would “closely scrutinise it for essential work only and an appropriate budget which should not go higher than this estimation”, and would encourage the optimisation of synergies and burden sharing between the small CSDP mission and the larger Commission programme.

62.19 The Minister’s letter included some evidence of EUSEC DRC’s achievements, which he summed up thus: “As a result of the gains that have been made in recent years, the DRC now has a body resembling an army”.

62.20 The then Committee concluded that his explanation and justification of what was now proposed — especially the unclassified summary of the key discussion paper on security sector development in the DRC that he enclosed with his letter (the Conclusion and 5-Year Objectives section are reproduced in their most recent Report) — made a compelling case for the further EUSEC RDC extension and the proposed short-term successor “micro-mission”.

62.21 In his Explanatory Memorandum of 27 August 2014, on the most recent Council Decision, the Minister confirmed that EUPOL RDC would close on 30 September 2014 and a final report on this mission will follow in due course.

62.22 EUSEC RDC, however, remained “an integral part of international, EU and UK efforts to support the strengthening of peace and security in the Great Lakes region”.

62.23 He continued his comments thus:

“The overall objective of the EU’s, and indeed the UK’s own national, comprehensive engagement in support of SSR in the DRC is support for reform of the Congolese security sector, ensuring that it operates efficiently under democratic control and following the principles of the rule of law. EUSEC’s work is also supporting reform of the Congolese armed forces to ensure they provide greater protection of human rights — particularly crucial to ensuring delivery of the UK’s Preventing Sexual Violence in Conflict initiative — and greater responsiveness to the needs of the Congolese people. It is also our objective to encourage local ownership of the reform programme by the Congolese authorities, with the eventual aim of encouraging full takeover and responsibility for delivery in this area.

“SSR is crucial to the security and stabilisation in the Great Lakes, and this was set out in the report of the Stabilisation Unit which was shared with the Committees on 2 June. SSR is a key part of the commitments given by the Government of the DRC under the Peace, Security and Cooperation Framework for the DRC and Great Lakes Region signed in Addis Ababa on 24 February 2013. The SSR activity supported by EUSEC is a key piece in the jigsaw that is helping to ensure delivery against the

460 For full details of the Minister’s letter, see (35273), — and (35274), —: Fifth Report HC 219-v (2014–15), chapter 12 (2 July 2014).

commitments of the PSCF. It also helps ensure UK activity elsewhere — our own development programmes and support for the UN mission to the DRC, MONUSCO — are as effective as they can be. It is helping to ensure that money spent on development programmes continues to make the necessary difference.

“Over the last 12 months, EUSEC has made real progress in supporting the authorities in DRC to take more control of the security sector reform process. While it remains the case that the current political situation in DRC is marked by an absence of strategic direction pending the nomination of a new government, which has been delayed since October 2013, real concrete gains have been made in terms of security sector reform, as set out in my letter of 2 June. In order for these gains to be safeguarded and advanced, it is crucial that the mandate of EUSEC is renewed.”

62.24 The Minister then provided a number of further illustrations of EUSEC’s contribution. Looking ahead:

“During the next 9 months, EUSEC will continue to work on modernising the administration and human resources of the armed forces, will support the training of new recruits, and provide strategic advice to the army, both centrally and to the regions. It will also support preparation for the transition to the European Development Fund, which will take over for the next phase of defence reform by June 2015. On strategic advice, the mission will focus particularly on working on the preparation of legislation and the work with the Reform Committees, particularly in Goma. On administration the mission will continue to work to improve the financing of the Congolese armed forces and improving the human resources management systems. Work to support the military academies will include consolidation of technical and conceptual support, training materials and financing.

“While a lack of DRC engagement was a key factor limiting the impact EUSEC had from 2005–2013, as I set out in my letter of 2 June it is much less of a factor now. I am hopeful that this will continue to remain the case, and while we will, as ever, continue to keep CSDP commitments under review, I remain confident that following the 9 month extension period, we will be in a suitable position to enable transfer of the bulk of the work of EUSEC to Commission focused engagement, and that the residual mini-CSDP mission which will remain after the initial 9-month period will be in a position to have completed hand over of its work to the Congolese authorities by July 2016.”

62.25 With regard to the Financial Implications, the Minister said that the proposed budget for the final nine months of the full EUSEC mission would be €4.6 million, reduced from €8,455,000 for the 12 months to September 2014. He explained that the draft budget was released on 26 August and had not yet been discussed in Brussels working groups; given recess dates, the imminent expiry of the mandate on 30 September and his belief that it would not change significantly in negotiations, he hoped that our predecessors would be prepared to clear the Council Decision on that basis, and undertook to provide the final budget details once agreed.
The draft Council Decision

62.26 In his Explanatory Memorandum of 29 May 2015, the Minister for Europe outlines the Financial Implications of this final mandate extension as follows:

“The CFSP budget funds EUSEC RD Congo. The UK contributes a proportion to the pre-agreed CFSP budget, not the individual programmes within it, so this proposal does not present additional costs to the UK.

“The proposed budget of €2.7m is for the period 1 July 2015 to 30 June 2016. However, an element of the budget has also been allocated to cover an additional three-month liquidation period (1 July 2016 to 30 September 2016). The amount foreseen for this liquidation period is €380,000. In effect, the proposed budget will therefore cover fifteen months, the first twelve months of which is devoted to the mandate. The new budget will follow on from the existing nine-month allocation of €4.6 million which expires on 30 June 2015. This represents a reduction of €1.9 on spend, and we are satisfied that it represents good value for money, having sought to bear down on unnecessary costs where possible. The element of the UK’s contribution to the overall CFSP budget that will be devoted to EUSEC will be approximately €400,000.

“The proposed budget of the micro-mission is higher than earlier estimate of €1.3m. It was only after agreement was reached on the planning documents and mission composition that the EEAS was able to generate a more accurate estimate. We judge the proposed budget to be commensurate with the size and scope of the mission. UK officials will continue to evaluate closely the impact of EUSEC throughout the course of the mandate to ensure it remains on track, whilst maintaining value for money.

“An overview of the proposed budget is contained within the table below. For reference, information for the previous allocation is also included. Figures in brackets denote the element devoted to the liquidation budget.

<table>
<thead>
<tr>
<th>Budget Heading (€)</th>
<th>Current Budget (€) 1 October 2014 to 30 June 2015</th>
<th>Proposed Budget (€) 1 July 2015 to 30 June 2016 (liquidation period: 1 July 2016 to 30 September 2016)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel costs</td>
<td>2,275,609</td>
<td>1,617,932 (244,266.88)</td>
</tr>
<tr>
<td>Missions</td>
<td>179,310,00</td>
<td>146,820,00 (5,000)</td>
</tr>
<tr>
<td>Running expenditure</td>
<td>1,726,376</td>
<td>631,410 (115,010)</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>-46,500</td>
<td>10,500</td>
</tr>
<tr>
<td>Representation</td>
<td>10,800</td>
<td>14,400</td>
</tr>
<tr>
<td>Projects expenditure</td>
<td>404,000</td>
<td>252,800</td>
</tr>
<tr>
<td>Contingencies</td>
<td>50,403,86</td>
<td>26,137,70</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,600,000</strong></td>
<td><strong>2,700,000</strong></td>
</tr>
</tbody>
</table>

“Key Subheads
- **“Personnel Costs – (€1,617,932):**
  - The budget will fund 24 staff, which is a reduction of 31 on the previous year. The liquidation team will comprise three international staff and eight local staff.

- **“Missions Expenditure (€146,820,00):**
  - “This expenditure relates to the costs incurred in implementing the mandate and includes transportation, per diems and accommodation. Six trips to Europe are planned plus two local flights per month.

- **“Running Costs (€631,410):**
  - “This covers a range of costs such as transport, IT, communications, office accommodation, office supplies, welfare and goods & services. Compared to the existing budget, the new allocation will generate savings of savings of €1,096,966.

- **“Capital Expenditure (€10,500)  
  - Proposed spend is for communications and office equipment.

- **“Projects (€252,800)  
  - The mission will continue to support projects as it heads towards transition. Proposed spend is down by €151,200 compared to the existing budget.”**

**The Government’s view**

62.27 The Minister recalls the background (originally launched in 2006; an integral part of international, EU and UK efforts to support the strengthening of peace and security in the Great Lakes; originally due to close in September 2014, but subsequent sustained high levels of conflict in November 2012 bringing renewed attention and increasing the international community’s resolve to bring greater security and stability to the Great Lakes), the Minister comments as follows:

“The overall objective of the EU’s comprehensive SSR engagement is to ensure the Congolese security sector operates efficiently under democratic control and follows the principles of the rule of law. EUSEC’s work is also supporting reform of the Congolese armed forces to ensure they provide greater protection of human rights - particularly crucial to ensuring continued delivery of the UK’s Preventing Sexual Violence in Conflict initiative - and greater responsiveness to the needs of the Congolese people.

“As set out in the Stabilisation Unit report, which was shared with the Committees on 2 June 2014, SSR is crucial to the security and stabilisation in the Great Lakes. SSR is a key part of the commitments given by the DRC Government under the Peace, Security and Cooperation Framework for the DRC and Great Lakes Region signed in
Addis Ababa on 24 February 2013. The SSR activity supported by EUSEC helps deliver these commitments. It also helps ensure UK activity elsewhere — our own development programmes and support for the UN mission to the DRC, MONUSCO — are as effective as they can be.

“Despite the progress made on the SSR agenda to date, and EUSEC’s successes, much remains to be done before the DRC has a security sector that responds to the needs of its citizens and fully respects human rights. Recent attacks in Beni territory in eastern DRC — in which it has been alleged that rogue elements of the FARDC may have played a part — and the current lack of strategic planning and cooperation between the FARDC and MONUSCO highlight the importance of EUSEC’s work.”

62.28 Turning to the Mission’s activities, the Minister says:

“The majority of activities undertaken by the current mission will be transferred to European Development Fund support from 1 July 2015, which will ensure defence reform is continued on a longer term basis. EUSEC’s purpose will be to carry out the small number of residual activities which cannot be carried out under any other European mechanism. It will prepare for the transition and handover of these tasks to other actors and the Congolese authorities as appropriate. EUSEC DRC will:

(a) “Provide strategic advice to the Congolese Ministry of Defence and other agencies working on reform of the armed forces; and

(b) “Provide support to the military training system, focusing on schools for officers and non-commissioned officers.

“The mission leadership has proposed a staff of 10 international personnel – down from EUSEC’s current 30+. The mission will be streamlined and will be based in Kinshasa with personnel deployed in Kananga at the Military Academy and in Kitona at the Military school for Non-Commissioned Officers. The detachment in Goma (where the UK has seconded the head of office since 2010) will close on 30 June 2015. Whilst we were initially keen to see the Goma office remain open to support efforts to monitor and hand over existing projects in the east of the country, we are confident that this can be achieved by mission personnel visiting from the capital, and did not want to extend the cost of the mission.”

Previous Committee Reports

None, but see (35273), — and (35274), —: Fifth Report HC 219-v (2014–15), chapter 12 (2 July 2014).
63 Citizen Security Strategy for Central America and the Caribbean

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny

Document details
Joint Staff Working Document: Action Plan

Legal base
—

Department
Foreign and Commonwealth Office

Document numbers
(36830), 8521/15, SWD(15) 102

Summary and Committee’s conclusions

63.1 In June 2014, the Council adopted an EU Strategy on Citizen Security in Central America and the Caribbean (see “Background” for details).

63.2 This further Joint Staff Working Document sets out an EU Action Plan for the Strategy. The Action Plan is structured around three main objectives:

— developing a shared citizen security agenda with the region;

— strengthening the ability of governments in the region to deliver quality public services; and

— fostering greater regional and international operational cooperation in the fight against insecurity.

63.3 The Action Plan is intended to deliver a comprehensive and coordinated EU contribution towards tackling the serious security challenges facing the region. It aims to make use of the full array of EU tools, including political dialogue, conflict prevention development cooperation, humanitarian aid and trade policy, as well as complement Member States’ policies and activities. Action is designed to focus on crime prevention and root causes, including socio-economic development, education, issues arising from urbanisation and human rights.

63.4 The intention is that this EU Action Plan would will form part of a wider Action Plan that will be agreed at the EU-CELAC Summit on 10–11 June in Brussels.462

63.5 The Minister for Europe (Mr David Lidington) says that: the high level aims of the Action Plan are in line with the UK’s objectives; bringing the full range of EU tools and to addressing these issues therefore has the potential to support and complement UK work in

462 CELAC = Community of Latin America and the Caribbean. EU-CELAC summits bring together European, Latin American and Caribbean leaders to strengthen relations between both regions, and are the main fora for dialogue and cooperation between Europe, and Latin American and Caribbean states. The second EU-CELAC / 8th EU-LAC summit was be held in Brussels on 10–11 June 2015 under the theme: “Shaping our common future: working for prosperous, cohesive and sustainable societies for our citizens”. See Political declaration, Brussels declaration and action plan of the 2nd EU-CELAC summit for the outcome.
the region; but careful co-ordination will be needed between the European External Action Service (EEAS) and the existing activities of Member States, so as to ensure maximum impact.

63.6 Like the precursor Joint Communication, this Action Plain raises no issues in and of itself, but warrants reporting to the House nonetheless because of the degree of interest in the region and the threats to its security, which the UK has for many years been seeking to help its governments and regional organisations confront and overcome. Otherwise, we, too, are content to leave it to interested Members who may wish to do so, to pursue the matter further via the many means at their disposal.

63.7 We now clear the Joint Staff Working Document.


Background

63.8 The EU’s “comprehensive approach” to external conflict and crises is set out in the Joint Communication on “The EU’s Comprehensive Approach to External Conflict and Crises” of December 2013. That Joint Communication was one of several documents prepared ahead of the December 2013 European Council, which was the first since 2007 to review that EU’s Common Foreign and Security Policy and defence activities. In December 2013, the European Council called for further steps to improve the efficiency and effectiveness of the EU’s comprehensive approach.

63.9 The subsequent May 2014 Foreign Affairs Council Conclusions welcomed the Joint Communication as an important step in this process. The “comprehensive approach” is predicated upon the notion that European Union and its Member States:

“can bring to the international stage the unique ability to combine, in a coherent and consistent manner, policies and tools ranging from diplomacy, security and defence to finance, trade, development and human rights, as well as justice and migration. This contributes greatly to the Union’s ability to play a positive and transformative role in its external relations and as a global actor.”

63.10 The Council defines the “comprehensive approach” as:

“both a general working method and a set of concrete measures and processes to improve how the EU, based on a common strategic vision and drawing on its wide array of existing tools and instruments, collectively can develop, embed and deliver more coherent and more effective policies, working practices, actions and results.”

63.11 The Council said that:

“its fundamental principles are relevant for the broad spectrum of EU external action” and that “[t]he need for such a comprehensive approach is most acute in
crisis and conflict situations and in fragile states, enabling a rapid and effective EU response, including through conflict prevention.”

63.12 The European Union considers itself a long-term strategic partner of Latin America and the Caribbean. Overall relations are governed by a strategic partnership that was last renewed at the Summit of the EU and the Community of Latin America and the Caribbean (CELAC) in January 2013.

63.13 The 2014 Joint Communication, *Elements for an EU strategy on public security in Central America and the Caribbean*, set out elements for an EU strategy on public security in Central America and the Caribbean. The strategy aims to adopt a “comprehensive approach” to the challenges facing the region, placing citizens’ security at the heart, and is accordingly intended to promote greater efficiency and improved co-ordination in delivering EU support to the region. In so doing, it aims to enhance relations on a sub-regional basis, so as to develop a shared public security agenda with the region as part of an overall political and development partnership with the EU. The strategy is intended to strengthen the capacity of governments in the region to help tackle insecurity, while upholding human rights and boosting prevention policies. It is also aimed at fostering regional and international cooperation, so as to deal with the transnational dimension of public security threats.

63.14 The previous Committee concluded that, although the proposed EU Strategy — plainly a “good fit” with both ongoing regional initiatives and bilateral programmes — raised no issues in and of itself, a report to the House was nonetheless warranted because of the degree of interest in the region and the threats to its security, which — as the Minister for Europe (Mr David Lidington) noted — the UK has for many years been seeking to help its governments and regional organisations confront and overcome.

**Previous Committee Reports**


**64 EU decentralised agencies**

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<tr>
<td>Committee’s decision</td>
<td>(a) Cleared from scrutiny; further information requested; (b) Cleared from scrutiny</td>
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463 Council Conclusions on the Comprehensive Approach, see pp.17–21.
Document details
(a) Progress report on the implementation of the Common Approach on EU decentralised agencies
(b) Guidelines on key performance indicators (KPIs) for agency directors

Legal base
—

Department
Foreign and Commonwealth Office

Document numbers
(a) (36839), 8789/15, COM(15) 179
(b) (36697), 7496/15, SWD(15) 62

Summary and Committee’s conclusions

64.1 Both documents are relevant to the Common Approach and follow-up Roadmap for EU decentralised agencies. The Common Approach provides a set of principles for EU decentralised agencies to help them streamline their activities and improve their performance. In the Roadmap, the Commission set out in detail how it intended to follow-up on the Common Approach, listing 30 action points and deadlines for itself, agencies, Member States, the European Parliament and the Council.

64.2 Document (a) is the second Commission progress report on the progress of the Commission and decentralised agencies’ implementation of the Common Approach. It supersedes a first progress report which was published in December 2013 but this document was not considered by our predecessors as it was not deposited by the Government (an oversight for which it now apologises). The report shows some progress has been made on the implementation of the roadmap. It focuses on the setting up, operation and evaluation/audit of agencies and their management of financial/human resources and budgetary process. It also looks at the revision of agencies’ founding acts and the role of Commission representations on agencies’ boards.

64.3 Document (a) also references a separate report by the Network of EU Agencies on specific actions set out in the Roadmap which was sent to the President of the European Council on 27 February 2015.

64.4 Document (b) sets out guidelines on the introduction of the Key Performance Indicators (KPIs) which are intended to measure the performance of the agency directors as proposed under the Common Approach and Roadmap.

64.5 The Commission suggests that as agencies vary so much, no one set of indicators could be used to measure performance across the board, and therefore proposes that the management board of each agency choose from a set of agreed indicators those that are best suited to measure their Director’s performance. They cover both operational objectives (encompassing work programme and annual report) and financial and human resource management (spanning budgetary and financial discipline, internal control systems; fulfilment of the Agency’s establishment plan and the level of staff wellbeing).

64.6 The Government welcomes both documents, with qualifications. It has made efforts to ensure the Commission’s commitment to an overall 5% reduction in agency staffing is implemented, but is disappointed that the 2015 EU Budget shows a 6% year on year increase in agency expenditure.

64.7 We thank the Minister for his Explanatory Memorandum and letter addressing document (a). We note the Minister’s apology for the non-deposit of the first progress report. As this is now superseded by the second progress report (document (a)), on this occasion we do not insist on deposit of the earlier document. We commend the efforts of the Government to ensure that the 5% reduction in agency staff is delivered, but share its disappointment at the 6% “year-on-year” increase in agency expenditure.

64.8 Document (b) is technical in nature and not inherently important. However, we report it briefly to the House because of its possible relevance to the outcome of the Government’s review of agencies, initiated by its predecessor. This could identify shortcomings in the management of agencies as a factor affecting their performance. We ask the Government for an update on how that review is progressing and when we will be informed of the outcome.

64.9 In the meantime, we clear both documents from scrutiny.

**Full details of the documents:** (a) Progress report from the Commission on the implementation of the Common Approach on EU decentralised agencies: (36839), 8789/15, COM(15) 179; (b) Commission Staff Working Document: Guidelines on key performance indicators (KPIs) for directors of EU decentralised agencies: (36697), 7496/15, SWD(15) 62.

**Background and previous scrutiny**

64.10 These are new documents which we have not previously scrutinised. They are connected, however, to two documents that our predecessors have retained under scrutiny: the Commission Roadmap on the follow-up to the Common Approach on EU decentralised agencies and the Communication from the Commission to the European Parliament and the Council — Programming of human and financial resources for decentralised agencies 2014-2020.

64.11 The documents were held under scrutiny because the previous Government has been conducting a cross-departmental review of the performance of EU decentralised agencies which it initiated in 2013. We understand from the previous Government’s most recent correspondence on the review (8 October 2014) that it had decided to broaden and deepen its analysis of feedback from departments in the light of developments such as the creation

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466 (34625), 5022/13: [http://europa.eu/agencies/documents/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf](http://europa.eu/agencies/documents/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf)

of an Inter-institutional Working Group (IIWG) on resources for decentralised agencies, the conclusion of the Balance of Competences review and a new Commission.

The Government’s view of both documents

64.12 In two separate Explanatory Memoranda of 15 June 2015 the Minister for Europe (Mr David Lidington) addresses these respective documents. He makes some remarks which are common to both documents, namely that the Government:

- continues to welcome efforts to ensure that EU decentralised agencies operate with improved efficiency, accountability and greater coherence;
- therefore welcomes, with the qualifications outlined further below, the Commission Roadmap and progress reports (including document (a)) and the KPIs (document (b)); but
- continues to be disappointed that the EU Budget 2015 saw “a 6% year on year increase in expenditure on decentralised agencies”, believing that EU institutions such as agencies should be subject to maximum budgetary restraint and to the same cost cutting measures and resource constraints as Member States.

Document (a)

64.13 The Minister says that the Government:

- welcomes the work undertaken by the Commission and the agencies to implement the Roadmap but that it must continue to be seen as a “work in progress”, reflecting the Commission’s commitment to follow-up implementation;
- notes the Commission’s start-up toolkit on the procedures to be followed when an agency is being set up, but believes that whether a host country signs a headquarters’ agreements with an EU agency located in their country is a decision for them after discussions with the agency concerned; and
- supports efforts to maximise efficiencies in how the agencies operate, and notes progress in some areas and also efforts to prevent conflicts of interest and the adoption of anti-fraud strategies.

64.14 The Minister also welcomes the Multi-Annual Financial Framework 2014-2020 provision to progressively reduce EU staffing levels\(^\text{468}\) by 5% over five years (the staffing target). Noting progress to streamline Human Resource practices across the agencies, he tells us that:

- the IIWG met twice in 2014 and took forward the staffing target, with an expectation that it will be reached by 2018; and

\(^{468}\) Of all EU institutions, bodies and agencies
the Government takes an active role in IIWG meetings to advance the reform agenda and, in particular, has intervened during a number of Working Groups and Committee Councils to influence the progress towards the staffing target.

64.15 The Minister adds:

“The Government welcomes the Commission’s commitment that the reforms undertaken will remain relevant in the coming years. We will continue to monitor closely Commission and agency efforts to reform, streamline and adapt to meet the realities of resource constraints in the years to come, and will continue to push for further budgetary restraint.”

64.16 He further explains that wider work is planned at EU level on agency reform. The European Parliament recently published two documents for the IIWG which focussed on the financing of the agencies and potential for efficiency gains, including:

- streamlining agencies’ competences to reduce any overlap;
- reconsidering the criteria for choosing a location for an agency; and
- looking at the partially and fully self-funded agencies.

**Document (b)**

64.17 The Minister explains that KPIs:

- are another step towards greater coherence between the agencies and a standardised way of measuring the performance of their directors, but should not be seen as a single source of measuring director or agency performance; and
- only measure the areas within the direct control of the director and not the agency as a whole “where performance could be affected by a multitude of factors”.

64.18 However, he says that the Government welcomes measures which will more closely monitor the budgets of the agencies. He adds however that the Government is concerned that:

- there is no provision in the guidance on how the directors would be held to account should they fail to meet the standards set by the KPIs;
- there is no measurement of the quality of agency output, which has as big an impact on performance as meeting objectives; and
- there is no provision for reviewing the KPIs and their effectiveness and so is itself currently conducting a review with agencies on KPI effectiveness.
The Minister’s letter of 18 June 2015

64.19 The Minister apologises for the Government’s “regrettable oversight” in failing to deposit the first progress report referred to in document (a), which has only just “come to light”. The document was presented by the Commission without a formal inter-institutional cover and “slipped through” the normal scrutiny processes. Recognising the importance of our scrutiny role, the Minister says that he remains committed to updating us in a timely manner on issues involving decentralised agencies.

Previous Committee Reports


65 The EU’s Special Representative (EUSR) to Bosnia and Herzegovina

<table>
<thead>
<tr>
<th>Committee’s assessment</th>
<th>Politically important</th>
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<tr>
<td>Committee’s decision</td>
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<tr>
<td>Document details</td>
<td>Council Decision extending the mandate of the European Union Special Representative in Bosnia and Herzegovina</td>
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<tr>
<td>Legal base</td>
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<td>Department</td>
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</tr>
<tr>
<td>Document numbers</td>
<td>(36894), —</td>
</tr>
</tbody>
</table>

Summary and Committee’s conclusions

65.1 EUSRs are appointed where the Council agrees with the High Representative that an additional EU presence on the ground is needed to deliver the political objectives of the Union. The EU has appointed an EUSR in BiH since 2002.

65.2 The draft Council Decision extends the mandate of the European Union Special Representative (EUSR) in Bosnia and Herzegovina (BiH), Mr Lars-Gunnar Wigemark until 30 October 2015. The current mandate expires on 30 June 2015.

65.3 The Minister for Europe (Mr David Lidington) explains that this is “a short term, technical extension to roll over the mandate for four months, to bring it in line with the
mandates of other EUSRs”. He notes that the role of EUSR is currently combined with that of the EU’s Head of Delegation in BiH.

65.4 The mandate of the EUSR in BiH will be:

“continued progress in the Stabilisation and Association process,469 with the aim of a stable, viable, peaceful, multi-ethnic and united BiH, co-operating peacefully with its neighbours and irreversibly on track towards EU membership. To this end, the EUSR offers advice and facilitation in the local political progress, co-ordinates the activities of EU actors in BiH and provides EU actors and EU Heads of Mission with regular reporting on the local political situation. The EUSR also undertakes significant outreach work, aimed at communicating to the BiH population the benefits of EU integration and why certain reforms are necessary to realise them. The EUSR will therefore play a key role in the delivery of the EU initiative on BiH.”

65.5 Nineteen years after the Dayton Accords, and notwithstanding sustained support from the International Community, a country of four million inhabitants remained divided by mistrust between the various ethnic groups, the upshot of which has been political stagnation, a lack of badly needed reform and the consequential stagnation of the Bosnian EU accession process. Against this background, in November 2014 the Foreign Secretary and his German counterpart put forward a new, high-profile initiative towards BiH’s EU accession, which was swiftly followed up by the EU High Representative/Vice-President, Federica Mogherini, and the Enlargement Commissioner in a visit to Sarajevo. As the Minister suggests, the EUSR is seen as crucial in supporting HR Mogherini’s mandate under the new EU initiative, which was endorsed by the December 2014 Foreign Affairs Council.

65.6 The hiatus between the resignation of Mr Wigemark’s highly-regarded predecessor last October and his own appointment in March was thus particularly ill-timed. The Minister assured our predecessors that this was nonetheless not related to the tension between the previous EU High Representative for Foreign Affairs and Security Policy (Baroness Ashton) and the European External Action Service (EEAS), and the Council, over the appointment and control of such emissaries; he was also upbeat about Mr Wigemark’s potential, notwithstanding his lack of regional and local experience (see “Background” below and the previous Committee’s January 2015 Reports for full information).

65.7 The continuation of Mr Wigemark’s mandate has resulted in an override of scrutiny, in view of the fact that the Committee had not yet been formed at the time at which this Council Decision needed to be adopted. In the circumstances and on this occasion, we do not take issue with the Minister’s decision.

469 The Stabilisation and Association process agreed between the EU and the countries of the Western Balkans explicitly linked the offer of the prospect of accession — and assistance to achieve it — to willingness and ability to meet the political and economic requirements set for all aspirants. Regional cooperation constitutes an essential element and is recognised as a qualifying indicator of the Western Balkan countries' readiness to integrate.
65.8 We now clear the Council Decision. In so doing, we endorse all that our predecessors have said about the need for the next round of EUSR mandate renewals to be submitted in a timely fashion, i.e., so that any questions that may arise may be dealt with before the adoption of the relevant Council Decision.

65.9 In this instance, we would like the Minister’s next Explanatory Memorandum to contain a full assessment of the political situation in BiH and the extent to which the HR has been able to pursue and fulfil her mandate under the new EU initiative; and a similarly full assessment of the EUSR’s performance since his appointment in March.

**Full details of the documents:** Council Decision extending the mandate of the European Union Special Representative in Bosnia and Herzegovina: (36894), —.

**Background**

65.10 EU Special Representatives (EUSR) tackle specific issues (including Human Rights), countries or regions of conflict. They provide the EU with an active political presence, acting as a “voice” and “face” for the EU and its policies. They answer directly to the EU High Representative/Vice-President, who is responsible for proposing their appointment. But they are appointed by the EU Council, who determine each mandate, budget and job holder.

65.11 Council Decision 2011/426/CFSP appointed Peter Sørensen as the EU’s Special Representative (EUSR) to Bosnia and Herzegovina (BiH) with a mandate until 30 June 2015. As recently as June 2014, the Minister for Europe (Mr David Lidington) had described him as having strengthened the EU’s visibility and political impact in BiH, taken the lead in supporting BiH in EU-related matters and being a respected and trusted interlocutor who carried real weight with key Bosnian politicians from all three constituent parties (Bosniak, Bosnian Serb and Bosnian Croat); the EUSR mandate, he said, remained critical to galvanising BiH’s leaders into making the reforms needed to allow them to submit a credible application for candidate status.

65.12 The objective of the EUSR is to assist in the creation of a stable, viable, peaceful and multi-ethnic BiH, co-operating peacefully with its neighbours and irreversibly on track towards EU membership. To this end, the EUSR offers advice and facilitation in the local political progress, co-ordinates the activities of EU actors in BiH and provides EU actors and EU Heads of Mission with regular reporting on the local political situation. The EUSR also undertakes significant outreach work, aimed at communicating to the BiH population the benefits of EU integration and why certain reforms are necessary to realise them.

65.13 The current political framework emerged from the 1995 Dayton Agreement, which ended a bitter three-and-a-half-year war. The longstanding goal has always been for BiH to work its way towards European accession. The BiH authorities need to deliver five objectives (well established, approved by the PIC SB and all previously recognized by

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470 See EU Special Representatives for full information.
471 The Peace Implementation Council (PIC).
BiH authorities as obligations) revolving around creating a sustainable, multi-ethnic, democratic, law-based State, and fulfil two conditions — signing of a BiH Stabilisation and Association Agreement, and a positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Agreement.

65.14 But things have not gone according to plan. Delivery or fulfilment of these “Five Objectives and Two Conditions” has, however, proved elusive. Nineteen years later, a country of four million inhabitants remains divided by mistrust between the various ethnic groups, the upshot of which has been political stagnation, a lack of badly needed reform and the consequential stagnation of the Bosnian EU accession process.

65.15 On 6 November 2014, the British and German foreign ministers met their eight western Balkan counterparts and then proposed a new joint initiative, the key points of which the two Foreign Ministers set out in a joint article in the German daily newspaper Frankfurter Rundschau and in an “open letter” in Bosnia and Herzegovina and neighbouring countries. Their proposals focused on improvements in economic and social policy and good governance, so as to create jobs, strengthen the rule of law and reduce corruption and criminality. The two foreign ministers called on the political leaders of Bosnia and Herzegovina to commit in writing to “making the country’s institutions fit” at all levels as a precondition for working effectively with the European Union; urged them to draw up a broad reform agenda with the European Union to help the country make progress on the road towards EU membership; and extended an offer to the people of Bosnia and Herzegovina and to the politicians they have elected: if they implement the necessary reforms, they would “work to achieve progress on the country’s path towards Europe”.

65.16 They also promised actively to seek broad-based political support for their initiative from neighbouring Croatia and Serbia, EU partners and the USA. However, the most important factor, they argued, was leadership on the part of Bosnian politicians, who must have the interests of their whole country at heart, regardless of ethnic affiliations.472

65.17 This initiative was followed up in a 5 December 2014 visit to Sarajevo by the EU High Representative/Vice-President, Federica Mogherini, and the Enlargement Commissioner, Johannes Hahn; in an end-of-visit statement, the HR said:

“From our side this would mean not lowering the bar and changing the EU conditionality — that is not something that is on the agenda — but it might mean that we can look at how the sequence can be changed or can be better addressed to make sure that there are some concrete deliverables in terms of reforms, starting from the economic and social reforms and getting also to the functionality of the state.”473

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472 Steinmeier and Hammond, which is reproduced at the first Annex to our predecessors’ Twenty-eighth Report HC 219-xxvii (2014–15), chapter 14 (7 January 2015).

473 Statement of 5 December 2014.
65.18 The initiative was subsequently endorsed by the 15 December 2014 Foreign Affairs Council, who invited HR Mogherini and Commissioner Hahn:

"to continue engaging with the BiH leadership to secure at the earliest its irrevocable commitment to undertake reforms in the framework of the EU accession process… [in order to]… establish functionality and efficiency at all levels of government and allow Bosnia and Herzegovina to prepare itself for future EU membership." 474

65.19 However, despite this being a critical juncture and Mr Sørensen’s high level of performance, a vacancy arose on 31 October 2014 due to (as the Minister for Europe put it) his “early departure … to another position”.

65.20 It was not until 2015, however, that the Council proposed to appoint his successor, from 1 March: Mr Lars-Gunnar Wigemark — described by the Minister as “a senior Swedish diplomat with close to 30 years of experience, most recently as EU Head of Delegation to Pakistan”.

65.21 Thus the EU lost a key interlocutor at a crucial moment and was now having to rely on a short-term appointment. The fact that the previous HR had decided to leave the appointment until her successor had taken office seemed to the previous Committee to reflect a much wider uncertainty over the future of EUSRs as a whole. As noted in other earlier Reports,475 Baroness Ashton had wished to incorporate all the EUSRs into the European External Action Service (EEAS), thereby turning them from special representatives agreed by the Council into ones who would be appointed by, and report only to, the High Representative — a proposal that the previous Committee had indicated that it would find disturbing because it would undermine Member State control of an important element in Common Foreign and Security Policy.

65.22 The Committee therefore asked the Minister to provide a swift update on where this proposal now stood, in the aftermath of HR Mogherini’s appointment; and to provide the background to Mr Sørensen’s premature departure — why he had left, whether it had anything to do with this political tussle over the future of EUSRs and what his new appointment was. In the meantime, the Council Decision appointing Mr Wigemark was cleared from scrutiny.476

65.23 The Minister:

— agreed entirely that it was unfortunate that the EU had lost a key interlocutor at this juncture, but nonetheless maintained that Mr Wigemark would bring significant experience to the role, and be well supported by an experienced team in Sarajevo, including a Deputy Head Delegation with substantial regional expertise, in Kosovo as well as in BiH;

474 Council conclusions on-Bosnia and Herzegovina.
— understood that Mr Sørensen’s departure was entirely for personal reasons and not as a result of any other issues; his new role was as Head of the EU Delegation to the United Nations and other International Organisations in Geneva;

— said that, during discussions of both the 2014 and 2015 EU budgets, the UK and likeminded Member States had ensured that EEAS proposals for transferring the EUSRs and their associated resources, currently under the (Member State-controlled) CFSP budget, into the EEAS, had been rejected;

— that, now Federica Mogherini had taken office, he would “continue to underline the primacy of the Member States in this important tool”;

— had written to Federica Mogherini towards the end of last year to stress the importance of allowing sufficient time for national scrutiny processes in advance of the forthcoming round of mandate renewals;

— understood that the new mandates would issue shortly;

— recalled that Baroness Ashton did not replace the EUSRs for Central Asia and the Middle East Peace Process when they resigned last year, stating that she did not wish to pre-empt the decision of her successor;

— understood that Federica Mogherini was considering filling both slots in the near future; and

— described all this as “a promising start”, which he would “continue to monitor”.

The previous Committee’s assessment

65.24 The previous Committee said that it would continue to do likewise. It accordingly looked to the Minister to lean hard on the EEAS in order to ensure that the raft of mandate renewals that were falling due for renewal were submitted for scrutiny in good time for any questions that might arise to be dealt with before those mandates expired.

65.25 In the meantime, the previous Committee noted with approval that the previous High Representative’s proposal had been rejected, and that the role and mandate of all EUSRs would therefore continue to lie in with the Council, along with approval of any change of incumbent — all of which remained subject to prior parliamentary scrutiny.477

Previous Committee Reports


66 EU restrictive measures: South Sudan

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

Document details

Legal base
Council Decision: Article 29 TEU; unanimity
Council Regulation: Article 215 TFEU; QMV

Department  Foreign and Commonwealth Office
Document numbers  (a) 36895, — (b) 36896, —

Summary and Committee’s conclusions

66.1 Last July, the BBC pithily summed up South Sudan’s story thus:

“South Sudan - Timeline of trouble

“1962-2005: Mainly Christian and animist South Sudanese fight mostly Muslim, Arabic-speaking northerners

“2011: South Sudan gains independence; hundreds of thousands of refugees go home

“One of world’s least developed countries

“Numerous rebellions

“Governed by former rebel group SPLA

“2013: President Salva Kiir sacks Vice-President Riek Machar and accuses him of plotting a coup

“Machar denies charges but heads a rebellion

“Fighting takes on ethnic dimension between Kiir’s Dinka community and Machar’s Nuers

“Thousands killed, about a million forced from their homes.”

66.2 In 2014 a Council Decision and a Council Regulation provided for the creation of a separate EU South Sudan sanctions regime until 12 July 2015, separating them from previous measures concerning Sudan, and integrating them into a single legal act. The arms embargo first implemented in 1994 under the Sudan sanctions regime, before South Sudan gained independence in 2011, was continued; travel restrictions and the freezing of funds and economic resources were introduced against persons obstructing the political process in South Sudan, including by acts of violence or violations of ceasefire agreements, as well as persons responsible for serious violations of human rights in South Sudan; and two such individuals are “listed”: Peter Gadet, an opposition commander considered responsible for a range of military operations and consequently associated with multiple breaches of ceasefire agreements; and Santino Deng Wol, who has led government forces on military operations in breach of ceasefire agreements.


66.4 The Minister for Europe (Mr David Lidington) explains that this new Council Decision and Regulation, in addition to transposing the UNSCR, retain the arms embargo and the designation of the two individuals which were agreed by the EU prior to the adoption of Resolution 2206 (2015). The legislation also retains the EU’s capacity to designate individuals and entities separately from the UN.

66.5 The Minister also explains that (and apologises for the fact that) due to the fact that the draft documents were received after the dissolution of parliament and the need for the UN Security Council resolution to be incorporated into EU law, he found himself having to over-ride scrutiny.

66.6 The measures raise no questions in and of themselves; it remains to be seen if they have the desired outcome.

66.7 In the meantime, we are drawing them to the attention of the House because of the level of interest in the situation in South Sudan.

66.8 We now clear the documents.

66.9 In the circumstances and on this occasion, we do not object to the Minister having over-ridden scrutiny.

66.10 In his Explanatory Memorandum of 22 July 2014, Minister for Europe (Mr David Lidington) recalled that:

— the first EU arms embargo on Sudan was imposed in 1994 by Council Decision 94/165/CFSP in response to the civil war in the southern part of the country;

— in response to a renewed outbreak of civil war in the Sudanese region of Darfur in 2003, the UN Security Council imposed an arms embargo on Sudan on 30 July 2004, through UN Security Council Resolution 1556;

— Council Common Position 2004/31/CFSP and Council Regulation No. 131/2004 maintained and strengthened the existing EU arms embargo imposed by Council Decision 94/165/CFSP, in view of the ongoing civil war in Sudan at that time;

— on 9 July 2011, South Sudan became independent;

— accordingly, on 18 July 2011, the Council adopted Decision 2011/423/CFSP concerning restrictive measures against Sudan and South Sudan, extending the existing Sudan arms embargo to also cover South Sudan; and

— on 24 November 2011, the Council adopted Regulation (EU) No. 1215/2011 which extended the scope of application of the arms embargo to South Sudan.

66.11 The Minister went on to say that, at that time, both sides had failed fully to honour their commitments to cease hostilities and engage in meaningful talks. International unanimity and pressure, including through targeted sanctions, would send a strong message to both sides about resolving the conflict through dialogue. Peter Gadet was an opposition commander considered responsible for a range of military operations in Jonglei, Unity and Upper Nile States, and consequently associated with multiple breaches of ceasefire agreements; similarly, Santino Deng Wol commanded the third infantry division of the army and had led government forces on military operations in Unity State in breach of ceasefire agreements.

66.12 He highlighted the then Government’s commitment to such targeted, legally robust designations as an important tool in order to bring both sides to a negotiated political settlement. However, he noted, if an individual or entity did not fulfil the criteria for designation under the sanctions regime, that person or entity should not be listed “even if their actions might be considered distasteful or unsavoury”.

66.13 On 11 May, the EU issued the following statement:

“The armed conflict in South Sudan has intensified in recent days, exacerbated by a new military offensive in Unity State. Concerned by the humanitarian consequences of the fighting and the difficulties faced by relief organisations on the

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ground, HRVP Mogherini and Commissioner Stylianides made the following statement:

“South Sudan’s man-made crisis has caused one of the worst humanitarian disasters of recent years. The renewed fighting in Unity State is a serious breach of the Cessation of Hostilities Agreement, forcing thousands of civilians to flee their homes. It is essential that all parties respect the Cessation of Hostilities Agreement throughout the country in order to spare the suffering of innocent civilians and to facilitate the life-saving work of humanitarian organisations. All parties have an obligation to protect and respect civilians irrespective of their ethnic origin or political affiliation.

“There can be no military solution to this conflict. Only a concerted effort by political leaders to reach a negotiated solution will bring an end to the suffering of the people of South Sudan and enable them to live in peace and allow the country to resume its development. Responsibility for this rests on the shoulders of those leaders. If they fail to make the necessary effort for peace, they will inevitably be held responsible also for the consequences.”

The Minister’s Explanatory Memorandum of 29 May 2015

66.14 In his Explanatory Memorandum, the Minister says:

— on 3 March 2015, the UN Security Council adopted Security Council Resolution (UNSCR) 2206 (2015) providing a framework for sanctions including a travel ban and asset freeze measures for use against certain persons responsible for, complicit in or having engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of South Sudan;

— currently there are no UN designations, but the resolution provides the UN Security Council with the means to apply sanctions against individuals who meet the designation criteria, in support of resolving the conflict in South Sudan;

— the Council Decision and Regulation being submitted for Parliamentary scrutiny integrate the sanctions measures provided for by UNSCR 2206 (2015) as well as the measures previously imposed by the EU through Decision 2014/449/CFSP and Regulation (EU) No. 748/2014, combining them into single legal instruments; and

— the legislation retains the arms embargo and the designation of two individuals as previously agreed by the EU.

66.15 The Minister notes that UNSCR 2206 (2015) sets out the UN’s serious concern regarding the conflict between Government and Opposition forces which began in December 2013, and which has resulted in human suffering, loss of life and the displacement of 2 million people (including more than 1.5 million internally displaced people and 500,000 refugees).

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480 See statement.
66.16 He goes on to explain that the resolution supports the Intergovernmental Authority on Development (IGAD), which has mediated peace talks in order to resolve the conflict; and further states the Security Council’s expectation that all parties will participate meaningfully in the peace process, respecting the commitments reached during IGAD negotiations.

66.17 The Minister continues as follows:

“a fundamental IGAD commitment was the Cessation of Hostilities (CoH) Agreement signed by both the Government of the Republic of South Sudan and the Sudan’s People Liberation Movement (SPLM) in January 2014. Both parties have, however, failed to honour their commitments and have not engaged in the peace process meaningfully in support of bringing an end to the conflict. Breaches of the CoH Agreement is one of the criteria for designation under the UN sanctions regime.”

The Government’s view

66.18 The Minister says:

“There can be no military solution to this conflict. Lasting peace and reconciliation rests on the concerted effort by political leaders to reach a negotiated solution through peaceful dialogue and action. The UN’s ability to impose sanctions will send an important signal that those who have breached the Cessation of Hostilities Agreement face consequences and that the Security Council is prepared to act against those that undermine the peace, stability and security of South Sudan.

“The UK voted in favour of the Resolution 2206 (2015) supporting the UN framework for the use of targeted sanctions to coerce both sides into agreeing lasting peace in South Sudan. The UK therefore agreed to the adoption of the EU Council Decision and Regulation which implements these provisions into EU and national law. The UK will continue to work closely with the Republic of South Sudan government, as well as United Nations and African Union members, on a wide range of issues which support international peace and stability efforts in South Sudan. This covers the political, security, economic, humanitarian and human rights challenges in South Sudan as well as negotiations between Sudan and South Sudan.”

66.19 In a separate letter of the same date, the Minister says:

“The draft Council Decision and Regulation were received by my officials on 13 April. An amended version of the Council Regulation was then received later on 24 April. The documents were then agreed in Brussels on 27 April and formally adopted on 7 May 2015. I therefore did not receive the draft copies in time to pass through the normal scrutiny process before the dissolution of parliament. The Committee will be aware of the need to implement UN restrictive measures promptly. I therefore regret that I found myself in the position of having to agree to the adoption of these
European Scrutiny Committee, First Report, Session 2015-16

Council documents before your Committee will have an opportunity to scrutinise them.”

Previous Committee Reports

None, but see (36217), — and (36218), —: Ninth Report HC 219-ix (2014–15), chapter 39 (3 September 2014).

67 Common Security and Defence Policy (CSDP) Mission in the Occupied Palestinian Territories: EUBAM Rafah and EUPOL COPPS

Committee’s assessment

Politically important

Committee’s decision

Cleared from scrutiny

Document details

(a) Council Decision on the EU Police Mission for the Palestinian Territories (EUPOL COPPS)
(b) Council Decision the EU Border Assistance Mission for the Rafah Crossing Point (EUBAM Rafah)

Legal base

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

Department

Foreign and Commonwealth Office

Document numbers

(a) 36913, — (b) 36927, —

Summary and Committee’s conclusions

EUBAM Rafah

67.1 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.

67.2 The draft Council Decision that the previous Committee 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 to this 12-month mandate extension took account of the broader political situation at that 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.

**EUPOL COPPS**

67.3 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.

67.4 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.

67.5 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.”

67.6 The Minister then wrote to the previous Committee on 11 March 2015 concerning a European External Action Service (EEAS) Review covering both missions; once published (which he expected “within the next few weeks”) his officials would “look to support” their continuation. Negotiations on mandate renewals and budgets would take place during dissolution; however, his officials would continue to press for value for money, and monitor mission performance carefully to ensure that the CSDP operation in the Palestinian Territories remained on track to achieve its objectives, and lobby Member States to achieve UK objectives.

67.7 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.”

67.8 That is why, in October 2014 the Foreign Secretary, along with his French and German counterparts, had written to the previous HR (Baroness Ashton) “to emphasise the important role of EUBAM Rafah”. Regrettably, the Minister said, “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.”

67.9 However:

“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.”

67.10 With regard to EUPOL COPPS, the Minister recalled 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 said that he believed that the Strategic Review was likely to assess that this work needed 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.”

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

The previous Committee’s assessment

67.12 The previous Committee noted that Prime Minister Benyamin Netanyahu had 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 process, 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”.

67.13 It was accordingly impossible to know precisely how these long-running CSDP missions would be best able to contribute; but it made sense not to prejudge that at this critical juncture, and instead to contemplate a further mandate extension (though no more than 12 months, they presumed).

67.14 The previous Committee also thanked the Minister for having set out his position prior to that process so frankly, and encouraged him 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 \textit{fait accompli} when the relevant Council Decisions are subsequently submitted for scrutiny).

67.15 In the meantime, they reported 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; and again drew this exchange to the attention of the Foreign Affairs Committee.

### The draft Council Decisions

67.16 The first (document 36913) extends the mandate of \textit{EUPOL COPPS} for 12 months to 30 June 2016. The proposed budget is €9,175,000 for 12 months. The previous budget was €8,975,000.

67.17 The second (document 36927) extends the mandate of \textit{EUBAM Rafah} for 12 months to 30 June 2016. The EUBAM Rafah proposed budget is €1,270,000 for 12 months. The previous budget was €940,000.

67.18 On \textit{EUPOL COPPS}, the Minister says that the EEAS Strategic Review assessed that progress has been made in mandate delivery against the mission’s three objectives, and that more work remains to be done in developing PA capabilities; and recommends that the mandate be extended accordingly. The Minister agrees with this assessment, and has agreed to a 12 month mandate extension, to 30 June 2016, and to the principle of a further 12 month extension to 30 June 2017. However, the Minister says that it was also:

“made clear that we do not see any automaticity in the EU’s agreement for a further year beyond 2016. We insisted on a Strategic Review to be presented in spring 2016 and that there needs to be a discussion based on it in spring 2016 before any decision

482 See the EU High Representative’s (Federica Mogherini) 18 March 2015 statement.


484 See the “Background” section of our Report below for details of each mission’s past and prospective activities, and the Annexes to this chapter for a detailed breakdown of each mission’s budgets.
is made about any further year. We have also ensured that over the course of the next mandate the mission will begin to explore options for transition and drawdown of activities. The mission will include these options in the spring 2016 Strategic Review.”

67.19 On EUBAM Rafah, the Minister recalls that its mandate is to remain prepared to return to the Rafah Crossing Point (RCP) should political and security conditions allow, and to contribute through mentoring, to building up the Palestinian capacity in all aspects of border management of Rafah. He says that during the 2014/15 mandate, with agreement from EU Member States, EUBAM Rafah launched the Palestinian Authority (PA) Preparedness Project, which aims to help the PA General Agency for Borders and Crossings (GABC) in further developing operational capabilities for running the Rafah Crossing Point according to international standards.

67.20 The Minister signifies his agreement with the EEAS Strategic Review’s assessment that the GABC does not currently have the capability to run the RCP to international standards and recommendations that the EUBAM Rafah mandate is extended to maintain its readiness to redeploy and that it continues the PA Preparedness Project. He describes the proposed 2015/16 activities as useful and consistent with the mission’s mandate and the UK’s Gaza objectives (one element of which is to mitigate the risk of a return to conflict in Gaza and improve the humanitarian situation being to encourage the PA to resume control of the Gaza border crossings, as this would enable an increase in the movement of goods and people and help solidify the PA’s presence of the in Gaza). The PA Preparedness Project demonstrates the EU’s commitment to play an active role on Gaza and, if reactivation of EUBAM Rafah does prove possible, would help ensure that the PA has the capacity to begin to manage the border in line with international standards quickly. However, in agreeing to this 12 month mandate extension, the Minister says that it was again:

“made clear that we do not see any automaticity in the EU’s agreement for a further year beyond 2016. We insisted on a Strategic Review to be presented in spring 2016 and that there needs to be a discussion based on it in spring 2016 before any decision is made about any further year.”

67.21 These missions have been running for a long time, and have cost a good deal thus far. Since we have not seen the Strategic Review, we can only rely on the generalisations in the Minister’s Explanatory Memoranda as to what they have achieved. It seems extraordinary that, after ten years, only now has EUBAM Rafah “developed a detailed knowledge of the GABC’s capabilities and preparedness for managing the RCP”; is still working with GABC Senior Management in setting out a vision for operating the RCP; and has only just begun to assist the PA in developing a Border Catalogue, or strategic framework upon which the PA will operate the RCP, and an Action Plan, which will set out the tactical and operational requirements for operating the RCP. There is still clearly a massive agenda for the much more expensive EUPOL COPPS. Given what work remains to be done, and the political significance attached to these missions (see
paragraphs 67.08 and 67.10 above), it is difficult to see them ever being wound up, notwithstanding what the Minister says about next Spring’s further Strategic Review.

67.22 Given their political significance, we also find it odd that the Minister has nothing to say about what has been happening since the March general election in Israel, or with the PA and Hamas, i.e., the political context that is fundamental to these missions’ proper functioning. We therefore ask the Minister to ensure that any future exchanges on these missions include a clear exposition of the political context at that time.

67.23 We envisage such exchanges before the next iteration of these Council Decisions. Looking to the further Strategic Review, we endorse our predecessors’ earlier observations, both specific and general (see paragraph 66.14 above). This means that, with regard to the 2016 Strategic Review, we would appreciate a letter from the Minister as the process gets underway, outlining his views at that time on what the future of these missions should be.

67.24 In the meantime, we now clear the draft Council Decisions and, in the circumstances and on this occasion, do not take issue with the scrutiny overrides.


**Background**

67.25 The Minister’s letter referred to above is set out in full in our predecessors’ 24 March 2015 Report, and the wider background to the two missions in their earlier relevant Reports.485

**EUPOL COPPS**

67.26 In his Explanatory Memorandum of 5 June 2015, the Minister for Europe (Mr David Lidington) recalls his 11 March 2015 letter and the previous Committee’s 24 March 2015, and then turn to the EEAS Strategic Review:

“The Strategic Review assessed that progress has been made in mandate delivery against the mission’s 3 objectives. Key achievements include:

- “The Palestinian Civil Police is able to undertake core policing tasks;
- “Strengthening the Ministry of Interior’s (MoI) strategic planning capacity through the co-location of strategic advisers with the MoI;

• “Preparing a new draft Law on Police;
• “Supporting the PCP in human resource management, principally with the standardisation of Standard Operating Procedures and job descriptions;
• “Supporting the drafting of the PCP’s first Code of Conduct and helping to promote it in all policing districts;
• “Making progress on developing a coherent PCP training system and improving the capacity of the Palestinian College for Police Services;
• “Working closely with the Chief Justice to promote internal structural reforms;
• “Carrying out enhanced planning in support of the Palestinian Judicial Institute, aimed at providing coherent training packages across the West Bank for judges;
• “Improving the capacity and skills of police investigators and prosecutors.

“The Strategic Review assesses that more work remains to be done in developing PA capabilities, particularly on the legal basis, internal arrangements and the division of responsibilities in the security and justice sector of the PA. It recommends that the mandate be extended so that the mission can: continue to strengthen security sector governance through structural and organisational reform within the MoI; propose and enable the adoption of intelligence-led and community policing as organisational policies; continue to develop standard police policy and procedures; ensure the development and implementation of internal accountability measures, including disciplinary guidelines and regulations; establish and reinforce the separation of powers within the judicial system that the mandate be extended; and support training and capacity building for judges and prosecutors, including on anti-corruption measures, access to justice, human rights and gender.”

The Government’s view

67.27 The Minister comments as follows:

“We agree with the Strategic Review’s assessment and therefore have indicated in Brussels that we would be content for a 12 month extension of the mandate for EUPOL COPPS to 30 June 2016. All EU Member States also agreed to the principle of a further 12 month extension to 30 June 2017. We agreed to this, but made clear that we do not see any automaticity in the EU’s agreement for a further year beyond 2016. We insisted on a Strategic Review to be presented in spring 2016 and that there needs to be a discussion based on it in spring 2016 before any decision is made about any further year. We have also ensured that over the course of the next mandate the mission will begin to explore options for transition and drawdown of activities. The mission will include these options in the spring 2016 Strategic Review.”

67.28 With regard to the Mission Budget (see Annex 2 to this chapter of our Report for detail), the Minister says:
“The proposed budget for the period 1 July 2015 to 30 June 2016 is €9,175,000, which represents an increase of around 2.2% on the 2014/15 budget. However, this increase is largely due to exchange rate fluctuations, the overall impact of which has been offset by around 50% through efficiency savings.

“UK officials in Brussels participated in detailed discussions on the budget and I am content that the proposed expenditure is commensurate with mission activity and represents value for money.”

**EUBAM Rafah**

67.29 In his Explanatory Memorandum of 15 June 2015, the Minister recalls that EUBAM Rafah’s mandate is to remain prepared to return to the Rafah Crossing Point (RCP) should political and security conditions allow, and to contribute, through mentoring, to building up the Palestinian capacity in all aspects of border management at Rafah.

67.30 He continues as follows:

“During the 2014/15 mandate, with agreement from EU Member States, EUBAM Rafah launched the Palestinian Authority (PA) Preparedness Project. This project aims to help the PA General Agency for Borders and Crossings (GABC) in further developing operational capabilities for running the Rafah Crossing Point according to international standards.

“The project has achieved a number of successes since it began in October 2014. It has:

- developed a detailed knowledge of the GABC’s capabilities and preparedness for managing the RCP;
- led a workshop with the GABC Senior Management, which resulted in the PA setting out a vision for operating the RCP;
- begun to assist the PA in developing a Border Catalogue, or strategic framework upon which the PA will operate the RCP;
- begun to assist the PA in developing an Action Plan, which will set out the tactical and operational requirements for operating the RCP;
- led a study trip for 10 Senior Managers from the GABC to the border control and EU external border in Hungary, which provided theoretical and practical experience about the Integrated Border Management System.”

67.31 With regard to the EEAS Strategic Review, the Minister says:

“The Strategic Review recommends that the EUBAM Rafah mandate is extended to maintain its readiness to redeploy. It assesses that the GABC does not currently have the capability to run the Rafah Crossing Point to international standards and recommends that the mission continues the PA Preparedness Project.”
Looking ahead, the Minister says that in 2015/16 the mission intends to provide support to the PA in the following areas:

- “Assisting the PA define the roles and responsibilities of the different agencies that operate under the GABC’s umbrella (Police, Customs, International Cooperation, Audit/internal control, Preventative Security and General and Military Intelligence);
- “Supporting the PA improve the coordination and cooperation among these different agencies;
- “Supporting the PA in improving the professionalisation of personnel to be deployed at the RCP, through tailored training to a group of PA personnel and developing a training policy for wider use;
- “Preparing a joint PA-EUBAM Rafah redeployment plan.”

The Government’s view

The Minister comments as follows:

“We agree with the Strategic Review’s assessment. We consider that the proposed 2015/16 activities are useful and are consistent with the mission’s mandate and the UK’s Gaza objectives. One element of the UK’s efforts to mitigate the risk of a return to conflict in Gaza and improve the humanitarian situation has been and continues to be to encourage the PA to resume control of the Gaza border crossings, as this would enable an increase in the movement of goods and people and help solidify the presence of the PA in Gaza. The PA Preparedness Project is a demonstration of the EU’s commitment to play an active role on Gaza and if reactivation of EUBAM Rafah does prove possible, would help ensure that the PA has the capacity to begin to manage the border in line with international standards quickly.

“We have therefore indicated in Brussels that we would be content for a 12 month extension of the mandate for EUBAM Rafah to 30 June 2016. All EU Member States also agreed to the principle of a further 12 month extension to 30 June 2017. We agreed to this, but made clear that we do not see any automaticity in the EU’s agreement for a further year beyond 2016. We insisted on a Strategic Review to be presented in spring 2016 and that there needs to be a discussion based on it in spring 2016 before any decision is made about any further year. The UK ensured during Operational Plan negotiations that sufficient benchmarking be included to provide a means of evaluation of the project work in 2015/16. An annex with benchmarking will be produced over the coming weeks. We will continue to carefully scrutinise the delivery of the project and outcomes over the next mandate.”

With regard to the Mission Budget (see Annex 2 to this chapter of our Report for detail), the Minister says:
“The proposed budget for the period 1 July 2015 to 30 June 2016 is €1,270,000. This represents a rise of €330,000 (approximately 35%) on the current budget. The increase is predominantly due to increases in personnel and office costs as a result of the PA Preparedness Project. Although a significant increase, I am satisfied that this expenditure is necessary to enable delivery of the mandate. Throughout the Strategic Review process, UK officials pressed for value for money and a budget commensurate with mission activity. I judge that the pursuit of further efficiencies would generate only marginal savings; and would force EUBAM to cut important activity under the PA Preparedness Project.”

67.35 Concerning the Timetable, the Minister says in connection with both missions that, with their mandates and budgets due to expire on 30 June 2015, both Council Decisions will be adopted at the 22 June 2015 Foreign Affairs Council. In accompanying letters of 5 and 15 June, he says that, given that the Committee was unlikely to have been formed before the Council is required to adopt the Decision, he regrets having had to agree to their adoption before the Committee has had an opportunity to scrutinise the documents, but delaying their extension “would mean that certain mission staff would have to temporarily leave the country, pending mandate renewal”, which would have been “costly and disruptive”.

Previous Committee Reports


Annex 1: the Minister’s comparison of the current and proposed EUPOL COPPS budget:

<table>
<thead>
<tr>
<th>Budget heading</th>
<th>2014/15 (Euros)</th>
<th>2015/16 (Euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel costs</td>
<td>6,463,492</td>
<td>6,536,975</td>
</tr>
<tr>
<td>Missions</td>
<td>205,104</td>
<td>208,698</td>
</tr>
<tr>
<td>Running expenditure</td>
<td>1,666,930.40</td>
<td>1,710,712</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>538,159</td>
<td>549,148</td>
</tr>
<tr>
<td>Representation</td>
<td>15,600</td>
<td>15,600</td>
</tr>
<tr>
<td>Contingencies</td>
<td>85,714.60</td>
<td>153,867</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8,975,000</strong></td>
<td><strong>9,175,000</strong></td>
</tr>
</tbody>
</table>

Key Subheads:

- Personnel Costs (€6,536,975):
  - “An increase of €73,483 represents a small rise of 1.1% on current expenditure. The rise is mainly due to the standard payment of salary
increments; and the addition to the payroll of three positions which had previously been occupied by secondees for whom costs were borne by Member States.

- **Mission Expenditure (€208,698):**
  - “This expenditure relates to the costs incurred in implementing the mandate and includes transportation, per diems and accommodation. Proposed expenditure represents an increase of €3594 (1.75%) on the existing allocation.

- **Running Costs (€1,710,712):**
  - “This covers a range of costs such as transport, IT, communications, office accommodation, office supplies, welfare and goods & services. Compared to the existing budget, the new allocation will mean an increase of €43,872 (2.63%).

- **Capital Expenditure (€549,148):**
  - “This is for equipment for media, IT, Communications, offices, security and quick impact projects. Proposed expenditure represents an increase of €10,989 (2.0%) on the current subhead allocation.

- **Representation (€15,600):**
  - “No change.

- **Contingencies (€153,867):**
  - “The contingency reserve is 1.7% of the budget.”

**Annex 2: the Minister’s comparison of the current and proposed EUPOL COPPS budget:**

<table>
<thead>
<tr>
<th>Budget heading</th>
<th>2014/15 (Euros)</th>
<th>2015/16 (Euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel costs</td>
<td>625,764.31</td>
<td>847,016.83</td>
</tr>
<tr>
<td>Missions</td>
<td>20,211</td>
<td>21,570</td>
</tr>
<tr>
<td>Running expenditure</td>
<td>275,327</td>
<td>360,350</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>1,500</td>
<td>14,000</td>
</tr>
<tr>
<td>Representation</td>
<td>2,040</td>
<td>2,040</td>
</tr>
<tr>
<td>Contingencies</td>
<td>15,891.34</td>
<td>25,023.17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>940,000</strong></td>
<td><strong>1,270,000</strong></td>
</tr>
</tbody>
</table>

- **Personnel Costs (€847,016.83):**
  - “Proposed expenditure of €847,016.83 is 35% greater than for 2014/15. Costs for Local Staff have risen by €140,000 on account of the recruitment of two more local staff (a Interpreter/Project Assistant for the PA Preparedness Project and an HR Assistant); the yearly step increase; and an increase of €41,000 for social security and pension fund payments. In addition, the allocation for staff severance costs has doubled to €20,000: local staff are entitled to severance only after one year of service so this money is to allow for any cancellation of contract. The new
staff will only be entitled to severance pay from the next mandate (in case they leave the mission).

- "EUBAM intends to recruit four visiting experts for a total of 732 days under the PA Preparedness project. The budget proposes an allocation of €69,688 to cover per diem payments, travel and insurance.

- **Missions Expenditure (€21,570):**
  - "This expenditure relates to the costs incurred in implementing the mandate. The 2015/16 budget represents an increase of €1,359 (6%) on the current year, primarily due to increased expenditure in respect of daily allowances and accommodation in Israel/Occupied Palestinian Territories, Europe and other countries.

- **Running Costs (€360,350):**
  - "This covers a range of costs such as transport, IT, communications, services and supplies, activities with counterparts, welfare, press and public information, financial costs and audit. Proposed expenditure represents a rise of €35,608 (30%).
  - "Transport: Anticipated expenditure of €57,120 is an increase of almost over €23,000. Visiting experts will require transportation, which will necessitate the use of all vehicles in the car fleet. The mission will incur additional running costs as a consequence;

  - **i. Information and Technology:** The intended allocation of €8000 is double that for 2014/15. The rise is due primarily to domain registration and web services costs, which have increased from €400 to €3400. EUBAM has been requested by the EEAS Strategic Communication Division to update its website in order to harmonise it with the visual identity of other missions. The website has not been updated for two years.

  - **ii. Communications:** Negligible decrease.

  - **iii. Offices - Rent and Services:** Planned expenditure of €153,260 is an increase of €87,560 on the current allocation. This is due to a necessary move to different premises. The EEAS and Commission have stressed that the current accommodation is unsuitable for the mission in terms of available space to accommodate the HOM, additional staff and visiting experts. Although more expensive, the proposed location is within the same premises as the EU Delegation, which will offset security costs that would be incurred if the move was elsewhere. In addition, EUBAM is ‘waitlisted’ for when a smaller but sufficient office space becomes available in the same building. Should a suitable space become available, then the mission will go for the smaller solution. The office move will only take place in the beginning of next mandate. In addition, costs for storage have risen. The cars are stored in the EU Delegation parking space, prices for which have already risen during the current mandate.

  - **Office supplies:** These have increased from €1440 to €3000: Already during the current mandate the funds were deemed insufficient. The
forecasted spending will be €2,400 for the mandate. This is due to several factors: inaccurate original calculation, the change of the exchange rate throughout the mandate, the deployment of Visiting Experts in the mission, additional local staff.

- **Capital Expenditure (€14,000)**
  - This covers software and office equipment. Proposed expenditure is up €12,500 on the current year. The bulk of the increase is in respect of €11,500 for communications equipment. The mission has previously procured the services of external translators for workshops and conferences. However, the use of in-house staff for translation should be more cost effective. The mission plans to buy a dedicated translation unit (headsets, speakers, etc.), which can be used during the seminars/workshops etc. The price indicated in the budget is based on offers for the aforementioned equipment received by the mission from local suppliers.

- **Representation (€2040):**
  - “No change.”

### 68 Restrictive measures against the regime in Yemen

**Committee’s assessment**  
Politically important

**Committee’s decision**  
Cleared from scrutiny

**Document details**  
Council Decision and Council Regulation on amendments to existing restrictive measures

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

**Department**  
Foreign and Commonwealth Office

**Document numbers**  
(36936), — (36937), —

**Summary and Committee’s conclusions**

68.1 The Minister for Europe (Mr David Lidington) explains that:


- the resolution imposes an arms embargo against two individuals under the Yemen sanctions regime — the leader of the Houthi rebel group, Abdulmalik al-Houthi, and the former President of Yemen’s son, Ahmed Ali Abdullah Saleh — as well as the three individuals previously designated under UN Security Council resolution 2140 (2014);
— that earlier Resolution imposed an asset freeze and travel ban against individuals and an asset freeze against entities designated by the UN Sanctions Committee as engaging in, or providing support for, acts that threaten the peace, security or stability of Yemen;

— Resolution 2216 (2015) further extends the travel ban and asset freeze measures to Abdulmalik al-Houthi and Ahmed Ali Abdullah Saleh; and

— also extended the scope of the designation criteria set out in resolution 2140 (2014), underscoring that acts that threaten the peace, security, or stability of Yemen may also include violations of the arms embargo, or obstructing the delivery of humanitarian assistance to Yemen or access to, or distribution of, humanitarian assistance in Yemen.

68.2 The Minister recalls that an EU Council Decision and Regulation (“the principal Decision and Regulation”) implementing the asset freeze and travel ban into EU law were adopted on 18 December 2014; and explains that the EU Council Decision and Regulation, adopted on 8 June 2015, update the Decision and Regulation of 18 December 2014, thereby also implementing the arms embargo into EU law and extending the designation criteria

68.3 As the two UN statements issued when these UNSCRs were adopted illustrate (see “Background”), the international response is not altogether united. The country’s history is complex. After three decades of rule, President Saleh finally ceded power in November 2011, after months of protests; his successor, President Hadi, then fled the capital in February 2015 after Houthi Shia rebels seized control. This situation is now even further complicated by what many observers regard as a proxy battle between the Sunni and Shia worlds of Saudi Arabia and Iran. With the Russia on the side-lines, what the effect of the UN measures will be is thus open to conjecture at the very least.

68.4 However, their implementation by the EU raises no questions, and we therefore clear the Council Decision and Council Regulation from scrutiny.

68.5 Given that the Committee was not in existence at the point at which these measures needed to be implemented, we do not take issue with the Minister having over-ridden scrutiny.


486 The modern Republic of Yemen was born in 1990 when traditional North Yemen and communist South Yemen merged after years of clashes. Since unification Yemen has been slowly modernising and opening up to the world, but still retains much of its tribal character. A short civil war in 1994 ended in defeat for separatist southerners, but regional tensions re-emerged in the summer of 2009 when government troops and Houthi rebels from the Shia Zaidi sect clashed in the north, killing hundreds and displacing more than a quarter of a million people. See BBC News Yemen Overview.
68.6 In a statement of 26 February 2014, the UN said:

“Sending a message of support to the Government and people of Yemen, the Security Council unanimously adopted a resolution welcoming recent progress in the country’s political transition and expressed strong support for the completion of next steps, among them drafting a new constitution, and holding a referendum as well as general elections.

“Unanimously adopting resolution 2140 (2014) under Chapter VII of the United Nations Charter, the Council encouraged all the country’s constituencies, including youth and women’s groups, to continue their active and constructive engagement in Yemen’s political transition.

“The Council reaffirmed the need for full and timely implementation of the political transition following the comprehensive National Dialogue Conference, in line with the Gulf Cooperation Council (GCC) Initiative and Implementation Mechanism. Encouraging all constituencies to implement the recommendations of the National Dialogue Conference, it called upon the Hiraak Southern movement, the Houthi movement and others to partake constructively in the process and to reject the use of violence for political aims.

“Further by the text, the Council condemned the growing number of attacks carried out or sponsored by Al-Qaida in the Arabian peninsula, expressing its determination to address that threat in accordance with the Charter and international law. It called for national efforts to address the threat posed by explosives as well as small arms and light weapons to Yemen’s stability and security.

“Also by the text, the Council expressed concern over reported serious human rights abuses and violence against civilians, and urged all parties to end conflicts and comply with their obligations under applicable international humanitarian and human rights law. It also expressed concern over the continuing recruitment of children by armed groups and Yemeni Government forces, calling for continued national efforts to end and prevent their recruitment and use. The Council also expressed concern over the use of media to incite violence and frustrate the people’s legitimate aspirations for peaceful change.

“By other terms, the Council decided that, for an initial one-year period from today’s action, all Member States would prevent the entry into or transit through their territories of designated individuals. It also decided to establish a Committee comprising all its members to monitor implementation of measures imposed by the Council; designate individuals and entities to be subjected to such measures; and to establish such guidelines as may be necessary to facilitate their implementation.
“The text also contained provisions on economic reform and development assistance to support the transition, among others.”

68.7 On 14 April, the UN issued a further statement, which said:

“Imposing sanctions on individuals it said were undermining the stability of Yemen, the Security Council today demanded that all parties in the embattled country, in particular the Houthis, immediately and unconditionally end violence and refrain from further unilateral actions that threatened the political transition.

“Adopting resolution 2216 (2015) by 14 affirmative votes to none against, with one abstention (Russian Federation), the Council also demanded that the Houthis, withdraw from all areas seized during the latest conflict, relinquish arms seized from military and security institutions, cease all actions falling exclusively within the authority of the legitimate Government of Yemen and fully implement previous Council resolutions.

“Acting under chapter VII of Charter, the body also called upon the Houthis to refrain from any provocations or threats to neighbouring States, release the Minister for Defence, all political prisoners and individuals under house arrest or arbitrarily detained, and end the recruitment of children.

“Imposing sanctions, including a general assets freeze, travel ban and arms embargo, on Abdulmalik al-Houthi, who it called the Houthi leader, and Ahmed Ali Abdullah Saleh, son of the president who stepped down in 2011, the resolution called upon all Yemeni parties to abide by the Gulf Cooperation Council and other initiatives and to resume the United Nations-brokered political transition.

“Reaffirming the need for all parties to ensure the safety of civilians, the Council called on parties to facilitate the evacuation by concerned States and international organizations of their civilians and personnel from Yemen. The resolution requested the Secretary-General to report on the implementation of the resolution within 10 days.

“Explaining his delegation’s decision to abstain, the representative of the Russian Federation said the text failed to take into account proposals his country had made, refused to call on all sides to halt fire and lacked clarity on a humanitarian pause. There were inappropriate references to sanctions, he added, stating that resolution must not result in an escalation of the crisis.

“The representative of Jordan, Council President for April, said, however, that the adoption of the resolution under Chapter VII was a clear and firm signal to the Houthis and all those supporting them to comply with their obligations. Stressing the regional ramifications of the escalating conflict, she stated that the Council was prepared to consider any additional measures required.

“The Council had for months demanded that the parties in Yemen proceed with the agreed upon political transition, the representative of the United States recalled. In response, however, the Houthis had intensified their military actions, threatening the country’s and region’s security. For that reason, she strongly supported the resolution, which provided a general asset freeze and travel ban on spoilers.

“Also welcoming the adoption, the representative of Yemen described it as a tangible demonstration of the seriousness of the international community’s support for his people’s effort to restore peace, rule of law and democracy. He said that while the Yemeni Government and other parties were finalizing a comprehensive peace framework, opposition forces had mounted a coup d’état, threatening the social fabric and cohesion of the Yemeni people. He applauded the response of the Gulf Cooperation Council to the crisis as consistent with the imperative of preserving Yemen’s Constitution and rebuffing Iran’s designs.”

The Minister’s Explanatory Memorandum of 19 June 2015

68.8 In his Explanatory Memorandum of 19 June 2015, the Minister says that the unilateral actions by the Houthis, and their supporters, “have gravely undermined the political transition process in Yemen, and have seriously jeopardised the security, stability, sovereignty and unity of Yemen”. The Houthis have “consistently failed to implement their commitments made in the Peace and National Partnership Agreement and have continued to use force to achieve their aims”. A political solution in Yemen will “be difficult to achieve unless the Houthis and their supporters can be deterred”.

68.9 The Minister explains that:

— the targeted arms embargo prevents, by law, the supply of weapons, military equipment and financial assistance to the Houthis and their supporters;

— it is reinforced by the designation of Abdulmalik al-Houthi and Ahmed Ali Abdullah Saleh under the asset freeze and travel ban measures set out in UNSCR 2140 (2014); and

— these targeted sanctions are intended to support the efforts of the Gulf Co-operation Council and the wider international community to facilitate a political solution to the crisis in Yemen.

68.10 The Minister comments thus:

“The situation in Yemen remains very serious and fighting between competing forces continues. Ultimately the solution to the crisis must be a political one. Under UN-auspices, initial consultations were held on 16–17 June in Geneva between the Yemeni Government and adversaries to the conflict. We see this as a first step
towards establishing a political process and are fully supportive of the UN efforts. These negotiations should promote a return to the political transition based on the GCC Initiative, the Yemen National Dialogue outcomes, and UN Security Council resolutions.”

68.11 In a separate letter of the same date, the Minister;

— explains that the draft EU Council Decision and Regulation were received by his officials on 11 May and were formally adopted on 8 June 2015, after negotiations in Brussels; and

— expresses his regret that, with the Committee yet to reconvene, the Government had to agree to the adoption of these Council documents before the Committee had an opportunity to scrutinise them.

Previous Committee Reports

None.

69 The EU and the Sahel: EUCAP Sahel Niger

Committee’s assessment

Politically important

Committee’s decision

Cleared from scrutiny; relevant to the floor of the House debate on migration issues and the EU naval operation in the south central Mediterranean

Document details


Legal base

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

Department

Foreign and Commonwealth Office

Document number

(36945), —

Summary and Committee’s conclusions

69.1 The crisis in Mali, instability in Libya and Boko Haram terrorism in Nigeria are all threatening Niger’s security and development. In addition, the country is faced with the illegal trafficking of drugs, weapons and people on its territory. Some of this organised crime serves to fund terrorist groups which are using Niger’s vast desert regions as trafficking routes or safe havens.

69.2 Council Decision 2012/392/CFSP established EUCAP Sahel Niger, to build the capacity of Nigerien security forces to fight terrorism and organised crime. It was launched in July 2012, and is currently “mandated” until July 2016. It has five main tasks:
— advise and assist in the implementation of the security dimension of the Nigerien Strategy for Security and Development at national level;

— support the development of regional and international coordination in the fight against terrorism and organised crime;

— develop and implement adequate criminal investigation training programmes utilising a “train the trainer” approach;

— support the development of Nigerien Security Forces resilience by developing a Human Resources strategy and providing training in management issues; and

— contribute to the identification, planning and implementation of projects in the security field.\footnote{See \textit{EEAS factsheet on EUCAP Sahel Niger} for full information.}

69.3 This draft Council Decision proposes a budget for July 2015–July 2016 of €9,800,000 (£6,964,000). EUCAP will continue to assist the Nigerien authorities to define and implement their National Security Strategy and contribute to improving the capacities of Nigerien security forces in the fight against terrorism and organised crime.

69.4 The mission performed poorly at first but, following a change of leadership and focus, delivery has steadily improved (see “Background” below).

69.5 The Minister for Europe (Mr David Lidington) supports the proposal. He describes EUCAP Sahel Niger as an increasingly important EU presence in the Sahel, both as a guided to recently-established civilian CSDP Mission in Mali and as a crucial actor in the effort to tackle the flow of migrants northwards from Sub-Saharan Africa to Libya and on to the Mediterranean. Whilst it is necessary to be realistic about what this Mission can achieve in the wide desert spaces of Niger, the Minister agrees that the EU should do more on upstream migration work in the Sahel, and that EUCAP should be an important instrument in this area.

69.6 In their first Report on this mission, our predecessors noted that it demonstrated, not for the first time, the leading, sometimes solitary, and commendable role the Minister and his officials have had in controlling the cost of CSDP missions; we are pleased to be able to commend them once again.

69.7 The Minister notes that, in the context of the growing migration crisis in the Mediterranean and North Africa, plans to strengthen EUCAP’s activity on migration — including in the northern Nigerien town of Agadez — are currently in hand. This additional migration activity will (as he says) also require a Council Decision and a further revised budget, which we look forward to receiving in good time.

69.8 At that juncture, as well as a detailed outline of this proposed additional migration-related activity, we should be grateful if the Minister would say more about
what the Mission has been doing during the past year (since his summary — “EUCAP Sahel Niger has so far trained over 2,500 members of the security forces, armed forces, civil service and judiciary” — is precisely the same as that of a year ago).

69.9 On 23 April an Extraordinary European Council agreed a number of actions, including:

- disrupting trafficking networks, bringing the perpetrators to justice and seizing their assets, through swift action by Member State authorities in co-operation with EUROPOL, FRONTEX, the European Asylum Support Office (EASO) and EUROJUST, as well as through increased intelligence and police-cooperation with third countries;

- undertaking systematic efforts to identify, capture and destroy vessels before they are used by traffickers; and

- preparing for a possible CSDP operation to this effect.

69.10 That CSDP operation is now moving ahead, in the shape of EUNAVFOR Med, whose job will be to “disrupt the business model of the smugglers, achieved by undertaking systematic efforts to identify, seize/capture and destroy vessels and assets before they are used by smugglers”.490 We deal with this and other aspects of the EU’s response to the growing migration crisis in a separate Report, where we are recommending that they should be debated on the floor of the House. Given that disrupting “the business model of the smugglers” will also depend on the ability and willingness of Nigerien security forces to interdict them, we consider that this chapter of this Report be “tagged” to that debate.

69.11 In the meantime, we clear this Council Decision.

69.12 Given that the Committee was not in existence at the point at which the budget would otherwise have run out, we do not take issue with the Minister having over-ridden scrutiny.

**Full details of the documents:** Council Decision amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger): (36945), —.

**Background**

69.13 The first year’s budget was €8.7 million (£6.2 million); the second year’s, €9.2 million (£6.5 million). The mission got off to a slow start, largely due to a rushed planning process, lack of local buy-in and inadequate leadership. It began to pick up speed in its second year; so much so that, in March 2014, the Minister for Europe (Mr David Lidington) was able to

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490 See (36874), —; (36938), —: Council Decisions to establish and launch on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR Med).
report that the Mission was now delivering against its mandate, and that an EEAS Strategic Review had recommended extending the mandate for a further two years, from 17 July 2014, with the Mission being roughly the same size, retaining its current structure and costing a similar amount to now, with some small changes to the current tasks. Niger remained a fragile democracy in an increasingly volatile region; elections were due in 2015-2016, and a visible EU presence at least until then would increase the chances of a smooth poll.491

69.14 The draft Council Decision cleared by our predecessors in July 2014 thus extended the mandate for two years to July 2016, with a budget covering the period July 2014 to July 2015. The Minister said that EUCAP Sahel Niger had now trained over 2,500 members of the Nigerien security forces, armed forces, civil service and judiciary. He described the mission’s work on improving the services’ human resource and forensic capabilities as having been particularly successful; likewise its work to co-ordinate EUCAP’s activity with that of other international actors in Niger (the latter led by the UK secondee in the Mission).

69.15 EUCAP would continue to assist the Nigerien authorities to define and implement their National Security Strategy and contribute to improving the capacities of Nigerien security actors in the fight against terrorism and organised crime. The Mission gained 11 new staff492 and would expand its activity in some areas, including additional visits to the northern town of Agadez. Despite this, and (so said the Minister) as a result of UK lobbying, the Mission’s budget for July 2014–July 2015 showed a very small decrease compared to the previous year’s budget, principally due to savings on capital expenditure.493

The draft Council Decision

69.16 This draft Council Decision extends the budget, covering the period 16 July 2015 to 15 July 2016. The proposed budget is €9,800,000 (£6,964,000)0 (see the Annex to this chapter of our Report for the Minister’s detailed analysis).

The Government’s view

69.17 In his Explanatory Memorandum of 22 June 2015, the Minister says that his officials “have interrogated the budget” and that he judges the proposed expenditure “to be commensurate with delivery of the mandate and good value for money”.

69.18 Recalling the slow start, the Minister says that, following a change of leadership and “a focus on bottom-up projects”, delivery has steadily improved. He again notes that co-ordination between the EUCAP and other international actors (led by the UK secondee), and work with Niger’s regional command centres, as particular areas of strength, and that

492 The overall authorized strength is 80 personnel (52 international staff and 28 local staff).
EUCAP Sahel Niger has so far trained over 2,500 members of the security forces, armed forces, civil service and judiciary.

69.19 He continues as follows:

“In the context of the growing migration crisis in the Mediterranean and North Africa, plans to strengthen EUCAP’s activity on migration — including in the northern Nigerien town of Agadez — are currently in hand. We can expect further planning documents on this uplift to be circulated in due course. The additional migration activity will also require a Council Decision and a further revised budget, and I shall write again to the Committees once these have been received.

“In the meantime, this Council Decision and the associated budgetary impact statement are necessary for the Mission to continue its work under its current mandate. It was recommended by Brussels committees that the Mission should use the second year of its 2014–16 mandate to increase its activity on training, capacity-building and other front-line tasks. This new budget makes provision for the Mission to do this, and whilst the overall budget rises by some 7%, this combined with other adjustments have enabled the Mission to increase its planned project activity by 53% in 2015–16. As before, projects and training are linked to one or more of the Mission’s four objectives:

- “Developing Interoperability (between the Nigerien services);
- “Building technical competence and expertise;
- “Strengthening human resources systems and structures;
- “Ensuring co-ordination among international donors and Nigerien recipients.”

69.20 Regarding the mission’s overall perspective, the Minister says:

- “EUCAP Sahel Niger is becoming an increasingly important EU presence in the Sahel. Whilst the civilian CSDP Mission in Mali has only recently launched, lessons are being learnt from its elder sister in Niger; and as the latter reaches maturity it is seen by many Member States as a crucial actor in the effort to tackle the flow of migrants northwards from Sub-Saharan Africa to Libya and on to the Mediterranean. Whilst we should be realistic about what this Mission can achieve in the wide desert spaces of Niger, we agree that the EU should do more on upstream migration work in the Sahel, and that EUCAP should be an important instrument in this area. In the meantime we welcome the increased focus on projects and training under the current mandate, and therefore support the Mission’s budget for 2015–16.”

494 Further details of the projects are set out in the Minister’s budget analysis at the Annex to this chapter of our Report.
Previous Committee Reports


Annex: The Minister’s detailed analysis of the 2015–16 Budget

“The Proposed budget for EUCAP Sahel Niger is €9,800,000. This represents a 7% increase on the current allocation of €9,155,000. This increase is due to the recruitment of three extra staff, and costs incurred in delivering increased training and project activity, for which Member States have given support. The increase will be funded from within the existing CFSP budget which covers the costs of all civilian CSDP missions. UK officials have interrogated the budget. We judge the proposed expenditure to be commensurate with delivery of the mandate and good value for money. Comparison of the new budget to the previous budget is set out below (in euros):

<table>
<thead>
<tr>
<th>Budget heading</th>
<th>Current budget</th>
<th>Proposed budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personnel costs</td>
<td>5,172,123</td>
<td>5,502,551.30</td>
</tr>
<tr>
<td>2. Missions</td>
<td>322,120</td>
<td>233,362.33</td>
</tr>
<tr>
<td>3. Running expenditure</td>
<td>1,858,323</td>
<td>1,934,520.56</td>
</tr>
<tr>
<td>4. Capital expenditure</td>
<td>638,853</td>
<td>435,698</td>
</tr>
<tr>
<td>5. Representation</td>
<td>9,600</td>
<td>9,600</td>
</tr>
<tr>
<td>6. Projects and training</td>
<td>974,440</td>
<td>1,493,597.70</td>
</tr>
<tr>
<td>Contingencies</td>
<td>179,541</td>
<td>190,670.11</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9,155,000</strong></td>
<td><strong>9,800,000</strong></td>
</tr>
</tbody>
</table>

**Personnel Costs: €5,502,551.39**

“Proposed costs for personnel will rise by €330,428 (6.4%). The mission will budget for 94 staff, an increase of three staff on 2014/15. Reasons for the increase include:

a. “The annual increase in staff salaries including a €4,000 increase to the HOM’s salary, as per EC staff regulations;

b. “International Contracted Staff: costs will rise from €2,021,244 to €2,210,358.55 on account of the addition of two staff, an increase of 10%. Additional staff will help the mission continue and strengthen important activities in the north (Agadez) and other regions to tackle illegal migration, organised crime and the threat of Boko Haram;

c. “Local Staff: Headcount will rise by one to 35, with the allocation for this subhead rising from €780,758 to €824,032.69. The additional staff member is required to strengthen management of mission resources.

d. “Insurances: Expenditure for 2015/16 will be €160,178.16 compared to €93,351 for the current allocation. This increase is mainly due to a change to what is covered under the insurance. Costs for the current year included high risk insurance for the HoM and international members, liability insurance
and visiting experts. Under the proposed budget, cover will also include medical insurance for local staff (€52,080) which will also cover dependant costs. This is the practice followed in other CSDP Missions such as EUSEC RD Congo.

“Mission Costs: €233,362.33

“This budget line covers expenditure directly related to the implementation of the mandate, such as the costs of travel to Brussels, within the Sahel and surrounding region, and within Niger, as well as the costs of nine visiting experts travelling from Europe. The new budget proposes a reduction of 27.5% compared to 2014-15.

“Running Costs: €1,934,520.56

“Expenditure under this subhead covers vehicles, IT & communications, office accommodation (rent and services), security services, medical services, administrative costs and visibility (website maintenance, media subscriptions, video production, promotional material, press conferences). Proposed expenditure represents an increase of €76,197.56 (4.1%), due to:

a. “An increase in office and accommodation costs. The HQ has been enlarged to include new offices and parking space, which will require additional spending on maintenance and utilities. In addition, more accommodation will be needed for the uplift in staff connected with the planned increase in EUCAP’s activity on migration. Furthermore, a 10% increase in building rent has been budgeted to cover additional costs resulting from increases in the local rental market;

b. “An increase in administrative costs. This is attributable to the inclusion of welfare costs under this subhead, which had previously appeared in a different part of the budget. Overall, welfare expenditure will reduce from €35,945 to €23,304.48.

“Capital Expenditure: €435,698

“This covers capital expenditure on vehicles, IT and communications equipment, buildings, medical, security and miscellaneous equipment. The proposed expenditure represents a reduction of 31.8% on the current subhead allocation. Overall, costs have decreased by €203,155. Now that the mission is firmly established, there is less need for costly capital expenditure. However, the mission has budgeted for a certain amount of IT equipment, security equipment and medical kits.

“Representation Costs: €9,600

“No change. Representation costs remain the same as in 2014-15.
“**Project & Training Costs: €1,493,597.70**

“This covers the continuation and expansion of core mission activities to strengthen capacities of Nigerien security actors and combat organised crime. This work is central to the delivery of the Mission’s mandate. The 2015-16 budget proposes an increase of €519,157 (53%) on the allocation for 2014-15, due to increased project and training activity as recommended by Member States. Expenditure of €770,364 on projects represents an increase of €269,267; while the resources deployed to training activity will rise from €473,373 to €772,963. Thirteen projects are being delivered by the Mission under the current mandate. A number of these are linked to training programmes also being provided by the Mission:

a. **Projects** include: strengthening coordination capacities of the Niger Defence and Security forces (FDS); strengthening operational bodies of the gendarmerie – with a possible solution being creation of an operational centre (requiring construction of pre-fab structures) in Zinder; delivery of training to reinforce criminal investigation techniques and operational capacity of the interior security forces (FSI - this requires additional IT); strengthening work to detect false documentation; equipping the National Guard and Gendarmerie with ICT equipment to combat terrorism; improving maintenance capacities of the FSI, including the provision of tools for FSI mechanics; development of a concept for mobile servicing facilities to help the FDSN improve support for vehicles in the Sahel; reinforcing the capacities of the Nigerien authorities for coordination with partners. EUCAP will also support the creation of a National Secretariat for coordination.

b. **Training** activity over the budget period will amount to 327 days of training for 955 trainees in Niamey, and 167 days of training for 1,130 trainees in the regions, over the course of the budget period. The additional training-related costs reflect expenditure on *per diems*, travel and administrative support that will be incurred conducting ten training trips to Agadez, two to Tahoua, five to Zinder/Diffa and one to Maradi.

“**Contingencies: €190,670.11**

“The Contingencies budget has increased by 6.2%, which almost tracks the rise in the overall budget (7%). This budget line covers unforeseen costs such as severance pay, and can only be used with prior written approval of the Commission. The contingency for 2014–15 remained unused.”

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70 Ukraine and Russia: EU restrictive measures

**Committee’s assessment**

Politically important
Committee’s decision: Cleared from scrutiny

Document details: Council Decision concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine

Legal base: Article 29 TEU; unanimity

Department: Foreign and Commonwealth Office

Document number: (36956), —

Summary and Committee’s conclusions

70.1 The EU Council has amended Council Decision 2014/512/CFSP (which was previously amended by Council Decisions 2014/659/CFSP and 2014/872/CFSP) concerning the economic (Tier III) restrictive measures in view of Russia’s actions destabilising the situation in Ukraine. The new amendment extends the restrictive measures for a further period of six months, so that the duration of the restrictive measures is linked to the complete implementation of the Minsk agreements.

70.2 Decision 2014/512/CFSP, as amended, imposed a number of sectoral sanctions against Russian entities. These include an arms embargo, ban on the supply of equipment and services to Russian deep water, Arctic and shale oil exploration and production projects, and a ban on Russian access to certain EU financial instruments and services (see the “Background” section and Annex 1 of this chapter of our Report for full details).

70.3 Decision 2014/512/CFSP will be renewed for a further six months, until 31 January 2016, to enable the Council to assess the implementation of the Minsk agreement (see Annex 2 of this chapter of our Report for full details of the Minsk agreement).

70.4 The Minister for Europe (Mr David Lidington) describes Russia’s implementation of the Minsk agreement as “limited and inconsistent”; with most of its commitments falling towards the end of the Minsk timeline, the EU has agreed to adopt a six-month “technical rollover” of the restrictive measures until January 2016. The Minister had hoped that these measures would have been adopted soon after the March European Council; but consensus was not reached until on 17 June; and to “ensure that this issue did not complicate an already heavily loaded European Council”, the measures were adopted by the Foreign Affairs Council on 22 June. A scrutiny over-ride has thus occurred, which the Minister regrets.

70.5 For understandable reasons the Minister glosses over the internal disagreements among Member States that delayed the process, which have been widely reported in the media. In the circumstances and on this occasion, we do not take issue with his having over-ridden scrutiny.

70.6 Though this “rollover” was also widely publicised at the time, and raises no issues in and of itself, we are reporting it to the House because of the widespread interest in developments in Ukraine and in the EU response to it.
70.7 We now clear the Council Decision.

**Full details of the documents:** Council Decision (CFSP) 2015/971 of 22 June 2015 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine: (36956), —.

**Background**

70.8 The European Union is focusing its efforts on de-escalating the crisis in Ukraine. The EU calls on all sides to continue engaging in a meaningful and inclusive dialogue leading to a lasting solution; to protect the unity and territorial integrity of the country and to strive to ensure a stable, prosperous and democratic future for all Ukraine's citizens. The EU has also proposed to step-up its support for Ukraine's economic and political reforms.

An extraordinary meeting of the European Council on 3 March 2014 condemned the clear violation of Ukrainian sovereignty and territorial integrity by acts of aggression by the Russian armed forces as well as the authorisation given by the Federation Council of Russia on 1 March for the use of the armed forces on the territory of Ukraine. The EU called on Russia to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the Agreement on the Status and Conditions of the Black Sea Fleet stationing on the territory of Ukraine of 1997.

70.10 In a statement of the Heads of State or Government following an extraordinary meeting on 6 March, the EU underlined that a solution to the crisis must be found through negotiations between the Governments of Ukraine and the Russian Federation, including through potential multilateral mechanisms. Having first suspended bilateral talks with the Russian Federation on visa matters and discussions on the New (EU-Russia) Agreement as well as preparations for participation in the G8 Summit in Sochi, the EU also set out a second stage of further measures in the absence of de-escalatory steps and additional far-reaching consequences for EU-Russia relations in case of further destabilisation of the situation in Ukraine.

70.11 In the absence of de-escalatory steps by the Russian Federation, on 17 March 2014 the EU imposed the first travel bans and asset freezes against Russian and Ukrainian officials following Russia's illegal annexation of Crimea. The EU strongly condemned Russia's unprovoked violation of Ukrainian sovereignty and territorial integrity.

70.12 The EU believes a peaceful solution to the crisis should be found through negotiations between the Governments of Ukraine and the Russian Federation, including through potential multilateral mechanisms.

70.13 The EU also remains ready to reverse its decisions and reengage with Russia when it starts contributing actively and without ambiguities to finding a solution to the Ukrainian crisis.495

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495 See EU sanctions against Russia over Ukraine crisis.
70.14 On 31 July 2014, the Council adopted Council Decision 2014/512/CFSP and Council Regulation (EU) No. 833/2014, which imposed a number of sectoral sanctions against Russian entities, in view of Russia’s destabilising actions in Ukraine. These included an arms embargo, ban on the supply of equipment and services to Russian deep water, Arctic and shale oil exploration and production projects, and a ban on Russian access to certain EU financial instruments and services.

70.15 On 8 September 2014, the Council adopted Council Decision 2014/659/CFSP and Council Regulation (EU) No. 960/2014. They strengthened restrictions on Russia’s access to EU capital markets, so that EU nationals and companies could no longer provide loans with a maturity exceeding 30 days to five major Russian state-owned banks; at the same time, trade in new bonds, equity or similar financial instruments with a maturity exceeding 30 days, issued by the same banks, were prohibited; the same prohibitions were extended to three major Russian defence companies and three major energy companies. In addition, the scope of the prohibition on the supply of sensitive technologies was broadened to include prohibiting the provision of certain services necessary for deep water and Arctic oil exploration and production, and shale oil projects in Russia; and the ban on the export of dual-use goods and technology was extended to prohibit the supply of certain dual-use items to specific Russian military/civilian end-users.

The Council Decision

70.16 In his Explanatory Memorandum of 2 July 2015, the Minister says that:

— the March European Council made a commitment to rolling over these measures before they expire at the end of July 2015, concluding that the “duration of the restrictive measures” are “clearly linked to the complete implementation” of the Minsk agreements; and

— due to the way these agreements are structured the timeframe for implementation cannot be completed before December 2015.

The Government’s view

70.17 The Minister comments thus:

“Russia’s implementation of Minsk has been limited and inconsistent so far, and since most of its commitments fall towards the end of the Minsk timeline the EU has agreed to adopt a six-month technical rollover of the restrictive measures until January 2016. We will continue to press Russia to implement its obligations, whilst

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496 Available at COUNCIL DECISION 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
497 Available at COUNCIL REGULATION (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
498 Available at COUNCIL DECISION 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
499 Available at COUNCIL REGULATION (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
monitoring closely, and stand ready to pursue further restrictions if there are serious breaches of the ceasefire.”

70.18 In a separate letter of the same date, the Minister says:

“Whilst I had hoped that this item would have been adopted soon after the March European Council, in order to ensure the consensus of Member States, the political agreement to renew the measures was only secured at the EU Committee of Permanent Representatives on 17 June. The Committee will be aware of the importance of renewing these measures to maintain the pressure on Russia for its actions in Ukraine. To ensure that this issue did not complicate an already heavily loaded European Council, renewal of the measures was put forward for adoption to the Foreign Affairs Council on 22 June.

“I therefore regret that I found myself in the position of having had to agree to the adoption of these Council documents before your Committee had an opportunity to scrutinise them.”

Previous Committee Reports


Annex 1: Summary of EU measures concerning Russia’s actions in Ukraine and the Crimea

“Restrictive measures (asset freezes and visa bans)

- “Asset freezes and visa bans apply to 151 persons while 37 entities are subject to a freeze of their assets in the EU. This includes 145 persons and 24 entities responsible for action against Ukraine’s territorial integrity, six persons providing support to or benefitting Russian decision-makers and 13 entities in Crimea and Sevastopol that were confiscated or that have benefitted from a transfer of ownership contrary to Ukrainian law.

“Restrictions for Crimea and Sevastopol

“As the EU does not recognise the annexation of Crimea and Sevastopol, the following restrictions have been imposed.

- “The EU has adopted a prohibition on imports originating from Crimea and Sevastopol unless accompanied by a certificate of origin from the Ukrainian authorities.
• Investment in Crimea or Sevastopol is outlawed. Europeans and EU-based companies may no more buy real estate or entities in Crimea, finance Crimean companies or supply related services.

• In addition, EU operators will no more be permitted to offer tourism services in Crimea or Sevastopol. In particular, European cruise ships may no more call at ports in the Crimean peninsula, except in case of emergency. This applies to all ships owned or controlled by a European or flying the flag of a member state. Existing cruise contracts may be still be honoured until 20 March.

• It has also been prohibited to export certain goods and technology to Crimean companies or for use in Crimea. These concern the transport, telecommunications and energy sectors or the prospection, exploration and production of oil, gas and mineral resources. Technical assistance, brokering, construction or engineering services related to infrastructure in the same sectors must not be provided.


“Measures targeting sectoral cooperation and exchanges with Russia (“Economic” sanctions)

• “EU nationals and companies may no longer buy or sell new bonds, equity or similar financial instruments with a maturity exceeding 30 days, issued by:

  1. five major state-owned Russian banks, their subsidiaries outside the EU and those acting on their behalf or under their control.

  2. three major Russia energy companies and

  3. three major Russian defence companies.

• Services related to the issuing of such financial instruments, e.g. brokering, are also prohibited.

• EU nationals and companies may not provide loans to five major Russian state-owned banks.

• Embargo on the import and export of arms and related material from/to Russia, covering all items on the EU common military list.

• Prohibition on exports of dual use goods and technology for military use in Russia or to Russian military end-users, including all items in the EU list of dual use goods. Export of dual use goods to nine mixed defence companies is also banned.

• Exports of certain energy-related equipment and technology to Russia are subject to prior authorisation by competent authorities of Member States. Export licenses will be denied if products are destined for deep water oil exploration and production, arctic oil exploration or production and shale oil projects in Russia.
• Services necessary for deep water oil exploration and production, arctic oil exploration or production and shale oil projects in Russia may not be supplied, for instance drilling, well testing or logging services.”

Annex 2: Text of the Minsk agreement

“1. An immediate and comprehensive ceasefire in individual areas of the Donetsk and Luhansk regions of Ukraine and its strict implementation starting at 0000 (Kyiv time) February 15, 2015.

2. The withdrawal of all heavy weapons by both parties at equal distances in order to create at least a 50 kilometer security zone for 100mm or larger caliber artillery systems, a 70 kilometer security zone for Grad multiple rocket launcher systems and a 140 kilometer security zone for the Tornado-S, Uragan, and Smerch multiple rocket launcher systems and Tochka (Tochka-U) tactical missile systems:

— for the Ukrainian troops: [withdrawal] from the actual contact line;

— for the military units of individual areas of the Donetsk and Luhansk regions of Ukraine: [withdrawal] from the contact line in accordance with the Minsk memorandum of September 19, 2014

Withdrawal of aforementioned heavy weapons shall begin no later than the second day of the ceasefire and end within 14 days.

The OSCE will contribute to this process with the support of the Trilateral Contact Group.

3. Starting the first day of such withdrawal, ensuring the effective monitoring and verification by the OSCE of the ceasefire and the withdrawal of heavy weapons with the use of all necessary technical means, including satellites, UAVs, radar systems, etc.

4. On the first day after the withdrawal, to begin a dialogue on the procedures for holding local elections in accordance with Ukrainian law and the Law of Ukraine ‘On a temporary order of local government in individual areas of the Donetsk and Luhansk regions,’ as well as on the future regime of these areas, according to this Act.

Immediately, no later than 30 days from the date of signing of this document, to adopt a resolution of the Verkhovna Rada of Ukraine with the specification of a territory subject to the special regime in accordance with the Law of Ukraine ‘On temporary order of local government in some regions of the Donetsk and Luhansk regions’ based on the line set in a Minsk memorandum of September 19, 2014.

5. To provide pardons and amnesties by the enactment of a law prohibiting prosecution and punishment of persons with regard to the events that took place in individual areas of the Donetsk and Luhansk regions of Ukraine.

500 See EU sanctions against Russia over Ukraine crisis for full details and further background.

501 Minsk agreement.
6. To ensure the release and exchange of hostages and illegally detained persons based on the principle of ‘all for all’. This process must be completed no later than the fifth day after the withdrawal.

7. To provide secure access, delivery, storage and distribution of humanitarian aid to the needy on the basis of an international mechanism.

8. Determination of the procedure for the full restoration of the socio-economic relations, including transactions of social payments, such as pensions and other payments (takeings and income, timely payment of all utility bills, renewal of taxation within Ukraine’s legal framework).

To this end, Ukraine shall regain control over the segment of its banking system in conflict-affected areas, and an international mechanism to facilitate such transfers will probably be created.

9. Restoration of full control over the state border of Ukraine by Ukraine’s government throughout the whole conflict area, which should begin on the first day after the local elections and be completed after a comprehensive political settlement (local elections in individual areas of the Donetsk and Luhansk regions on the basis of the Law of Ukraine, and a constitutional reform) by the end of 2015, on condition of implementation of paragraph 11 — with consultations and in agreement with the representatives of individual areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group.

10. The withdrawal of all foreign armed forces, military equipment, as well as mercenaries from the territory of Ukraine under the supervision of the OSCE. Disarmament of all illegal groups.

11. Conducting constitutional reform in Ukraine, with the new constitution coming into force by the end of 2015, providing for decentralization as a key element (taking into account the characteristics of individual areas of the Donetsk and Luhansk regions, agreed with representatives of these areas), as well as the adoption of the permanent legislation on the special status of individual areas of the Donetsk and Luhansk regions in accordance with the measures specified in Note [1], until the end of 2015. (See Notes)

12. On the basis of the Law of Ukraine ‘On temporary order of local government in individual areas of Donetsk and Luhansk regions’ the questions regarding local elections shall be discussed and agreed with the individual areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group. Elections will be held in compliance with the relevant standards of the OSCE with the monitoring by the OSCE ODIHR.

13. To intensify the activities of the Trilateral Contact Group, including through the establishment of working groups to implement the relevant aspects of the Minsk Agreement. They will reflect the composition of the Trilateral Contact Group.

Notes:
Such measures, in accordance with the Law ‘On the special order of local government in individual areas of the Donetsk and Luhansk regions,’ include the following:

— Exemption from punishment, harassment and discrimination of persons associated with the events that took place in individual areas of the Donetsk and Luhansk regions;

— The right to self-determination with regard to language;

— Participation of local governments in the appointment of heads of prosecutors’ offices and courts in individual areas of the Donetsk and Luhansk regions;

— The possibility for the central executive authorities to conclude agreements with the relevant local authorities on economic, social and cultural development of individual areas of Donetsk and Luhansk regions;

— The state shall support socio-economic development of individual areas of Donetsk and Luhansk regions;

— Assistance from the central government to cross-border cooperation between the individual areas of the Donetsk and Luhansk regions and regions of the Russian Federation;

— The creation of people’s militia units [police] upon the decision of local councils in order to maintain public order in individual areas of the Donetsk and Luhansk regions;

— The powers of local council deputies and other officials elected in snap elections, appointed by the Verkhovna Rada of Ukraine according to this law, cannot be terminated.

The document is signed by the members of a Trilateral Contact Group:

[OSCE] Ambassador Heidi Tagliavini
Second President of Ukraine L.D. Kuchma
The Ambassador of the Russian Federation to Ukraine M.Yu. Zurabov
A. V. Zakharchenko
I. V. Plotnitsky.”

71 Customs risk management

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny

Document details
Commission Communication on the EU Strategy and
Summary and Committee’s conclusions

71.1 In August 2014 the Commission presented in this Communication a strategy on customs risk management and supply chain security based on a step by step action plan. The Government is generally supportive of the strategy and action plan. The previous Committee said that, while it had no issue with the thrust of this Communication, it noted two concerns, about challenging timelines and about development of a central repository, the Government had drawn to its attention. So it asked to hear about any success with the Commission in mitigating these concerns, before the document could be cleared from scrutiny.

71.2 The Government tells us now that these two concerns have been addressed satisfactorily, so that it is now ready to support Council adoption of the text of the action plan.

71.3 Given these improvements to the action plan we now clear the document from scrutiny.


Background

71.4 In August 2014, following encouragement in June 2013 by the Council, the Commission presented in this Communication a strategy on customs risk management and supply chain security based on a step by step action plan and a cost benefit analysis. The Government is generally supportive of the strategy and action plan. However, it did express to the previous Committee two concerns, about challenging timelines and about development of a central repository.

71.5 The previous Committee said that, while it had no issue with the thrust of this Communication, it noted the concerns the Government had drawn to its attention. So it asked to hear from the Government about any success with the Commission in mitigating these concerns. Meanwhile the document remained under scrutiny.
The Minister’s letter of 6 July 2015

71.6 The Exchequer Secretary to the Treasury (Damian Hinds) now tells us about a resolution of the two concerns the Government had. First, noting that the action plan set out an expectation for implementation in the period 2014–2020, he says that:

- the Government was concerned that any calls to implement changes at the beginning of this range would be very challenging;
- during further negotiations with the EU, officials have worked closely with other Member States which shared the UK’s concerns to secure agreement to preserve a flexible delivery timetable which fully aligns with implementation plans for the new Union Customs Code;
- this includes the introduction of an additional two year transitional period from May 2016 to May 2018;
- given this the Government believes that the action plan now provides sufficient flexibility to enable the UK to meet the timetable for delivery; and
- consequently, the Government can now support this text.

71.7 Secondly, the Minister says that the other main Government concern, in respect of the creation of a central data repository, was that it could extend to the creation of EU level performance measures and targets which could impact on Member States’ ability to control their own resource deployment. He reports that:

- officials have taken part in further negotiations on this matter, which have led to the adoption of a more flexible delivery model which provides Member States with the option of carrying out risk analysis within their own national systems rather than receiving results from a centrally performed risk analysis system;
- this will therefore remain a matter of national competence and the UK will retain control over the deployment of its resources; and
- as a result the Government is now able to support this text.

71.8 Making plain now what neither the Communication nor the Government’s Explanatory Memorandum had revealed previously — that it is the Council’s intention to formally adopt the text of the action plan, the Minister hopes that we are now able to clear the document from scrutiny, so that the Government can vote in favour of the text.

Previous Committee Report

72 Financial services: resilience of credit unions

Committee’s assessment
Legally and politically important

Committee’s decision
Cleared from scrutiny; drawn to the attention of the Treasury Select Committee

Document details
(a) Proposal for a Regulation to improve the resilience of credit institutions; (b) Commission impact assessment for the proposed Regulation; (c) European Central Bank Opinion on the proposed Regulation

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

Department
HM Treasury

Document numbers
(a) (35781), 6022/14 + ADDs 1–4, COM(14) 43
(b) (35829), 6860/14 + ADDs 1–3, SWD(14) 30
(c) (36523), 15924/14, —

Summary and Committee’s conclusions

72.1 In January 2014 the Commission proposed a Regulation to provide for structural measures to improve the resilience of EU credit institutions. The proposal was complemented by another proposal for a Regulation, on securities financing transactions, already cleared from scrutiny. The proposed Regulation was accompanied by the Commission’s impact assessment and in November 2014 the European Central Bank issued an Opinion on the proposed Regulation.

72.2 The predecessor Committee considered the proposed Regulation several times, noting the need to ensure safeguarding of Part I of the Banking Reform Act 2013, to address a number of other issues for the UK and to take account of the European Central Bank Opinion.

72.3 When, in March, the predecessor Committee last considered the matter it heard that, given divisions in both the Council and the European Parliament on some of the fundamental elements of the Commission proposal, it currently looked unlikely to the Government that there would be a Council General Approach or trilogues by May, although it expected the Latvian Presidency to continue to push for this. The predecessor Committee kept the documents under scrutiny

72.4 The Government tells us now that:

- the Council did after all agree a General Approach on the proposed Regulation, albeit only in June;
- the text of the General Approach meets the UK’s negotiating objectives;
therefore, the Government supported the General Approach, even though the
document was still under scrutiny; and

it is not yet known when the European Parliament will adopt its first reading of the
proposed Regulation, thus allowing trilogue discussion to begin.

72.5 We note the satisfactory Council outcome on this proposed Regulation and now
clear the documents from scrutiny.

72.6 As for the breach of the Scrutiny Reserve Resolution we accept that in the
circumstances this was understandable.

72.7 However, we are concerned about another aspect of the scrutiny process. The
Government’s letter informing us of the developments we now report purported, but
failed, to attach two Council documents (which were, however, accessible to us on the
Council website). This is not acceptable. We expect the Government to ensure a higher
standard when reporting to us in the future.

Full details of the documents: (a) Proposal for a Regulation on structural measures
improving the resilience of EU credit institutions: (35781), 6022/14 + ADDs 1–4, COM(14)
43; (b) Commission Staff Working Document: Impact Assessment accompanying the
proposal for a Regulation on structural measures improving the resilience of EU credit
institutions and the proposal for a Regulation on reporting and transparency of securities
financing transactions: (35829), 6860/14 + ADDs 1–3, SWD(14) 30; (c) European Central
Bank Opinion of 19.11.2014 on a proposal for a Regulation on structural measures
improving the resilience of EU credit institutions: (36523), 15924/14, —.

Background

72.8 The Liikanen Report or Report of the European Commission’s High-level Expert Group
on Bank Structural Reform (known as the Liikanen Group) is a set of recommendations
published in October 2012 by a group of experts led by Erkki Liikanen, governor of the
Bank of Finland and European Central Bank (ECB) council member. The Group’s
mandate was to determine whether structural reforms of EU banks would strengthen
financial stability, improve efficiency and consumer protection in addition to the
regulatory reform of the EU bank sector. The Group recommended actions in five areas,
including mandatory separation of proprietary trading and other high-risk trading and
strengthening bank governance and control of banks.502

72.9 With the proposal for a Regulation, document (a), published in January 2014, the
Commission suggested, in response to the Liikanen Report, structural measures to improve
the resilience of EU credit institutions. The proposal was complemented by another
proposal for a Regulation, on securities financing transactions.503

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

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

72.11 The proposed Regulation was accompanied by the Commission’s impact assessment, document (b), and in November 2014 the European Central Bank (ECB) issued this Opinion, document (c), on the proposed Regulation.

72.12 The predecessor Committee considered the proposed Regulation several times:

- hearing that the Government expected a derogation in the Commission text to allow the UK to continue the reforms in Part I of the Banking Reform Act 2013;
- noting, however, a number of other issues for the UK which the Government wished to see addressed; and
- reminding the Government that it did not accept the view that an opt-in choice existed irrespective of whether the Commission had chosen a Justice and Home Affairs (JHA) legal base for a proposal — it commented that if the Government believed in this case that there was a JHA issue it needed to seek a JHA legal base.

72.13 As for the ECB Opinion, the predecessor Committee noted the Government’s reservations and asked to be informed as to how the Opinion was playing into Council negotiation of the proposed Regulation.

72.14 When, in March, the predecessor Committee last considered the matter it heard:

- about developments in Council consideration of the proposal and that the Latvian Presidency was aiming to reach a General Approach by the ECOFIN Council in May, which would form the basis for trilogue negotiations with the European Parliament;
- that, on the basis of current negotiations, the Government’s assessment was, however, that reaching a broad compromise in the Council looked unlikely;
- on the ECB Opinion, that the Bank’s concerns had been somewhat tempered;
- the European Parliament was considering and discussing a raft of amendments with a view to voting on them in late March; and
- that, given divisions in both the Council and the European Parliament on some of the fundamental elements of the Commission proposal, such as the separation
process, it currently looks unlikely to the Government that there would be a Council General Approach or trilogues by May, although it expected the Latvian Presidency to continue to push for this.

72.15 The predecessor Committee kept the documents under scrutiny.

The Minister’s letter of 24 June 2015

72.16 The Economic Secretary to the Treasury (Harriett Baldwin), reports that:

- the Latvian Presidency did after all reach agreement on a General Approach, at the 19 June ECOFIN Council; and
- as the UK’s negotiating objectives had been secured and the Government’s red lines met, set out in the Council document recording the General Approach, the Chancellor supported the agreement.

72.17 The Minister then says that:

- she recognises that UK support for the General Approach constitutes, regrettably, a scrutiny override;
- given that negotiations were not sufficiently advanced for the Government to seek a scrutiny waiver or clearance ahead of Dissolution, and that we had not been appointed ahead of the ECOFIN Council, we had not had the opportunity to scrutinise this latest compromise; and
- given the importance of this matter for the UK banking sector, it was, however, clearly in the national interest to support a text which protected UK red lines at this time.

72.18 The Minister tells us that this text, which has the backing of all Member States, will now form the basis of the Council’s position for trilogue discussions with the European Parliament once it comes to a first reading position on the proposal.

72.19 Then turning to the substance of the proposal the Minister explains that a final compromise was reached in the Council following intense discussions on outstanding concerns from France. She says that five further amendments were agreed:

- an amended recital 26 highlighting the application of a proportionate approach to both the scope of the proposed Regulation and to the assessment of trading activity risk;
- an amended recital 44 reinstating text to note that European Banking Authority technical standards should not pre-empt supervisors’ work on setting excessive risk thresholds;

• an amended recital 48 and Article 5a(5) to introduce European Banking Authority guidelines on the occasion a Member State implements structural separation in accordance with national law, such as the UK implementing the Banking Reform Act, and applies relaxation of large exposure limit rules; and

• a minor amendment to the Council Minute Statement on the proposed Regulation taking account of existing national legislation.

72.20 The Minister comments that:

• the important debate between supervisory discretion versus more prescriptive rules on structural separation has been and will no doubt continue to be had in the Council and in the ECON Committee of the European Parliament;

• the Chancellor was pleased that the agreed text recognised the different financial systems and pressures across Member States, and that an accommodation had been found for the UK to implement tougher structural measures to protect retail depositors; and

• he also observed that the compromise illustrated the need to address different eurozone and non-eurozone requirements and that it balanced the ECB’s logical desire for uniform regulation to manage 19 different regimes in the eurozone whilst not imposing it on all 28 Member States and therefore allowing the UK to take a tougher course.

72.21 The Minister continues that the Government’s key negotiating objectives will remain securing an accommodation in the proposed Regulation for the Banking Reform Act and ensuring, as far as possible, that the Government would not have to apply a second regime for bank structural reform alongside the Banking Reform Act, leading to excessive burdens for economic operators and the Prudential Regulation Authority alike. She asserts that the General Approach, whilst not perfect in all its detail, does provide a solid basis for maintaining the Government’s objectives in forthcoming stages of the negotiation. She draws our attention in particular to:

• Article 5a of the agreed text, which outlines the two routes for achieving the aims of the proposed Regulation and that the ‘Banking Reform Act route’ is set out under paragraphs 2a, 3a and 3b;

• the negative scope thresholds in Article 4(1)(d) and the sub-paragraph under Article 5a(2)(b) which will help scope out those entities which fall below the BRA mandatory separation threshold of £25bn and ensure that no entity will be subject to two regimes; and

• recital 33, Article 5a (end) and the amended Article 26ga which provide safeguards for competent authorities operating the Banking Reform Act and the ‘banking structural reform route’ when it comes to managing of and cooperating on the regulation of banking groups operating across Member States.
72.22 Finally the Minister tells us that, following the inconclusive ECON Committee vote of 26 May on the rapporteur, Gunnar Hökmark’s, compromise amendments to the Commission proposal, the European Parliament’s political groups are still deciding how to proceed and that they will certainly now note the Council’s General Approach as well.

Previous Committee Reports


73 Investment Plan for Europe

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Summary and Committee’s conclusions

73.1 In November 2014 the Commission published a Communication suggesting a three part plan to promote investment in the EU economy, an “Investment Plan for Europe”. In January the Commission published this proposal for a Regulation to create a European Fund for Strategic Investments and a European Investment Advisory Hub, so enabling the Commission to implement and deliver its Investment Plan for Europe jointly with the European Investment Bank. The Commission also published a Draft Amending Budget for the 2015 EU budget to provide finance for the new bodies this year. These documents were cleared from scrutiny in the previous Parliament after debate in European Committee B in March.505

73.2 The Government has now given us a full account of the adoption of the proposed Regulation and the next steps for the European Fund for Strategic Investments.

73.3 In March the European Court of Auditors presented this Opinion of the proposed Regulation creating the legal framework for the Commission’s investment plan. On the basis of its views it suggested specific changes to the Commission’s proposed Regulation.

73.4 The Government, whilst noting that many of the Court’s concerns were addressed in negotiations, has told us that in the interests of good policy making it welcomed the input by the Court and looked to ensure its opinions were taken into account by the Commission, Council and European Parliament.

73.5 We are grateful for the Government’s account of where matters now stand in relation to the European Fund for Strategic Investments.

73.6 As for the European Court of Auditors’ Opinion, while noting its utility, we clear the document from scrutiny.

Full details of the documents: (a) Proposal for a Regulation on the European Fund for Strategic Investments and amending Regulations (EU) No. 1291/2013 and (EU) No. 1316/2013: (36605), 5112/15 + ADD 1, COM(15) 10; (b) European Court of Auditors Opinion No. 4/2015 (pursuant to Article 287(4) of the Treaty on the Functioning of the European Union (TFEU)) concerning the proposal for a Regulation on the European Fund for Strategic Investments and amending Regulations (EU) No. 1291/2013 and (EU) No. 1316/2013: (36768), 6541/15, —.

Background

73.7 In November 2014 the Commission published a Communication suggesting a three part plan to promote investment in the EU economy:

- a European Fund for Strategic Investments (EFSI), to mobilise €315 billion (£226 billion) for investment;
- a pipeline of investment projects and investment advisory hub (to be known as the European Investment Advisory Hub or EIAH); and
- a wider package of reforms to improve the investment climate, including action to remove barriers in the single market and improve regulation.

73.8 In January the Commission published a proposal for a draft Regulation, document (a), to create the legal framework for the first two strands of its investment plan, that is, a EFSI and a European Investment Advisory Hub, so enabling the Commission to implement and deliver the investment plan jointly with the European Investment Bank (EIB). The EFSI would be supported by an EU guarantee fund, providing a maximum EU guarantee of €16 billion (£11.5 billion) for EIB financing and investment operations to support the
development of infrastructure and investment in the EU as well as for small and medium size enterprises. The Commission also published a Draft Amending Budget for the 2015 EU budget to provide finance for the new bodies this year. Our predecessor Committee recommended that these three documents be debated in European Committee B and that debate took place on 24 March.\(^{506}\)

**The new document**

73.9 In March the European Court of Auditors (ECA) presented its Opinion of the proposal for a Regulation creating the legal framework for the Commission’s investment plan, document (b). It outlined general comments about the Commission’s proposal before suggesting specific changes to the text.

73.10 The ECA examined the proposed governance arrangements of the EFSI:

- recalling that these reflect a dual scheme, with the Commission directly responsible for the management of the funds of the EU guarantee only, while the EIB governing bodies would be responsible for the actual investment of the funds;
- saying that this choice should not undermine the Commission’s full responsibility in implementing the EU budget; and
- suggesting that, for transparency, all agreements between the Commission and EIB should be published.

73.11 The ECA discussed the proposal to leave to an agreement between the Commission and the EIB a number of matters it viewed as essential aspects, including establishing the EFSI as a separate guarantee facility within EIB accounts, its governance and internal audit arrangements and assessment of its performance. The ECA said that the terms of the agreement would have significant implications concerning the provision and use of the guarantee.

73.12 The ECA examined the interaction between the proposed Regulation and the Financial Regulation, which governs management of the EU’s finances:

- noting that the specific provisions of the Financial Regulation would not apply to the EU guarantee or fund;
- noting that there was no clear explanation for this;
- saying that it was unclear to what extent the EIB’s own rules would enforce fundamental principles set by the Financial Regulation; and
- suggesting that any derogations to the Financial Regulation provisions should be fully justified.

\(^{506}\) Ibid.
73.13 The ECA said that:

- to avoid legislative loopholes, essential elements of the proposed Regulation should remain in the hands of the Council and the European Parliament and be covered in the Regulation itself; and

- if a delegation of power was necessary, it should be limited to non-essential elements.

73.14 The ECA expressed some concern around the measurement of performance of the new instruments against the intended objectives:

- saying that accountability seems focussed on outputs rather than outcomes and impacts;

- asking whether the Commission and EIB reports would be complementary;

- asking whether the Commission would include the EFSI in its annual evaluation report on the EU’s finances, in particular whether it had met the objectives of job creation and private finance leveraged;

- saying that due dates for all stipulated reporting should be set; and

- noting that there was no accountability for the EFSI’s Steering Board and EIB governing bodies before the budgetary authorities.

73.15 In relation to provision of an EU guarantee, the ECA suggested that:

- there should be limits to the extent of potential liabilities on the EU budget, with in particular a ceiling for EIB expenses and explicit immunity for the Commission against legal claims by EFSI beneficiaries; and

- the legal form and functioning of the guarantee fund should be clarified.

73.16 Noting that creation of the EFSI was deemed to respond to urgent need and that therefore it had not been validated by an *ex-ante* evaluation, the ECA suggested that the Commission should use the upcoming mid-term review of the Multiannual Financial Framework to assess the progress achieved by the EFSI and should take any corrective measures needed.

73.17 The ECA requested changes to its audit mandate included in the draft Regulation. It said that:

- the wording put forward by the Commission could be restrictive; and

- the Regulation should fully take into account the ECA’s role to audit the legality, regularity, and sound financial management of all revenue and expenditure of the EU, including all aspects of the EFSI.
On the basis of these preceding comments the ECA then suggested specific changes to the Commission’s proposed Regulation. It said that it remained available to provide further input in the legislative process if necessary.

**The Government’s view of the new document**

In his Explanatory Memorandum of 27 May 2015 the Financial Secretary to the Treasury (Mr David Gauke), noting that the Opinion related to the Commission’s original proposed Regulation, told us that many of the ECA’s concerns were addressed in subsequent negotiations. He continued that in the interests of good policy making the Government welcomed the input by the ECA and had looked to ensure its opinions are taken into account by the Commission, Council and European Parliament.

**The Minister’s letter of 25 June 2015**

The Minister writes to update the Committee on the outcome of negotiations on the EFSI Regulation, which was formally adopted by the European Parliament on 24 June and by Council on 25 June.

The Minister first recalls that the Government priorities in the negotiations were to establish the EFSI within the existing EU Budget, to ensure the EFSI’s credibility to private sector investors and to ensure the mechanism is flexible and able to respond to the diverse range of investment needs across Member States. He then comments that:

- overall the Government believes the final text delivers its objectives, and this is a view shared by Member States, who unanimously supported the Regulation in COREPER;
- some compromises were necessary, however, to secure the European Parliament’s agreement; and
- notably these included facilitating a role for the European Parliament in vetting the candidate for the EFSI’s Managing Director and agreement to use €1 billion (£719 million) from the margin within the Multiannual Financial Framework to reduce the reallocations from high value added areas of Heading 1 of the Budget.

The Minister comments further that:

- the Government ensured that the EIB remains at the centre of the plan, with governance arrangements and decision making processes that are free from political interference;
- crucially, it ensured the recruitment of the Investment Committee (the experts who will decide on the application of the guarantee) will be independent of politics, with no role for the European Parliament — this ensures that projects will be selected on merit which is crucial to securing credibility with investors;
on financing, the maximum liability on the EU budget from the guarantee to the EIB remains unchanged at €16 billion (£11.5 billion);

however, the European Parliament wanted all €8 billion (£5.75 billion) of the paid-in Guarantee Fund to be financed from the margin;

in negotiations, the Council secured agreement that the financing of the guarantee fund will still be primarily from reallocations;

however, it was agreed to utilise an additional €1 billion (£719 million) of the margin to reduce the amount of reallocation required from high value added programmes in Heading 1a;

in particular, it was agreed to completely protect the European Research Council (ERC), Marie Skłodowska-Curie actions and ‘Spreading Excellence’ programmes; and

this is a good outcome, as UK Universities and other research institutions have historically benefitted from a substantial share of these research programmes — for example the UK received 22.3% of the budget available for ERC grants in the last Multiannual Financial Framework.

The Minister continues that:

the final deal respects the need to maintain flexibility, while providing transparency on the eligibility criteria;

the Regulation itself now specifies more detail on the sectors eligible to benefit from the EFSI and the available instruments, while retaining a broad scope;

the European Parliament asked for specific Member State and sectoral concentration quotas — the Government believed this was inappropriate as it could suggest projects were being selected to meet a quota, not on the basis of merit;

the agreed compromise was to avoid “excessive concentration” of investment, with the Steering Board setting “indicative” limits — the government thinks this allows for the necessary flexibility, and does not undermine the principle that projects are selected on merit. Further, it ensures that smaller research projects are not crowded out by larger infrastructure projects;

to ensure transparency and consistency in the assessment of projects, the compromise deal also introduces a ‘Scoreboard’, which the Investment Committee will use to assess projects against the objectives of the Regulation and which will be adopted by delegated act;

the European Parliament wanted the EFSI to be permanent from the outset; and
• in the final compromise, the investment period is time-limited to four years, with a fundamental evaluation of the performance of the EFSI against its objectives after three years — if the venture proves successful, a decision may be taken to extend the provision of guarantees.

73.24 The Minister says that:

• the focus now is to promote the EFSI in the UK and ensure that both private and public sector projects have access to the necessary information to make the most of the opportunities on offer;

• at the same time, it is crucial that the UK continues to build on its increasingly successful record in accessing more traditional EIB and European Investment Fund (EIF) financing — for example, the EIB lent a record €7 billion (£5 billion) in the UK in 2014, an increase of 20% compared to 2013, which itself was a 56% increase over 2012, and in 2014 the UK’s SMEs received 20% of EIF activity, more than all other Member States;

• the Government has adopted a more strategic approach to EIB engagement, including by stepping up coordination both within Government, and between the UK authorities and the EIB;

• this includes ensuring that projects across the UK are well placed to take advantage of the EFSI, and that the EIB has a clearer picture of potential investment opportunities within the UK; and

• the Government looks forward to welcoming Commissioner Katainen’s ‘roadshow’ to the UK on 16 July and sees it as another opportunity to raise awareness of what the EFSI has to offer.

Previous Committee Reports


74 Capital Markets Union

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In February the Commission published a consultative Green Paper, about building a Capital Markets Union. The predecessor Committee asked that we should see the Government’s response to the Green Paper, which we now have before us.

Whilst now clearing the Green Paper from scrutiny, we draw it and, particularly, the Government’s response to the attention of the Treasury Committee.

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

In February the Commission published a Green Paper, about building a Capital Markets Union (CMU), to consult on a range of issues relating to improving market-based financing of the EU economy. It said that it would decide on appropriate follow-up measures on the basis of the consultation to put in place the building blocks for such a union by 2019. The Commission called for responses to the 32 questions posed by the Green Paper by 13 May and said that it expected to present an action plan in the summer.

Our predecessor Committee noted the Government’s intention to respond quickly to the Commission’s Green Paper and asked it to inform us of the content of that response. Meanwhile the document remained under scrutiny.

With her letter the former Economic Secretary to the Treasury (Andrea Leadsom) sent our predecessor Committee the Government’s response to the Green Paper. As this was received after that Committee’s last meeting in the previous Parliament it is only now being considered.

The Government’s response consisted of answers to the Commission’s 32 questions and a covering note. It noted that the Bank of England and the Financial Conduct Authority would be submitting separate responses.

The Government introduced its remarks in the covering note by saying that:

“A fully functioning single market in capital would see more efficient allocation of capital without constraint due to location, diversification of sources of finance for

All of which can be seen in full at http://europeanmemorandum.cabinetoffice.gov.uk/memorandum/green-paper-building-capital-markets-union.
businesses, provide confidence to investors accessing markets, and a decreased reliance on bank funding. In turn, risk would be shared beyond borders and national banking sectors, cushioning local shocks and contributing to sustainable economic growth. These are ambitions that will take time to achieve but they are of central importance to the future growth and competitiveness of the EU and its economies.”

74.8 In the covering note the Government set out the principles it believed should underpin the development of the Commission’s Action Plan for the CMU and the actions it thought were essential in the immediate, medium, and longer term to develop the capital markets that would sustain and strengthen the EU into the future. It said that in developing its priorities, it had employed the three following principles, which would form a reasonable basis for drawing up the Action Plan:

- every initiative should aim to contribute to sustainable growth and competitiveness in the EU;
- initiatives should be assessed and prioritised on the basis of impact and feasibility; and
- the Commission should require a high burden of proof to justify the creation of new market infrastructures or institutional change.

74.9 The Government then commented that the Commission’s consultation should provide a firm evidence base on which to base policy responses and that the Action Plan must set out, on the basis of the consultation, a set of evidenced priorities that have impact. It suggested that in the immediate term, the CMU Union should focus on:

- restarting the securitisation market;
- lowering the barriers to accessing capital markets;
- supporting development of a pan-EU private placement market;
- opening the market for SME lending by establishing minimum standards for SME credit information; and
- removing barriers to funds operating cross-border.

74.10 For the medium term, the Government suggested that the CMU should focus on:

- establishing vibrant venture capital markets in every Member State;
- developing EU corporate bond markets;
- promoting international consistency, cooperation and trade; and
- ensuring the European Supervisory Authorities contribute to a competitive EU.

74.11 As for the longer term, the Government suggested that the CMU should focus on building capability in all Member States.
74.12 But the Government also said that it did not see value in progressing the following measures:

- transfer of direct supervisory responsibilities to EU institutions;
- a 29th regime for harmonisation of personal pensions;
- tax harmonisation; and
- harmonisation of insolvency laws.

74.13 The Government concluded its remarks in the covering note by saying:

“Improving the provision of capital market financing to business and achieving a single market in capital are long term goals and will take many years to achieve fully. We need to start now, taking action where there is a clear evidence base in support of initiatives by the Commission and by Member States. We can also take the time to complete further in-depth research on some important issues where we still need to build the evidence base to support action. With the right programme of reforms, we should be able to look back at the end of Commission’s mandate to see significant progress, with burgeoning capital markets in every Member State. Flows of capital between Member States will increase, with businesses of all sizes finding it easier to access capital both in the home market and elsewhere. Businesses will be better informed about their financing options and the financial sector better able to meet their funding needs. The EU will be more competitive, with higher growth and better productivity. The EU will be a more attractive destination for international investors; and all investors will feel more confident about pursuing a wider range of investment opportunities and channels.

“The issues outlined in this note are important to the UK and, we believe, would be key drivers of this transformation. They should form a central part of the CMU reform programme. Given the relatively short time we have had to consider the issues in the Green Paper, there will be areas for action which the UK may want to build upon or has not yet identified. In particular, the Bank of England and FCA will also submit their own responses to this consultation. The UK is fully prepared to consider any measures which contribute to CMU where action can be justified by evidence and respects the principles of subsidiarity and proportionality. In line with the Commission’s Better Regulation initiative, legislative proposals should be subject to a robust impact assessment, be directed at achieving the Commission’s own objectives for CMU and should be pursued only where non-legislative measures are known not to be sufficient.

“With the most developed capital markets in Europe, the UK has a key role to play in building a Capital Markets Union. The UK will participate actively in the debate that follows this Green Paper to set the direction of CMU. The Commission must act decisively and above all, the CMU Action Plan should send a clear message: Europe is open for business.”
Previous Committee Reports


75 Europe 2020 Strategy

Committee’s assessment: Politically important
Committee’s decision: Cleared from scrutiny; drawn to the attention of the Treasury, Business, Innovation and Skills and Work and Pensions Committees

Document details: Commission Communication on the results of a consultation on the Europe 2020 Strategy
Legal base: —
Department: HM Treasury
Document numbers: (36754), 7273/15, COM(15) 100

Summary and Committee’s conclusions

75.1 In March 2010 the European Council endorsed a “Europe 2020 Strategy” for the coming decade. It set out the challenges facing the EU over the coming decade and the need for “a strategy to turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion”. It set out five headline targets, covering employment, research and development, climate and energy, education, social inclusion and poverty reduction, which the EU should aim to achieve by 2020. On 5 May 2014, the European Commission launched a public consultation for a midterm review of the Europe 2020 Strategy, with a deadline of 31 October 2014.

75.2 In this Communication the Commission reports the results of its public consultation on the Europe 2020 Strategy.

75.3 The Government says that no policy implications arise directly from the Communication, but tells us that the UK submitted a response in 2014 to the Commission on the review and describes the three principles which guided the response and the six recommendations the Government made.

75.4 Whilst clearing this document from scrutiny, we draw it to the attention of the House for the information it gives about how the review of the Europe 2020 Strategy is developing. We think it will be of particular interest to the Treasury, Business, Innovation and Skills and Work and Pensions Committees.

Full details of the documents: Commission Communication on the results of the public consultation on the Europe 2020 strategy for smart, sustainable and inclusive growth: (36754), 7273/15, COM(15) 100.
Background

75.5 In March 2010 the European Council endorsed a “Europe 2020 Strategy” for the coming decade. It set out the challenges facing the EU over the coming decade and the need for “a strategy to turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion” and proposed:

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

75.6 On May 5 2014, the European Commission launched a public consultation for a midterm review of the Europe 2020 Strategy, with a deadline of 31 October 2014.

The document

75.7 In this Communication the Commission reports the results of its public consultation on the Europe 2020 Strategy. It has an introduction, an executive summary, sections on context, key figures, and main outcomes, and a conclusion. In its introduction the Commission explains what the Europe 2020 Strategy is and says that the first years of the strategy coinciding with a financial and economic crisis had significant impact on progress towards its goals.

75.8 In relation to context, noting that in March 2014 it published a Communication taking stock of the strategy, the Commission says that:

- halfway to the 2020 deadline the delivery of jobs and growth objectives is mixed;
- the legacy of the crisis is particularly acute in labour markets, with youth unemployment being a major concern;
- it is important for Member States to prioritise growth-enhancing expenditure;
- the crisis has also affected progress towards headline targets, with a negative impact on employment and poverty targets, which together with the research and development targets are not on course to be met;
- the EU is on course to meet its targets on education, climate and energy;

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• the 2020 targets are political commitments, with targets not sufficiently ambitious at the national level to meet EU-level targets;

• mixed progress on the 2020 targets can be attributed to the time lag with which structural reforms affect the economy;

• growing divergences exist in the performance of key indicators across and within Member States, and have hampered progress; and

• in light of this, one of the aims of the public consultation was to gain knowledge on delivery of the strategy.

75.9 In the key figures section the Commission says that:

• 775 respondents took part in the consultation;

• 41% of these were social partners, 20% governments and public authorities, 19% individual citizens, 14% academics and 6% companies;

• a majority of participants covered all areas of the strategy in their replies;

• EU and national institutions have also fed into the consultation; and

• reflections on the review have generated strong interest and mobilised stakeholders involved in the implementation of the strategy.

75.10 As for outcomes and conclusions the Commission, noting that there were four main outcomes from the public consultation, says first that the scope and the objectives of the Europe 2020 Strategy are considered to be relevant, with 86% of respondents considering that the EU needs a strategy for jobs and growth. Secondly, it considers that the current five headlines targets are relevant and mutually reinforcing, with 87% considering them a useful tool. The Commission says there is strong support for keeping the current five targets, with 78% of respondents considering them sufficient, and with no clear hierarchy emerging from the consultation. Thirdly, the Communication notes the flagship initiatives have served their purpose, although, however, a significant number of respondents give a mixed assessment. Finally, the Commission considers that improving delivery and implementation would be desirable — 40% of respondents say the Europe 2020 Strategy has not made a difference, and the Commission argues that successful implementation has been affected by weaknesses in awareness, involvement and enforcement.

The Government’s view

75.11 In his Explanatory Memorandum of 3 June 2015 the Financial Secretary to the Treasury (Mr David Gauke) introduces his remarks by saying that the Government notes this Commission summary of the results of the consultation and that no policy implications arise directly from the Communication. He then tells us that under the
previous Government the UK submitted a response on 31 October 2014 to the Commission on the review. He says that the response was guided by three principles:

- that the focus of Europe 2020 Strategy should remain firmly on jobs and growth and enabling the private sector to produce this growth;

- that the strategy should seek to balance actions by Member States with cost effective EU-level policy levers, while fully respecting the principles of subsidiarity and not incurring additional EU-level spending; and

- that there should be a partnership between the Commission and Member States, with the Commission providing analysis and Member States taking ownership of reforms.

75.12 The Minister continues that the UK’s response made six recommendations:

- that the Europe 2020 Strategy should remain focused on growth and jobs, including by avoiding new or extended EU-level targets;

- the strategy should pay greater attention to creating a favourable business environment and access to credit;

- to increase transparency and ownership, the Commission should share its analysis and draft CSRs (adopted annually in the context of the European Semester);

- the Commission should make greater use of pre-existing globally recognised indicators;

- the structural reform elements of the European Semester should be moved to a biennial system, with half of Member States subject to the process each year; and

- there should be a renewed and ambitious EU-level structural reform agenda, including regulatory reform, a stronger Single Market and far-reaching free trade agreements.

Previous Committee Reports

None.

76 Taxation: Savings Directive

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


Legal base  (a) Article 115 TFEU; —; unanimity; (b) Articles 115, 218(5) and 218(8) TFEU; —; unanimity; (c) Articles 115, 218(6)(b) and 218(8) TFEU; —; unanimity

Department  HM Treasury

Document numbers  (a) (36765), 7373/15, COM(15) 129
     (b) (36782), 7759/15 + ADD 1, COM(15) 150
     (c) (36783), 7784/15 + ADD 1, COM(15) 151

Summary and Committee’s conclusions

76.1 The European Savings Directive requires Member States to disclose interest earned by a resident of another Member State to that Member State, so allowing the relevant Member State to check whether tax has been paid on that interest as appropriate. The EU has an agreement with, amongst other third countries, Switzerland to apply equivalent provisions. In March 2014 an amended European Savings Directive was agreed. This is due to come into force at the beginning of 2017. However, in the meantime a 2011 Directive on administrative cooperation in the field of taxation was amended in December 2014, in order to bring a new global standard for automatic exchange of tax information into EU law. This amended Directive overlaps and goes beyond the European Savings Directive.

76.2 In the light of this duplication, it was agreed by Member States and the Commission during the negotiations on the amended Directive that the European Savings Directive would be repealed. Therefore the Commission proposes a draft Directive, document (a), to apply a phased repeal of the European Savings Directive as the amended Directive on administrative cooperation comes into force. As a result of the proposal there would be no period where Member States have to report under both Directives, so reducing the burden on business and ensuring no unnecessary duplication of effort.

76.3 The draft Council Decisions, documents (b) and (c), are to allow the EU to sign and conclude an amending protocol to its agreement with Switzerland to ensure that it is in line with EU and international developments on international tax transparency, in particular in consequence of adoption of the amended Directive on administrative cooperation and the proposed repeal of the European Savings Directive.
76.4 The Government explains to us, given the apparent benefit for UK interests, its support for all three of these proposals.

76.5 Given its constitutional requirements, for Switzerland to be able to commence first exchanges under the new standards by September 2018, the amending protocol needed to be signed by the end of May. So the Government also gave advanced notice that it intended to vote for the Council Directive concerning signature at the ECOFIN Council of 26 May, even though, regrettably, this would override the scrutiny reserve.

76.6 We have no reason to question these practical proposals and clear the documents from scrutiny. Moreover we accept that the Government’s action in relation to the scrutiny reserve was in the circumstances justified.


**Background**

76.7 The European Savings Directive (EUSD), Council Directive 2003/48/EC, requires Member States to disclose interest earned by a resident of another Member State to that Member State. This allows the relevant Member State to check whether tax has been paid on that interest as appropriate. The EUSD also contains transitional arrangements, currently applied by two Member States, under which they levy and exchange a withholding tax.

76.8 Following adoption of the EUSD the EU reached agreement with Andorra, Liechtenstein, Monaco, San Marino and Switzerland for these third countries to apply equivalent provisions. Equivalent provisions have also been applied in the dependent territories of the UK and the Netherlands.

76.9 An amendment was agreed to the EUSD by the Member States in March 2014 which expanded the categories of information to be reported in Directive 2014/48/EU. This amended EUSD is due to come into force at the beginning of 2017. However, in the meantime the Directive on administrative cooperation in the field of taxation (DAC), Directive 2011/16/EU, was amended in December 2014. This amended Directive, Council Directive 2014/107/EU, brings the new global standard for automatic exchange of tax information (known as the Common Reporting Standard) into EU law. It overlaps and goes beyond the EUSD.
The documents

76.10 In the light of this duplication, it was agreed by Member States and the Commission during the negotiations on the amended DAC that the EUSD would be repealed. Therefore the Commission proposes a draft Directive, document (a), to apply repeal of the EUSD for 27 Member States, including the UK, from 1 January 2016 when the amended DAC comes into force. In the case of Austria the amended DAC does not come into force until 2017, so the Commission proposes that repeal of the EUSD would not come into force for Austria until 30 June 2017.

76.11 The obligation for paying agents and Member States to pass through information received prior to the repeal to other Member States and the obligations in respect of beneficial owners would continue, to 5 October 2016 and the end of 2016 respectively.

76.12 As a result of the proposal there would be no period where Member States have to report under both the EUSD and the amended DAC. This would reduce the burden on business and ensure no unnecessary duplication of effort.

76.13 The draft Council Decisions, documents (b) and (c), are to allow the EU to sign and conclude an amending protocol to its agreement with Switzerland to ensure that it is in line with EU and international developments on international tax transparency, in particular in consequence of adoption of the amended DAC and the proposed repeal of the EUSD. The Commission says that its proposals would minimise costs and administrative burdens both for tax administrations and for economic operators and increase tax transparency in Europe by binding Switzerland to the new international standards.

76.14 Given Swiss constitutional requirements for ratification, for Switzerland to be able to commence first exchanges under the new standards by September 2018, the amending protocol needed to be signed by the end of May.

The Government’s view

76.15 In his Explanatory Memorandum of 1 June 2015 about the draft Council Directive, document (a), the Financial Secretary to the Treasury (Mr David Gauke) comments that:

- repeal of the amended EUSD would result in no loss of information to the UK;
- the EUSD would be switched off when the DAC is switched on; and
- this would reduce what would otherwise be additional reporting burdens on UK financial institutions that result from the differences in how information is exchanged and from differences in timing.

76.16 In his Explanatory Memorandum of 27 May 2015 about the draft Council Decisions, documents (b) and (c), the Minister says that:

- following agreement of the revised DAC, the Commission, on the basis of a previous mandate to update the existing Savings Agreements, has been negotiating
with Switzerland, Monaco, Liechtenstein, Andorra and San Marino so that they also adopt the new global standard, together with the Member States;

- the first to complete these negotiations with the Commission is Switzerland, which would ensure Switzerland is in line with EU and international developments on international tax transparency;

- these proposals would ensure that Switzerland is in line with EU developments and would increase tax transparency in Europe; and

- this will help the UK realise the expected yield from these new agreements.

**The Minister’s letter of 21 May 2015**

76.17 In accordance with the House’s Scrutiny Reserve Resolution, the Minister wrote apologetically to explain the Government’s intention to override the scrutiny reserve in relation to the draft Council Decision concerning signature of the amended agreement, document (b). Noting that these proposals were published after dissolution of the last Parliament and that for Switzerland to be able to commence first exchanges under the new standards by September 2018, the amending protocol needed to be signed by the end of May, the Minister says that:

- the proposal was to be taken at the ECOFIN Council of 26 May;

- as it was subject to a unanimous vote UK support was necessary for adoption of the proposal; and

- the Government intended to vote in favour of the proposal at that Council

76.18 The Minister explains further that, given the constitutional requirements for ratification, meant for Switzerland to be able to commence first exchanges under the new standards by September 2018, the agreement with the EU would need to be signed by the end of May:

- if this deadline were missed then it was likely the agreements would not, due to Swiss constitutional procedure, be signed for another 12 months;

- if this lead to a delay in exchange of information, this would delay expected yield for the UK and the other Member States; and

- given this and the impact that delay would have on the UK national interest, the Government believed it right to support this proposal, while fully recognising that this regrettably represented a scrutiny override.

**Previous Committee Reports**

None.
**77 Manipulation of deficit data in Valencia**

**Committee’s assessment**
- Politically important

**Committee’s decision**
- Cleared from scrutiny

**Document details**
- (a) Draft Council Decision imposing a fine on Spain — manipulation of deficit data in the Autonomous Community of Valencia;
- (b) Commission Report on *the investigation related to the manipulation of statistics in Spain*

**Legal base**
- (a) and (b) Article 8 (1) Regulation 1173/2011;
- QMV

**Department**
- HM Treasury

**Document numbers**
- (a) (36840), 8801/15, COM(15) 209
- (b) (36841), 8818/15 + ADDs 1–2, COM(15) 211

**Summary and Committee’s conclusions**

77.1 Article 126(1) TFEU requires Member States to avoid excessive government deficits. Accusations of misrepresentation of government deficit and debt data, whether intentional or due to serious negligence, will be investigated by the European Commission, which will report to the European Council. The Council is then empowered to impose a fine on a Member State found guilty of such misrepresentation.

77.2 In July 2014, the Commission launched an inquiry into the manipulation of statistical data in Spain, specifically referring to the Autonomous Community of Valencia. It concluded that there had been serious negligence in the non-recording and therefore non-reporting of expenditure and the failure to respect the accrual principle in national accounts, leading to an inaccurate reporting of the government deficit data of Spain to Eurostat in March 2012. Accordingly, the Commission recommended to the Council that Spain be fined €18.93 million (£13.46 million).

77.3 We note the decision of the Council to fine the Kingdom of Spain for serious negligence in the reporting of statistical data. Under the circumstances, a fine was required by EU legislation. The accurate reporting of statistical data is vital for the coordination of economic policy within the Eurozone. However, we also note that the misrepresentation of data had a limited impact on economic governance of the EU, that there was no intent to deceive, and that the various bodies involved cooperated fully with the investigation, and that accordingly the fine was reduced to 20% of the possible total.

77.4 We further note that this is a matter for Member States within the Eurozone. The UK cannot face any financial sanction under the Stability and Growth Pact.

Background

77.5 Article 126(1) of the TFEU requires Member States to avoid excessive government deficits. Economic policy coordination within the EU requires accurate government deficit and debt data. Regulation (EU) No 1173/2011 of the European Parliament and of the Council (16 November 2011) provides for a system of sanctions to enforce budgetary surveillance in the Eurozone. Specifically, Article 8(1) of the Regulation empowers the Council, upon recommendation from the Commission, to impose a fine on a Member State guilty of misrepresentation of government debt and deficit data, whether by design or by serious negligence.

The documents

77.6 In July 2014, the Commission began an investigation into the alleged manipulation of statistics in Spain. This related to data from the Autonomous Community of Valencia. Its purpose was to assess whether serious indications of the misrepresentation of debt and deficit data could be confirmed, and, if so, whether such misrepresentation occurred as a result of intent or negligence.

77.7 The Commission found that there were irregularities in the accounting, recording and reporting of expenditure in Valencia over a number of years. The irregularities included:

- Lack of application of the accrual principle;
- Use of extra-budgetary accounts;
- Late recording of expenditure;
- Misleading reporting of statistical information from Valencia to the national authorities.

77.8 As a result of these irregularities, the Excessive Deficit Procedure (EDP) data communicated to Eurostat in March 2012 failed to include some of the expenditure incurred by Valencia. This led to a breach of the rules of the European System of Accounts (ESA 95).

77.9 The Commission also found that a key role in the failure to record and report expenditure was played by the Regional Audit Office of Valencia (Intervención General de la Generalitat Valenciana, IGGV). Moreover, information on unrecorded expenditure was publicly available through the yearly reports of the Regional Court of Auditors of Valencia,
which had recommended that the IGGV should ensure accurate recording of such expenditure.

77.10 The Commission concluded that its report satisfied Article 8(1) of Regulation (EU) No 1173/2011 and therefore recommended to the Council that a fine be imposed on the Member State. Article 8(2) of the Regulation stipulates that the fine should not exceed 0.2% of the most recent gross domestic product of the Member State concerned.

**Calculation of the fine**

77.11 Article 14 of Commission Delegated Decision 2012/678/EU of 29 June 2012 requires that the Commission, in imposing a fine for the manipulation of statistics as covered by the Regulation, should ensure that the fine is effective, proportionate and dissuasive. This is a two-step process.

77.12 First, the reference amount of the fine is decided. This is calculated according to Article 14(2) of the Commission Delegated Decision, which says that the reference amount should be equal to 5% of the larger impact of the misrepresentation of the general government deficit of Spain for the relevant years covered by the notification in the context of the EDP. This figure was calculated as €1.893 billion, which means that the reference figure was €94.65 million.

77.13 The second part of the process is a decision as to whether to vary the reference figure upwards or downwards, according to the specific circumstances of the case. The Commission in this case concluded that the misrepresentation of the data had had no significant effect on the functioning of the economic governance of the EU, since it had had little impact on the deficit of Spain as a whole. Accordingly, it considered that a reduction of the fine could be granted on this account.

77.14 The Commission also determined that the misrepresentation had taken place due to serious negligence. As there was no intent to deceive, on this account no variation in the reference amount was applied.

77.15 Furthermore, the Commission ruled that the misrepresentation of data was the responsibility of one entity, the IGGV, within the general government sector of Spain, and under these circumstances a reduction of the fine could be granted.

77.16 Finally, the Commission noted that the Spanish statistical authorities and, indeed, all bodies concerned in the case had demonstrated a high degree of cooperation with the investigation, providing the necessary information as and when requested. On these grounds, a reduction of the fine could be granted.

77.17 The final recommended amount of the fine, taking into account the mitigating circumstances detailed above, was therefore set at €18.93 million (£13.46 million), which equates to 20% of the reference amount. This is the recommendation of the Commission to the Council.
The Council decision

77.18 The Council accepts the recommendation of the European Commission’s report into the matter and proposes to impose a fine of €18.93 million (£13.46 million) on the Kingdom of Spain for the misrepresentation, by serious negligence, of government deficit data.

The Government’s view

77.19 The Government is clear that there are no policy implications arising from this draft Council Decision for the UK. The Decision is addressed only to the Kingdom of Spain as a member of the Eurozone. The UK cannot face any similar type of financial sanction.

Previous Committee Reports

None.
### 78 European Semester 2015: Country Specific Recommendations

**Committee’s assessment**  
- Politically important

**Committee’s decision**  
- Cleared from scrutiny

**Document details**  
- (a) Commission Communication about the *Country Specific Recommendations for the 2015 European Semester*;  
- (b) Draft Council Recommendation about broad economic guidelines for the Eurozone;  
- (c) Draft Council Recommendation about Belgium’s National Reform and Stability Programmes for 2015;  
- (d) Draft Council Recommendation about Bulgaria’s National Reform and Convergence Programmes for 2015;  
- (e) Draft Council Recommendation about the Czech Republic’s National Reform and Convergence Programmes for 2015;  
- (f) Draft Council Recommendation about Denmark’s National Reform and Convergence Programmes for 2015;  
- (g) Draft Council Recommendation about Germany’s National Reform and Stability Programmes for 2015;  
- (h) Draft Council Recommendation about Estonia’s National Reform and Stability Programmes for 2015;  
- (i) Draft Council Recommendation about Ireland’s National Reform and Stability Programmes for 2015;  
- (j) Draft Council Recommendation about Spain’s National Reform and Stability Programmes for 2015;  
- (k) Draft Council Recommendation about France’s National Reform and Stability Programmes for 2015;  
- (l) Draft Council Recommendation about Croatia’s National Reform and Convergence Programmes for 2015;  
- (m) Draft Council Recommendation about Italy’s National Reform and Stability Programmes for 2015;  
- (n) Draft Council Recommendation about Latvia’s National Reform and Stability Programmes for 2015;  
- (o) Draft Council Recommendation about Lithuania’s National Reform and Stability Programmes for 2015;  
- (p) Draft Council Recommendation about Luxembourg’s National Reform and Stability Programmes for 2015;  
- (q) Draft Council Recommendation about Hungary’s National Reform and Convergence Programmes for

Legal base
(a) —; (b)–(aa) Articles 121(2) and 148(4) TFEU; —;

Department
HM Treasury

Document numbers
(a) (36843); 8886/15; COM(15) 250; (b) (36844); 8888/15; COM(15) 251; (c) (36845); 8890/15; COM(15) 252; (d) (36846); 8891/15; COM(15) 253; (e) (36848); 8893/15; COM(15) 254; (f) (36849); 8894/15; COM(15) 255; (g) (36850); 8895/15; COM(15) 256; (h) (36851); 8896/15; COM(15) 257; (i) (36852); 8898/15; COM(15) 258; (j) (36853); 8899/15; COM(15) 259; (k) (36854); 8900/15; COM(15) 260; (l) (36855); 8901/15; COM(15) 261; (m) (36856); 8902/15; COM(15) 262; (n) (36857); 8903/15; COM(15) 263; (o) (36860); 8920/15; COM(15) 264; (p) (36861); 8923/15; COM(15) 265; (q) (36862); 8924/15; COM(15) 266; (r) (36863); 8926/15; COM(15) 267; (s) (36864); 8927/15; COM(15) 268; (t) (36865); 8929/15; COM(15) 269; (u) (36866); 8931/15; COM(15) 270; (v) (36867);
Summary and Committee’s conclusions

78.1 The annual European Semester is an EU-level system for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. On the previous Committee’s recommendation the four documents for the first stage of the 2015 European Semester, the Annual Growth Survey, the draft Joint Employment Report, the EU Autumn Forecast, an economic report, and the Alert Mechanism Report, the first stage of the Macroeconomic Imbalance Procedure, were debated in European Committee B on 4 March, prior to their consideration by the European Council on 19–20 March.510

78.2 In March, as the second stage of the 2015 European Semester, the Commission published its Communication about an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews of Member State economies. It was accompanied by Commission Staff Working Documents giving Country Reports for all Member States (including the UK), apart from Greece. The Commission also published in March a draft Council Recommendation on broad guidelines for economic policies of Member States and the EU and a draft Council Decision on guidelines for the employment policies of Member states and the EU.

78.3 These, together with a package of recommended Country Specific Recommendations reflecting the analysis in the Country Reports and material submitted by Member States in their National Reform Plans, which the Commission was expected to present in May, were to be considered by the June European Council. The previous Committee recommended that the Commission Communication and the UK Country Report, together with, once available, the Commission’s draft 2015 Country Specific Recommendations and the two documents concerning economic and employment guidelines be debated in European Committee B. It suggested that these debates should take place before the documents were considered at the June European Council.511

78.4 The first of the present documents is a Commission Communication about the 2015 Country Specific Recommendations. The second concerns broad economic guidelines for

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the eurozone. The remaining 25 documents are the draft Country Specific Recommendations for all Member States, bar Cyprus, Greece and the UK.  

78.5 The Government comments favourably on the Commission Communication concerning the 2015 Country Specific Recommendations. As for the other documents the Government tells us that they have no direct policy implications for the UK. But it adds that it encourages all Member States to enact positive changes in the light of the Country Specific Recommendations.

78.6 In normal circumstances we would recommend the Commission Communication and the draft Council Recommendation on broad economic guidelines for inclusion in a debate on a number of documents to be considered in preparation for or at the European Semester debate. However, consideration of all relevant documents has now been completed by the Council and the European Council and the 2015 European Semester process has itself been completed. We think therefore that there is little purpose now in debating these documents and accordingly clear them from scrutiny and rescind the predecessor Committee’s debate recommendations on the earlier documents. Nevertheless, we note that we will wish to revert to the normal pattern of debates on the documents for the 2016 European Semester.

78.7 As for the draft Country Specific Recommendations for the other Member States, whilst clearing them from scrutiny, we draw them to the attention of the Treasury Committee for the information they give about the economic developments the Commission thinks necessary for them.

Sweden and delivering a Council opinion on the 2015 Convergence Programme of Sweden: (36872), 8941/15, COM(15) 276.

**Background**

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

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

78.10 On the previous Committee’s recommendation the four documents for the first stage of the 2015 European Semester, the AGS, the draft Joint Employment Report, the EU Autumn Forecast and the AMR, were debated in European Committee B on 4 March, prior to their consideration by the European Council on 19–20 March.513

78.11 As the second stage of the 2015 European Semester the Commission published its Communication about an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews. It was accompanied by Commission Staff Working Documents giving Country Reports for all Member States (including the UK) apart from Greece. These reports contained an in-depth review of macroeconomic imbalances (where applicable), and an assessment of Member State progress in addressing their 2014 Country Specific Recommendations (CSRs), approved by the June 2014 European Council. These documents, together with a package of recommended CSRs reflecting the analysis in the Country Reports and material submitted by Member States in their National Reform Plans, which the Commission was expected to present in May, were to be considered by the June European Council.

78.12 The accompanying Commission Staff Working Document, entitled Country Report United Kingdom 2015, comprised an assessment of the general UK economic situation

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513 Op cit.
and its outlook, the in-depth reviews of possible macroeconomic imbalances identified in the AMR and a statement of the UK progress regarding the completion of 2014 CSRs. The Commission’s view was that the UK was experiencing macroeconomic imbalances, which required policy action and monitoring — this was the lowest of the five categories of imbalances the Commission made use of in its Communication.

78.13 The Commission also published in March a draft Council Recommendation on broad guidelines for economic policies of Member States and the EU and a draft Council Decision on guidelines for the employment policies of Member states and the EU.

78.14 The predecessor Committee recommended that these four documents be debated in European Committee B together with, once available, the Commission’s draft 2015 CSRs. It suggested that these debates should take place before the documents were considered at the June European Council and urged the Government to schedule the debates as soon as possible in this Parliament. It added that in the debates Members might discuss the Commission’s overall and Member State specific assessments of economic, particularly macroeconomic, issues.\textsuperscript{514}

\section*{The documents}

\subsection*{Commission Communication}

78.15 In the introduction to its Communication about the CSRs for the 2015 European Semester, document (a), the Commission:

\begin{itemize}
  \item says that growth is returning to the EU, with low oil prices and steady global growth;
  \item observes that these positive developments are short-term, and that greater efforts are needed to overcome weaknesses; and
  \item notes that 2015 CSRs focus on investment, ambitious structural reform, striking a balance between short-term stabilisation and long term sustainability and improving employment policy and social protection.
\end{itemize}

78.16 In the second section the Commission elaborates on its new approach for the European Semester, saying that:

\begin{itemize}
  \item changes made include focussing on the priorities in the AGS, publishing the Commission’s country-specific and eurozone analysis three months earlier and more intensive outreach with national authorities and social partners;
  \item the changes have been welcomed; and
  \item the streamlining has continued in the CSRs, where fewer recommendations have been made.
\end{itemize}

\textsuperscript{514} Op cit.
78.17 In the third section, about the focus of the 2015 Semester, the Commission:

- notes that some progress was made overall on the 2014–15 CSRs, but that there was limited progress in areas such as opening product and services markets;
- says macroeconomic imbalances are being corrected, but risks remain high in some Member States;
- notes that there is a time lag between the introduction of labour market reforms and their full effect on job creation, which may help explain why unemployment remains high;
- points out that the EU and its Member States have recognised the need to boost investment, and that as part of its work to strengthen the links between investment, structural reforms and fiscal responsibility, it has clarified the flexibility in the Stability and Growth Pact; and
- says that for Croatia and France it has analysed their reform commitments and concluded there is no need to escalate the MIP.

78.18 The fourth section concerns the key objectives of the 2015 CSRs. The Commission says that these are:

- removing barriers to financing and supporting investment, with the UK specifically noted to have made progress last year;
- improving the business environment and productivity;
- adapting public finances to make them more supportive of growth, with the new deadline for the UK’s Excessive Deficit Procedure being noted;\(^{515}\) and
- improving employment policy and social protection.

78.19 The Commission also notes the reduction in the number of recommendations, which means that some areas will be monitored as part of other processes and in the Country Reports.

78.20 The Commission concludes by calling on the Council to endorse the approach for the 2015 CSRs, and for Member States to implement them strictly. It also says it is working on the mid-term review of the Europe 2020 Strategy and intends to present it by the end of this year.

**Broad guidelines for economic policies of eurozone Member States**

78.21 The draft Council Recommendation on implementation of the broad guidelines for the economic policies of eurozone Member States, document (b), suggests:

\(^{515}\) (36859), 8905/15: see chapter 79 of this report.
• using peer pressure to promote structural reforms that facilitate the correction of large internal and external debts and support investment;

• regularly assessing delivery of reforms in those Member States with serious imbalances;

• continuing regular assessment of structural reforms;

• taking decisions, by spring 2016, on the follow-up to the coordination exercise on reducing the high tax wedge on labour and on reforming services markets;

• coordinating fiscal policies to ensure that the aggregate eurozone fiscal stance is in line with sustainability risks and cyclical conditions;

• holding, by spring 2016, discussions on improvements in the quality and sustainability of public finances, focussing in particular on the prioritisation of investment at national and EU levels and on making tax systems more growth friendly;

• monitoring effective functioning of national fiscal frameworks;

• ensuring timely finalisation of the follow up of the Comprehensive Assessment by the European Central Bank, implementation of the Bank Recovery and Resolution Directive, completion of ratification of the Intergovernmental Agreement on the Single Resolution Fund and making the Fund fully operational as from January 2016;

• promoting measures to deepen market-based finance, to improve access to finance for SMEs and to develop alternative sources of finance;

• encouraging further reforms of national insolvency frameworks;

• taking forward work on deepening Economic and Monetary Union; and

• contributing to improvement of the economic surveillance framework in the context of a planned report from the Presidents of the European Council, the European Parliament, the Commission, the European Central Bank, and the Eurogroup.

Council Recommendations and Opinions for Member States other than the UK

78.22 In May the Commission published CSRs for Member States, containing draft Council Recommendations and Opinions. We report on the UK CSR in a separate chapter in this report.\textsuperscript{516}

78.23 In the CSR for Belgium, document (c), the draft Council Recommendation and Opinion suggest:

\textsuperscript{516} Op cit.
• achieving a fiscal adjustment of at least 0.6% of GDP towards the medium-term objective in 2015 and in 2016;

• using windfall gains to put the general government debt ratio on an appropriate downward path;

• complementing the pension reform by linking the statutory retirement age to life expectancy;

• agreeing on an enforceable distribution of fiscal targets among all government levels;

• adopting and implementing a comprehensive tax reform broadening the tax base;

• improving functioning of the labour market by reducing financial disincentives to work; and

• restoring competitiveness by ensuring that wages evolve in line with productivity.

78.24 In the CSR for Bulgaria, document (d), the draft Council Recommendation and Opinion suggest:

• avoiding a structural deterioration in public finances in 2015 and achieving an adjustment of 0.5% of GDP in 2016;

• taking measures to improve tax collection and addressing the shadow economy;

• improving cost-effectiveness of the health care system;

• completing, by December 2015, a system-wide independent asset-quality review and a bottom-up stress test of the banking sector;

• performing a portfolio screening for the pension fund and insurance sectors;

• reviewing and fortifying banking and non-banking financial sector supervision;

• improving corporate governance in financial intermediaries;

• developing an integrated approach for groups at the margin of the labour market, in particular older workers and young people not in employment, education or training;

• establishing a transparent mechanism for setting the minimum wage and minimum social security contributions;

• adopting reform of the School Education Act, and increasing participation in education of disadvantaged children, by improving access to good-quality early schooling; and

• with a view to improving the investment climate, preparing a comprehensive reform of the insolvency framework drawing on international best practice.
78.25 In the CSR for the Czech Republic, document (e), the draft Council Recommendation and Opinion suggest:

- achieving a fiscal adjustment of 0.5% of GDP in 2016;
- improving the cost-effectiveness and governance of the healthcare sector;
- fighting tax evasion, simplifying the tax system and implementing the anti-corruption plan;
- increasing transparency and efficiency of public procurement;
- reducing the high level of taxation levied on low-income earners, by shifting taxation to other areas;
- improving availability of affordable childcare;
- adopting higher education reform and ensuring adequate training for teachers; and
- supporting poorly performing schools and taking measures to increase participation among disadvantaged children.

78.26 In the CSR for Denmark, document (f), the draft Council Recommendation and Opinion suggest:

- avoiding deviating from the medium-term objective in 2016;
- enhancing productivity, in particular in the services sectors oriented towards the domestic market;
- easing restrictions on retail establishments; and
- taking measures to remove remaining barriers posed by authorisation and certification schemes in the construction sector.

78.27 In the CSR for Germany, document (g), the draft Council Recommendation and Opinion suggest:

- increasing public investment in infrastructure, education and research, including by using the available fiscal space;
- fostering private investment by improving the efficiency of the tax system;
- using the ongoing review to improve the design of fiscal relations between the federation, Länder and municipalities, particularly with a view to ensuring adequate public investment at all levels of government;
- increasing incentives for later retirement;
- taking measures to reduce high labour taxes and social security contributions and to address the impact of fiscal drag;
• revising the fiscal treatment of mini-jobs to facilitate the transition to other forms of employment;

• taking measures to stimulate competition in the services sector; and

• removing the remaining barriers to competition in the railway markets.

78.28 In the CSR for Estonia, document (h), the draft Council Recommendation and Opinion suggest:

• avoiding deviating from the fiscal medium-term objective in 2015 and 2016;

• improving labour market participation;

• improving incentives to work through measures targeting low-income earners;

• taking action to narrow the gender pay gap;

• ensuring high-quality social and childcare services at local level;

• increasing participation in vocational education and training, and its labour market relevance, in particular by improving the availability of apprenticeships; and

• focusing public support for research and innovation on a limited number of smart specialisation areas.

78.29 In the CSR for Ireland, document (i), the draft Council Recommendation and Opinion suggest:

• ensuring a correction of the excessive deficit in 2015;

• achieving a fiscal adjustment of 0.6% of GDP towards the medium-term objective in 2016;

• using windfall gains from better-than-expected economic and financial conditions to accelerate deficit and debt reduction;

• limiting discretionary powers to change expenditure ceilings beyond predefined contingencies;

• broadening the tax base and reviewing tax expenditures;

• increasing cost-effectiveness of the healthcare system;

• rolling out activity-based funding throughout the health system;

• increasing the work-intensity of households and addressing the poverty risk of children by tapering the withdrawal of benefits and supplementary payments upon return to employment and through better access to affordable full-time childcare;
• finalising restructuring solutions for a vast majority of mortgages in arrears by end-2015 and strengthening the monitoring arrangements by the Central Bank of Ireland;

• ensuring that restructuring solutions for loans to distressed SMEs and residual commercial real-estate loans are sustainable; and

• ensuring that a central credit registry is operational by 2016.

78.30 In the CSR for Spain, document (j), the draft Council Recommendation and Opinion suggest:

• ensuring correction of the excessive deficit by 2016 by taking the necessary structural measures in 2015 and 2016 and using windfall gains to accelerate the deficit and debt reduction;

• strengthening transparency and accountability of regional public finances;

• improving cost-effectiveness of the healthcare sector;

• completing reform of the saving banks’ sector and completing restructuring and privatisation of state owned savings banks;

• promoting alignment of wages and productivity, taking into account differences in skills and local labour market conditions as well as divergences in economic performance across regions, sectors and companies;

• taking steps to increase the quality and effectiveness of job search assistance and counselling to tackle youth unemployment;

• streamlining minimum income and family support schemes and fostering regional mobility;

• removing the barriers preventing businesses from growing, including size-contingent regulations;

• adopting the planned reform on professional services; and

• accelerating implementation of the law on market unity.

78.31 In the CSR for France, document (k), the draft Council Recommendation and Opinion suggest:

• ensuring action under the excessive deficit procedure and a correction of the excessive deficit by 2017 by reinforcing the budgetary strategy;

• taking measures for all years and using all windfall gains for deficit reduction;

• specifying the expenditure cuts planned for these years and providing an independent evaluation of the impact of key measures;
making the spending review effective and identifying savings opportunities across government;

limiting the rise in local authorities’ administrative expenditure;

taking measures by March 2016 to bring the pension system into balance;

ensuring that the labour cost reductions stemming from the tax credit for competitiveness and employment and from the responsibility and solidarity pact are sustained;

evaluating the effectiveness of these schemes in the light of labour and product market rigidities;

reforming wage-setting to ensure that wages evolve in line with productivity;

ensuring that minimum wage developments are consistent with the objectives of promoting employment and competitiveness;

reducing, by the end of 2015, regulatory impediments to companies’ growth;

removing restrictions on access to and the exercise of regulated professions;

simplifying and improving the efficiency of the tax system;

taking action to reduce the taxes on production and the corporate income statutory rate, while broadening the tax base on consumption;

taking measures as from 2015 to abolish inefficient taxes that are yielding little or no revenue;

reforming labour law to provide more incentives for employers to hire on open-ended contracts;

facilitating take up of derogations at company and branch level from general legal provisions;

reforming the law creating the accords de maintien de l’emploi by the end of 2015 in order to increase their take-up by companies; and

taking action to reform the unemployment benefit system in order to bring the system back to budgetary sustainability and to provide more incentives to return to work.

78.32 In the CSR for Croatia, document (l), the draft Council Recommendation and Opinion suggest:

ensuring a correction of the excessive deficit by 2016 by taking measures in 2015 and reinforcing the budgetary strategy for 2016;

publishing and implementing the findings of the expenditure review;
• improving control over expenditure at central and local level, in particular by establishing a sanctioning mechanism for entities breaching budgetary limits;
• adopting the Fiscal Responsibility Act and strengthening the capacity and role of the State Audit Office;
• introducing a recurrent property tax and improving VAT compliance;
• reinforcing public debt management;
• discouraging early retirement by raising penalties for early exits;
• improving efficiency of pension spending;
• tackling fiscal risks in healthcare;
• tackling weaknesses in the wage-setting;
• fostering alignment of wages with productivity and macroeconomic conditions;
• strengthening incentives for the unemployed and inactive to take up paid employment;
• carrying out the reform of the social security system, based on the 2014 review, and further consolidating social benefits by improving targeting and eliminating overlaps;
• reducing the extent of fragmentation and overlap between levels of central and local government;
• increasing transparency and accountability in the public corporate sector;
• advancing the listing of minority packages of shares of public companies and privatisations;
• reducing parafiscal charges and removing excessive barriers for service providers;
• improving the efficiency and quality of the justice system;
• reinforcing the pre-insolvency and insolvency frameworks for businesses in order to facilitate debt restructuring and putting in place a personal insolvency procedure; and
• strengthening the capacity of the financial sector to support the recovery.

78.33 In the CSR for Italy, document (m), the draft Council Recommendation and Opinion suggest:

• achieving a fiscal adjustment of at least 0.25% of GDP towards the medium-term objective in 2015 and of 0.1% of GDP in 2016 by taking the necessary structural
measures in both 2015 and 2016, taking into account the allowed deviation for the implementation of major structural reforms;

- implementing the privatisation programme and using windfall gains to make further progress towards putting the general government debt ratio on a downward path;

- implementing the enabling law for tax reform by September 2015;

- adopting the planned national strategic plan for ports and logistics;

- ensuring that the management of EU funds improves;

- adopting and implementing laws modernising the public administration;

- revising the statute of limitations by mid-2015;

- ensuring that the reforms adopted to improve the efficiency of civil justice help reduce the length of proceedings;

- tackling, by the end of 2015, remaining weaknesses in the corporate governance of banks and taking measures to accelerate the reduction of non-performing loans;

- strengthening active labour market policies;

- establishing an effective framework for wage bargaining;

- as part of efforts to tackle youth unemployment, adopting and implementing planned school reform and expanding vocationally-oriented tertiary education;

- implementing the simplification agenda for 2015–17 to ease the administrative and regulatory burden;

- adopting competition-enhancing measures in all the sectors covered by the competition law, and taking decisive action to remove remaining barriers; and

- ensuring that local public services contracts not complying with the requirements on in-house awards are rectified by end-2015.

78.34 In the CSR for Latvia, document (n), the draft Council Recommendation and Opinion suggest:

- ensuring that the deviation from the medium-term objective in 2015 and 2016 is limited to the allowance linked to the systemic pension reform;

- improving vocational education and training;

- speeding up the curricula reform and increasing the offer of apprenticeships;

- ensuring that the new financing model of the higher education system rewards quality;
better targeting of research financing and incentivising private investment in innovation;

- reforming social assistance and increasing employability;

- reducing the high tax wedge for low-income earners by shifting tax burden to other sources less detrimental to growth;

- improving accessibility, cost-effectiveness and quality of the healthcare system and linking hospital financing to performance mechanisms;

- improving efficiency of the judicial system by providing adequate means to fight tax evasion and by strengthening the role of the Judicial Council; and

- improving public service legislation to strengthen the conflict of interest regime and link remuneration to responsibilities.

78.35 In the CSR for Lithuania, document (o), the draft Council Recommendation and Opinion suggest:

- avoiding deviation from the medium-term objective in 2015 and ensuring that the deviation in 2016 is limited to the allowance linked to the systemic pension reform;

- broadening the tax base and improving tax compliance;

- addressing the challenge of a shrinking working-age population by improving the labour-market relevance of education, increasing attainment in basic skills, and improving the performance of the healthcare system;

- reducing the high tax wedge for low income earners;

- adopting a comprehensive reform of the pension system that also addresses the challenge of pension adequacy;

- improving the coverage and adequacy of unemployment benefits and cash social assistance; and

- improving the employability of those looking for work.

78.36 In the CSR for Luxembourg, document (p), the draft Council Recommendation and Opinion suggest:

- broadening the tax base, in particular on consumption, recurrent property taxation and environmental taxation;

- closing the gap between the statutory and effective retirement age; and

- reforming the wage-setting system with a view to ensuring that wages evolve in line with productivity.
78.37 In the CSR for Hungary, document (q), the draft Council Recommendation and Opinion suggest:

- achieving a fiscal adjustment of 0.5% of GDP towards the medium-term objective in 2015 and of 0.6% of GDP in 2016;
- restoring normal lending to the real economy and removing obstacles to market-based portfolio cleaning;
- reducing liability risks linked to increased state ownership in the banking sector;
- reducing distortive sector-specific taxes;
- removing entry barriers in the service sector;
- reducing the tax wedge for low-income earners, including by shifting taxation to areas less distortive to growth;
- continuing to fight tax evasion;
- reducing compliance costs and improving efficiency of tax collection;
- strengthening structures in public procurement that promote competition and transparency and improving the anti-corruption framework;
- reorienting the budget resources to active labour market measures to foster integration into the primary labour market;
- improving the coverage of social assistance and unemployment benefits;
- increasing participation of disadvantaged groups in education and improving the support offered to these groups through targeted teacher training;
- strengthening measures to facilitate the transition between different stages of education and to the labour market; and
- improving the teaching of essential competences.

78.38 In the CSR for Malta, document (r), the draft Council Recommendation and Opinion suggest:

- following correction of the excessive deficit, achieving a fiscal adjustment of 0.6% of GDP towards the medium-term objective in 2015 and 2016;
- improving basic skills and reducing early school-leaving by promoting the continuous professional development of teachers;
- increasing the statutory retirement age and linking it to life expectancy; and
- improving small and micro-enterprises’ access to finance.
78.39 In the CSR for the Netherlands, document (s), the draft Council Recommendation and Opinion suggest:

- shifting public expenditure towards supporting investment in Research and Development (R&D) and work on improving private R&D expenditure;
- decreasing mortgage interest tax deductibility so that tax incentives to invest in unproductive assets are reduced;
- providing for a more market-oriented pricing mechanism in the rental market and further relating rents to household income in the social housing sector; and
- reducing the level of contributions to the second pillar of the pension system for those in the early years of working life.

78.40 In the CSR for Austria, document (t), the draft Council Recommendation and Opinion suggest:

- avoiding deviation from the medium-term objective in 2015 and 2016;
- ensuring budget neutrality of the tax reform aimed at reducing the tax burden on labour;
- correcting misalignment between the financing and spending responsibilities of the different levels of government;
- taking measures to ensure the long-term sustainability of the pension system;
- strengthening measures to increase the labour market participation of older workers and women;
- taking steps to improve the educational achievement of disadvantaged young people;
- removing disproportionate barriers for service providers and impediments to setting up interdisciplinary companies; and
- addressing the potential vulnerabilities of the financial sector in terms of foreign exposure and insufficient asset quality.

78.41 In the CSR for Poland, document (u), the draft Council Recommendation and Opinion suggest:

- following correction of the excessive deficit, achieving a fiscal adjustment of 0.5% of GDP towards the medium-term objective both in 2015 and 2016;
- establishing an independent fiscal council;
- limiting use of reduced VAT rates;
- starting the process of aligning pension arrangements for farmers and miners with those for other workers, and adopting a timetable for progressive full alignment;
- putting in place a system for assessing and recording farmers’ incomes;
- taking measures to reduce the excessive use of temporary and civil law contracts in the labour market; and
- removing obstacles to investment in railway projects.

78.42 In the CSR for Portugal, document (v), the draft Council Recommendation and Opinion suggest:
- ensuring a correction of the excessive deficit in 2015;
- achieving a fiscal adjustment of 0.6% of GDP towards the medium-term objective in 2016;
- enforcing laws to better control expenditure;
- improving medium-term sustainability of the pension system;
- safeguarding financial sustainability of state-owned enterprises;
- further improving tax compliance and efficiency of the tax administration;
- promoting alignment of wages and productivity, taking into account differences in skills and local labour market conditions as well as divergences in economic performance across regions, sectors and companies;
- ensuring that developments relating to the minimum wage are consistent with the objectives of promoting employment and competitiveness;
- improving efficiency of public employment services; and
- ensuring effective activation of benefit recipients and adequate coverage of the minimum income scheme.

78.43 In the CSR for Romania, document (w), the draft Council Recommendation and Opinion suggest:
- taking all necessary measures to complete the financial assistance programme;
- limiting deviation from the fiscal medium-term objective in 2015 to a maximum of 0.25% of GDP, as specified under the 2013–15 balance-of-payments programme, and returning to the medium-term objective in 2016;
- implementing the comprehensive tax compliance strategy;
- tackling undeclared work, and pushing ahead with the equalisation of the pensionable age for men and women;
• strengthening provision of labour market measures;
• ensuring that the national employment agency is adequately staffed;
• establishing clear guidelines for setting the minimum wage transparently;
• introducing the minimum insertion income;
• increasing provision and quality of early childhood education and care;
• reducing early school leaving;
• pursuing the national health strategy 2014–20 to remedy issues of poor accessibility, low funding and inefficient resources; and
• adopting the law on reforming corporate governance of state-owned enterprises.

78.44 In the CSR for Slovenia, document (x), the draft Council Recommendation and Opinion suggest:

• ensuring a durable correction of the excessive deficit in 2015, and achieving a fiscal adjustment of 0.6% of GDP towards the medium-term objective in 2016;
• adopting the Fiscal Rule Act and revising the Public Finance Act;
• advancing long-term reform of the pension system;
• adopting, by the end of 2015, a healthcare and long-term care reform;
• reviewing the mechanism for setting the minimum wage;
• increasing employability of low skilled and older workers;
• addressing long-term unemployment and providing adequate incentives to extend working lives;
• bringing down the level of non-performing loans;
• improving credit risk monitoring capacity in banks;
• continuing corporate restructuring and maintaining strong corporate governance in the Bank Asset Management Company;
• taking measures to improve access to finance for SMEs and micro companies;
• adopting a strategy for the Slovenian Sovereign Holding with a clear classification of assets, implementing an annual asset management plan and applying performance criteria; and
• improving the efficiency of civil justice to reduce the length of proceedings.
78.45 In the CSR for Slovakia, document (y), the draft Council Recommendation and Opinion suggest:

- improving cost-effectiveness of the healthcare sector;
- increasing tax collection;
- addressing long term unemployment by introducing activation measures, second chance education and high-quality training tailored to individuals’ needs;
- improving incentives for women to remain in or return to employment, by improving the provision of childcare facilities;
- improving teacher training and the attractiveness of teaching as a profession to stem the decline in educational outcomes;
- increasing participation of Roma children in mainstream education and in high-quality early childhood education;
- to boost investment in infrastructure, improving and streamlining administrative procedures for obtaining land-use and construction permits; and
- increasing competition in public tenders and improve supervisory mechanisms in public procurement.

78.46 In the CSR for Finland, document (z), the draft Council Recommendation and Opinion suggest:

- ensuring that the excessive deficit is brought below 3% of GDP by 2017;
- continuing efforts to reduce the fiscal sustainability gap and strengthening conditions for growth;
- adopting the agreed pension reform and gradually eliminating early exit pathways;
- ensuring effective design and implementation of administrative reforms concerning municipal structure and social and healthcare services;
- pursuing efforts to improve the employability of young people, older workers and the long-term unemployed;
- ensuring that wages evolve in line with productivity; and
- taking measures to open the retail sector to effective competition.

78.47 In the CSR for Sweden, document (aa), the draft Council Recommendation and Opinion suggest:

- addressing the rise in household debt by adjusting fiscal incentives; and
• to alleviate the structural under-supply of housing, fostering competition in the construction sector, streamlining the planning and appeals procedures for construction and revising the rent-setting system to allow more market-oriented rent levels.

The Government’s view

78.48 In his Explanatory Memorandum of 3 June 2015 about the Commission’s overarching Communication, document (a),517 the Financial Secretary to the Treasury (Mr David Gauke), says that:

• the Government notes the Communication;

• it welcomes the changes made by the Commission to the 2015 European Semester, which are in line with the suggestions made by the UK in its response to the consultation on the Europe 2020 Strategy mid-term review; and

• it welcomes in particular the Commission making fewer CSRs, which are more narrowly focussed on the key issues of jobs and growth.

78.49 In his Explanatory Memorandum of 27 May 2015 about the draft Council Recommendations and Opinions, documents (b)–(aa) the Minister says that they have no direct policy implications for the UK. He adds that:

• renewed focus on structural reforms — at the EU, eurozone and Member State level — is needed to help embed recovery and address the EU’s important medium term growth issues;

• the Government therefore encourages all Member States to enact positive changes in light of the CSRs.

78.50 The Minister also notes, in connection with the UK’s CSR,518 that Member States which received Recommendations and Opinions in similar areas to the UK are:

• public finances — Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Spain, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Latvia, Malta, Poland, Portugal, Romania and Slovenia;

• housing and private debt — Hungary, Ireland, the Netherlands, Portugal and Sweden;

• labour market — Austria, Belgium, Germany, Denmark, Estonia, Spain, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Latvia, Poland, Portugal, Romania, Slovakia and Slovenia; and

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517 This Explanatory Memorandum also concerns other documents specific to the UK: see chapter 79 of this report.
518 Op cit.
• education and skills — Austria, Belgium, the Czech Republic, Germany, Estonia, Hungary, Italy, Lithuania, Latvia, Malta, Romania and Slovakia.

Previous Committee Reports

None.

79 European Semester 2015: the UK

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny

Document details
(a) Draft Council Recommendation about the UK’s excessive government deficit (b) Draft Council Recommendation about the UK’s National Reform and Convergence Programmes for 2015 (c) Draft Council Recommendation about the UK’s excessive government deficit

Legal base
(a) Article 126(7) TFEU; —; QMV of all Member States bar the UK; (b) Article 121(2) and 148(4) TFEU; —; QMV; (c) Article 126(8) TFEU; —; QMV of all Member States bar the UK

Department
HM Treasury

Document numbers
(a) (36859), 8908/15 + ADD 1, COM(15) 245; (b) (36873), 8943/15, COM(15) 277; (c) (36878), 8976/15, COM(15) 244

Summary and Committee’s conclusions

79.1 The annual European Semester is an EU-level system for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. On the previous Committee’s recommendation the four documents for the first stage of the 2015 European Semester, the Annual Growth Survey, the draft Joint Employment Report, the EU Autumn Forecast, an economic report, and the Alert Mechanism Report, the first stage of the Macroeconomic Imbalance Procedure, were debated in European Committee B on 4 March, prior to their consideration by the European Council on 19-20 March.\footnote{20}
In March, as the second stage of the 2015 European Semester, the Commission published its Communication about an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews of Member State economies. It was accompanied by Commission Staff Working Documents giving Country Reports for all Member States (including the UK) apart from Greece. The Commission Staff Working Document for the UK comprised an assessment of the general UK economic situation and its outlook, an in-depth review of possible macroeconomic imbalances identified in the Alert Mechanism Report and a statement of the UK progress regarding the completion of 2014 Country Specific Recommendations. The Commission’s view was that the UK was experiencing macroeconomic imbalances, which required policy action and monitoring.

The Commission also published in March a draft Council Recommendation on broad guidelines for economic policies of Member States and the EU and a draft Council Decision on guidelines for the employment policies of Member States and the EU.

These four documents, together with a package of recommended Country Specific Recommendations reflecting the analysis in the Country Reports and material submitted by Member States in their National Reform Plans, which the Commission was expected to present in May, were to be considered by the June European Council. The previous Committee recommended that these documents be debated in European Committee B together with, once available, the Commission’s draft 2015 Country Specific Recommendations. It suggested that these debates should take place before the documents were considered at the June European Council.

The Stability and Growth Pact is an EU agreement to ensure that Member States pursue sound public finances and coordinate their fiscal policies. In July 2008 the Council placed the UK in the Pact’s corrective arm, the excessive deficit procedure. In December 2009 it revised its Recommendations to the UK.

In May the Commission published the 2015 Country Specific Recommendations for the UK and also two draft Council Recommendations about revising the UK’s excessive deficit procedure, in the light of the Commission’s assessment that the UK had not taken effective action under the procedure. The UK’s 2015 Country Specific Recommendations were endorsed by the European Council on 25-26 June and the two draft Council Recommendations were adopted by the ECOFIN Council on 19 June.

In commenting on the three new documents the Government has given us its somewhat upbeat view of the Commission’s draft Recommendations and implied criticisms of UK policies.
79.8 In normal circumstances we would recommend the UK’s 2015 Country Specific Recommendations for inclusion in the European Semester debate, as suggested by the predecessor Committee. We would also recommend, given their close connection to the Commission’s views of the UK in its European Semester assessments, the two draft Council Recommendations for inclusion in that debate.

79.9 However, consideration of these documents, together with the Commission Communication reviewing Member States’ macroeconomic situations and the accompanying UK Country Report, together with the economic and employment policy guidelines, has now been completed by the Council and the European Council and the 2015 European Semester process has been completed. We think therefore that there is little purpose now in debating these documents and accordingly clear the new documents from scrutiny and rescind the predecessor Committee’s debate recommendations on the earlier documents.

79.10 Nevertheless, we note that we will wish to revert to the normal pattern of debates on the documents for the 2016 European Semester.

**Full details of the documents:** (a) Draft Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in the United Kingdom: (36859), 8908/15 + ADD 1, COM(15) 245; (b) Draft Council Recommendation on the National Reform Programme of the United Kingdom and delivering a Council opinion on the 2015 Convergence Programme of the United Kingdom: (36873), 8943/15, COM(15) 277; (c) Draft Council Decision establishing that no effective action has been taken by the United Kingdom in response to the Council Recommendation of 2 December 2009: (36878), 8976/15, COM(15) 244.

**Background**

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

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

79.13 On the previous Committee’s recommendation the four documents for the first stage of the 2015 European Semester, the AGS, the draft Joint Employment Report, the EU Autumn Forecast and the AMR, were debated in European Committee B on 4 March, prior to their consideration by the European Council on 19-20 March. 522

79.14 As the second stage of the 2015 European Semester the Commission published its Communication about an assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews. It was accompanied by Commission Staff Working Documents giving Country Reports for all Member States (including the UK) apart from Greece. These reports contained an in-depth review of macroeconomic imbalances (where applicable), and an assessment of Member State progress in addressing their 2014 Country Specific Recommendations (CSRs), approved by the June 2014 European Council. These documents, together with a package of recommended CSRs reflecting the analysis in the Country Reports and material submitted by Member States in their National Reform Plans, which the Commission was expected to present in May, were to be considered by the June European Council.

79.15 The accompanying Commission Staff Working Document, entitled Country Report United Kingdom 2015, comprised an assessment of the general UK economic situation and its outlook, the in-depth reviews of possible macroeconomic imbalances identified in the AMR and a statement of the UK progress regarding the completion of 2014 CSRs. The Commission’s view was that the UK was experiencing macroeconomic imbalances, which required policy action and monitoring — this was the lowest of the five categories of imbalances the Commission made use of in its Communication.

79.16 The Commission also published in March a draft Council Recommendation on broad guidelines for economic policies of Member States and the EU and a draft Council Decision on guidelines for the employment policies of Member states and the EU.

79.17 The predecessor Committee recommended that these four documents be debated in European Committee B together with, once available, the Commission’s draft 2015 CSRs. It suggested that these debates should take place before the documents were considered at the June European Council and urged the Government to schedule the debates as soon as possible in this Parliament. It added that in the debates Members might discuss the Commission’s overall and Member State specific assessments of economic, particularly macroeconomic, issues, saying that the Commission’s UK Country Report would be of particular interest. 523

79.18 The Stability and Growth Pact (SGP) is an EU agreement to ensure that Member States pursue sound public finances and coordinate their fiscal policies. Some of the SGP’s rules aim to prevent fiscal policies being potentially problematic, while others are intended

522 Op cit.
523 Op cit.
to correct excessive budget deficits or excessive public debt burdens. It involves fiscal monitoring, against a number of criteria, of Member States by the Commission and the Council and the issuing of yearly recommendations for policy actions to ensure full compliance with the SGP. It has both a preventative and a dissuasive (corrective) arm, the latter being known as the excessive deficit procedure.

79.19 In July 2008 the Council placed the UK in the excessive deficit procedure. In December 2009 it revised its Recommendations to the UK.524

The documents

79.20 The Commission’s recommended CSRs for each Member State are introduced by a preamble. The preamble to the UK draft CSRs, document (b):

- notes the previous decisions taken as part of the European Semester, and recalls the conclusions of the UK’s 2015 Country Report;
- notes that the UK is in the corrective arm of the SGP, and the draft Council Recommendation, document (a), to correct the excessive deficit by 2016-17;
- says that a high level of household debt has been identified as a possible macroeconomic imbalance, and that planning reforms have been undertaken but are unlikely to have a short-term impact;
- mentions that the UK labour market has performed well, but points to challenges around low work intensity and female and youth employment; and
- suggests boosting investment is a key challenge and that the UK should ensure the business tax system is pro-investment.

79.21 In light of the preamble, the Commission suggests the following recommendations to the UK for the period 2015-16:

- ensure effective action under the excessive deficit procedure and endeavour to correct the excessive deficit in a durable manner by 2016-17, in particular by prioritising capital expenditure;
- take further steps to boost supply in the housing sector, including by implementing the reforms of the national planning policy framework;
- address skills mismatches by increasing employers’ engagement in the delivery of apprenticeships;
- take action to further reduce the number of young people with low basic skills; and
- further improve the availability of affordable, high-quality, full-time childcare.

524 Op cit.
79.22 In the recitals to the Commission’s draft Council Decision that the UK has taken no effective action in response to the December 2009 Council Recommendation under the excessive deficit procedure, document (c), the points made are that:

- in December 2009 the Council had recommended that the UK bring the general government deficit below the SGP reference level of 3% of Gross Domestic Product (GDP) by 2014/15;

- it also specified that the Government should implement the fiscal measures in 2009/10 as planned in the 2009 Budget, ensure an average annual fiscal effort of 1.75% of GDP between 2010/11 and 2014/15, in order to contribute to bringing the general government gross debt ratio back on a declining path and accelerate the reduction of the deficit if economic or budgetary conditions turned out better than expected;

- the budget deficit was 5.2% of GDP in 2014/15, above the 3% reference level;

- the average annual reduction in the structural deficit was 0.7% of GDP between 2010/11 and 2014/15;

- when adjusted for the impact of revisions to potential GDP growth, and revenue developments compared to the expected relationship between revenue and GDP growth, the adjusted average annual improvement in the structural deficit is 1.1%, which is below the 1.75% target;

- the discretionary fiscal consolidation measures set out between the Pre-Budget Report 2009 and the 2014 Autumn Statement amounts to 3.5% of GDP between 2010/11 and 2014/15;

- despite the implemented fiscal consolidation plan, the UK government deficit did not fall below 3% in 2014/15, and the UK did not achieve an average annual fiscal effort of 1.75% of GDP; and

- overall the UK response to the Council Recommendation has not been sufficient.

79.23 Given the Commission’s suggested finding that the UK has not responded adequately to the 2009 Council Recommendation the Council would need to adopt a new Recommendation that the UK reduce the government deficit below 3% of GDP within a given period, which would also need to establish a deadline of six months for the Government to demonstrate it is taking effective action and need to be consistent with a minimum annual improvement in the structural deficit of 0.5% of GDP. Accordingly the new Council Recommendation, document (a), the Commission proposes would suggest that the UK should:

- reach a headline deficit of 4.1% of GDP in 2015/16 and 2.7% in 2016/17 at the latest, which should be consistent with delivering an improvement in the structural balance of 0.5% of GDP in 2015/16 and 1.1% in 2016/17, based on the Commission’s updated 2015 Spring Forecast;
• fully implement the consolidation measures incorporated into all Budgets and Autumn Statements up and including the 2015 Budget to achieve the recommended structural effort, with any modifications being fiscally-neutral in relation to current plans;

• further detail the expenditure cuts in the forthcoming spending Review, these being necessary to ensure correction of the excessive deficit by 2016/17;

• accelerate the reduction of the headline deficit in 2015/16 and 2016/17 if economic, financial or budgetary conditions turn out better than currently expected — budgetary consolidation measures should secure a lasting improvement in the general government structural balance in a growth-friendly manner and, in particular further cuts in capital expenditure should be avoided;

• comply with the obligation to set out a medium term objective as laid down by the SGP; and

• implement the planned reforms of increasing the state pension age in order to contribute towards strengthening the long-term sustainability of the public finances.

79.24 The new Council Recommendation would also:

• establish a six month deadline for the UK to take effective action in response to the Council Recommendation and to report in detail the consolidation strategy envisaged to achieve the required targets; and

• comment that, to ensure the success of the fiscal consolidation strategy, it would also be backed by consolidation with comprehensive structural reforms in line with the proposed CSRs for the UK, particularly those related to the preventative arm of the MIP.

The Government’s view

79.25 In his Explanatory Memorandum of 3 June 2015525 the Financial Secretary to the Treasury (Mr David Gauke) first says the Government notes the Commission’s SGP draft Council Decision, document (c), and draft Council Recommendation, document (a), the latter of which is referenced in the first draft Recommendation in the UK draft SCRs, document (b). He continues that:

• over the period of the Commission’s assessment described in the preamble to the draft Council Decision the UK deficit has been cut by half from its post-war peak while delivering the strongest growth of any major European economy last year and the latest IMF data shows that the Government reduced the structural deficit

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525 This Explanatory Memorandum is also concerned with the Commission’s Communication on the 2015 European Semester CSRs: see (36843) 8886/15 in chapter 78 of this Report.
by more than half between 2010 and 2013, a larger absolute reduction than any other country in the G7; and

- the Commission’s draft Council Recommendation that the UK reduce the deficit below 3% of GDP by 2016/17 is in line with plans as set out in the 2015 Budget and the requirement of Member States to avoid excessive government deficits does not apply to the UK unless it adopts the euro, rather it should “endeavour to avoid an excessive deficit”.

79.26 Turning to the other UK draft CSRs the Minister says, in relation to CSR 2 about taking further steps to boost supply in the housing sector, including by implementing the reforms of the National Policy Planning Framework, that:

- the housing market is recovering from the severe impact of the financial crisis;
- in 2014 there were 137,000 housing starts in England — a 10% increase on 2013;
- annual housing starts and planning approvals are at seven year highs;
- the Government is committed to making the vital reforms needed to address the structural issues in the housing market;
- this includes measures to support home ownership, increase housing supply and reform the planning system;
- the Commission’s draft is in line with the Government’s priorities in this area; and
- it should be noted that housing and planning is a devolved matter and, although there is a shared commitment to boosting housing supply, including action on reviewing national planning frameworks, that this is being taken forward in different ways and with different emphasis in each devolved administration, as outlined in the UK National Reform Programme.

79.27 On CSR 3, about addressing skills mismatches by increasing employer engagement in apprenticeships, taking further action to reduce the number of people with low skills and further improving the availability of affordable, high-quality and full time childcare, the Minister says that:

- the Commission rightly highlights how important it is that young people can acquire the skills that they, and employers and the wider economy need;
- in addition to the 2.2 million new apprenticeships delivered over the last five years, the Government is committed to delivering three million more in the next five years;
- on basic skills, young people over 19 who have left full-time education without an English and Maths qualification are eligible for free training to obtain these;
devolved administrations have introduced guarantees of education, training or employment for targeted groups;

- on childcare, the Government is committed to providing 30 hours of free childcare to working parents of three and four year-old children; and

- devolved administrations also have responsibility for childcare policy, and this varies across jurisdictions.

79.28 Finally, the Minister reiterates that the UK is not subject to sanctions under the SGP nor at any stage of the European Semester.

**Previous Committee Reports**
None.

**80 Corporate taxation**

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**Document details**

- Commission Communication — *A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action*

**Legal base**

- HM Treasury

**Document numbers**

- (36940), 9949/15 + ADDs 1–2, COM(15) 302

**Summary and Committee’s conclusions**

80.1 As cross-border activity has increased, particularly following development of the single market, EU attention has focussed on various aspects of corporate taxation.

80.2 With this Communication the Commission presents an Action Plan it has developed to review the corporate tax framework in the EU. The Commission discusses a series of measures, focused on five areas for EU action: a common consolidated tax base; ensuring effective taxation where profits are generated; additional measures for a better tax environment for business; further progress on tax transparency; and EU tools for coordination.

80.3 The Government tells us that it will support those measures that will help to prevent aggressive tax planning by multinational enterprises and enable the international tax rules to be applied more effectively. But it emphasises that the UK will not sign up to any measure that would undermine its tax sovereignty, or damage the prospects for growth in the EU.
80.4 This Communication foreshadows measures, including importantly a revised proposal for a common consolidated corporate tax base, which will require close scrutiny, once presented. So, whilst clearing the document from scrutiny, we draw it to the attention of the Treasury Committee.

**Full details of the documents:** Commission Communication: *A fair and efficient corporate tax system in the European Union: 5 key areas for action*: (36940), 9949/15 + ADDs 1–2, COM(15) 302.

**Background**

80.5 As cross-border activity has increased, particularly following development of the single market, EU attention has focussed on various aspects of corporate taxation. For example the Parent-Subsidiary Directive and the Interest and Royalties Directive have sought to deal with issues of double taxation and the Commission has suggested other matters it asserts need attention, such as a Common Consolidated Corporate Tax Base (CCCTB)\(^{526}\) or greater cooperation between tax authorities.\(^{527}\)

**The document**

80.6 The Commission has developed an Action Plan to review the corporate tax framework in the EU, which it says in this Communication is driven by the following objectives:

- to re-establish the link between taxation and economic activity;
- to ensure that Member States can correctly value corporate activity in their jurisdiction;
- to create a competitive and growth-friendly corporate tax environment for the EU, resulting in a more resilient corporate sector; and
- to protect the single market and secure a strong EU approach to external corporate tax issues.

80.7 With the Action Plan itself the Commission discusses a series of measures to meet these objectives, focused on five areas for EU action:

- a CCCTB;
- ensuring effective taxation where profits are generated;
- additional measures for a better tax environment for business;

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• further progress on tax transparency; and
• EU tools for coordination.

**A Common Consolidated Corporate Tax Base**

80.8 The present proposed Directive, to introduce a CCCTB on which the House and eight other chambers raised reasoned opinions, would:

• provide for a single set of harmonised rules for calculating the tax base for taxable profits of companies resident in Member States;
• allow companies to opt into this CCCTB or to continue to operate within national tax systems;
• allow groups of companies to calculate their total EU-wide consolidated profit for tax purposes;
• provide for that profit to be allocated to companies making up the group on the basis of an apportionment formula composed of sales, payroll, number of employees and assets in each Member State; and
• provide that Member States would then tax the profit apportioned to companies in their Member State.528

80.9 The Commission now says that:

• it intends to publish a new legislative proposal for a CCCTB in 2016;
• while preserving the existing objective of improving the environment for businesses in the EU, the Commission will propose removing the optional aspect, which it asserts would risk introducing additional avoidance opportunities;
• it hopes that, by making the CCCTB compulsory, at least for multinational entities, this would eliminate mismatches, through a common tax base, and possible manipulation of transfer pricing rules, through the consolidation of group profits;
• it recognises that the CCCTB is an ambitious initiative and that consolidation has been the most difficult aspect in Member States’ negotiations on the present proposal;
• it proposes, therefore, a step-by-step approach focused primarily on agreeing and implementing a common tax base, which would also include an element of cross-border loss relief, allowing groups to offset their EU-wide losses against their profits; and
• full consolidation proposal would then be re-introduced at a later stage.

528 Ibid.
Ensuring effective taxation where profits are generated

80.10 The Commission proposes that, while the new CCCTB proposal is being prepared, work should continue on the international aspects of the current proposal. This would include definition of a “permanent establishment”, which determines the level of economic presence required in a jurisdiction for it to be able to tax the profits of a non-resident business, and Controlled Foreign Company rules, which prevent the diversion of profits that should be taxed in the jurisdiction in which a multinational group is resident.

80.11 The Commission recognises there is a link with the ongoing G20/OECD Base Erosion and Profit Shifting (BEPS) project, which is due to conclude in 2015, and invites the Council to achieve consensus on these elements within 12 months. It says that it will work with Member States and businesses in order to build on the BEPS Transfer Pricing guidelines and ensure the coordinated implementation of these at EU level.

80.12 The Commission says that it will explore ways to ensure the effective taxation of profits, while creating a competitive and growth-friendly corporate tax environment. In particular, it recommends that the Code of Conduct for Business Taxation criteria are modified, so that the Code of Conduct Group can ensure effective taxation, and that the proposed recast of the Interest and Royalties Directive be adopted, so that the benefits of the Directive are only given if the interest and royalty payments are subject to effective taxation elsewhere in the EU. The Commission says further that it will continue to provide guidance to Member States on intellectual property regimes in line with the approach agreed by the Code of Conduct Group in 2014, with the possibility of preparing binding legislative measures if Member States do not apply this new approach consistently over the next 12 months. (The agreement was based on the BEPS “modified nexus approach”, which links the income deriving from an intellectual property asset to the research and development expenditure that was undertaken to create it.)

Additional measures for a better tax environment for business

80.13 As part of its revised CCCTB proposal, the Commission will recommend cross-border loss relief for group entities within the EU, which would later be followed by full consolidation. It will also recommend, before the summer of 2016, ways to improve the multilateral Arbitration Convention, which is the current mechanism to resolve double taxation disputes in the EU.

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529 The Code of Conduct Group (Business Taxation), set up by the ECOFIN Council in 9 March 1998, deals mainly with assessing the tax measures which fall within the scope of the December 1997 Code of Conduct for Business Taxation and overseeing the provision of information on those measures.

530 (32374), 16907/11 + ADDs 1–2: see Forty-ninth Report HC 428-xlv (2010-12), chapter 17 (14 December 2011).

531 See BEPS modified nexus approach

532 See Transfer Pricing and the Arbitration Convention.
**Further progress on tax transparency**

80.14 In an annex to the Communication, the Commission has published a consolidated version of Member States’ independent lists of third country non-cooperative tax jurisdictions, featuring those jurisdictions identified by at least ten Member States. The Commission suggests that further work on third countries and tax good governance standards should be undertaken in the context of the Code of Conduct Group within the next twenty-four months.

80.15 The Commission says that it is also launching a public consultation on various options for the disclosure obligations of certain corporate tax information, including public country-by-country reporting — this consultation will feed into a cost-benefit analysis of these options to be concluded in the first quarter of 2016.

**EU tools for coordination**

80.16 In consultation with Member States, the Commission will work on a proposal to review the Code of Conduct Group, in order to ensure that the Group can react efficiently to cases of harmful tax competition. The Commission has also decided to prolong the mandate and expand the scope of the Platform on Tax Good Governance.533

**Conclusion**

80.17 In conclusion the Commission says:

“This Action Plan provides the foundation on which to build a fairer, growth-friendly corporate tax framework for EU. Measures proposed will contribute to achieving revenue stability, a stronger Single Market, greater corporate resilience and efficiency and a fair and level-playing field for businesses.

“This Action Plan has identified the core areas of work for the immediate, medium and long-term future. The harmonisation of corporate tax rates is not part of this agenda. The aim is to coordinate Member States tax systems so that they can better combat aggressive tax planning.

“In the short term, some issues related to base erosion and profit shifting can usefully be discussed. The issue of effective taxation of profits in the Single Market also needs to be addressed. The Commission would urge the current and upcoming Presidencies to concentrate their efforts on making progress on these issues in the context of existing legislative proposals and by reforming the Code of Conduct for Business Taxation. The Commission expects good results to be achieved in the EU over the next 18 months, following the BEPS agenda.

“In the medium to long term, the revised CCCTB proposal will offer a strong tool to establish fair, predictable and efficient corporate taxation in the EU, including the

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533 See *Platform on Tax Good Governance*. 
final objective of consolidation. This will only materialise if Member States are committed and invest sufficiently in the new proposal. Strong political commitment will be necessary to achieve successful results on a post-BEPS corporate tax agenda for the EU.

“This Action Plan will be the basis for Commission work on corporate tax policy over the next years. Work will evolve to take account of the input of the European Parliament, contributions of other EU institutions and stakeholders, and outcomes of the OECD BEPS initiative. The Commission will keep progress under review.

“Ultimately, the key to reforming corporate taxation in the EU, to make it fairer and more efficient, is in the hands of the Member States. Member States need to overcome their differences for the sake of fairness, competitiveness and efficiency. It is therefore time to move forward.”

80.18 The Communication is accompanied by a Staff Working Document, which summarises the discussions held on this topic at a stakeholder meeting of 13 April, assesses tax competition in the EU, summarises empirical evidence in relation to profit shifting by multinational companies and outlines a number of options for addressing this problem.

The Government’s view

80.19 In his Explanatory Memorandum of 29 June 2015 the Financial Secretary to the Treasury (Mr David Gauke) says first, that whilst noting that this Action Plan is not binding, the Government will consider the detail of the proposals as these are published, and. He then comments that:

- the fight against tax avoidance and aggressive tax planning is a UK priority and the Government welcomes Commission consideration of what EU-level actions may be appropriate in this area;

- as corporate tax avoidance is, however, a global problem, EU action must build on agreements reached at OECD level, in order to ensure a coherent approach that is effective;

- therefore, the Government welcomes the Commission’s focus on ensuring that Member States are able to implement the BEPS outcomes, for example in relation to new rules relating to the permanent establishment definition or transfer pricing;

- these will strengthen tax administration within the EU, and help to counter aggressive tax planning by multinational enterprises;

- the Government also welcomes the Commission’s support for a competitive and fair tax system in the EU that supports economic growth, including the principle that profits should be taxed in the jurisdiction where the economic activities that give rise to them are located;
the Government’s view is that action at EU level must be effective and proportionate; and

the UK will not sign up to any measure that would undermine its tax sovereignty, or damage the prospects for growth in the EU.

80.20 The Minister also says that the Government does not endorse the publication of a list of third country non-cooperative tax jurisdictions — it is the Government’s view that this gives a misleading impression of the position on tax transparency of a number of jurisdictions on the list, including the UK’s Overseas Territories and the Crown Dependency included in the list.

**Previous Committee Reports**

None.
81 The functioning of the Schengen area

Committee’s assessment
Politically important

Committee’s decision
Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee; relevant to the Commission Communication: Free movement of EU citizens and their families: Five actions to make a difference recommended for debate on the floor of the House on 22 January 2014

Document details

Legal base
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Department
Home Office

Document numbers
(36925), 9483/15, COM(15) 236

Summary and Committee’s conclusions

81.1 This is the Commission’s seventh six-monthly report on the functioning of the Schengen area, covering the period from November 2014 to end April 2015. It provides an overview of the main trends and developments within the Schengen area to inform political and strategic discussion at Ministerial level. Although the UK remains outside the Schengen free movement area, and continues to exercise border controls on all individuals seeking entry to the UK, it has chosen to take part in those aspects of Schengen dealing with policing and law enforcement and is entitled to participate in political discussions on the overall functioning of the Schengen area.

81.2 In this Report chapter, we summarise the main findings of the Commission report and the Government’s position as set out in the Explanatory Memorandum provided by the Minister for Immigration and Security (James Brokenshire).

81.3 Whilst much of the Commission report concerns elements of the Schengen acquis in which the UK does not participate, we consider that it provides a useful strategic overview of the challenges facing Member States in managing migration at a time of increased migratory pressures at the EU’s external borders and loss of life in perilous journeys across the Mediterranean, as well as the efforts being made at EU level to address these challenges. We agree with the Government that the efficacy of controls at the EU’s external borders, the implementation of the EU’s visa liberalisation policy, and the application of a range of measures intended to enhance security within the Schengen area, are likely to have some impact on migratory pressures at the UK’s borders and on its own internal security. We therefore consider that the Commission report is likely to be of interest to the House and is relevant to the Commission
Communication: *Free movement of EU citizens and their families: Five actions to make a difference* which was recommended for debate on the floor of the House on 22 January 2014. The debate remains outstanding. We also draw the Commission report to the attention of the Home Affairs Committee.

81.4 We are content to clear the Commission report from scrutiny. In doing so, however, we remind the Minister that we have asked previously for further information on two matters relevant to the functioning of the Schengen area: the first concerns the outcome of the case brought by Spain in the Court of Justice to challenge arrangements for the UK to cooperate and exchange information with the EU’s new border surveillance system, Eurosur; the second concerns the outcome of the Swiss referendum in February 2014 calling for the introduction of immigration quotas and its impact on Switzerland’s association with the Schengen free movement area. We look forward to receiving updates on both matters at the earliest opportunity.

81.5 We note that the UK is taking part in “constructive discussions” on the arrangements for sharing with national parliaments information on the “content and results” of each evaluation carried out under the new Schengen Evaluation and Monitoring Mechanism, as well as any remedial action to address deficiencies in implementation. Our predecessors wrote to the Commission and the (then) Presidency of the Council in January seeking further information on the practical arrangements. We await a response. Meanwhile, we urge the Minister to remind the Commission and the current and future Presidency of the Council of our interest in establishing a workable system for sharing information which ensures that national parliaments are able to play an effective role in monitoring and evaluating Member States’ implementation of their Schengen obligations.

**Full details of the documents:** Commission Report: *Seventh bi-annual report on the functioning of the Schengen area 1 November 2014—30 April 2015*: (36925), [9483/15](#). COM(15) 236.

**Commission report on the functioning of the Schengen area**

81.6 The Commission report reviews:

- migratory pressures at the EU’s external borders and migration flows within the Schengen area;

- Member States’ application of Schengen rules; and

- the use of “flanking” measures, such as the Schengen Information System, Visa Information System, readmission and visa facilitation agreements, which are intended to enhance security within the Schengen area.
Migratory pressures at the EU’s external borders

81.7 The Commission highlights two main developments during the reporting period: the continuing migration crisis in the Mediterranean and the significant increase in the detection of irregular border crossings by third country nationals at the external borders of the Schengen area, exceeding 111,000 cases in the five months from November 2014 to March 2015 (three times greater than for the same period a year ago). Italy is responsible for the largest number of detections (mainly of Syrians and Eritreans), followed by Greece and Hungary.

81.8 Although the Central Mediterranean was the main route used by migrants in 2014, with a four-fold increase in detections compared with 2013, the Western Balkans route accounted for the highest number of detections (more than 55,000) during the first five months of the period covered by the Commission report (November 2014 to end April 2015). This is attributable to a “significant increase” in the detection of irregular migrants from Kosovo at the Serbian-Hungarian border. The Commission reports that the trend appears to have been reversed through the strengthening of border controls and additional support provided by the Commission, Frontex and Member States but adds that “sustained efforts are required to consolidate this tendency”.

81.9 The Commission report describes a number of developments concerning the Central Mediterranean route in recent months, including the use of “ghost ships” (in which migrants are abandoned by the ship’s crew and left to drift at sea) and the launch of Operation Triton in November 2014. This joint operation, coordinated by Frontex, followed on from the phasing-out of the Italian-led search and rescue operation, Mare Nostrum. Whilst noting that Operation Triton has undertaken a significant number of search and rescue operations (334 up until 18 May 2015), and led to the detection of 49,871 migrants and the arrest of 132 facilitators, the Commission states that the focus on border surveillance is insufficient to resolve the migration crisis in the Mediterranean. It highlights the need to tackle people smuggling and human trafficking more effectively, work more closely with third countries, and strengthen solidarity and responsibility within the EU.

81.10 The Eastern Mediterranean route accounted for the largest number of detections in March this year, reflecting both “seasonal changes” and “increasing pressure” on this route.

81.11 The report indicates that the Commission will continue to monitor external border management in Member States experiencing significant migratory flows (notably Italy, Hungary and Bulgaria) as well as progress made in addressing deficiencies in national asylum systems (Greece’s National Action Plan for Asylum expired in December 2014), implementing EU asylum rules (including the systematic fingerprinting of irregular migrants and asylum seekers), and tackling secondary movements within the EU.

534 See p.3 of the Commission report. Detections at the Serbian-Hungarian border decreased from almost 12,000 in February 2015 to fewer than 400 in March; the number apprehended on the Western Balkans route similarly fell from nearly 15,000 in February 2015 to over 5,000 in March.

535 The proposals put forward by the Commission in its Communication, A European Agenda on Migration, as well as the immediate measures to deal with the crisis in the Mediterranean announced by the European Council at a special summit in April 2015, are described in our Second Report HC-342-ii (2015-16), chapter 2 (21 July 2015).
Commission will also monitor the situation in Ukraine. Despite a fourteen-fold increase in the number of applicants for asylum in 2014 (14,000 compared with 1,000 in 2013), the Commission considers that the overall numbers remain “relatively low”.

81.12 The Commission recognises the threat posed by foreign fighters returning to the EU from Syria, adding that “it is possible under the current legal framework to carry out systematic checks on persons enjoying the rights of free movement under Union law against the relevant databases based on risk assessment”. It intends to work with Member States to ensure that the Schengen Borders Code and Schengen Information System are “fully exploited” and to develop “common risk indicators” which allow for more targeted checks on individuals.536

**Migration flows within the Schengen free movement area**

81.13 The Commission reports an increase of around 32% in the number of irregular migrants detected within the Schengen area from November 2014 to March 2015, compared to the same period a year ago, with most apprehended in Germany, Sweden, France, Spain and Austria. Frontex has started to collect data on secondary movements within the Schengen free movement area, but the Commission notes that a number of Member States have either failed to submit relevant data or have provided incomplete data, making it much more difficult to trace internal migration routes. A joint Europol/Frontex report will be published in June providing a preliminary analysis of secondary movements within the EU.

81.14 The Commission describes the main results of the *Mos Maiorum* Operation, a police operation involving 27 countries which was carried out over a fourteen-day period under the Italian Presidency in 2014 and sought to gather information on the main routes used by irregular migrants, as well as the working methods of criminal networks involved in people smuggling. It notes that over 19,000 irregular migrants were intercepted (of which just over 11,000 applied for asylum), 257 facilitators were apprehended and 593 documents seized.

81.15 A further joint operation — “Amberlights 2015” — carried out from 1–14 April 2015 under the Latvian Presidency sought to intensify border checks at airports, improve the detection of overstaying third country nationals, and collect information on document fraud. Initial results indicate that 1,409 over-stayers and three imposters were detected.537

**Application of the Schengen acquis by Member States**

81.16 The Schengen Borders Code contemplates that individual Member States participating in the Schengen free movement area may, exceptionally, re-introduce temporary controls at their internal borders where there is a serious threat to public policy

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536 See p.5 of the Commission report.
537 *Over-stayer* refers to third country nationals who no longer fulfil the conditions for remaining on the territory of a Member State, often because their short-term visa has expired. *Imposter* refers to an individual obtaining or using a document fraudulently, either by assuming a false identity or by pretending to be someone else.
or internal security. None has done so during the period covered by the Commission report.

81.17 The report describes the Commission’s efforts to monitor obstacles to free movement in border areas (such as additional police checks or disproportionate traffic flow controls) in order to ensure that they do not constitute systematic controls equivalent to border checks. Investigations are continuing in four cases concerning possible obstacles to fluid traffic flow in Austria, Belgium, Italy and Slovenia. The Commission has formally notified Germany that certain provisions of its Federal Police Law do not comply with the Schengen Borders Code and has asked Poland to clarify the basis for the obligation to carry certain documents in internal border zones.

81.18 The report notes that 30 countries are now participating in the European Border Surveillance System (Eurosur) and that work on a Handbook containing technical and operational guidelines on the implementation and management of Eurosur has been completed. Eurosur tools enable Member States to track vessels and identify (through optical and radar satellite technology) those suspected of involvement in people smuggling. Eurosur vessel detection services are being used to support Operations Triton and Poseidon in the Mediterranean.

81.19 The report contains details of alleged violations of Schengen rules which are currently under investigation by the Commission, including allegations of “push-back” practices at the external borders of Bulgaria and Greece which may contravene the principle of non-refoulement, and summary removals from Spanish territory (Ceuta and Melilla). Poland has also been asked to amend a bilateral agreement with Ukraine concerning their shared border crossing points to bring it into compliance with the safeguards contained in the Schengen Borders Code.

81.20 Following complaints about excessive waiting times at the border between Spain and Gibraltar, the Commission reports that Gibraltar has acted on recommendations issued in July 2014 which are intended to improve the management of vehicle and passenger flows and tackle tobacco smuggling more effectively. The Commission says it will “continue to monitor the situation closely” and seeks to ensure that the reconstruction works announced by Spain at this border crossing point are implemented.\textsuperscript{538}

81.21 The report briefly reviews the transposition and implementation of two Schengen measures concerning the return of illegal migrants and cooperation with neighbouring third countries to facilitate the movement of local border traffic (neither measure applies to the UK). The Commission has brought infringement proceedings against four Member States based on their failure to implement several provisions of the EU Return Directive correctly, including those dealing with detention pending return and the introduction of an effective forced return monitoring mechanism.\textsuperscript{539}

\textsuperscript{538} See p.8 of the Commission report.

\textsuperscript{539} See the Return Directive (2008/115/EC).
81.22 The Commission explains that a new Schengen evaluation mechanism, agreed in 2013, took effect in November 2014 and that the first evaluations covering different aspects of the Schengen acquis have been carried out in Austria and Belgium. An unannounced visit also took place in Sweden.\(^{540}\) The Commission expects to include details of the outcome of Schengen evaluations in one of the two biannual reports it publishes each year on the overall functioning of the Schengen area.

81.23 The Commission report confirms that the Council has so far been unable to agree that controls at the EU’s internal borders with Bulgaria and Romania should be lifted, despite concluding in June 2011 that both countries had fulfilled the criteria for full application of the Schengen acquis. It notes that Croatia has officially declared that it is ready (as of 1 July 2015) for a Schengen evaluation, with a view to lifting controls at its internal borders with other Member States.

The use of flanking measures

81.24 The Commission reports that the second generation Schengen Information System (SIS II) became provisionally operational in the UK with effect from 13 April 2015. The Council is expected to confirm UK participation later in the year, following the outcome of an evaluation visit planned for June.

81.25 The Commission highlights the importance of SIS II as a tool for the safe and rapid exchange of information on terrorist suspects. It notes that use of the new functionalities provided by SIS II has continued to increase, but that “significant discrepancies” between Member States remain. In particular, some Member States are still unable to insert photographs, fingerprints and links. The Commission says it will monitor progress closely. It has launched a formal investigation against Italy concerning the use of SIS II at Italy’s external borders and the quality of the data for alerts relating to refusal of entry or stay in the Schengen area.

81.26 The Visa Information System (VIS), which stores and processes information on short-stay visas, is now operational in 16 world regions. Plans to roll VIS out to two further regions (the first covering Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, the second, Russia) have been delayed as a consequence of “political, economic and technical doubts” raised by several Member States.

81.27 Although VIS is generally operating well, the Commission emphasises the need for Member States to comply with all of the checks required by VIS. Since 11 October 2014, the use of fingerprints to verify the identity of visa holders at Schengen border crossing points has been mandatory, but the Commission notes that fingerprint checks are not being carried out systematically.

81.28 Turning to the EU’s visa policy, the Commission reports a steady increase in asylum applications since the introduction of visa-free travel to the Schengen area for five Western

\(^{540}\) Regulation\thestablishing a new Schengen evaluation mechanism (1053/2013).
Balkan countries, with Germany bearing the brunt of the rise in numbers. Applicants from these countries constituted 11% of the total number of applications for asylum in the Schengen area in 2014. Despite this increase, no Member State has sought to trigger a new visa suspension mechanism, introduced in January 2014, which is intended to be used as a last resort in the event of substantial increases in the number of irregular migrants or rejected asylum applicants from a visa-free third country.

81.29 A visa reciprocity mechanism, also in force since January 2014, makes it easier for the EU to respond to the imposition of visa requirements on one or more Member States by a visa-free third country. The Commission has established regular tripartite meetings with Australia, Canada, Japan and the US with a view to achieving reciprocal visa-free travel for nationals of all EU Member States and considers that their positive engagement in the discussions obviates the need, at this stage, to consider a suspension of their visa exemption.

81.30 Finally, the report notes that bilateral discussions with Russia on visa matters remain suspended. By contrast, Moldovan citizens possessing a biometric passport have been entitled to visa-free entry to the Schengen area since April 2014, with no evidence of significant abuse recorded. Readmission and visa facilitation agreements with Cape Verde entered into force on 1 December 2014, and negotiations have commenced with Belarus and Morocco. The Council has approved a negotiating mandate for readmission and visa facilitation agreements with Tunisia and the Commission has begun short-stay visa waiver negotiations with 16 small Caribbean and Pacific island nations and the United Arab Emirates. The Commission has also sought Council approval to open visa waiver negotiations with Peru and Colombia. A Mobility Partnership between the EU and Jordan was signed in October 2014, paving the way for the negotiation of visa facilitation and readmission agreements once a mandate has been agreed by the Council.

The Minister’s Explanatory Memorandum of 24 June 2015

81.31 The Minister explains that the UK does not take part in the border and visa aspects of the Schengen acquis but participates in Council discussions and highlights two areas of particular interest for the UK: the impact on the UK’s borders of illegal immigration transiting the Schengen area and UK participation in Frontex operations. He says that the Commission’s latest report is “particularly relevant” in light of the migration crisis in the Mediterranean and expresses the Government’s commitment to “working with other Member States to find a sustainable solution”.

81.32 Turning first to the pressures at the external borders of the Schengen area, the Minister notes:

“The Government remains concerned about the continued increase in illegal migration into the EU, and is engaged in a range of activity to address this issue, with a particular focus on work with key countries of origin and transit to combat people
smugglers and traffickers and to tackle the root causes of illegal migration. The Government is also engaging with EU partners in view of shared concern about the number of European foreign fighters travelling to Syria and Iraq and the threat they pose on their return.”

81.33 The Government is similarly concerned about the “significant impact on UK borders” of secondary migratory movements within the Schengen area and welcomes efforts at EU level to understand and tackle this phenomenon more effectively.

81.34 The Minister explains that the UK is unable to participate formally in Eurosur, as it builds on elements of the Schengen acquis on border controls in which the UK is not entitled to take part. He nevertheless considers Eurosur to be “an important tool for practical cooperation between Member States that has already helped to save lives at sea as well as bolstering the European response to illegal immigration and cross-border criminality”. He notes that the UK negotiated an amendment to the Eurosur Regulation to enable the UK to cooperate with Eurosur and to exchange information on the basis of bilateral or multilateral agreements concluded with neighbouring Member States participating in Eurosur. He continues:

“Spain has subsequently brought a case before the European Court of Justice to challenge the legality of this provision. The case has yet to be decided by the Court, however on 13 May 2015 Advocate General Wahl issued an Opinion in the matter which was favourable to the UK’s position, and which recommended that Spain’s challenge be dismissed. Whilst the UK is therefore optimistic, neighbouring Member States are reluctant to enter into such agreements with the UK pending clarity on the legality of their doing so.”

81.35 The Minister reiterates the Government’s concern at the delays at the border between Gibraltar and Spain, and the pace and design of reconstruction works being carried out by Spain. He adds:

“The UK welcomes the fact that the Commission has agreed to monitor the situation until all the measures it proposed to Spain have been implemented. The UK hopes that the Commission will continue to monitor the situation if the delays persist despite reconstruction works having been completed.”

81.36 The Minister notes that the new Schengen Evaluation Mechanism requires the Commission to publish an annual report on the evaluations it has carried out which must be made public and include information on the outcome of the evaluations and “the state of play” in implementing any recommended remedial action. The report is also to be made available to national parliaments. He explains that a draft report on Austria’s recent evaluation is classified as “restricted”, adding:

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542 See para 21 of the Minister’s Explanatory Memorandum.
543 See para 32 of the Minister’s Explanatory Memorandum.
544 See para 32 of the Minister’s Explanatory Memorandum.
545 See para 36 of the Minister’s Explanatory Memorandum.
“The UK is taking part in constructive discussions on their format and substance to establish best practice for future reports, especially as they form the basis for related declassified processes such as informing Parliament of the findings of the reports and the format of the annual report. We therefore continue to monitor implementation developments closely.”546

81.37 The Minister agrees that Bulgaria and Romania have met the technical criteria for accession to the Schengen area, but adds:

“The UK does not have a vote on the text as currently drafted as it covers the lifting of air and sea borders between Schengen States and use of immigration data on SIS, border elements of the Schengen *acquis* in which we do not participate.”547

81.38 The Minister expects Croatia to be added to the Schengen evaluation schedule once it has completed the relevant questionnaire and says that the Government will follow developments closely.

81.39 Turning to UK participation in SIS II, the Government supports further development of the system and better use of fingerprints to confirm identity, as well as greater use of SIS II to track and monitor registered sex offenders and disrupt criminal activity.

81.40 The UK does not participate in the Visa Information System (VIS) but the Minister considers that it is helpful in preventing abuse of the Schengen visa system.

81.41 The UK similarly does not take part in EU visa liberalisation measures but the Minister expresses concern that the removal of a visa requirement for nationals of Western Balkan countries has resulted in “systematic abuse of our migration and asylum system by Albanian nationals”.548 He continues:

“The Albanian authorities are now working closely with us to address this issue but the Government remains of the view that robust safeguards must be in place with regard to future Schengen visa liberalisation. We will continue to urge caution in this area and support any Member State seeking to invoke the suspension clause if they have a clear need to use it.”549

81.42 The Minister explains that the UK has not opted into EU Readmission Agreements with Belarus and Cape Verde, but that it has opted into negotiations for an EU Readmission Agreement with Tunisia. Commenting more generally on visa liberalisation measures, the Minister says:

“The UK does not participate in the visa element of the Schengen *acquis* and is therefore not directly affected by developments regarding Schengen visa facilitation

546 See para 40 of the Minister’s Explanatory Memorandum.
547 See para 43 of the Minister’s Explanatory Memorandum.
548 See para 56 of the Minister’s Explanatory Memorandum.
549 See para 56 of the Minister’s Explanatory Memorandum.
agreements and visa liberalisation. However, given the impact on UK borders of Schengen visa liberalisation in the Western Balkans, the Government continues to make clear the need for proper safeguards to be incorporated into such agreements.\(^{550}\)

81.43 The Minister notes, finally, that the Commission presented its report at the Justice and Home Affairs Council on 16 June 2015 but that there has not yet been an opportunity to discuss its substance.

**Previous Committee Reports**


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550 See para 63 of the Minister’s Explanatory Memorandum.
82 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

**Department for Business, Innovation and Skills**


- (36766) 7423/15 COM(15) 131: Commission Annual Report on *the Implementation of Part IV of the EU-Central America Association Agreement*.


- (36776) 7634/15 COM(15) 139: Commission Annual Report on *the Implementation of the EU-Korea Free Trade Agreement*.

- (36789) 7959/15 COM(15) 155: Proposal for a Regulation implementing the anti-circumvention mechanism providing for the temporary suspension of tariff preferences of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, and Georgia.


Proposal for a Regulation amending Regulation (EU) No. 19/2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States and Colombia and Peru, and amending Regulation (EU) No. 20/2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States and Central America.

Proposal for a Regulation applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing or leading to the establishment of, Economic Partnership Agreements (recast).

Department for Culture, Media and Sport


Recommendation for a Council Decision designating the European Capitals of Culture for the year 2019 in Bulgaria and Italy.


Department of Energy and Climate Change


Department for Environment, Food and Rural Affairs

(36718) Proposal for a Council Decision to conclude, the Exchange of Letters to obtain membership of the Extended Commission of the Convention for the Conservation of Southern Bluefin Tuna.

6671/15 + ADD 1 COM(15) 71


6672/15 + ADD 1 COM(15) 72

(36744) Proposal for a Regulation amending Regulation (EU) No. 1236/2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries.

7150/15 + ADDs 1–2 COM(15) 121


7026/15 —


7152/15 COM(15) 120

(36761) Proposal for a Council Decision on the position to be adopted at the Seventh Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants regarding the proposals for amendments of Annexes A, B and C.

7361/15 COM(15) 137


7365/15 COM(15) 133

(36773) Proposal for a Regulation fixing the adjustment rate provided for in Regulation (EU) No. 1306/2013 for direct payments in respect of calendar year 2015.

7532/15 COM(15) 141

(36809) European Court of Auditors’ Special Report No. 4/2015 — Technical Assistance: What contribution has it made to agriculture and rural development? (pursuant to Article 287(4), second subparagraph, TFEU).

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8341/15 + ADD 1 COM(15) 180
European Court of Auditors’ Special Report No. 5/2015 — Are financial instruments a successful and promising tool in the rural development area? (pursuant to Article 287(4), second subparagraph, TFEU).


Commission Report regarding the mandatory indication of the country of origin or place of provenance for unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food.

Commission Report regarding the mandatory indication of the country of origin or place of provenance for milk, milk used as an ingredient in dairy products and types of meat other than beef, swine, sheep, goat and poultry meat.


Proposal for a Council Decision establishing the position to be adopted with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine (OIV).

Commission Communication — Consultation on the fishing opportunities for 2016 under the Common Fisheries Policy.


Proposal for a Regulation concerning the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (recast).

Department of Health


Commission Report on the implementation of the second Programme of Community action in the field of health in 2013.

Department for Transport

Proposal for a Directive on aviation security charges.

Proposal for a Directive amending Directive 2006/126/EC as regards driving licences which include the functionalities of a driver card.

Proposal for a Council Decision establishing the position to be taken in HELCOM and IMO concerning the designation on the Baltic Sea as Nitrogen Oxide Emissions Control Area (NECA)


(36770) European Court of Auditors’ Special Report No. 1/2015 — Inland Waterway Transport in Europe: No significant improvements in modal share and navigability conditions since 2001 (pursuant to Article 287(4), second subparagraph, TFEU).

(36774) Commission Report on cooperation between regulatory bodies under Article 63(2) of Directive 2012/34/EU.


(36916) Proposal for a Council Decision establishing the position to be adopted in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for amendments to UN Regulations Nos. 14, 17, 28, 29, 41, 49, 51, 54, 59, 80, 83, 95, 100, 101, 107, 109, 117, 134 and 135, on a new UN Regulation on electric vehicle safety of category L and on amendments to the Consolidated Resolution on the Construction of Vehicles (R.E.3).

Foreign and Commonwealth Office


<table>
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<tr>
<th>Document Reference</th>
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<tr>
<td>(36786)</td>
<td>Council Implementing Regulation implementing Article 9(4) of Regulation (EC) No. 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo.</td>
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<tr>
<td>(36815)</td>
<td>Commission Annual Joint Report 2014 on the Hong Kong Special Administrative Region.</td>
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<tr>
<td>(36910)</td>
<td>Proposal for a Council Decision concerning the rules applicable to national experts on secondment to the General Secretariat of the Council and repealing Decision 2007/829/EC.</td>
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Council Implementing Regulation implementing Regulation (EU) 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.


Council Decision updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2015/521/CFSP.

Council Implementing Regulation implementing Article 2(3) of Regulation (EC) No. 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No. 2015/513.

Proposal of the High Representative of the Union for Foreign Affairs and Security Policy for a Council implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus.


Council Implementing Decision (CFSP) 2015/... of ... implementing Decision 2011/486/CFSP concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan.

Council Implementing Regulation (EU) 2015/... of ... implementing Article 11(1) and (4) of Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan.
Council Decision (CFSP) 2015/.../ of ... on the repeal of Council Decision 2013/320/CFSP in support of physical security and stockpile management activities to reduce the risk of the illicit trade in SALW and their ammunition in Libya and its region.

**HM Treasury**

Commission Staff Working Document on *the movement of capital and the freedom of payments*.

Commission Annual Report 2013 on *the European Union Solidarity Fund*.

Commission Report on *the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2003/71/EC of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC*.

Proposal for amending Budget No. 3 to the general budget 2015 entering the surplus of the financial year 2014.

Commission Report on *the introduction of the euro in Lithuania 2015*.

Elements for a payment plan to bring the EU budget back onto a sustainable track.


Commission Report on *Finland — Report prepared in accordance with Article 126(3) of the Treaty*. 
European Scrutiny Committee, First Report, Session 2015-16


Proposal for a Council Implementing Decision amending Implementing Decision 2013/463/EU on approving the macroeconomic adjustment programme for Cyprus.


Commission Report on the implementation of macro-financial assistance to third countries in 2014.


Home Office


Commission Report assessing the situation of non-reciprocity with certain third countries in the area of visa policy.

Commission Third Progress Report on Georgia’s implementation of the action plan on visa liberalisation.

Office for National Statistics

(36751) 5063/15 + ADD 1 COM(15) 90

(36953) 10305/15 COM(15) 309
Formal minutes

Tuesday 21 July 2015

Members present:

Sir William Cash, in the Chair

Geraint Davies  Craig Mackinlay
Richard Drax  Mr Jacob Rees-Mogg
Peter Grant  Alec Shelbrooke
Nia Griffith  Graham Stringer
Kate Hoey  Kelly Tolhurst
Kelvin Hopkins  Mr Andrew Turner
Calum Kerr  Heather Wheeler

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 82 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

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

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[Adjourned till Wednesday 9 September at 2.00pm.]
Standing Order and membership

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

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

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

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

The expression “European Union document” covers —

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

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

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

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

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

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

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

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

Current membership

Sir William Cash MP (Conservative, Stone) (Chair)
Geraint Davies MP (Labour/Cooperative, Swansea West)
Richard Drax MP (Conservative, South Dorset)
Peter Grant MP (Scottish National Party, Glenrothes)
Damian Green MP (Conservative, Ashford)
Nia Griffith MP (Labour, Llanelli)
Kate Hoey MP (Labour, Vauxhall)
Kelvin Hopkins MP (Labour, Luton North)
Calum Kerr MP (Scottish National Party, Berwickshire, Roxburgh and Selkirk)
Craig Mackinley MP (Conservative, South Thanet)
Mr Jacob Rees-Mogg MP (Conservative, North East Somerset)
Alec Shelbrooke MP (Conservative, Elmet and Rothwell)
Graham Stringer MP (Labour, Blackley and Broughton)
Kelly Tolhurst MP (Conservative, Rochester and Strood)
Mr Andrew Turner MP (Conservative, Isle of Wight)
Heather Wheeler MP (Conservative, South Derbyshire)