House of Commons

European Scrutiny Committee

Fifth Report of Session 2010–11

Documents considered by the Committee on 27 October 2010, including the following recommendations for debate:

Economic policy coordination (two documents)

Europe 2020 Strategy: integrated guidelines

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

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 in the House of Commons Vote Bundle on Mondays 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.

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

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Contents

Report

1 Economic policy coordination

(a) (32036) 14498/10 COM(10) 524	Draft Regulation on the effective enforcement of budgetary surveillance in the euro area
(b) (32043) 14497/10 COM(10) 523	Draft Council Directive on requirements for budgetary frameworks of the Member States
(c) (32044) 14496/10 COM(10) 522	Draft Council regulation (EU) No …/… amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure
(d) (32047) 14520/10 COM(10) 526	Draft Regulation amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies

Legal base	(a) Articles 121(6) and 136 TFEU; co-decision; QMV (b) and (c) Article 126(14) TFEU; consultation; unanimity (d) Article 121(6) TFEU; co-decision; QMV
Documents originated	29 September 2010
Deposited in Parliament	(a)-(c) 11 October 2010 (d) 12 October 2010
Department	HM Treasury
Basis of consideration	EM of 25 October 2010
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	For debate on the Floor of the House, together with two Commission Communications, already recommended for debate,[1] and two other legislative proposals dealt with in a separate chapter of this Report[2]

1 (31618) 9433/10 and (31776) 11807/10: see HC 428–i (2010–11), chapter 8 (8 September 2010).

2 (32045) 14512/10 and (32046) 14515/10: see chapter 2 of this Report.

Background

1.1 Two elements of the EU's common economic policies are the Economic and Monetary Union, with the eventual aim that all Member States would adopt the euro,[3] and the processes for economic policy coordination under the "Europe 2020" strategy.[4] A third element is the Stability and Growth Pact.

1.2 The Stability and Growth Pact, adopted by the Amsterdam European Council in June 1997, emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a "reference value" of 3%.[5] Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State.[6] These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission's current economic forecasts. If a Member State's programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact's preventative arm.

1.3 On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU (formerly Article 104 EC) and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows ECOFIN to require publication of additional information by the Member State concerned before issuing bonds and securities, to invite the European Investment Bank to reconsider its lending policy for the Member State concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

1.4 In response to the current economic problems the EU has adopted a number of measures including the European Economic Recovery Plan of 2008 for fiscal stimulus[7] and the May 2010 package of a European Financial Stabilisation Mechanism which allows EU financial assistance to be granted to a Member State facing "severe difficulties caused by natural disasters or exceptional occurrences beyond its control" and a Special Purpose Vehicle for a voluntary intergovernmental agreement of eurozone Member States for mutual financial support, the European Financial Stabilisation Facility.[8] Such measures

3 At present 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) have adopted the euro.

4 See (31373) 7110/10: HC 5–xiv (2009–10), chapter 1 (17 March 2010) and *Gen Co Debs*, European Committee B, 22 March 2010, cols 3–28.

5 This obligation does not apply to Member States, including the UK, whilst they remain outside the eurozone, but they are required to endeavour to avoid excessive deficits.

6 The Member States that have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.

7 See (30213) 16097/08: HC 19–i (2008–09), chapter 4 (10 December 2008) and *HC Deb*, 20 January 2009, cols 626–653.

8 See (31611) 9606/10 (31796) 12119/10: HC 428–i (2010–11), chapter 7 (8 September 2010).

have been adopted whilst there has been a parallel discussion of the perception that the EU's economic policy framework has been tested by the global economic crisis, that the EU does not have a mechanism to provide crisis support to its Member States, particularly in the eurozone, and that *ex ante* budgetary surveillance of some countries had not always been sufficiently robust.

1.5 In May and June 2010 the Commission published two Communications: *Reinforcing economic policy coordination* and *Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance* — we have recommended these documents for debate on the Floor of the House.[9] The June 2010 European Council reiterated Heads of Government agreement on the need to address some of the issues related to economic governance.[10]

The documents

1.6 These three draft Regulations and the draft Directive carry forward some of the proposals from the Commission's Communications. They are intended to improve economic governance within the EU and to ensure that Member States abide by the terms of the Stability and Growth Pact. Two of the draft Regulations, documents (c) and (d), are amendments to existing secondary legislation on the Pact's preventative arm and excessive deficit procedure. The draft Regulation, document (a) would create a new series of sanctions for eurozone Member States and the draft Directive, document (b) would create minimum standards for domestic fiscal frameworks.

1.7 The draft Regulation to amend Regulation (EC) No 1466/97 on surveillance of budgetary positions and economic policies, document (d), concerns the preventative arm of the Stability and Growth Pact, which requires Member States to submit annual stability or convergence programmes with details of how they plan to achieve agreed medium-term fiscal policy objectives. The amendments would reinforce the role of these objectives and allow the Council to assess whether countries are making sufficient economic adjustment to achieve these. The draft Regulation provides that:

- an indicative annual pace of 0.5% of GDP would be the benchmark against which Member States' progress towards their objectives would be judged;
- all Member States' expenditure would be monitored by the Council in order to judge whether they are running prudent fiscal policies;
- countries that had reached their medium term budgetary objective would be required to show that their annual expenditure growth did not go beyond a prudent medium term rate of GDP growth, unless they also had revenue items that offset the extra growth;

9 See (31618) 9433/10 and (31776) 11807/10: HC 428–i (2010–11), chapter 8 (8 September 2010).

10 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/115346.pdf.

- for countries that had not yet achieved their medium term budgetary objective, annual expenditure growth would have to be kept below their medium-term GDP growth rate, unless there were revenue items to offset extra expenditure;
- the effects of a general economic downturn could be allowed for, if it meant that Member States were forced to depart temporarily from their normal adjustment path towards the medium term budgetary objective;
- Member States that had moved from an unfunded to a fully funded pension scheme would be given credit for this by being allowed to deviate from the adjustment path or their medium term budgetary objective, as long as it was clear that the deviation had arisen solely because of the costs of making these reforms and remained a temporary deviation;
- there should be an appropriate safety margin to ensure that the cost of the pension reform did not push the Member State into excessive deficit;
- where a Member State was not judged to be running prudent fiscal policies, the Council could invite the country to make adjustments to its programme in order to achieve its medium term objective;
- more serious deviations from the adjustment path that had had an impact on the government balance of 0.5% of GDP in one year or 0.25% of GDP or more averaged over two years could lead to the Council making a formal recommendation to the Member State to change its policies so that it could return to its adjustment path, particularly if such deviations were persistent or serious;
- if a Member State had, however, already achieved and done better than its medium term budgetary objective, the Council would not need to take action if it then deviated from the adjustment path; and
- the timing of submission of stability and convergence programmes, presently submitted in the autumn, would with the advent of the "EU Semester", be altered to require submission in April, to coincide with submission of Member States' National Reform Programmes.

1.8 The recitals to the draft Regulation indicate that there should be an extra enforcement mechanism for eurozone Member States that have consistently deviated from their normal adjustment path without good reason — that is the measures proposed in the draft Regulation create a new series of sanctions for eurozone Member States, document (a).

1.9 The draft Regulation to amend Regulation (EC) No 1467/97, document (c), concerns the excessive deficit procedure, the process by which the Council monitors Member States running deficits above 3% of GDP or debt ratios of more than 60% of GDP. The amendments are intended to speed up the stages of the excessive deficit procedure so that the Council could take swift action to monitor excessive deficits, and issue sanctions faster in the case of non compliance with recommendations. The draft Regulation provides that:

- all Member States would have a deadline of six months to take effective action to reduce their debts and deficits once they were in the excessive deficit procedure;

- excessive deficits should normally be corrected within twelve months;
- Council recommendations to Member States in the excessive deficit procedure should require Member States to meet annual budgetary targets that would improve their cyclically adjusted balance by a minimum of 0.5% of GDP, so that they would be on course to meet the deadline for correction of the excessive debt or deficit;
- revised recommendations could be issued to Member States if they had taken effective action, but their finances had suffered significant adverse effects as a result of events beyond the Government's direct control, such as a major economic downturn;
- in such circumstances, the deadline for correction of the excessive deficit could be extended by up to twelve months;
- the Council would have to issue a warning under Article 126 (9) TFEU to eurozone Member States that were breaching their excessive deficit procedure recommendations within two months of the Council decision that the Member State had not taken adequate action to reduce its debt and/or deficit;
- the warning would set a new deadline by which the Member State would have to take effective action and would request that the Member State improved its cyclically adjusted balance by a minimum of 0.5% of GDP per annum;
- the Council warning would set out the policy measures that would help the Member State to achieve this;
- if the eurozone Member State subsequently failed to act on the warnings, the Council would have to impose sanctions on the Member State within four months of the warning;
- subsequent rounds of more intensive sanctions could be imposed for further non-compliance with the Council's recommendations;
- there would be greater emphasis on the 60% debt criterion of the Stability and Growth Pact — presently, although the Treaty gives equal weight to the debt and the deficit criteria, Member States have only entered excessive deficit procedure as a result of their deficits exceeding the 3% threshold;
- there would be a benchmark for assessing whether a Member State's debt was diminishing towards the 60% threshold at an adequate pace;
- this benchmark would require countries to reduce the degree to which their actual debt level exceeds the 60% threshold, over the previous three years, at a rate of one-twentieth per year;
- because of the economic downturn and the fact that many Member States are currently running debt levels above 60% of GDP, there would be a three year transition period once the revised Regulation entered into force, so as to ensure that the effects of the recent crisis are taken into account when assessing a Member

State's debt levels and whether or not it should be put into excessive deficit procedure on this basis;

- there would be some flexibility for Member States that had implemented pension reforms to put their pensions on a fully funded basis;
- if Member States were running high debts or deficits above the Treaty reference values as a result of the costs of these reforms, and as long as the deficit remained close to the reference value if the debt criterion had been breached, the Commission and Council could take the pension reform into consideration when deciding whether to put the Member State into the excessive deficit procedure (or deciding whether the excessive deficit procedure could be abrogated); and
- once the revised Regulation entered into force, there would be a five year period within which the cost of any pension reforms made by a Member State (regardless of when those reforms were made) would be taken into consideration when the Council assesses the debt levels of that Member State.

1.10 The draft Regulation sets out the process by which sanctions would be applied to eurozone countries. Sanctions for these Member States have always existed under Article 126(11) TFEU, but have never previously been defined, beyond the indication that they should be of an appropriate size and proportionate to the Member State's GDP. The draft Regulation provides that:

- there would be a fixed fine of 0.2% of the Member State's GDP, plus a variable element;
- if the breach had occurred because of a high deficit, the variable element would be calculated as 10% of the difference between the Member State's actual deficit as a percentage of GDP in the previous year and the 3% Treaty reference value;
- if the breach had occurred because of high debts above the 60% Treaty reference value, the variable component would be calculated as 10% of the difference between the actual deficit as a percentage of GDP in the previous year and the general government balance as a percentage of GDP that ought to have been achieved if the Member State had followed the terms of the warning issued under Article 126(9);
- subsequent sanctions for repeated non compliance with recommendations would be calculated on the basis of the variable component only;
- individual fines would be capped at 0.5% of GDP; and
- whilst a Member State remained in the excessive deficit procedure the Council would have to review its progress every year to decide whether it was taking effective action or whether further sanctions should be imposed.

1.11 The draft Regulation on the effective enforcement of budgetary surveillance in the eurozone, document (a), would establish a process by which sanctions would be applied to eurozone Member States and would allow sanctions to be applied to these countries in both the preventative arm of the Stability and Growth Pact, that is, on the basis of

assessments of a Member State's stability programme, and the corrective arm — the excessive deficit procedure. The draft Regulation provides that:

- only eurozone Member States would vote on any of the decisions to impose sanctions or fines, with the vote of the Member State concerned not taken into account;
- if a Member State did not achieve or make adequate progress towards its medium-term budgetary objectives and this deviation was serious or there were several deviations from this path, the Member State would have to pay a deposit to the EU of 0.2% of their GDP in the previous year;
- the Council would take the decision to impose the deposit on the Member State by "reverse qualified majority" — that is there would have to be a qualified majority of Member States opposing the imposition of this deposit, otherwise it would be imposed automatically within ten days of a Commission proposal;
- the Member State would receive interest on this deposit at a rate to be determined, depending on the term of investment and the Commission's credit rating;
- in exceptional circumstances, the Member State could make a formal request to the Commission for this deposit to be waived or for the amount to be reduced, which the Commission and Council would consider;
- once the Member State had taken corrective policy action to return to the adjustment path towards its medium term budgetary objectives, the deposit and any interest would be returned to the Member State in full;
- if the Member State subsequently entered the excessive deficit procedure, the Member State would have to make a deposit of 0.2% of its GDP in the previous year;
- the Council would impose this on the Member State, acting by reverse qualified majority;
- this deposit would not bear interest;
- if the Member State had already placed an interest bearing deposit with the EU under the preventative arm of the Stability and Growth Pact, it would be converted into a non-interest-bearing deposit;
- if this were smaller than the amount of the previous interest bearing deposit, the extra amount would be returned to the Member State;
- if the non-interest-bearing deposit were larger than the previous interest bearing deposit, then the Member State would have to supplement it by the necessary amount when it entered the excessive deficit procedure;
- reduction or cancellation of this deposit would be allowed if there were exceptional economic circumstances or if the Member State was able to make a convincing case to Commission and Council for such a waiver or reduction;

- once the Council had decided that the Member State could leave the excessive deficit procedure, any outstanding non-interest-bearing deposits lodged with the EU would be returned to the Member State;
- the Member State would continue to be monitored under the excessive deficit procedure as normal;
- if Council decided that the Member State had failed to act on its excessive deficit procedure recommendations, it would impose a fine on the Member State, acting by reverse qualified majority;
- the fine would be set at 0.2% of the Member State's GDP in the previous year;
- any non-interest-bearing deposit that the Member State had already paid would be converted into a fine;
- if the fine were larger than the deposit, the Member State would have to make up the excess;
- if the fine were smaller, the extra amount would be returned to the Member State; and
- the Commission and Council could decide to cancel or reduce the amount of the fine in exceptional economic circumstances or on the basis of a request by the Member State.

1.12 The draft Regulation does not contain detailed explanations of exactly how Member States would pay these deposits to the EU nor where this money would be held. However, it indicates that:

- the Commission would count income from fines and the interest earned by the EU on deposits that do not bear interest to the Member State as "other revenue" under the EU Budget; and
- this money would be distributed amongst eurozone countries that were not in the excessive deficit procedure and did not have excessive macroeconomic imbalances.

1.13 The draft Council Directive on requirements for Member States' budgetary frameworks, document (b) proposes a series of minimum standards for Member States' domestic budgetary frameworks, which would need to be adopted by 31 December 2013 at the latest. The proposal provides that:

- Member States would have to have public accounting systems that met all the terms of Regulation (EC) No 2223/96 (commonly referred to as the ESA 95 standards);[11]
- Member States would have to publish monthly cash-based fiscal data and a table comparing cash-based and ESA-based data;

11 See http://epp.eurostat.ec.europa.eu/portal/page/portal/esa95_supply_use_input_tables/introduction.

- in countries where a great deal of expenditure is delegated to regional or sub-regional bodies, governments would have to take steps to ensure that all sub sectors of government operated under the same accounting rules and published the same standard of data as the central finance ministry and, where relevant, published data at the same frequency;
- any budgetary responsibilities of public authorities would have to be set out clearly in order to enhance the transparency and accountability of the whole system;
- such bodies would have to take steps to ensure compliance with the same numerical fiscal rules as the central government;
- Member States would have to ensure that their fiscal planning was done on the basis of credible macroeconomic and budgetary forecasts, working on the most probable or even more cautious scenarios that highlighted possible deviation from the most likely macro-fiscal scenario;
- Member States would be required to explain any divergence between the macro-fiscal scenario that underpinned their own forecasts and fiscal plans and the Commission's forecasts for that country;
- Member States would be required to prepare alternative macroeconomic scenarios based on previous experience of fiscal outturns relative to forecasts, in order to show what their fiscal position could be under different economic circumstances;
- Member States would have to prepare multiannual budgetary frameworks, that is showing future fiscal projections over a number of years, rather than over a twelve month period only;
- the budgetary framework would have to contain clear budgetary objectives expressed in terms of government deficit and debt and clear forward projections of major expenditure and revenue based on current fiscal policies;
- it would need to explain how the government's fiscal plans would make progress towards the Member State's medium-term budgetary objective relative to the same projections made on the basis of current fiscal policies;
- Member States would be required to have numerical fiscal rules that increased compliance with the Treaty reference values of 3% deficit and 60% debt;
- such numerical rules would have to be reflected in annual budgets and to contain a number of design features, including regular monitoring of compliance with the rules, such as by independent national institutions;
- there would need to be within the rules consequences in case of non-compliance and escape clauses to allow for Member States to deviate from them in exceptional circumstances;
- Member States would have to publish detailed information on contingent liabilities with potentially significant impact on public budgets, making sure that this information covered all sub sectors of government; and

- they would have to publish information on the impact of tax expenditure on revenue.

The Government's view

1.14 In relation to subsidiarity the Financial Secretary to the Treasury (Mr Mark Hoban) says that the Government believes that the Commission is justified in proposing the amending legislation on the Stability and Growth Pact, documents (c) and (d), and the legislation to create sanctions for euro area countries, document (a). But he continues that consistency with the principle of subsidiarity has yet to be established in relation to the proposal to create EU minimum standards for domestic fiscal frameworks, document (b), and says that the Government will provide us with an update on its position in due course.

1.15 Turning to the policy implications the Minister first tells us that the Government supports the aims of these proposals to strengthen the SGP and to improve fiscal and macroeconomic surveillance within the EU and can agree with the Commission's view that the Stability and Growth Pact should be more rigorously enforced in future, particularly for eurozone Member States. He comments that:

- as economic coordination between Member States helps to foster greater economic stability, particularly between eurozone countries, it is right that ECOFIN should spend more time assessing the content of Member States' stability and convergence programmes;
- prior to the economic crisis the Stability and Growth Pact was not always rigorously enforced and countries were allowed to stray from their fiscal targets without facing penalties; and
- this has undermined the credibility of the Pact as a mechanism for preventing Member States from running unsustainable fiscal policies.

1.16 The Minister then tells us that the Government supports the proposals, in documents (a) and (c), to make more frequent use of sanctions in future for eurozone Member States in the excessive deficit procedure and to make application of sanctions more automatic, particularly in cases where these countries have breached their excessive deficit procedure recommendations. But he adds that the Government feels strongly that this process should not become fully automatic, as that could excessively diminish the Council's role — it should retain a role in launching the excessive deficit procedure and taking major decisions related to the treatment of Member States.

1.17 The Minister emphasises that, from a legislative and a policy perspective, the UK has a different relationship to the Stability and Growth Pact from all other Member States by virtue of the opt-out from euro membership and Protocol 15 to the TFEU. He reminds us that this Protocol makes it clear that the UK only has to 'endeavour to avoid' excessive deficits, whereas under Article 126 TFEU all other Member States 'shall avoid' excessive deficits. He observes that, because of these provisions and because the UK is not in the eurozone, the sanctions proposed within the draft Regulation on budgetary surveillance and the draft amending Regulations on the Stability and Growth Pact and excessive deficit procedure, documents (a), (c) and (d), would not apply to the UK.

1.18 Turning to the Treaty value of 60% of GDP for public debt the Minister says that the Government supports the greater focus on such debt within the framework of the Stability and Growth Pact, as well as the proposal to build in a transition period, so that the effects of the recent economic downturn on Member States' debt levels can be appropriately taken into account. He comments that:

- these proposals would strengthen the application of the excessive deficit procedure, putting Member States into the procedure if they had debt to GDP ratios above 60% and not declining;
- the Government believes, however, that setting a numerical pace to assess whether Member States were reducing their debt levels at an appropriate speed could be too prescriptive, depending on how it is enforced;
- debt dynamics are complex and debt has many drivers — so the Council must retain discretion when judging whether debt is falling at an appropriate speed;
- the Government continues to believe that the main consideration should be whether a Member State's debt is on a downward trajectory, rather than the specific pace of annual debt reduction; and
- it will seek amendments to these proposals, when the Council negotiations begin this autumn, so that the numerical pace remains only as an indicative benchmark for debt reduction and so that it is not used as a concrete rule by which Member States' debt reduction plans are judged.

1.19 Turning to the draft Council Directive on requirements for Member States' budgetary frameworks, document (b), the Minister tells us that the Government agrees that there may be some benefit in reinforcing domestic fiscal frameworks to improve the transparency and reliability of national accounting, statistical and fiscal data. He says that:

- measures to improve the quality of national statistics and the independence of national statistical authorities are particularly welcome, in light of the statistical problems that were uncovered in Greece earlier this year;
- the UK already has a high quality and robust national fiscal framework, with independent statistical and fiscal authorities in place — so these elements of the proposals should have little impact on the UK;
- the Government supports the requirement for all Member States to adopt multiannual budgetary frameworks, to ensure that economic and fiscal projections are shown over a number of years rather than just over a one year horizon; and
- the UK Budget is already set on a multiannual basis, containing economic and fiscal projections over a five year period, which clearly demonstrates the medium-term impact of announced policies on the UK's fiscal position.

But the Minister continues that:

- the Government remains concerned that the Commission has proposed legislation on minimum standards for domestic fiscal frameworks;

- construction and operation of Member States' national fiscal frameworks should be a matter for national governments to decide;
- the Government does not support, in particular, the proposed legislative requirements that specify the design of Member States' domestic fiscal rules;
- countries must have the discretion to determine their fiscal policies based on national circumstances; and
- this principle will guide the Government in its negotiations.

Conclusion

1.20 **These legislative proposals are an important step in developing coordination of economic policy at EU level. As such we recommend that they be debated on the Floor of the House, together with the Commission Communications *Reinforcing economic policy coordination* and *Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance* which we have already recommended for debate and two related proposals which we are recommending for debate in another chapter of this Report.[12] And given the importance and breadth of the subject matter, the debate ought to be for three hours.**

1.21 **In debating these four documents Members could examine particularly the Government's points about:**

- **the automaticity of the proposals for sanctions in documents (a) and (c);**
- **the preference for a numerical pace for debt reduction to be an indicative benchmark rather than a concrete rule;**
- **the subsidiarity issue in relation to the draft Directive (b); and**
- **the proposals in that draft Directive for minimum standards for domestic fiscal frameworks.**

On the subsidiarity question we hope that the Government will have updated its view in time for the debate.

12 See chapter 2.

2 Economic policy coordination

(a) (32045) 14512/10 COM(10) 525	Draft Regulation on enforcement measures to correct excessive macroeconomic imbalances in the euro area
(b) (32046) 14515/10 COM(10) 527	Draft Regulation on the prevention and correction of macroeconomic imbalances

Legal base	Article 121(6) TFEU; co-decision; QMV
Documents originated	29 September 2010
Deposited in Parliament	12 October 2010
Department	HM Treasury
Basis of consideration	EM of 23 October 2010
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	For debate on the Floor of the House, together with two Commission Communications, already recommended for debate,[13] and four other legislative proposals dealt with in a separate chapter of this Report[14]

Background

2.1 Two elements of the EU's common economic policies are the Economic and Monetary Union, with the eventual aim that all Member States would adopt the euro,[15] and the Stability and Growth Pact.[16] A third element is the current processes for economic policy coordination under the "Europe 2020" strategy,[17] which are based on Articles 121 and 136 TFEU:

- the Council adopts, on the basis of Commission drafts, broad economic policy guidelines and employment guidelines;[18]

13 See (31618) 9433/10 and (31776) 11807/10: HC 428–i (2010–11), chapter 8 (8 September 2010).

14 See (32036) 14498/10 and (32043) 14497/10 (32044) 14496/10 (32047) 14520/10: chapter 1 of this Report.

15 At present 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) have adopted the euro.

16 The Member States which have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.

17 See (31373) 7110/10: HC 5–xiv (2009–10), chapter 1 (17 March 2010) and *Gen Co Debs*, European Committee B, 22 March 2010, cols 3–28.

18 See (31574) 9233/10: HC 428–i (2010–11), chapter 9 (8 September 2010) and chapter 3 of this Report.

- the broad economic policy guidelines inform annual policy recommendations to Member States agreed by the Council on the basis of a recommendation from the Commission;
- Member States report annually on reform plans and priorities;
- the Commission can, on its own initiative, address a public policy warning to Member States whose policies are deemed inconsistent with the broad economic policy guidelines;
- there is a separate process for policies under the employment guidelines; and
- eurozone Member States can agree their own guidelines, provided they are consistent with those agreed among all the Member States.

2.2 In response to the current economic problems the EU has adopted a number of measures including the European Economic Recovery Plan of 2008 for fiscal stimulus[19] and the May 2010 package of a European Financial Stabilisation Mechanism, which allows EU financial assistance to be granted to a Member State facing "severe difficulties caused by natural disasters or exceptional occurrences beyond its control", and a Special Purpose Vehicle for a voluntary intergovernmental agreement of eurozone Member States for mutual financial support, the European Financial Stabilisation Facility.[20] Such measures have been adopted whilst there has been a parallel discussion of the perception that the EU's economic policy framework has been tested by the global economic crisis, that the EU does not have a mechanism to provide crisis support to its Member States, particularly in the eurozone, and that *ex ante* budgetary surveillance of some countries had not always been sufficiently robust.

2.3 In May and June 2010 the Commission published two Communications: *Reinforcing economic policy coordination* and *Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance* — we have recommended these documents for debate on the Floor of the House.[21] The June 2010 European Council reiterated Heads of Government agreement on the need to address some of the issues related to economic governance.[22]

The documents

2.4 These two draft Regulations carry forward some of the proposals from the Commission's Communications. With the draft Regulation on the prevention and correction of macroeconomic imbalances, document (b), the Commission proposes a two stage process to firstly monitor and then correct such imbalances across all Member States. Macroeconomic imbalances can refer to divergences in current account positions and competitiveness trends across countries, excessive domestic demand growth which can

19 See (30213) 16097/08: HC 19–i (2008–09), chapter 4 (10 December 2008) and *Hansard*, 20 January 2009, cols 626–653.

20 See (31611) 9606/10 (31796) 12119/10: HC 428–i (2010–11), chapter 7 (8 September 2010).

21 HC 428–i (2010–11), *op. cit.,* chapter 8 (8 September 2010).

22 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/115346.pdf.

contribute to asset price and credit bubbles and over-reliance on particular components of output, such as exports. For the purposes of the legislation imbalances are defined as "macroeconomic developments which are adversely affecting, or have the potential adversely to affect, the proper functioning of the economy of a member state or of economic and monetary union, or of the Union as a whole". In presenting the draft Regulation the Commission argues that "the emergence of large macroeconomic imbalances, including wide and persistent divergences in competitiveness trends, proved highly damaging to the European Union, and in particular to the euro, when the crisis struck" and that the mechanics of this included "low financing costs [that] fuelled misallocation of resources, often to less productive uses, feeding unsustainable levels of consumption, housing bubbles and accumulation of external and internal debt in some Member States".

2.5 In relation to prevention of imbalances the Commission proposes that:

- there should be initial surveillance starting "with an alert mechanism that aims to identify Member States with potentially problematic levels of macroeconomic imbalances" — this "complements the macro-structural country surveillance provided for under Europe 2020";
- the alert mechanism should consist of a scoreboard of macroeconomic and macro-financial indicators for Member States, which would be established by the Commission after consultation with Member States;
- alert thresholds would be set and announced for each indicator, with thresholds for eurozone Member States possibly differing from those applicable to other Member States;
- "the thresholds should be seen as indicative values to guide assessment, but should not be interpreted in a mechanical way; they should be supplemented by economic judgement and country-specific expertise";
- there should be regular release of the results of the scoreboard, accompanied by a Commission report "containing an economic and financial assessment, putting the movement of the indicators into perspective";
- the report would indicate "whether the crossing of lower or upper thresholds in one of more Member States signifies the possible emergence of imbalances";
- the Commission would, on the basis of the available information, compile a list of Member States it considered to be affected by, or at risk of, imbalances;
- as part of multilateral surveillance, the Council should discuss and adopt conclusions on the scoreboard report;
- following this discussion the Commission would prepare country-specific in-depth reviews for those Member States affected by, or at risk of, imbalances; and
- the in-depth reviews would take into account early warnings or recommendations from the European Systemic Risk Board, along with policy intentions from the

Member State concerned, as reflected in its Stability or Convergence Programme and its National Reform Programme.

2.6 As a result of these in-depth reviews, three outcomes would be possible:

- the Commission could propose that no further steps were necessary, if imbalances were considered unproblematic;
- if it considered that a Member State was experiencing imbalances, the Commission would inform the Council accordingly, which could, on the basis of a proposal from the Commission, address necessary "preventive" recommendations to the Member State concerned; and
- if the Commission considered that the Member State was affected by "excessive imbalances", it would notify the Council accordingly, so beginning an enforcement procedure to correct excessive macroeconomic imbalances.

This second stage corrective mechanism, an "Excessive Imbalance Procedure", which could be applied to any Member State, would be a new element of the economic surveillance process.

2.7 For the Excessive Imbalance Procedure the draft Regulation provides that:

- the Council could, on a recommendation from the Commission, adopt recommendations "declaring the existence of an excessive imbalance and recommending the Member State concerned to take corrective action";
- these recommendations would be made public and would be more detailed and prescriptive than the "preventative" recommendations provided for in the second outcome under the surveillance procedure;
- the Member State concerned would be required to submit a corrective action plan, that would set out "specific and concrete policy actions the Member State concerned has implemented or intends to implement", to a deadline agreed by the Council when it opened the Excessive Imbalance Procedure;
- within two months of submission of the corrective action plan, the Council would, on the basis of a Commission report, assess the corrective action plan and, if considered sufficient, adopt an opinion endorsing it;
- if actions taken or envisaged were deemed insufficient the Council would, on the basis of a Commission proposal, invite the Member State to amend its corrective action plan within a new deadline;
- the Commission would monitor implementation of corrective action in Member States in the Excessive Imbalance Procedure;
- for that purpose the Member State concerned would be required to report to the Council and the Commission at regular intervals with progress reports, which would be made public;

- the Commission could carry out "surveillance missions" to the Member State concerned to monitor implementation;
- on the basis of a Commission report, the Council would conclude whether or not the Member State concerned had taken the recommended corrective action;
- where the Council concluded that the Member State had taken the recommended action, the procedure would be held in "abeyance" (which "means that the Member State is making satisfactory progress ... However, due to the possibly long lags between adoption of corrective action and its effect on the ground, effective resolution of imbalances might take some time") and the monitoring process would be continued;
- if the Council concluded that the Member State had not taken the recommended action, the Member State would remain subject to the Excessive Imbalance Procedure and the Council would adopt, on a proposal from the Commission, revised recommendations for corrective action on which the Member State concerned would be required to report, as in the monitoring process; and
- the Excessive Imbalance Procedure would be closed once the Council, on a recommendation from the Commission, concluded that "the Member State is no longer affected by excessive imbalances".

2.8 With the draft Regulation, document (a), the Commission proposes enforcement of measures to correct excessive macroeconomic imbalances in the eurozone. It is designed to accompany the draft Regulation to establish the Excessive Imbalance Procedure, document (b). It would provide that:

- if a eurozone Member State repeatedly failed to act on Council recommendations to address excessive imbalances, it would have to pay a yearly fine until the Council established that corrective action had been taken;
- as a rule the fine would be 0.1% of GDP in the preceding year;
- repeated failure would be not meeting two successive deadlines for corrective action; and
- Council decisions concerning such fines would be made by a qualified majority of eurozone Member States, excluding the Member State.

The Government's view

2.9 The Financial Secretary to the Treasury (Mr Mark Hoban) says that the Commission's proposals would have a number of policy implications in the UK:

- were the UK deemed to be experiencing imbalances, the Council could address policy recommendations to the Government on measures to address imbalances;
- were the UK deemed to be experiencing excessive imbalances, the Council could adopt recommendations placing the UK in the Excessive Imbalance Procedure; and

- further reporting and monitoring of progress would follow, to potentially include surveillance missions from the Commission.

The Minister adds however, that the draft Regulations are clear that the enforcement mechanism of fines to correct excessive imbalances would apply only to eurozone Member States.

2.10 The Minister tells us that the Government believes that heightened surveillance of macroeconomic imbalances and competitiveness is crucial if the EU is to generate stronger and more stable growth in the future and it welcomes the Commission's proposals as a useful starting point in establishing stronger surveillance of macroeconomic imbalances and competitiveness developments. He comments further that:

- in the negotiations on the draft Regulations the Government will look to take forward the principle, from negotiations in the Van Rompuy Taskforce on economic governance, that the Council and Commission should work closely together to address imbalances;

- in order to create more meaningful surveillance it is important to improve the ownership, responsibility and accountability for reforms to address imbalances at the Member State level — this could include greater Council involvement on, for instance, agreeing the scoreboard of indicators on the basis of a Commission recommendation;

- the Government will seek to ensure that discussions on imbalances take place among all Member states where relevant;

- it welcomes the Commission's proposals to allow eurozone Member States to go further with surveillance, to include sanctions if they wish;

- the need for intra eurozone surveillance of macroeconomic imbalances is particularly strong, with a focus on developments in competitiveness and economic flexibility, because membership of the single currency necessarily removes some particular channels of adjustment;

- the Government believes that changes to surveillance should build on existing instruments for policy coordination under the Europe 2020 strategy, where possible;

- it welcomes the clarity in the Commission's proposals as to how the Excessive Imbalance Procedure would build on existing mechanisms for policy recommendations and warnings under Article 121 TFEU;

- it believes that analysis of imbalances and competitiveness developments should also feed into recommendations for Member States' national obstacles or "bottlenecks" to growth in the Europe 2020 strategy, as a valuable mechanism for improving national ownership, responsibility and accountability;

- it believes equally that praise should be given to Member States that have made significant progress, so that there are positive incentives for countries to improve, and more efforts should be made to highlight and share best practice;

- the Government will seek to ensure that reporting under the Excessive Imbalance Procedure is not overly burdensome on Member States, including in relation to the Commission's proposed surveillance missions to Member States;
- it will seek to ensure that analysis of imbalances from other organisations are taken on board, such as the European Systemic Risk Board, as noted in the Commission's proposals, but also including the IMF, OECD and others; and
- it will seek to ensure that surveillance of imbalances in the EU and the eurozone complements the G20 *Framework for Strong, Sustainable and Balanced Growth*.[23]

2.11 The Minister says that the draft Regulations have no financial implications for the UK. But, recalling that the proposal relating to the eurozone, document (a), would establish a system of fines applicable in the eurozone, notes that such fines would "constitute other revenue, as referred to in Article 311 of the Treaty, and shall be distributed, in proportion to their share in the total gross national income (GNI) of the eligible Member States, between Member States whose currency is the euro and which are not subject to the excessive imbalances procedure...and do not have an excessive deficit as determined in accordance with Article 126(6) of the Treaty".

Conclusion

2.12 **These draft Regulations are an important step in developing coordination of economic policy at EU level. As such we recommend that they be debated on the Floor of the House, together with the Commission Communications *Reinforcing economic policy coordination* and *Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance* which we have already recommended for debate and four related proposals which we are recommending in a another chapter of this Report.[24] And given the importance and breadth of the subject matter, the debate ought to be for three hours.**

2.13 **In debating these two documents Members could examine particularly the degree to which an Excessive Imbalance Procedure might inhibit the Government's freedom of manoeuvre in deciding economic policy.**

23 See http://www.pittsburghsummit.gov/mediacenter/129639.htm.

24 HC 428–i (2010–11), *op. cit.,* chapter 8 (8 September 2010); and chapter 1 of this Report.

3 Europe 2020 Strategy: integrated guidelines

(a) (31573) 9231/10 SEC(10) 488	Draft Council Recommendation on broad guidelines for the economic policies of the Member States and of the Union: *Part I of the Europe 2020 integrated guidelines*
(b) (31574) 9233/10 COM(10) 193	Draft Council Decision on guidelines for the employment policies of the Member States: *Part II of the Europe 2020 integrated guidelines*

Legal base	(a) Article 121 TFEU; —; QMV (b) Article 148(2) TFEU; consultation; QMV
Department	(a) HM Treasury (b) Work and Pensions
Basis of consideration	Minister's letter of 11 October 2010
Previous Committee Report	HC 428–i (2010–11), chapter 9 (8 September 2010)
Discussion in Council	(a) ECOFIN 8 June 2010, European Council 17–18 June 2010, ECOFIN 13 July 2010 (b) Employment, Social Policy, Health and Consumer Affairs Council 7 June 2010, European Council 17–18 June 2010, further consideration by Employment, Social Policy, Health and Consumer Affairs Council on 21 October 2010
Committee's assessment	Legally and politically important
Committee's decision	For debate in European Committee B

Background

3.1 In 2000 an action plan, known as the Lisbon Agenda or Lisbon Strategy, was launched to "make Europe, by 2010, the most competitive and the most dynamic knowledge-based economy in the world". In 2005 the action plan was relaunched for the remainder of the decade as the Lisbon Strategy for Jobs and Growth. As part of the relaunch two-part "integrated guidelines" were agreed. They contained broad guidelines for the economic policies of the Member States and the then Community and guidelines for the employment policies of the Member States. The guidelines were to be taken into account by Member States in preparing and annually updating their National Reform Programmes. Each Member State reported annually on its reform programme and received non-binding recommendations, proposed by the Commission and endorsed by the Council, for future policies.

3.2 In March 2010 the Commission proposed a "Europe 2020 Strategy" for the coming decade, to follow on from the Lisbon Strategy. It set out the challenges facing the EU over the coming decade and the need for "a strategy to turn the EU into a smart, sustainable and

inclusive economy delivering high levels of employment, productivity and social cohesion" and proposed:

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

The strategy was to continue with integrated guidelines and the associated reporting and monitoring process.[25] The plan for a strategy was endorsed by the European Council in March 2010.[26] The Lisbon Treaty contains the legal base for the integrated guidelines — Article 121 TFEU for broad economic policy guidelines and Article 148 TFEU for employment policy guidelines. The latter article provides that the employment guidelines must be consistent with the economic guidelines.

3.3 Alongside the Lisbon Strategy has been the Growth and Stability Pact. The Pact, adopted in 1997, emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a "reference value" of 3%. Each year the Economic and Financial Affairs Council (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission's current economic forecasts. If a Member State's programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact's preventative arm. On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU (formerly Article 104 EC) and the relevant Protocol. The March 2010 European Council, in endorsing the Europe 2020 Strategy said that "The timing of the reporting and assessment of the National Reform Programmes and Stability and Convergence Programmes should be better aligned, in order to enhance the overall consistency of policy advice to Member States".[27]

3.4 These two documents presented, in April 2010 the Commission's proposals for the integrated guidelines for the Europe 2020 Strategy. It suggested the guidelines should remain largely stable until 2014 to ensure a focus on implementation. The Commission proposed ten guidelines:

25 See (31373) 7110/10: HC 5–xiv (2009–10), chapter 1 (17 March 2010) and *Gen Co Debs*, European Committee B, 22 March 2010, cols. 3–28.

26 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/113591.pdf.

27 *Ibid*.

- Guideline 1: Ensuring the quality and the sustainability of public finances;
- Guideline 2: Addressing macroeconomic imbalances;
- Guideline 3: Reducing imbalances in the euro area;
- Guideline 4: Optimising support for research and development and for innovation, strengthening the knowledge triangle and unleashing the potential of the digital economy;
- Guideline 5: Improving resource efficiency and reducing greenhouse gases emissions;
- Guideline 6: Improving the business and consumer environment and modernising the industrial base;
- Guideline 7: Increasing labour market participation and reducing structural unemployment;
- Guideline 8: Developing a skilled workforce responding to labour market needs, promoting job quality and lifelong learning;
- Guideline 9: Improving the performance of education and training systems at all levels and increasing participation in tertiary education; and
- Guideline 10: Promoting social inclusion and combating poverty.

Guidelines 1–6 are the proposed broad economic policy guidelines, which come within the remit of the Economic and Finance Affairs Council (ECOFIN), and Guidelines 7–10 the employment policy guidelines, which come within the remit of the Employment and Social Policy Council.

3.5 The details of the first six proposed guidelines were set out in document (a), which presented a draft Recommendation to Member States for adoption by the Council. The details of the four proposed employment guidelines were set out in document (b), which presented a draft Decision for adoption, after consultation with the European Parliament, by the Council. The Decision would require Member States to take account of the guidelines in their employment policies.

3.6 When we considered these documents, in September 2010, we said that the potential impact of the integrated guidelines for the Europe 2020 Strategy and for EU commentary on Government policies was important, that we thought the Government should be examined about that potential in a debate in European Committee and that, therefore, we recommended such a debate on the two documents.

3.7 However, we also said that before that debate took place we wanted to hear from the Government on two points, related to the employment guidelines, document (b). We noted that these guidelines, which Member States "shall take into account in their employment policies" under Article 148(2) TFEU, were being adopted on the basis of a legally binding Council Decision, whereas the economic guidelines were adopted on the basis of a non-legally binding Council Recommendation. We asked the Minister to explain

to us the thinking behind why the employment guidelines were to be adopted by a Decision and not a Recommendation, and whether this affected their legal status in the Member States. On this note we saw that, under guideline 8, Member States were told that "quality initial education and attractive vocational training must be complemented with effective incentives for lifelong learning, second-chance opportunities, ensuring every adult the chance to move one step up in their qualification and by targeted migration and integration policies". If these were indeed guidelines, we thought this recommendation should have been expressed in terms of "should" rather than "must".

3.8 Secondly, we asked the Minister whether, in his view, the Decision adopting the employment guidelines fell within the definition of a "legislative act" under the TFEU. If it did the subsidiarity early warning mechanism in Protocol 2 would apply, meaning that the House could submit a "reasoned opinion" to the Commission if it thought that the proposal did not comply with the principle of subsidiarity. We continued that:

- as the excerpt from the guidelines above showed, this was a policy field in which the Commission was making detailed recommendations;
- but it was also one where competence was shared with the Member States — so the principle of subsidiarity was particularly important;
- we thought that the draft Decision was a legislative act because the Council was to adopt the Decision after the "participation" — in this case consultation — with the European Parliament: so the procedure came within the generic definition of a "special legislative procedure" in Article 289(2) TFEU;
- however, doubt arose because the legal base did not state in terms that it was a special legislative procedure;
- in correspondence with us, the previous Government took the view that, where a legal base in the TFEU did not state that it was an ordinary or special legislative procedure, the act adopted was always non-legislative rather than legislative, irrespective of the participation of the European Parliament; and
- were that interpretation to be right, the House could not have invoked the subsidiarity early warning mechanism on this proposal.

The Minister's letter

3.9 The Minister of State for Employment, Department for Work and Pensions (Chris Grayling) says in response to our first point that:

- in contrast to Article 121 TFEU, the legal base for the Council Recommendation, Article 148 TFEU, the legal base for the Council Decision, does not specify the form of the act that must be used to adopt the guidelines;
- it is therefore in theory an open choice but the Government would argue that adopting the guidelines by Decision has no policy implication;

- the Decision is only for adopting guidelines which the Council is required to do but those guidelines are clearly non-binding under the terms of the Treaty, which the Decision text replicates;
- this is an oddity, and the Government does not have access to any argument or explanation deployed in advance of the Amsterdam Treaty in 1997, when the employment title first appeared;
- the Government is very clear, however, that the guidelines, nor the Europe 2020 process based on them, cannot be used to commit the UK to any policy action;
- it is clear from Article 148(2) TFEU that the guidelines are not intended to be legally binding;
- Member States are required to produce annual reports and Article 148(3) TFEU is clear that these are on implementation of national employment policy;
- any recommendations to Member States, therefore, should have the same focus and be on the basis of 148(4) TFEU only;
- Article 148 TFEU does not provide for any action against a Member State that did not comply with the obligation (in the Treaty, repeated in the Decision) to take account of the guidelines;
- in the Government's view the purpose of the guidelines is to provide a framework for what Member States should coordinate on — the aim is not to drive national policy but to increase collectively the EU level of employment;
- the process gives the Government scope to report on what it thinks is most relevant and useful for the exchange of good practice; and
- it will, moreover, have a role in agreeing to the text of the Joint Employment Report and it is that which may cover implementation of the guidelines which the Government's believes amounts to setting the European Council's priorities for the year ahead.

3.10 Finally, in response to our first point, the Minister says that, in relation to our suggestion that in Guideline 8 the word 'should' would be better employed than 'must', the Government tried to get this amended but without success. He continues that, whilst the Government agrees that the use of an imperative does appear to be in conflict with the role of the guidelines, the word has no legal force and any interpretation of it to that effect would be overridden by the overall non-binding status provided for by the Treaty, particularly in Guideline 8 where it relates to an area that is wholly national competence.

3.11 In response to our question about whether the adoption of the guidelines could be interpreted as a legislative act, the Minister says that:

- the Government's view is that an act is non-legislative unless the legal base specifies that it is adopted under the ordinary legislative procedure or the special legislative procedure;

- therefore, the subsidiarity protocol does not apply, although the Government is clear that the guidelines and action based upon them must respect national competence, as Article 147 TFEU specifies; and
- the involvement of the European Parliament under Article 148(2) TFEU is purely consultative and not legislative.

Conclusion

3.12 **We are grateful to the Minister for his responses. We note the firmness of his language in saying that the guidelines for the employment policies of Member States are not binding on the Member States, and that this is clear from Article 148(2) of the Treaty on the Functioning of the European Union (TFEU), the legal base. But the wording of that Article does not, in our opinion, bear this out: it talks of an obligation rather than a discretion: "guidelines which the Member States *shall* take into account in their employment policies", rather than "*may*". We also note that Article 2(3) TFEU says that "Member States *shall* coordinate their economic and employment policies *within* arrangements as determined by this Treaty, which the Union will have competence to provide". And in relation to the actual content of the current guidelines, we note the UK was unsuccessful in negotiating the replacement of "must" with "should" in Guideline 8. So we conclude that the extent to which these guidelines bind the UK is more ambiguous than the Minister's account would suggest.**

3.13 **The consequence of the distinction the Minister, and seemingly the Treaty, draws between legislative and non-legislative acts is that national parliaments are stopped from formally raising subsidiarity concerns through the early warning mechanism in the Subsidiarity Protocol on all non-legislative acts. This strikes us as perverse in a field such as employment policy where the impact of EU policies on the individual citizen can be considerable and where there is, consequently, particular sensitivity about safeguarding national sovereignty.**

3.14 **These are both points which, in addition to the impact of the integrated guidelines for the Europe 2020 Strategy and for EU commentary on Government policies, Members could explore in the debate in European Committee, which we recommend should now take place. In relation to the employment guidelines the Minister might usefully be asked to explain:**

— **the negotiating history and implications of Articles 2(3) and 5 TFEU, which give the EU competence to "ensure coordination of the employment policies of the Member States", and in what respects this "coordinating" competence, introduced by the Lisbon Treaty, is distinct from shared competence and the doctrine of pre-emption;**

— **what, if any, are the policy grounds (above and beyond the Treaty definition of "draft legislative act") for stopping Parliament from formally raising subsidiarity concerns through the early warning mechanism on EU employment guidelines which Member States must take into account in their employment policies;**

— **or, in the likely absence of policy grounds, whether the inappplicability of the subsidiarity early warning mechanism is simply an example of the law of unintended consequences at work; and**

— **how he thinks the distinction the TFEU makes between legislative and non-legislative acts might affect the development and application of the principle of subsidiarity. For example, given that the Subsidiarity Protocol does not apply to non-legislative acts, should subsidiarity only be a relevant consideration in assessing EU legislation rather than guidelines such as these.**

4 Radio Spectrum Policy

(31965) 13872/10 + ADDs 1–2 COM(10) 471	Proposed Council Decision establishing the first Radio Spectrum Policy Programme

Legal base	Article 114 TFEU; QMV; ordinary legislative procedure
Document originated	20 September 2010
Document deposited	27 September 2010
Department	Business, Innovation and Skills
Basis of consideration	EM of 14 October 2010
Previous Committee Report	None; but see (31638) 9981/10: HC 428–i (2010–11), chapter 28 (8 September 2010) and (31645)10245/10: HC 428–i (2010–11), chapter 29 (8 September 2010)
To be discussed in Council	2 December 2010 Telecoms Council
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

4.1 The EU regulatory framework agreed in 2002 consisted of the:

— *Framework Directive* setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks.

— *Access and Interconnection Directive* stipulating procedures and principles for imposing pro-competitive obligations regarding access to and interconnection of networks on operators with significant market power.

— *Authorisation Directive* introducing a system of general authorisation, instead of individual or class licences, to facilitate entry in the market and reduce administrative burdens on operators.

— *Universal Service Directive* requiring a minimum level of availability and affordability of basic electronic communications services and guaranteeing a set of basic rights for users and consumers of electronic communications services.

— *Privacy and Electronic Communications Directive* setting out rules for the protection of privacy and of personal data processed in relation to communications over public communication networks.

4.2 In addition, the *Radio Spectrum Decision* established principles and procedures for the development and implementation of an internal and external EU radio spectrum policy.

4.3 The Framework also established a number of committees and policy groups to manage and implement the new system:

— *Communications Committee*: which advises on implementation issues;

— *European Regulators Group*: to facilitate consistent application of the regime;

— *Radio Spectrum Policy Group*: to enable Member States, the Commission and stakeholders to coordinate the use of radio spectrum;

— *Radio Spectrum Committee*: to deal with technical issues around harmonisation of radio frequency allocation across Europe.

4.4 In this fast-developing sector, it was decided in 2007 that the regulatory framework needed to be revised, with a view to ensuring that it continued to serve the best interests of consumers and industry in today's marketplace. An agreement on the EU Telecoms Reform was reached by the European Parliament and Council of Ministers on 4 November 2009, after two years of discussion during the legislative process. It consists of:

— the "Better Regulation" Directive;[28]

— the "Citizens' Rights Directive;[29] and

— the Regulation establishing the BEREC and the Office.[30]

28 Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services. See OJ 2009 L337.

29 Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws. See OJ 2009 L337.

30 Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office. See OJ 2009 L337.

4.5 BEREC (Body of European Regulators of Electronic Communications) replaced the European Regulators Group.[31]

4.6 The new rules now need to be transposed into national laws of the 27 Member States by May 2011. The main elements of the reform package are at Annex 1 of this chapter of our Report.

The Commission Communication

4.7 On 8 September we considered the Commission's over-arching Communication, "A Digital Agenda for Europe", which focuses on seven priority areas, and foresees some 100 follow-up actions, of which 31 would be legislative. The seven areas are:

— creating a digital Single Market;

— greater interoperability;

— boosting internet trust and security;

— much faster internet access;

— more investment in research and development;

— enhancing digital literacy skills and inclusion; and

— applying information and communications technologies to address challenges facing society like climate change and the ageing population.

4.8 In his analysis of this Communication, the Minister for Culture, Communications and Creative Industries Department for Business, Innovation and Skills/Department for Culture, Media and Sport (Ed Vaizey) said that the Commission had itself noted "the ambitious UK Government involvement in the telecoms area through provisions of what has since become the Digital Economy Act (2010) with far-reaching proposals concerning modernisation of spectrum, a commitment to ensure universal broadband availability and promotion of next generation networks (NGN)."[32] He also noted that almost all National Regulatory Authorities (NRAs = Ofcom in the UK) had imposed regulatory measures

31 The European Regulators Group for electronic communications networks and services was set up by the Commission to provide a suitable mechanism for encouraging cooperation and coordination between national regulatory authorities and the Commission, in order to promote the development of the internal market for electronic communications networks and services. Building on this experience, the Body of European Regulators for Electronic Communications (BEREC) and its support Office were created within the recently approved reform of the EU Telecom rules to improve the consistency of implementation of the EU regulatory framework. The first meetings of the Board of Regulators of BEREC and the Management Committee of the Office were held in Brussels on 28 January 2010. In July 2010, Member States decided that its permanent seat will be in Riga. See http://berec.europa.eu/Default.htm for further information on BEREC.

32 The general idea behind Next Generation Networks (NGN) is that one network transports all information and services (voice, data, and media such as video) by encapsulating these into packets, as on the Internet. The International Telecommunications Union thus defines NGN) as "a packet-based network able to provide Telecommunication Services to users and able to make use of multiple broadband, QoS-enabled transport technologies and in which service-related functions are independent of the underlying transport-related technologies. It enables unfettered access for users to networks and to competing service providers and services of their choice. It supports generalised mobility which will allow consistent and ubiquitous provision of services to users." See http://www.itu.int/en/pages/default.aspx for further information.

following their analyses of broadband markets covering wholesale (physical) network infrastructure access at a fixed location (market 4/2007);[33] and wholesale broadband access (market 5/2007). He further noted that.

> "On spectrum management, the Commission notes the need for coordinated action to open up the digital dividend spectrum to different services across Europe, creating an opportunity particularly for wireless broadband network operators to gain valuable radio spectrum."

The Council Decision

4.9 This proposal for a Council Decision establishing the first Radio Spectrum Policy Programme (RSPP) is part of the Commission's "Broadband Package" for the roll-out of broadband and fast- and ultra-fast networks in the EU. The other constituent parts, which we consider elsewhere in this Report, are:

- a Commission Communication: European Broadband: investing in digitally driven growth; and
- a Commission Recommendation on Regulated Access to Next Generation Access (NGA) Networks.[34]

4.10 The Commission begins by recalling that Article 8a (3) of Framework Directive 2002/21/EC as amended by Directive 2009/140/EC invites the Commission to present a legislative proposal to the European Parliament and Council to establish a multiannual Radio Spectrum Policy Programme (RSPP) setting out policy orientations and objectives for the strategic planning and harmonisation of the use of spectrum, "taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG)."

4.11 The RSPP is based on Article 114 TFEU, "given the importance of the availability and efficient use of spectrum for the establishment of an internal market for electronic communications and for other EU policy areas." The RSPP will determine until 2015 how spectrum use can contribute to EU objectives and optimise social, economic and environmental benefits. It builds on EU regulatory principles for electronic communications and on the Radio Spectrum Decision No 676/2002/EC (the RSD), reaffirms principles to be applied to all types of spectrum use, establishes objectives for EU initiatives and lists actions to be launched.

4.12 The Commission notes that spectrum is "essential for the digital society, fast wireless services, economic recovery, growth, high-quality jobs and long-term EU competitiveness", and that spectrum policy initiatives "are also key to the Digital Agenda for Europe and to the Europe 2020 strategy for smart, sustainable and inclusive growth."

33 Markets defined by 2007/879/EC, Commission Recommendation of 17th December 2007, on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services — the "Framework Directive" (FWD).

34 In common parlance, the NGA Recommendation.

4.13 The Commission also notes that inputs for the RSPP came from the Spectrum Summit hosted by Parliament and the Commission, a Commission public consultation and the RSPG.

4.14 The proposal is accompanied by a 77-page impact assessment and an eight page impact assessment summary. In brief, the Commission says that the advantage of EU action lies in the fact that radio transmissions do not stop at borders and incoherence between national approaches can hamper spectrum usage. It argues that insufficient coordination may have other negative effects, e.g.:

— fragment the internal market, preventing economies of scale, thereby increasing costs;

— cross-border interference preventing most efficient spectrum use by all Member States;

— less effective international spectrum coordination outside EU as there is no 'common voice';

— missed opportunities for boosting innovation at European level and possible delay in strategic investments.

4.15 The Commission says that the first RSPP will outline how spectrum use can contribute to main EU political objectives until 2015 and will generally envisage how to enhance social, economic and environmental benefits of spectrum access. The following objectives are identified:

— support, through spectrum policy, the wireless broadband objectives set in the EU2020 Strategy and the Digital Agenda for Europe;

— promote spectrum use efficiency in EU policies, in particular by fostering flexibility and competition;

— promote innovation at European level;

— address weaknesses in spectrum management in EU competence areas;

— support objectives for combating climate change and promoting energy efficiency as set in the EU2020 Strategy and the Digital Agenda for Europe;

— protect European policy interests in international arenas and support Member States in dealing with third countries;

— contribute to promoting the internal market in equipment, services and networks.

4.16 The Commission says that policy options were selected based on the potential added value of further EU harmonisation and coordination and based on the type of measures that could increase spectrum efficiency and bring economic, social and environmental benefits. It also says that public consultations and the spectrum summit demonstrated that key issues often extend beyond electronic communications across several sectoral interests; that spectrum sharing opportunities can be expanded by considering all users while respecting national competences; and that stakeholders clearly called for the widest possible scope.

4.17 The 26 paragraphs in the Recitals to the text of the legislative proposal set out the policy points that underlie the text of the legislative proposals, including:

— a multi-annual radio spectrum plan for the purposes of the establishment functioning of the internal market is called for by Article 8(a) of the Framework Directive (2002/21/EC);

— the RSPP is subject to the Co-Decision process involving both the Council and the European Parliament;

— Article 114 of the Treaty TFEU is the appropriate treaty base in that the efficient functioning and availability of spectrum is necessary for establishment and functioning of the single market, not only in communications but in a wide range of other EU policy areas;

— strategic planning and harmonisation of spectrum would enhance the single market for wireless communications, create new opportunities for innovation, and contribute towards promoting "smart, sustainable and inclusive growth" ensuring universal broadband coverage of speeds of at least 30 Mbps for all Europeans by 2020;[35]

— the programme, if agreed, will be in effect until 2015;

— recognition that spectrum management will remain largely a competence of Member States;

— also that such management should be in accordance with EU law, as well as allowing actions in order to pursue EU policies, noting also that the programme should rely on Decision 676/2002/EC, [36] as well as the technical expertise of the European Conference of Postal and Telecommunication Administrations (CEPT) in order that any policies covering spectrum which have been agreed by Council and the European Parliament can be enacted by technical implementing measures;

— optimum use of spectrum may require new and innovative authorisation solutions, including collective use of spectrum and infrastructure sharing;

— the contribution that the combination of flexible spectrum usage and spectrum rights trading will make towards economic growth, together with mechanisms to prevent spectrum "hoarding" in order to create a dominant market position;

— Member States should take *ex ante* or *ex post* actions in order to ensure distortions in the market place do not occur, thus preventing innovative new services or applications from being made available;

— for spectrum to be managed in the most efficient manner, there should be an inventory of spectrum, in particular between 300 MHz and 3 GHz;

35 A target contained within the Broadband Strategy.

36 Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision).

— the view that radio equipment standardisation is essential to efficient spectrum use and that this should follow principles laid down in Directive 1999/5/EC,[37] commonly known as the RTTE directive, to take account of the increased risk of interference that comes with ever greater use of wireless technologies and manage these risks appropriately;

— that the 800MHz spectrum should be, in principle, be made available for electronic communications in the EU by 2013;

— that spectrum requirements exist outside of the electronic communications sector, with key examples being: transport safety, e-Health, R&D and public protection;

— the International Dimension: that spectrum management often transcends national borders, that Member States be mindful of the requirement that they should not enter into international agreements that prevent them from fulfilling any of their EU obligations and that the EU should prepare negotiations and multilateral agreements, including the International Telecommunications Union (ITU) in accordance with the appropriate powers afforded to the EU under EU law; and where multilateral negotiations impact on principles and policies within a wider EU context, the EU should be able to enact new procedures to defend its interests in multilateral negotiations; in order to achieve this, the Commission, when taking into account the opinion of the Radio Spectrum Policy Group (RSPG), may propose common policy objectives to the European Parliament and Council.

Text of the legislative proposal

4.18 In his detailed and helpful Explanatory Memorandum of 14 October 2010, the Minister for Culture, Communications and Creative Industries Department for Business, Innovation and Skills/Department for Culture, Media and Sport (Ed Vaizey) summarises the text as follows:

> Article 1 — Aim & Scope
>
> "This article defines that the aim of the RSPP is to define a radio spectrum programme for the strategic planning and harmonisation of the use of spectrum in line with EU legislation and sets out the relevant directives, namely:
>
> - Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity;
>
> - Directive 2002/20/EC of the European Parliament and of the Council of 7 march 2002 on the authorisation of electronic communications networks and services;

37 Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

- Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services;
- Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services; and
- Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)."

Article 2 — Application of General Regulatory Principles

"This article lays out the regulatory principles that contribute towards a consistent spectrum management mechanism. They are:

- to encourage efficient use of spectrum to meet increasing demand;
- promote a service- and technology-neutral approach, in order to promote flexibility and encourage innovation;
- apply a least onerous authorisation system; and
- ensure effective competition and thus guarantee the functioning of the internal market."

Article 3 — Policy Objectives

"Building on the principles in Article 2, this article sets out the policy objectives of the RSPP. They are:

- To make sufficient spectrum available in a timely manner to support EU policy objectives;
- Maximise flexibility, in order to promote innovation & investment;
- A service- & technological-neutral approach;
- Allow the possibility of spectrum trading;
- Allow general authorisations;
- Maintain and develop effective competition through effective regulation where needed;
- Reduce fragmentation of the internal market by enhancing coordination and harmonisation of technical requirements;

- Facilitate the creation of standards that allow for flexible and efficient use of spectrum;
- Manage and avoid harmful interference; and
- Have due regard to the harmful effect of electromagnetic field emissions on human health."

Article 4 — Enhance Efficiency and Flexibility

"This article then builds upon the regulatory principles and policy objectives in Articles 1 to 3. They are:

- Adopt authorisation and allocation measures appropriate for the development of broadband services;
- Foster the collective and shared use of spectrum;
- Cooperate to develop and harmonise standards;
- Ensure selection conditions and procedures that promote investment and efficient use of spectrum;
- Develop guidelines on authorisation and procedures in order to avoid fragmentation of the internal market for that spectrum that can be traded; and
- Take appropriate measures to avoid spectrum hoarding, including financial penalties or withdrawal of rights."

Article 5 — Competition

"This article deals with actions that should promote competition, as well as those that could be used to avoid undue distortions. They are:

- A limit on the amount of spectrum that can be used by any economic operator;
- Ability to refuse to grant new usage rights in certain bands that could lead to excessive concentrations and thus stifle competition;
- Either a prohibition or the imposition of further conditions on certain transactions whose result would impede competition;
- A possible amendment of existing rights to remedy, ex post, excessive concentrations of spectrum holdings that would impede competition; and
- Authorisation procedures that avoid delays and promote competition."

Article 6 — Spectrum for Wireless Broadband Communications

"This article covers actions that would contribute towards the objectives of the Digital Agenda for Europe and develop wireless broadband communication. They are:

- Ensure sufficient spectrum is allocated in order to achieve the Digital Agenda's targets of all citizens having wireless broadband of at least 2Mbps by 2015, and at least 30Mbps by 2020;
- Authorise the use of spectrum covered by a number of Commission Decisions (2.5 to 2.69 GHz, 3.4 to 3.8 GHz and 900/1800 MHz) by January 2012;
- Make available the 800MHz band by January 2012;
- Ensure that actions covering the 800 MHz band does not have a negative impact on Programme Making and Special Events (PMSE) users;
- Adopt, without delay, the legislative basis that would allow spectrum trading;
- Consider the spectrum that would be required to support satellite-based services that would provide broadband for the most remote areas of Europe."

Article 7 — Spectrum Needs for Specific EU Policies

"This article covers actions that would contribute to best meet the spectrum requirements to support specific EU policies. They are:

- Ensure sufficient spectrum for scientific monitoring of the environment and space applications, such as GALILEO and GMES;
- Study and consider authorisation schemes that contribute to low-carbon policies eg smart grids and metering systems;
- Ensure sufficient spectrum for the development of safety services and allow the development of innovative interoperable public protection and disaster relief services; and
- Review the spectrum requirements for scientific research in areas that would have a major socio-economic impacts.

Article 8 — Inventory and Monitoring of Existing Uses of and Emerging Needs for Spectrum

"This article sets out the proposal for a pan-EU inventory, particularly in the 300 MHz to 3 GHz range. The aim is to ensure that spectrum is being used in the most effective & efficient manner."

Article 9 — International Negotiations

"This article sets out the principles behind how the EU should approach international negotiations regarding spectrum (in line with EU law covering internal and external competencies). It particular it covers the following matters:

- The International Telecommunications Union (ITU) (where the Presidency should coordinate & lead);
- The World Radio Communications Conference (2012);

- Where Member States and the EU share competence;
- The provision of technical and political support by the EU for Member States;
- A requirement for Member States to have due regard to their EU obligations when negotiating spectrum issues with non-EU states."

Article 10 — Cooperation Among Various Bodies

"This Article addresses how the relevant European institutions who are stakeholders in spectrum management should cooperate in order to address political and technical issues."

Article 11 — Public Consultation

"This Article instructs Member States to hold public consultations involving all stakeholders whenever appropriate."

Article 12 — Reporting

"This Article lays down the requirement for the Commission to review and report on the RSPP to both Council and the European Parliament by 2015."

Article 13 — Implementation — Notification

"This Article spells out the requirement for Member States to report to the Commission on how the RSPP has been implemented."

Article 14 — Entry into Force & Article 15 — Addresses

"These two Articles cover when the RSPP comes into force (upon publication in the Official Journal of the European Union) and that it is addressed to Member States."

4.19 The Minister says that the Decision may have an impact on UK law, and require changes to the Communications Act 2003 and the Wireless Telegraphy Act 2006. In addition, the Decision may have an impact on Ofcom as the sectoral regulator in the UK. As such, he notes that an Impact Assessment is required and says that it "will be sent in due course."

4.20 On the question of *Subsidiarity*, the Minister says that the proposal concerns an area in which the EU has already exercised its competence, that the proposal therefore complies with subsidiarity principle as set out in Article 5 of the Treaty on the European Union, and that the stated aim of the proposal is that there will be greater consistency in regulation across Europe.

4.21 The Minister also notes that, though the proposals are a reserved matter under UK's devolution settlements, the devolved administrations have an interest and have been consulted in the preparation of his Explanatory Memorandum.

The Government's view

4.22 The Minister welcomes the recognition that the Commission is giving to the importance of spectrum for economic growth in Europe and the need for a market-based approach to its allocation, and also the reaffirmation of the guiding principles of service- and technology-neutrality in the proposal for a Radio Spectrum Policy Programme. He continues as follows:

> **"Policy Objectives**
>
> "Article 3 covers the overall policy objectives which we would generally endorse. Of note, it includes measures to prevent and remedy excessive accumulation of spectrum rights. This featured in the recent Telecommunications Framework review and is legitimately an issue of concern to the Commission. Ofcom, as the UK's National Regulatory Authority (NRA) already has competition powers.
>
> "However, defining what 'anti-competitive hoarding' means is not as straightforward. One issue is how to prevent actions such as businesses buying spectrum when it becomes available in order to secure it for later use being misinterpreted as 'hoarding'. This is an issue when you take into account that business cycles and spectrum availability don't always align.
>
> **"Authorisation**
>
> "Article 4 includes developing 'guidelines on authorisation conditions and procedures for such bands, in particular on infrastructure sharing and coverage conditions'. Whilst guidelines themselves may not be a problem for the UK we need to monitor this as it might have implications for such issues as harmonised coverage conditions, duration of rights and spectrum block size.
>
> "However, we would also seek to amend the text of Article 4 so that it does not make '10 MHz block sizes' (while making good sense for efficient use of spectrum, especially for Long-Term Evolution — LTE networks) mandatory in any sense.
>
> **"Competition**
>
> "Article 5 specifically covers issues relating to competition. It tasks Member States to ensure competition and avoid market distortions that would affect competition. It suggests measures that Member States may use, such as spectrum caps or refusing to allow spectrum use if the competition would be negatively affected.
>
> "HMG welcomes the wording used which, whilst stating principles, allows for freedom of choice in order to use tools for implementation by each Member State without prescribing which should be used.
>
> "However, we do have some concern that Article 5(3) puts an obligation on MS regarding authorisation and selection procedures which is rather prescriptive and are thus discussing and pushing for a somewhat less obligatory approach in the Council discussions.
>
> **"Specific Aims**

"Article 6 contains some specific proposals to support an aim of wireless broadband contributing to a wider broadband aim of 30 Mbps for all citizens by 2020.

"The specific targets on making the 800 MHz band available for use by 1st January 2013 and the 2.6GHz band to be authorised by 1st January 2012 could be potentially problematic to the UK. We are aware, through discussions taking place at Telecommunication Council Working Party meetings, that these are shared by a number of other Member States and that a later date is likely to be agreed on.

"HMG has already made the Commission aware of potential interference issues with radars in bands adjacent to 2.6 GHz which could affect authorisation of spectrum and thus the timing for bringing such spectrum into use. This is a point recognised by Commission in the initial discussions on this proposal.

"We are also concerned with the proposed coverage obligations in Article 6 with respect to sparsely populated areas, which we believe should be a matter for each Member State; again it looks likely that a less prescriptive approach will be agreed.

"EU Policies

"Article 7 covers spectrum for specific EU policies such as the GALILEO navigation satellite and as such as it evolves in discussion, it has the potential to become a shopping list for spectrum.

"As such we think this Article is slightly at odds with the principles of service-neutrality re-iterated elsewhere in the RSPP; this being a point we are making in the Council.

"Inventory and needs

"Article 8 covers an inventory of spectrum use and future spectrum needs. This is another Article that needs to be monitored and whilst this potentially sounds beneficial, putting it into practice may prove challenging and the detail of this proposal will need to be extrapolated before assessing the potential benefits.

"EU International Role

"Article 9 considers the EU's role in international negotiations related to spectrum, principally at the ITU. The Commission states in Recital 20 that its long term objective is to become a member in the ITU in its own right (it currently only has observer status) and in the interim, the article suggests that the 'EU shall participate in international negotiations dealing with spectrum matters to defend its interests'. HMG accepts that there is an enhanced role of the EU with respect to negotiation on such issues as spectrum that have arisen since the Lisbon Treaty, but that in the context of the ITU it has to be the Presidency, in conjunction with the Commission, that coordinates any common position and represents any EU position in formal meetings.

"However, we remain concerned as to the specific mechanisms through which the EU would exert such coordination, within the context of the ITU, without a change to the ITU constitution and convention."

4.23 The Minister notes the various consultations that the Commission has carried leading up to the publication of this document , confirms that the UK (including Ofcom) has taken a full role during the consultation period and says that he intends this to continue during the negotiations that will now begin in the Council and then with the European Parliament. He does not expect agreement to be reached until late 2011 at the earliest and perhaps not for 18 months. In the immediate future, the RSPP proposals will be subject to Council Conclusions at the December Telecommunications Council. Once the RSPP is formally ratified, the Government will, the Minister says, again consult on how to implement in the UK.

Conclusion

4.24 **We are grateful to the Minister for his very thorough and helpful Explanatory Memorandum about this highly technical and complex subject.**

4.25 **The Minister has illustrated those aspects of the proposals about which he has concerns, and which he will be addressing during the upcoming negotiations. We look to him to keep the Committee informed appropriately and in a timely fashion about any proposed revisions. In the first instance, we should be grateful to know what Conclusions are adopted, and his views on the extent to which they advance, or if appropriate undermine, UK interests.**

4.26 **Meanwhile, we shall retain the document under scrutiny.**

Annex 1: Main elements of telecoms reform[38]

"The 12 most prominent reforms in the new package of rules for Europe's telecoms networks and services, as proposed by the European Commission in November 2007, and agreed between the negotiators of the European Parliament, the Council of Telecoms Ministers and the Commission on 5 November 2009 are:

1. **A right of European consumers to change, in 1 working day, fixed or mobile operator while keeping their old phone number.** Currently in the EU it takes on average 8.5 days for a mobile number and 7.5 days for a fixed number to be changed, with some customers facing a two to three week wait. In the future, consumers will be able to do this in 1 working day. In addition, under the new rules, the maximum initial duration of a contract signed by a consumer with an operator will be no longer than 24 months. Operators must also offer consumers the possibility of agreeing to a contract with a maximum duration of 12 months.

2. **Better consumer information**: Under the new telecoms rules, consumers will receive better information ensuring they understand what services they subscribe to and, in particular, what they can or cannot do with those communications services. Consumer contracts must specify, among other things, information on the minimum service quality levels, as well as on compensation and refunds if these

38 Extracted from http://ec.europa.eu/information_society/policy/ecomm/tomorrow/reform/index_en.htm.

levels are not met, subscriber's options to be listed in telephone directories and clear information on the qualifying criteria for promotional offers.

3. **Protecting citizens' rights relating to internet access by a new internet freedom provision**: Following the strong request of the European Parliament, and after long negotiations on this point, the new telecoms rules, in a new Internet freedom provision, now explicitly state that any measures taken by Member States regarding access to or use of services and applications through telecoms networks must respect the fundamental rights and freedoms of citizens, as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and in general principles of EU law. Such measures must also be appropriate, proportionate and necessary within a democratic society. In particular, they must respect the presumption of innocence and the right to privacy. With regard to any measures of Member States taken on their Internet access (e.g. to fight child pornography or other illegal activities), citizens in the EU are entitled to a prior fair and impartial procedure, including the right to be heard, and they have a right to an effective and timely judicial review.

4. **New guarantees for an open and more 'neutral' net**: The new telecoms rules will ensure that European consumers have an ever greater choice of competing broadband service providers. Internet service providers have powerful tools at their disposal that allow them to differentiate between the various data transmissions on the internet, such as voice or 'peer-to-peer' communication. Even though traffic management may allow premium high-quality services (such as IPTV) to develop and can help ensure secure communications, the same techniques may also be used to degrade the quality of other services to unacceptably low levels or to strengthen dominant positions on the market. That is why, under the new EU rules, national telecoms authorities will have the powers to set minimum quality levels for network transmission services so as to promote "net neutrality" and "net freedoms" for European citizens. In addition, thanks to new transparency requirements, consumers must be informed — before signing a contract — about the nature of the service to which they are subscribing, including traffic management techniques and their impact on service quality, as well as any other limitations (such as bandwidth caps or available connection speed).

   The Commission also made a political commitment to keep the neutrality of the internet under close scrutiny and to use its existing powers as well as new instruments available under the reform package to report regularly on the state of play in net neutrality to the European Parliament and the Council of Ministers.

5. **Consumer protection against personal data breaches and spam**: European citizens' privacy is a priority of the new telecoms rules. Names, email addresses and bank account information of the customers of telecoms and internet service providers, and especially the data about every phone call and internet session, need to be kept safe from accidentally or deliberately ending up in the wrong hands. Operators must respond to the responsibility that comes with processing and storing this information. Therefore, the new rules introduce mandatory notifications for personal data breaches — the first law of its kind in Europe. This

means that communications providers will be obliged to inform the authorities and their customers about security breaches affecting their personal data. This will increase the incentives for better protection of personal data by providers of communications networks and services. In addition, the rules concerning privacy and data protection are strengthened, e.g. on the use of 'cookies' and similar devices. Internet users will be better informed about cookies and about what happens to their personal data, and they will find it easier to exercise control over their personal information in practice. Furthermore, internet service providers will also gain the right to protect their business and their customers through legal action against spammers.

6. **Better access to emergency services, 112**: The new telecoms rules will ensure that European citizens gain better access to emergency services by extending the access requirements from traditional telephony to new technologies, strengthening operators' obligation to pass information about caller location to emergency authorities, and by improving general awareness of the European emergency number '112'. In addition, provisions on access to telecoms services for Europeans with disabilities have been strengthened so that they can benefit from the same usability of services as other citizens, but by different means. For the first time, the EU's telecoms rules will include a provision on the availability of terminal equipment offering the requisite services and functions for users with disabilities.

7. **National telecoms regulators will gain greater independence**: The new telecoms rules reinforce national telecoms regulators' independence by eliminating political interference in their day-to-day duties and by adding protection against arbitrary dismissal for the heads of national regulators.

8. **A new European Telecoms Authority that will help ensure fair competition and more consistency of regulation on the telecoms markets.** The reform creates a very important tool for making a single European telecoms market a reality: the new European Telecoms Authority 'BEREC' (Body of European Regulators for Electronic Communications) that will replace the loose cooperation behind closed doors that exists today in the 'European Regulators Group' with a more transparent and more efficient approach. BEREC decisions will be taken, as a rule, by majority of the heads of the 27 national telecoms regulators: by a simple majority when BEREC gives opinions in the context of the Commission's analysis of remedies notified by national regulators, and by a two thirds majority in other cases. Such BEREC decisions will be prepared by an independent supranational Office with expert staff. BEREC will also advise, support and complement the independent work of national telecoms regulators, especially when it comes to regulatory decisions with a cross-border relevance. A decision on the seat of BEREC still needs to be taken by the Governments of the 27 Member States.

9. **A new Commission say on the competition remedies for the telecoms markets**: The new EU telecoms rules will give the European Commission the power to oversee regulatory remedies proposed by national regulators (e.g. on the conditions of access to the network of a dominant operator; or on fixed or mobile termination rates). The objective is to avoid inconsistent regulation that could distort

competition in the single telecoms market. When the Commission, in close cooperation with BEREC, considers that a draft remedy notified by a national regulator would create a barrier to the single market, the Commission may issue a recommendation that requires the national regulator to amend or withdraw its planned remedy.

The new rules also enable the Commission to adopt further harmonisation measures in the form of recommendations or (binding) decisions if divergences in the regulatory approaches of national regulators, including to remedies, persist across the EU in the longer term, e.g. on broadband access conditions or on mobile termination rates.

10. **Functional separation as a means to overcome competition problems:** National telecoms regulators will gain the additional tool of being able to oblige telecoms operators to separate communication networks from their service branches, as a last-resort remedy. This new remedy has been advocated since 2007 by the European Commission and by the 27 national regulators. Functional separation can rapidly improve competition in markets while maintaining incentives for investment in new networks. Functional separation has been implemented in the UK since January 2006 where it triggered a surge in broadband connections (from 100.000 unbundled lines in December 2005 to 5.5 million 3 years later). The new EU rules on functional separation will add legal certainty for countries currently moving towards different forms of separation (Poland, Italy), while ensuring overall consistency for the benefit of the single market, effective competition and consumer choice.

11. **Accelerating broadband access for all Europeans**: Currently, in rural areas of the EU only an average of 70% of the population can have access to a broadband network connection. The reform will help in overcoming this "digital divide" by better managing radio spectrum and by making it effectively available for wireless broadband services in regions where building a new fibre infrastructure is too costly; and by allowing Member States to expand universal service provisions beyond narrow-band internet access.

    The reform in particular puts a much stronger emphasis on technology and service flexibility in spectrum use, making it easier for operators to introduce innovative technologies and services. This increased flexibility will bring important economic gains and has the potential to generate an estimated additional 0.1% of GDP per annum. In particular, it will allow the "digital dividend", the radio spectrum freed as a result of the switchover from analogue to digital TV, to work for the economic recovery as also stressed in the Commission's recent Communication on transforming the digital dividend into social benefits and economic growth.

12. **Encouraging competition and investment in next generation access networks:** The new rules bring legal certainty for investment in next generation access (NGA) networks. These networks, based on new optical fibre and wireless network technologies, are replacing less efficient traditional copper-wire networks and will allow high-speed internet connections. The reform of the telecoms rules reaffirms the importance of competition in this new sector while at the same time preserving

incentives to invest by taking into account the risks involved in allowing access to NGA networks and allowing for various cooperative arrangements between investors and access-seeking operators. In this way, the new rules will also ensure telecoms operators receive a fair return on their investments. On the basis of the new rules, the Commission plans to issue a recommendation for the regulation of access to NGA networks in the first half of 2010, taking into account the results of public consultations in 2008 and 2009. The rules governing the sharing of network elements, such as ducts or in-building wiring, between operators are also updated by the reform. Besides improving competition and services for businesses and consumers, this will also help lower the overall financial costs for operators of deploying NGA networks."

5 Broadband development in Europe

(31969) 13874/10 COM(10) 472	Commission Communication: *European Broadband: investing in digitally driven growth*

Legal base	—
Document originated	20 September 2010
Deposited in Parliament	28 September 2010
Department	Business, Innovation and Skills
Basis of consideration	EM of 14 October 2010
Previous Committee Report	None; but see (31638) 9981/10: HC 428–i (2010–11), chapter 28 (8 September 2010) and (31645)10245/10: HC 428–i (2010–11), chapter 29 (8 September 2010)
To be discussed in Council	2 December 2010 Telecoms Council
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

5.1 An earlier Commission Communication of 19 May 2010, which the Committee considered on 8 September, set out the Commission's Digital Agenda for Europe — the first of seven flagship initiatives under the "Europe 2020" strategy.[39] The "Europe 2020" strategy, which was launched by the Commission in March 2010, is a ten year strategy for smart, sustainable and inclusive growth, designed to prepare the EU for the challenges that

39 See http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf for details.

it will face over the next 10 years. It was endorsed by the 25–26 March 2010 European Council.

5.2 In unveiling its Digital Agenda for Europe,[40] the Commission said that implementing its ambitious agenda would contribute significantly to the EU's economic growth and spread the benefits of the digital era to all sections of society. The Commission noted that half of European productivity growth over the past 15 years was already driven by information and communications technologies and this trend was likely to accelerate. At that time, Commission Vice-President for the Digital Agenda Neelie Kroes said:

> "We must put the interests of Europe's citizens and businesses at the forefront of the digital revolution and so maximise the potential of Information and Communications Technologies (ICTs) to advance job creation, sustainability and social inclusion. The ambitious strategy set out today shows clearly where we need to focus our efforts in the years to come. To fully realise the potential of Europe's digital future we need the full commitment of Member States, the ICT sector and other vital economic players."

5.3 The Digital Agenda focuses on seven priority areas, and foresees some 100 follow-up actions, of which 31 would be legislative. The seven areas are:

— creating a digital Single Market;

— greater inter-operability;

— boosting internet trust and security;

— much faster internet access;

— more investment in research and development;

— enhancing digital literacy skills and inclusion; and

— applying information and communications technologies to address challenges facing society like climate change and the ageing population.

5.4 At her press conference to introduce the Communication, the Commissioner said that progress towards achieving the Communication's objectives would be measured against a number of specific targets, for example:

- by 2013, broadband coverage for all EU citizens and, by 2020, fast broadband coverage at 30 Megabits per second for all EU citizens, with at least half European households subscribing to broadband access at 100 Megabits per second;[41]
- by 2015, 50% of the EU population should be shopping online, with 20% of the population using cross-border online services;

40 See http://ec.europa.eu/information_society/digital-agenda/index_en.htm for full background.

41 A megabyte per second (MB/s or MBps) is a unit of data transfer rate.

- by 2015, regular internet use increased from 60% to 75%, and in the case of disadvantaged people from 41% to 60%;
- by 2015, halve the proportion of people who have never used the internet (from 30% to 15%);
- by 2015, 50% of EU citizens should be using online public services, with more than half of them returning filled in forms via the internet;
- by 2020, doubling EU Member States' total annual public spending on ICT Research and Development to €11 billion.

5.5 In his Explanatory Memorandum of 22 June 2010, the Minister for Culture, Communications and Creative Industries Department for Business, Innovation and Skills/Department for Culture, Media and Sport (Ed Vaizey) welcomed what he described as a comprehensive Communication and the forward looking strategy it outlined, professed himself to be particularly pleased about its focus on how to derive economic benefit from the use of ICT, which he maintained was something the Government had pressed the Commission on during its formation, and agreed that the priority for the new EDA should be a focus on initiatives that derive maximum leverage from ICT for economic growth and productivity. He also supported actions that sought to resolve both access to, and increased take-up of, the internet by EU citizens and businesses.

5.6 The Minister was, however, concerned that the large number of proposed actions could cause a lack of focus and dissipate effort, and thought that the Commission should have applied a more rigorous regime of prioritisation, which he believed would have ended up with a simpler, more achievable set of actions. At the Telecommunications Council, he had therefore suggested that the Commission, in conjunction with Member States, should set out a route map for major items for example, and regularly report progress to the Council, so as to ensure effective implementation of this agenda.

5.7 The Minister was not in a position at this stage to comment on all the proposals outlined in this Communication, reflecting both that work was still being taken forward on policy development but a lack of details in some of the proposals from the Commission.

5.8 Among those upon which he commented, however, were three Broadband targets, which he said were broadly in line with the Government's policy:

- by 2013, basic broadband for all Europeans, which he described as clearly consistent with the UK Universal Service Commitment to provide access to a 2 MBps service for all by 2012;
- by 2020, all Europeans to have access to speeds of greater than 30MBps, which he said implied some involvement of fibre in the access network and was at a "level of ambition" consistent with the Coalition Agreement and subsequent policy statements; and
- also by 2020, 50% or more of European households to subscribe to internet connections above 100 MBps, which he described as the most ambitious of the targets, and where he noted that the average level of the implicit Fibre To The

Home connection (FTTH)[42] in Europe according to the Communication was 1% (compared with 2% in the USA, 12% in Japan and 15% in South Korea), which he said meant that, in addition to removing investment barriers to allow coverage to grow, would require demand-side action.

5.9 The Communication suggested taking measures including possible legal measures to facilitate broadband investment, which the Minister said were precisely the ones being considered by the Government — for example, passive infrastructure sharing, co-ordination of civil engineering works and Member States fully using EU Structural and Rural Development Funds.

5.10 Turning to the *Financial Implications*, the Minister said that, although the Communication as such did not have any, the Commission proposed to leverage more private investment by doubling annual public spending on ICT research and development from €5.5 billion to €11billion (£4.6 billion–£9 billion) by 2020. The Minister noted that, while the Government saw R&D as a driver for growth, EU budget decisions must be seen in the context of fiscal consolidation and good financial management, with any increase being through reprioritisation away from areas with low EU value added funding to be made; that negotiations on the framework for the 2014–2020 EU budget would begin in early 2011, with agreement expected in 2012; and that the Commission cannot enter into financial commitments for this period until the negotiations have been concluded: the UK, along with other Member States, would therefore seek to ensure that discussions on policy areas in advance of those negotiations could not prejudice the outcome of the negotiations.

5.11 The Minister concluded by describing the Council Conclusions adopted at the 31 May Telecoms Council were as a set of bland endorsements at a very high level that did not sign the UK up to any particular part of the Digital Agenda, before the negotiations on each of the proposals that form the EDA had taken place,[43] and noting that the Commission would now begin to publish the various proposals according to the timetable.

Our assessment

5.12 We noted that: the Commissioner had also said at her press conference: "The digital world affects us all — there is no choice about that. But we can take the decision to use these changes to boost European growth, jobs and the well-being of our citizens. That is the decision the Commission is taking today, and we call on all those with a stake in this digital future for Europe to join us in moving forward"; and that the extent of this challenge was plainly set out in an associated Communication, on the development thus far of EU communications markets, which we also considered on 8 September, and which demonstrated just how far the EU was from a single market in this area.[44]

42 Fibre to the Home: a network where the final connection to the subscriber's premises is made of optical fibre. This technology is currently replacing copper-based networks.

43 The conclusions are available at http://www.eu2010.es/export/sites/presidencia/comun/descargas/may31_pressreleaseEN.pdf.

44 See headnote: (31645)10245/10: HC 428–i (2010–11), chapter 29 (8 September 2010).

5.13 We also cleared the document and look forwarded to considering the upcoming Broadband and other proposals as they were put forward.[45]

The Commission Communication

5.14 This Communication is part of the Commission's "Broadband Package" for the roll-out of broadband and fast- and ultra-fast networks in the EU. The other constituent parts, which we consider elsewhere in this Report, are:

- a Commission Recommendation on Regulated Access to Next Generation Access (NGA) Networks;[46]
- the proposal for a Decision of the European Parliament and of the Council establishing a Radio Spectrum Policy Programme (RSPP).

5.15 This Communication sets out a framework for helping Member States meet the European Digital Agenda's broadband targets for the EU. Its objective is to further assist the actions of national and local authorities in achieving the optimal conditions for the rollout of broadband across the EU. As foreseen in the earlier Communication, the key targets are:

- by 2013 Basic broadband coverage for all EU citizens;
- by 2020 All Europeans should have access to broadband speeds of above 30 Mbps; and
- by 2020 50% or more of European households should have broadband subscriptions above 100Mbps.

5.16 The Commission proposes the following Member State actions on order to achieve the broadband targets:

- by 2011, in cooperation with the European Investment Bank, issue guidance for local and regional authorities on the use of EU funds for broadband projects;
- by 2011, adopt investment guidelines for local and regional authorities to maximise use of EU funds for broadband projects; and
- by end-2013, increase funding of high-speed broadband through EU instruments such as the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development.

5.17 The Commission also calls upon Member States to:

45 See headnote: (31638) 9981/10: HC 428–i (2010–11), chapter 28 (8 September 2010).

46 In common parlance, the NGA Recommendation.

- implement the Next Generation Access (NGA) Recommendation and anticipate key aspects of the European Radio Spectrum Policy Programme (RSPP);
- set national broadband targets and adopt operational plans that are in line with the European broadband target, which the Commission intends to review the in 2011; and
- take national actions to reduce broadband investment costs.

5.18 The Communication begins by setting the background against which this strategy is set. It notes that world demand for high speed broadband is fast-growing, driven by the increased downloading of video from the Internet and the use of more graphically advanced websites. Along with download speeds being important in this context, equal consideration needs to be given to the need for higher upload speeds and lower latency.[47] Due to this, the Commission believes that high speed broadband will play a key role in economic recovery and as a platform to allow innovative new services and applications flourish throughout the EU. It is this belief that has driven the Commission to set out the targets and actions contained in the Communication. Several examples cited of existing and developing services that require such high speed connections include:

- "smart"electrical grids (which can cut consumer spending on energy and allow for more effective network management);
- real-time "cloud based" computing services[48] (which can be used by small businesses to lower costs); and
- data intensive e-health applications (allowing health-care professionals to use remote techniques and share information more readily).

The Communication notes that, in the view of the Organisation for Economic Cooperation and Development (OECD), the cost of savings in the transport, health, electricity and education sectors alone would justify the construction of a national FTTH network.

5.19 After considering issues relating to the technology and market developments associated with current broadband delivery — fixed copper or cable networks, wireless networks, e.g. Third Generation (3G) and fixed wireless access (Wifi or Wimax) — the Commission notes that the Next Generation Access Recommendation and transposition of

47 The time taken for data to get from one designated point to another.

48 Cloud based computing is the use of software, platforms or infrastructure offered by web based service providers to perform tasks on the Internet often performed in-house. A Cloud can be either publicly owned as is the case with Google web tools such as Gmail and Google Docs or it can be privately owned and operated generally by a company. There are presently three types of Cloud based services: Infrastructure-as-a-Service (e.g. Amazon Web Services and SliceHost, which provide virtual server instances based on technologies provided by the Vmware and Xen etc); Platform-as-a-service in the cloud (a set of software and product development tools hosted on the provider's infrastructure, e.g., GoogleApps); and Software-as-a-service cloud model (which leverages the vendor hardware infrastructure and their software product to provide a complete service to and end user such as Hotmail and Gmail). Other examples of cloud based services and technologies include: Storage — Amazon S3, Ubuntu One, Microsoft SkyDrive; Mapping — Google maps, Yahoo Maps, MapQuest; Telephony Services (VOIP) — Skype, Razortel; Business Tools — SugarCRM, Salesforce, Mail, Spam Filters; and Hosting Providers — Slicehost, OpSource, Rackspace. For further information, see http://randomitblog.blogspot.com/2009/10/what-is-cloud-based-computing.html.

the new Telecommunications Framework[49] should provide regulatory certainty and so promote investment and competition over such networks. The Commission calculates that upgrading current networks to meet the target of 30Mbps for all by 2020 will cost €38 billion to €58 billion (£32.7 billion to £50.0 billion), and between €181 billion and €268 billion (£156.0 billion to £230.9 billion) in order to meet the third target of 50% of households subscribing to 100Mbps by 2020.

5.20 The Commission then examines the various elements considered necessary for success of the strategy. EU broadband policy should foster investment in new networks and enhance infrastructure competition. The Commission accordingly intends to work in cooperation with Member States to produce effective national broadband plans, especially as very few Member States have strategies for super- and ultra-fast broadband. Member States' plans should incentivise and supplement private sector action by ensuring that the revised Telecommunications Framework is properly implemented in order to provide regulatory certainty in order to encourage further investment and include policies that assist private investment in broadband (e.g. rules that allow sharing of infrastructure and targeted financing measures that reduce risk and promote new open infrastructures). Member States' plan should also include clear guidance on the use of EU broadband funds and European Investment Bank instruments in eligible Member States. Updated digital competitiveness reports and a new "digital agenda scoreboard"' with detailed performance indicators will enable Member States to monitor and compare broadband plans.

5.21 The Commission then examines a variety of ways to minimise investment costs, including:

- making the installation of new passive infrastructures and "in-building" wiring a requirement for planning authorisations;
- coordinating civil works so that new networks can be installed at the same time as repairs or new duct installation;
- simplifying regulations and procedures to enable further roll-out of wireless infrastructures;
- ways in which national and local authorities could support broadband deployment through direct public investment that would take into account State Aid rules;
- cooperation with the Body of European Regulators for Electronic Communications (BEREC) to ensure they include measures to increase the rollout of broadband as a priority in its 2011 work programme;
- supporting the construction of broadband infrastructures and Internet take-up through both EU Rural Development and Structural Funds;
- promoting Wireless Broadband, by making radio spectrum more widely available;
- developing broadband finance instruments, in conjunction with the EIB.

49 Member States must have transposed the new provisions of the Telecoms Framework by May 2011.

5.22 In his Explanatory Memorandum of 14 October 2010, the Minister for Culture, Communications and Creative Industries (Ed Vaizey) fully supports the Commission's analysis of the role which broadband will play a key role in economic recovery and is supportive of the overall objectives of the Communication. He continues as follows:

> "The Government's objective is to have the best superfast broadband network in Europe by 2015. To achieve this task the Government is encouraging and supporting investment in rural and difficult to reach areas at the same time as market players are investing in more densely populated areas. The Government's policy is broadly consistent with the EU's targets and is likely to meet to meet them ahead of most other Member States."

5.23 With regard to calls on Member States to set out national broadband plans, the Minister says:

> "The Government has articulated a vision and will set out in a strategy document, the interventions planned to achieve the Government's vision. This should take the UK a long way towards achieving the specific EU targets. The Government plans to publish the strategy document before the end of 2010."

5.24 The Minister also supports the EU's recommendation that Member States should take actions that promote investment in broadband networks and reduce investment costs:

> "The specific suggestion that Member States should take action to promote infrastructure sharing is consistent with the approach that the Government has been pursuing. Ofcom has been consulting on access to BT's 'ducts and poles' in the context of its review of wholesale local access."

5.25 The Minister then says that the Government has sought views on the capacity for infrastructure sharing with other utilities in a discussion document published in July 2010 and is consulting on the implementation of the EU Framework Directive[50] which would assist with the goal of collecting data on the location of passive infrastructure. The Minister says that the Government is also looking actively at some of the other interventions suggested in the Communication including the re-use of public sector networks and assets.

5.26 The Minister also welcomes the commitments the Commission has made in the Communication in respect of European funding, noting that, in developing its approach, the Government wishes to make use of all available sources of funding to support private sector investment in broadband networks.

5.27 The Minister says that:

— neither a consultation nor impact assessment is required as the Communication does not contain any legislative proposals, but

50 The Framework directive is one of five directives that form the regulatory framework for the electronic communications sector in Europe. It is referred to in this document as the Telecoms Framework.

— the Government will undertake any necessary consultations and an impact assessment to determine the costs and benefits to business and other stakeholders if legislation is required to take forward any elements of this Communication.

5.28 With respect to the *Financial Implications*, the Minister notes that the proposed financing instruments to complement existing resources for financing of broadband infrastructure would require dedicated resources and that the Commission says that these dedicated resources could be provided by an EU contribution:

> "It is the UK Government's position that any proposals for additional funding from the EU Budget should respect the current Financial Framework ceilings and offer good value for money, particularly in the current economic climate. The Government cannot support proposals calling for funding post-2013 as this could prejudice the 2014–2020 Financial Perspective negotiations. These decisions should not be made in isolation of wider EU issues."

5.29 The Minister concludes by noting that the Communication will be the subject of Council Conclusions at the December Telecoms Council.

Conclusion

5.30 **We are reporting this Communication to the House because of the importance of its subject matter.**

5.31 **Though it raises no legal or political issues, we note and endorse what the Minister has to say about the financial aspects. We would therefore like him to write to us before the Telecoms Council meeting with as much information as possible about the Conclusions that he expects to be adopted, and to say in particular if he is confident that they will include the necessary caveats that he sets out above.**

5.32 **Until then, we shall retain the Communication under scrutiny.**

6 Financial services

(31697) 10827/10 + ADDs 1–2 COM(10) 289	Draft Regulation on amending Regulation (EC) No. 1060/2009 on credit rating agencies

Legal base	Article 114 TFEU; co-decision; QMV
Department	HM Treasury
Basis of consideration	Minister's letter of 19 October 2010
Previous Committee Report	HC 428–i (2010–11), chapter 16 (8 September 2010)
To be discussed in Council	Not known
Committee's assessment	Legally and politically important
Committee's decision	Not cleared, further information requested

Background

6.1 The Credit Rating Agency Regulation, Regulation (EC) No 1060/2009, which came into force on 7 December 2009, established an EU wide regulatory regime for such agencies. Amongst other matters the Regulation:

- stated, in a recital, that the current supervisory architecture should not be considered as the long-term solution for the oversight of credit rating agencies; and
- requested the Commission to put forward by 1 July 2010 a report on supervisory and regulatory reform and any legislative proposal needed to tackle the shortcomings identified as regards supervisory coordination and cooperation arrangements.[51]

6.2 In September and October 2009 the Commission proposed legislation, which is nearing completion, in relation to the new relevant supervisory authority, the European Securities and Markets Authority, and its role in relation to credit rating agencies.[52]

6.3 In June 2010 the Commission proposed this draft amending Regulation in order to introduce centralised oversight of credit rating agencies. It would provide for:

- the European Securities and Markets Authority to assume general competence in matters relating to the registration and on-going supervision of registered credit rating agencies, as well as matters related to the endorsement of ratings issued by rating agencies established in third countries, or the certification of such agencies;

51 See (30168) 15661/08: HC 19–ii (2008–09), chapter 1 (17 December 2008) and *Gen Co Debs,* European Committee B, 27 January 2009, cols 3–24.

52 See (30954) 13654/09 (30955) 13656/09 (30956) 13657/09 (30957) 13658/09 and (31088) 15093/09: HC 19–xxviii (2008–09), chapter 6 (21 October 2009), HC 19–xxx (2008–09), chapter 2 (4 November 2009, HC 5–i (2009–10), chapters 1 and 2 (19 November 2009 and *HC Deb,* 1 December 2009, cols 989–1030.

- national competent authorities (the Financial Services Authority in the UK), which currently perform these functions, to retain some specific supervisory powers;
- replacement, throughout the present Regulation, of any reference to competent authorities in charge of the registration and supervision of credit rating agencies by a reference to the European Securities and Markets Authority;
- powers for the European Securities and Markets Authority to request information, to launch investigations and to perform on-site inspections;
- alignment of the current Regulation with the proposals for the Alternative Investment Fund Managers Directive,[53] with the objective of treating alternative investment funds in the same way as other EU financial institutions with regard to the use of credit ratings — meaning that the credit ratings used for regulatory purposes by alternative investment fund managers, including hedge fund managers and private equity managers, must be issued or endorsed by a credit rating agency registered under the Regulation, or issued by an agency certified under the Regulation; and
- the issuer of a structured finance instrument, such as a credit institution or investment firm, to give access, upon request, to the information necessary for rating the structured finance instrument — so providing all other registered or certified credit rating agencies with access to the information they need to issue their own unsolicited ratings of the instrument, the Commission's intention being a more competitive ratings environment and a better deal for the investor who will be able to rely on more than one rating for the same instrument.

6.4 When we considered this proposal, in September 2010, we said that how the introduction of centralised oversight of credit rating agencies is to be arranged is important but we noted the Government's cautious approach to the proposal and its planned consultations with a stakeholder group. So, before considering the document further we asked to hear about:

- first, the Government's further thoughts about the scope of the European Securities and Markets Authority's powers in the draft amending Regulation, in relation to doubts over the legality of delegating broad executive powers to the European Supervision Authorities;
- secondly, its attitude to significant and unmet ongoing costs for national authorities implicit in the proposal; and
- thirdly, the outcome of its consultations.

Meanwhile the document remained under scrutiny.[54]

53 (30624) 9494/09 + ADDs 1–2 and (31089) 15162/09: see HC 19–xviii (2008–09), chapter 9 (3 June 2009), HC 19–xxii (2008–09), chapter 3 (1 July 2009), HC 5–vi (2009–10), chapter 2 (13 January 2010) and *Gen Co Debs,* European Committee B, 23 February 2010, cols. 3–28.

54 See headnote.

The Minister's letter

6.5 The Financial Secretary to the Treasury (Mr Mark Hoban) responds first on the issue of the legality of delegating broad discretionary powers to the European Supervisory Authorities, saying that the Government agrees that this could be unlawful. He comments that:

- it is the Government's understanding that the 'Meroni principle' applies in such a situation;
- according to the principle, the powers conferred on any EU agency must not exceed "clearly defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegating authority" and such powers must not amount to "a discretionary power, implying a wide margin of discretion, which may make possible the actual execution of economic policy";
- the Government has sought to ensure that any powers conferred on the European Securities and Markets Authority by the draft amending Regulation are subject to as tight a legal framework as can be secured, in order to ensure that any exercise of these powers can be subject to strict review in the light of objective criteria set out in the Regulation itself; and
- given the unique circumstances of credit rating agencies the Government considers that regulation at EU level by the Authority, as agreed by the ECOFIN Council in December 2009,[55] is appropriate.

6.6 As for significant and unmet ongoing costs for national authorities implicit in the proposal the Minister says that:

- the Government agrees that the proposed power to delegate specific supervisory tasks to the European Markets and Securities Authority does imply significant and unmet costs for national authorities;
- it has been a Government priority in the negotiations to ensure that the costs resulting from such a delegation are covered by the Authority itself;
- it has sought suitable amendments to the draft Regulation in order to secure this objective; and
- the current Council compromise text now clearly indicates that national authorities need to be covered for any costs incurred in conducting delegated tasks.

6.7 Finally, on the outcome of the Government's consultations the Minister says that:

55 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/111706.pdf.

- the Treasury, in conjunction with the Financial Services Authority, has held regular stakeholder meetings with credit rating agencies and has held discussions with trade associations and securities issuers; and
- the industry is broadly supportive of the Government position.

Conclusion

6.8 **We are grateful to the Minister for what he tells us about unmet costs of national authorities and about the Government's consultations.**

6.9 **However in relation to the issue of the legality of delegating broad discretionary powers to the European Markets and Securities Authority we observe that the Minister does not actually say to what extent the Government has been able to subject such delegation to a tight legal framework. Nor does he say whether the Government believes that the latest text of the proposal dispels the doubts about legality. We should be grateful if the Minister would clarify these points.**

6.10 **Meanwhile the document remains under scrutiny.**

7 Information management in the area of freedom, security and justice

(31838) 12579/10 COM(10) 385	Commission Communication: *Overview of information management in the area of freedom, security and justice*

Legal base	—
Document originated	20 July 2010
Deposited in Parliament	27 July 2010
Department	Home Office
Basis of consideration	Minister's letter of 13 October 2010
Previous Committee Report	HC 428–ii (2010–11), chapter 12 (15 September 2010)
To be discussed in Council	October 2010
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

7.1 The removal of internal border controls through the creation of an EU internal market and the establishment of the Schengen free movement area has been accompanied by a range of measures to strengthen external border controls and enhance police, judicial and

customs co-operation to tackle cross-border crime within the EU. Many of these measures depend on the cross-border exchange of data.

7.2 Since 2001, growing awareness of the terrorist threat within the EU has accelerated co-operation between national law enforcement authorities. The Justice and Home Affairs Council concluded in November 2009 that "effective and secure cross-border exchange of information is a pre-condition to achieve the goals of internal security in the European Union".[56]

7.3 A multiplicity of systems for the cross-border exchange of information, however, carries risks in terms of personal data protection, invasion of privacy, lack of coherence and duplication. As a result, the Stockholm Programme, which the European Council approved last December and which establishes the EU's priorities in the area of freedom, security and justice[57] for the period 2010–14, recognised "the need for coherence and consolidation in developing information management and exchange" systems and invited the Commission and Council to implement an EU Information Management Strategy based on a strong data protection regime.[58] The European Council also invited the Commission to evaluate existing instruments for the exchange of information with a view to determining whether there was a need to develop a European Information Exchange Model.

The Commission Communication

7.4 The Communication provides, for the first time, a comprehensive overview of EU instruments in the area of freedom, security and justice which regulate the collection, storage and exchange of personal data for law enforcement or migration purposes. The Commission's analysis leads it to make a number of observations about the features common to most EU information management systems and to suggest a "core set of principles" which should serve as a benchmark for evaluating existing systems and for considering future policy proposals. The need to safeguard the right to privacy and to ensure effective protection of personal data features prominently in the core principles.

The Government's view

7.5 In his Explanatory Memorandum of 9 August, the Minister for Immigration at the Home Office (Damian Green) welcomed the Communication but noted that "information exchange is not an end itself but a means of working towards providing greater public good — in combating crime, in facilitating legitimate travel, in doing business abroad, and in managing identity". He emphasised the need for effective data protection and transparency about the collection, retention and use of personal information in order to "strike the correct balance between private and public interests".[59]

56 Conclusions of the Justice and Home Affairs Council, 30 November 2009, Council document 16637/09.

57 The area of freedom, security and justice covers EU policies on visas, asylum and immigration, judicial co-operation in civil and criminal matters, and police co-operation. See Articles 67–89 in Title V of Part Three of the Treaty on the Functioning of the European Union.

58 See the Stockholm Programme, paragraph 4.2.2, Council document 17024/09.

59 Minister's Explanatory Memorandum, paragraph 36.

7.6 The Minister indicated that the UK would be unlikely to participate in a number of the new information management systems foreseen in the Communication, but would continue to advocate the introduction of a system for sharing Passenger Name Record data within the EU. He considered the Commission's core set of principles to be uncontentious but also provided a useful additional list of factors which the Government would take into account when evaluating existing EU information management systems or future initiatives.

The Committee's view

7.7 The Committee also welcomed the Communication and the Commission's elaboration of a set of core principles for future policy development, noting in particular the emphasis placed on the right to privacy and personal data protection as well as respect for the principles of subsidiarity and proportionality. The Committee invited further comment from the Minister on the following issues:

- whether he considered that existing EU instruments described in the Communication provided an effective standard of data protection;
- what implications adverse Constitutional Court rulings in Germany and Romania on the Data Retention Directive might have for the retention of communications data in the UK;
- whether he agreed with the Commission that continued piecemeal development of EU information systems could provide adequate and effective data protection and privacy safeguards; and
- whether he also agreed with the Commission's assertion that EU solutions (such as the Commission's s-TESTA or Europol's SIENA applications) for exchanging information provided the best guarantee for data security.

The Minister's letter of 13 October

7.8 The Parliamentary Under Secretary of State for Crime Prevention (James Brokenshire) says he believes that the measures referred to in the Communication generally provide an effective level of data protection, but that there are disparities between them, for example, as regards data security and retention, as well as some overlap of functions. He adds:

> "The Commission's plans for a new data protection instrument are likely to provide the opportunity to ensure the principles set out in the Communication can be embedded in the legal framework where appropriate. We believe that this will also be an opportunity to review the standards in the existing instruments to consider whether they could be updated and improved."

7.9 The Minister notes that the German Constitutional Court considered that the way in which Germany had transposed the Data Retention Directive 2006/24/EC into national law was unconstitutional, but adds that "the court also ruled that there was sufficient latitude within the Directive to enable it to be re-transposed in a way that was consistent with the German Constitution." He says that, in the UK, communications data is accessed through

the Regulation of Investigatory Powers Act 2000 (RIPA) and that the Government is satisfied that "we have the necessary structures in place to ensure that communications data retained under the Directive is accessed in accordance with the law and only when it is necessary and proportionate to do so."

7.10 The Minister understands the Committee's concern about the piecemeal development of EU information systems and expresses the view that

> "future developments in this field should take place within an agreed strategic framework such as that being implemented currently under the EU's Information Management Strategy. This should help ensure a more consistent approach is taken towards future developments. It should also ensure that appropriate data protection is taken into account, that information exchange is governed by principles of proportionality and necessity, and that any proposed schemes are appropriate and cost effective."

7.11 On ensuring the security of data exchanged across borders, the Minister explains that the Commission's s-TESTA is the base network for the UK's connection to many EU information sharing systems (including the second generation Schengen Information System — SIS II — once it becomes operational). The Government is continuing to discuss issues of security and accreditation of S-TESTA with the Commission, "but in the meantime the Cabinet Office has issued guidance to all relevant Government Departments requiring them to conduct individual risk assessments before using s-TESTA, taking account of issues such as the volume and sensitivity of the data being exchanged" . The Minister adds that the SIENA data communications network is not used as an EU system platform outside of Europol, but that "the UK would want to assess SIENA fully if it is presented as a platform option for any reviewed system or new initiative".

Conclusion

7.12 **We thank the Minister for his response. We note that there is a possibility that the Commission will introduce a new data protection instrument. We believe that this provides the Government with an important opportunity to press for the inclusion of clear and transparent standards of data protection which adequately safeguard individuals' right to privacy.**

7.13 **We note that the Minister does not comment on the judgment of the Romanian Constitutional Court which went further than the German Court in ruling that the generic obligation created by the EU Data Retention Directive[60] to retain communications data for a minimum of six months was unconstitutional because it violated rights protected by the European Convention on Human Rights, notably the right to respect for private and family life and correspondence, and the right to freedom of expression. We should be grateful if the Minister would tell us what, if any, implications that judgment is likely to have on the legality of the EU data retention**

60 Directive 2006/24/EC, OJ L 105, 13.4.2006, p.54.

regime established by the Directive. Meanwhile, the Communication remains under scrutiny.

8 Sexual abuse and exploitation of children and child pornography

(a) (31448) 8155/10 COM(10) 94	Draft Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA
(b) (32024) 14279/10 —	Draft Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

Legal base	Articles 82(2) and 83(1)TFEU; QMV; co-decision
Document originated	(a) 29 March 2010 (b) 1 October 2010
Deposited in Parliament	(a) 30 March 2010 (b) 8 October 2010
Department	Justice
Basis of consideration	EM of 14 October 2010; Ministers' letters of 29 September, 13 October, and 21 October 2010
Previous Committee Report	HC 428–i (2010–11), chapter 23 (8 September 2010)
To be discussed in Council	JHA Council, 2–3 December
Committee's assessment	Legally important
Committee's decision	(a) Not cleared; further information awaited (b) Cleared

Previous scrutiny

8.1 We reported on this proposal on 8 September.[61] In so doing, we recognised the importance of having effective legislation in place in the EU to ensure that those who commit serious crimes against children can be prosecuted and punished in every Member State. And we saw the deterrent effect this would have. But we thought that, in laying down additional detailed common rules on the prevention of these crimes and the protection of their victims, the Commission had lost sight of the original purpose of legislating in this field *at the level of the EU*, and in so doing over-interpreted the EU's powers under Title V

61 See headnote.

of the new Treaty on the Functioning of the European union (TFEU) — "Area of Freedom, Security and Justice".

8.2 So we agreed with the Secretary of State for Justice (Kenneth Clarke) when he said in his Explanatory Memorandum of 19 July that some of the additional rules contained in the proposed Directive, particularly on victim care and support, should be discretionary rather than obligatory. We also agreed with him that proper account should be taken in Brussels of the characteristics of the common law system, as Article 82(2) TFEU requires.

8.3 We also had the following additional concerns, which we asked the Minister to address.

- We doubted the adequacy of the legal base of Article 82(2) TFEU as cited in the proposal. In our opinion it should specify which of sub-paragraphs (a)-(c) is applicable. As it stands, the legal base could cover all three, and we did not see how 82(2)(a) and (b) — "mutual admissibility of evidence" and "the rights of individual in criminal procedure" — could provide a legal base for this proposal.

- We noted that Article 10 of the proposal asks Member States to take the measures necessary to disqualify those convicted of sexual offences against children from being allowed to work with children. And Article 10(4) in particular asks Member States to ensure that similar disqualifications in another Member State are "recognised and enforced". We shared the Minister's reticence about agreeing to be bound by these rules, but also asked him to say whether he thought this mutual recognition (as opposed to approximation) provision should be supported by the citation of Article 82(1)(a) as a legal base.

- We asked the Minister to point us to the legal bases in the TFEU which give the EU power to pass legally binding rules on treatment programmes for offenders or suspected offenders (Article 20) and blocking access to websites which contain child pornography (Article 21).

- In Article 9 the proposal sets minimum levels for maximum sentences for sexual offences against children consistently with Article 83(1) TFEU, which permits the EU to "establish *minimum rules* [...] concerning sanctions". Where we had a concern, however, was Article 9(2), which requires Member States to punish aggravated offences "by effective, proportionate and dissuasive penalties which are *more severe penalties* than those foreseen in Articles 3 to 6 for the basic offence". Whilst we shared the Minister's concerns that this would fetter judicial discretion in the passing of criminal sentences, we also wanted to know whether he thought the EU had the power under Article 83(1) TFEU and in the light of the case law of the Court of Justice on criminal penalties to oblige national courts to punish aggravated offences with "more severe penalties". If he did think the EU has this power, we asked him to explain how Article 9(2) would be implemented in domestic legislation (in view of the fact that the Commission now has infringement powers in the JHA field).

- The Minister said at paragraph 44 of his Explanatory Memorandum that Article 16 of the proposal "requires Member States to take extra-territorial jurisdiction where the victim of the offence is one of its own habitual residents or nationals". We

noted, however, that Article 16(3) of the proposal deposited in Parliament says that a Member State "may decide that it will not apply" jurisdiction on the basis of the residence or nationality of the victim. We asked the Minister to confirm that he was mistaken and that Member States do indeed have a discretion whether to exercise jurisdiction on the basis of the residence or nationality of the victim under the current proposal.

Minister's letter of 29 September 2010

8.4 In the absence of the Secretary of State for Justice, the Parliamentary Under-Secretary of State for Justice (Crispin Blunt) wrote on 29 September to respond to some of the concerns we had raised and update us on negotiations.

8.5 He explained that Article 8 of the draft Directive had been amended to address concerns highlighted by the Government about how the offences in Articles 3–5 may have inadvertently applied to legal sexual activity involving people over the age of consent. It now makes it clear that Member States may decide whether to criminalise consensual activity involving people over the age of consent where there is no abuse. The Article also allows for Member States to decide how some of the offences are applied in cases which involve certain consensual activity between children. The amendments the Government has sought have a similar effect to the exemptions agreed in the current Framework Decision[62] and the 2007 Council of Europe Convention on Combating the Sexual Exploitation of Children. They are also in line with the guidelines on prosecutorial discretion used by the Crown Prosecution Service in this sensitive area.

8.6 After recent negotiations he understood that Article 9(2) would be deleted from the Directive.

8.7 With regard to Article 16 on extra-territorial jurisdiction, the Committee was correct to note that there was a mistake in paragraph 44 of the Explanatory Memorandum, for which the Minister apologised. It is clear that Article 16 does not compel Member States to apply extra-territorial jurisdiction on the basis of the residence or nationality of the victim. The UK does not extend jurisdiction on this basis, although it does extend jurisdiction in certain cases where the offender is a UK national (or a resident, although there must be dual criminality), such as for offences involving the sexual abuse of children.

8.8 Finally, in light of the progress made during the negotiations on the criminal law offences (Articles 1–13, but not Article 10) the Minister explained that the Presidency was seeking to agree a "partial" general approach at the Justice and Home Affairs Council on 7–8 October in order to take forward negotiations with the European Parliament. As the Government's concerns on these Articles had been addressed the Minister sought our consent to the Minister agreeing in the Council to the partial general approach.

62 2004/68/JHA.

Minister's letter of 13 October

8.9 The Secretary of State for Justice wrote on 13 October to say that the Presidency did not in the end seek a partial general approach on this Directive because of outstanding Parliamentary scrutiny reservations. Instead, it sought informal agreement on Articles 1–9 and 11–13 and concluded that there was a sufficient basis for them to open informal discussions with the European Parliament; the formal negotiations would not commence until the remainder of the text had been discussed and agreed by the Council.

8.10 The Government also deposited the latest text of the criminal law provisions in the proposal (document (b)) on 7 October and the Minister said he had deposited an Explanatory Memorandum (EM) about it. He explained that this document deals with our outstanding concerns in relation to Articles 1–9 and 11–13 and he hoped that we would now agree to lifting the Parliamentary scrutiny reserve on these Articles.

Explanatory Memorandum of 14 October

8.11 The Minister explains that Articles 3 to 6 are concerned with setting minimum rules on conduct which would constitute a criminal offence in respect of sexual abuse of children, sexual exploitation of children, child pornography, and the solicitation of children for sexual purposes. In doing this the Commission is seeking to ensure particularly that a potential offender cannot gain advantage by travelling between Member States to sexually abuse children where these rules are more lenient.

8.12 The Articles also set out minimum maximum penalties for each of the offences in Articles 3 to 6. The approach differs from the current Framework Decision as that instrument allows for a range of minimum maximum sentences for particular types of offences, whereas the proposed Directive specifies a required minimum maximum penalty for each offence. The proposed minimum maximum penalties are generally significantly higher than under the current Framework Decision but in some cases are lower than those contained in the original proposal of 30 March.

8.13 The Government was initially concerned that the offences as drafted in the original proposal would capture consensual, lawful sexual activity involving children who are over the age of sexual consent. A number of amendments have been incorporated in the text, by the revised definition of 'pornographic performance' in Article 2, and by the exemptions in Article 8, to avoid this and to allow Member States to decide on the extent to which they apply the criminal law in this area. Recital 7 has also been amended to make it clear that the Directive does not govern Member States' policies on consensual sexual activity that children may participate in as part of growing up.

8.14 Article 3 sets out a range of offences concerning the sexual abuse of children including in cases involving the abuse of a recognised position of trust. The original Article 3(2) has been divided into Article 3(2) and Article 3(2a) to allow Member States to apply a different level of penalty to each of the offences. Both offences are caught by the Sexual Offences Act 2003 in the England and Wales although the level of penalty in the UK is substantially higher. The 'abuse of trust' offences in Article 3(4) and the 'coercion' offence in Article 3(5) have been amended to allow for a differentiation in penalty depending on whether the victim is above or below the age of consent and the penalties in relation to articles 3(4)(i)

and (ii) have been reduced. This behaviour and the levels of penalties are covered by various offences within the Sexual Offences Act 2003, depending on the facts of each case. The Government is able to accept this Article following these amendments.

8.15 Article 4 establishes a range of offences involving child prostitution and pornographic performances. The offences have been restructured in light of requests from Member States; the amendments also allow for different levels of sentencing dependant on whether the victim is aged above or below the age of consent. The Government is content that 'pornographic performance' has been clarified to show that it is not intended to capture consensual sexual conduct within personal relationships, particularly where the 'child' is over the age of consent and that recital 7 and Article 8 (2) allow Member States further discretion in how they apply this offence to non abusive, consensual activity. The Government is able to accept this Article.

8.16 Article 5 outlines the conduct which would constitute offences concerning child pornography (indecent photographs of children). The Article differs from that originally proposed in that there is now a lower minimum maximum penalty for the 'production' offence at Article 5(7) (previously Article 5(6)). The Article also now provides Member States with the discretion to decide whether the Article applies in cases where the person depicted is proven to be aged 18 years or over and in cases of 'virtual' child pornography. The scope of this Article is also affected by the new Article 8(3) which contains protections similar to those which exist in our domestic legislation for individuals who acquire, possess or produce child pornography of children who have reached the age of consent for private use and with the child's consent. The Government is able to accept this amended Article.

8.17 Article 6 is a new offence of 'Solicitation of Children for Sexual Purposes'. This is comparable to the offence (in the law of England and Wales) of 'arranging or facilitating the commission of a child sex offence' and similar to the offence of 'meeting a child following sexual grooming', although the offence in Article 6 is narrower because it has been restricted to conduct involving the use of information and communication technology, and wider in that Article 6 only requires a single communication prior to the meeting whereas the grooming offence in the Sexual Offences Act 2003 requires the offender to have met or communicated with the victim on at least two occasions. The Government does not believe that there is a need to limit this offence to the use of information and communication technology but accepts that this is a minimum standard and can agree to the current wording.

8.18 As with the current Framework Decision, the proposed Directive includes provisions in respect of instigation, aiding and abetting and attempting the offences covered earlier in the Directive. UK legislation already allows for such offences. Article 7 originally contained provisions specifically covering dissemination of materials advertising the opportunity to commit such offences and organising travel arrangements with the purpose of committing such offences but this has now been removed from Articles 1–13. The Government can accept this amended Article.

8.19 Article 8 on consensual sexual activities between peers has been amended as described above.

8.20 Article 9 sets out a range of circumstances which should be considered as aggravating circumstances for the offences in Articles 3–7, if they do not already form part of the elements of the original offences. The original Article 9(2) has been removed and Article 9(1) has been amended to provide for Member States to apply this Article according to their internal law. England and Wales do this by way of sentencing guidelines. In Northern Ireland these guidelines can be taken into account in sentencing decisions. (Northern Ireland is considering whether to establish its own Sentencing Council.) In Scotland, sentencing is a matter for the judiciary which is able to take into account the aggravating circumstances listed when sentencing. (Scotland is establishing a Sentencing Council.) New recital 7(a) makes clear that there is no attempt to fetter judicial discretion. The Government can accept the revised wording of this Article.

8.21 Article 13 on victims has been amended to take into account changes to the earlier criminal law Articles.

Minister's letter of 21 October

8.22 The Secretary of State for Justice writes again, in response to the outstanding queries we had raised and to provide an update on the negotiations in respect of the Articles to which those queries apply. He tells us that an informal agreement was reached at the Justice and Home Affairs Council on the substantive law provisions (Articles 1–13 of the proposal except 10). Negotiations on the remaining Articles will continue with a view to reaching a general approach on the entire text at the JHA Council on 2 and 3 December.

8.23 In our first Report we asked whether the text should cite the sub-paragraphs of Article 82(2) TFEU. The Government is content that the text refers simply to Article 82(2) because all three subparagraphs are relevant and notes that the ECJ does not require each subsection of an Article to be cited in legislation like this. So it does not intend to raise this matter in negotiations.

8.24 We requested an indication as to whether Article 10(4) concerning enforcement of employment disqualifications of convicted child sex offenders should be supported by Article 82(1)(a) of the Treaty on the Functioning of the European Union (TFEU). The Government agrees that Article 82(1)(a) should ideally be cited in this context, and it intends to raise this in negotiations. However, according to the Minister it is not essential that all relevant legal bases are cited in Directives, as long as the EU does in fact have the requisite powers in the Treaty.

8.25 In addition, we asked the Minister to point to the legal bases which give the EU power to pass legally binding rules on treatment programmes for offenders or suspected offenders and blocking access to websites containing child pornography. While the Minister agrees that the Union cannot require Member States to harmonise their laws in these areas, the Union could use the general crime prevention legal base in Article 84 TFEU to impose some obligations in these areas. The Government intends to raise this in negotiations.

8.26 The Minister does not accept that intervention programmes in Article 20 can be considered a "sanction," even in respect of *convicted offenders,* so he agrees with us that this proposal is not supported by Article 83(1) TFEU as a legal base. However, intervention programmes can be considered to be crime prevention measures under Article 84 TFEU

rather than sanctions, and an EU-wide requirement that all Member States take some action in this area (short of harmonising their laws) would support Member State action in relation to such measures. It would help the UK if other Member States also rehabilitated people convicted of sex offences, who of course are free to travel to the UK after they have served their sentences. The Government will seek appropriate amendments to this Article.

8.27 With regard to Article 21 on blocking websites containing child pornography, the Minister supports the policy of blocking websites, which is an important mechanism for preventing the distribution of child pornography on the internet. The Government will therefore seek to amend the wording so that Member States are merely required to support internet blocking, which would be in line with the scope of Article 84 TFEU. As with the points above, the Government considers it desirable but not essential for Article 84 TFEU to be cited as an additional legal base.

Conclusion

8.28 **We thank both Ministers for the information they have provided since we last reported on this proposal.**

8.29 **On the revised criminal law provisions, document (b), we are particularly pleased to note that Article 9(2) on penalties for aggravated offences has been deleted — this struck us as a step too far in the setting of criminal tariffs by the EU — and replaced by recital 7(a), which we hope sets a useful precedent. We are also grateful to the Minister and his officials for not agreeing to a partial general approach on document (b) during Parliamentary recess. Having considered the revisions made, we are now content to clear document (b) from scrutiny.**

8.30 **We note that the Minister will raise in negotiations a number of the concerns we had about citation of the correct legal bases, the aim being to add Articles 82(1) and 84 TFEU as legal bases. We are grateful for this: given that a supranational source of binding criminal law and procedure is such a sensitive area for the UK, as for any State, we think it important that the power conferred on the EU to pass such laws, and the legislative procedure which the EU institutions have to follow in passing such laws, is correctly cited. As the Minister will know, the legal base which is cited will also determine whether the subsidiarity early warning mechanism for national parliaments under Protocol 2 is applicable. However, the Minister does not agree, saying in his letter of 21 October that "it is not essential that all relevant legal bases are cited in Directives, as long as the EU does in fact have the requisite powers in the Treaty". We ask the Minister to provide us with the necessary further support for this remark, as we consider it highly significant.**

8.31 **The Minister also says that it is not necessary to cite the sub-paragraphs in Article 82(2) TFEU and that the ECJ does not require "each sub-section of an article to be cited in legislation like this". We would be grateful for reference to the ECJ's judgments on legislation like this on which the Minister relies in making this remark. We also note in passing that 82(2)(d) is a quasi-passerelle clause and a non-legislative act, and ask the Minister whether, were this to form the basis for EU**

action in the future, he thinks it would need to be cited in full as the legal base, rather than simply Article 82 TFEU.

8.32 **The Minister said in his letter of 29 September that he would provide us with a full Regulatory Impact Assessment as soon as possible, which we look forward to receiving.**

8.33 **Pending the Minister's replies to the above, we shall keep the remainder of the proposal, document (a), under scrutiny.**

9 Next Generation Access Networks

(32022) C(2010) 6223 SEC (10) 1037	Commission Recommendation: *Regulated access to Next Generation Access Networks*

Legal base	—
Document originated	20 September 2010
Deposited in Parliament	28 September 2010
Department	Business, Innovation and Skills
Basis of consideration	EM of 14 October 2010
Previous Committee Report	None; but see (31638) 9981/10: HC 428–i (2010–11), chapter 28 (8 September 2010) and (31645)10245/10: HC 428–i (2010–11), chapter 29 (8 September 2010)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 An earlier Commission Communication of 19 May 2010, which the Committee considered on 8 September, set out the Commission's Digital Agenda for Europe — the first of seven flagship initiatives under the "Europe 2020" strategy (a ten year strategy for smart, sustainable and inclusive growth, designed to prepare the EU for the challenges that it will face over the next 10 years, and endorsed by the 25–26 March 2010 European Council). [63]

9.2 At that same meeting we also considered a separate Communication covering the Commission's annual research on communications markets across the EU and its

63 See headnote: see (31638) 9981/10: HC 428–i (2010–11), chapter 28 (8 September 2010).

assessment of how well each Member State has implemented the regulatory framework in 2009. Commission officials visit each Member State to interview Government officials, national regulatory authorities (NRA — Ofcom in the UK), and industry and consumer representatives.

9.3 In his Explanatory Memorandum of 16 June 2010, the Minister for Culture, Communications and Creative Industries (Ed Vaizey) observed that the report acknowledged the benefits the European consumer had derived from the existing EU Framework (including increasingly affordable electronic communications) but raised some concerns over the independence of NRAs and the range of diverse regulatory approaches in national markets, "which deliver some significant differences in wholesale and retail prices in the sector", and noted the report's conclusion "that consumers and retailers are still faced with 27 different markets and are not able to take advantage of the economic potential of a single market".

9.4 The Minister noted also that, while the Report had no immediate legislative implications, it was generally seen as significant in determining possible future policy and legislation in the field of telecoms. He said that the latest round of policy negotiations were concluded in November 2009, and that the NGA Recommendation, which sets out the overall policy and regulatory approach that NRAs should adopt when considering the roll out of new high speed broadband networks, was to be adopted in September 2010.

9.5 We accordingly asked that, when it emerged, the Minister should deposit it with his views thereon, notwithstanding the fact that Commission Recommendations are not legislative acts under the Lisbon Treaty. In so doing, we had in mind not only the undertaking given by the previous Minister for Europe so to do, but also the fact that such Recommendations contain much useful analysis and insights into the Commission's thinking (which is why the previous Committee sought such an undertaking from the previous Minister for Europe).[64]

The Commission Recommendation

9.6 Though entitled "Recommendation on the regulated access to Next Generation Access Networks", the document in known in common parlance as the NGA Recommendation. It is one of three documents, the other two of which we consider elsewhere in this Report, that constitute the Commission's "Broadband Package"; the other two documents being:

— the Commission's Broadband Strategy (BBS);[65]

— the proposal for a Council Decision on a first Radio Spectrum Policy Programme (RSPP).[66]

64 See headnote: (31645)10245/10: HC 428–i (2010–11), chapter 29 (8 September 2010).

65 See (31969) 13874/10: chapter 5 of this Report.

66 See (31965) 13872/10: chapter 4 of this Report.

9.7 Next Generation Access — NGAs — Networks are the networks that are replacing the traditional copper-based networks that have been in place since the roll-out of telephone services. Generally speaking, NGA networks use fibre-optic-based technologies.[67]

9.8 In that the BBS has a role in providing an over-arching EU strategy for the roll-out of fast, super-fast and ultra-fast broadband networks in the EU, and the RSPP proposal deals with ensuring that there is the necessary spectrum in order for mobile/wireless solutions to play a full role (particularly important for rural and remote areas), the NGA Recommendation is a document that suggests a series of regulatory mechanisms to cover fixed networks.

9.9 In his Explanatory Memorandum of 14 October 2010, the Minister explains that the Recommendation builds on the changes brought about by the Telecoms Framework Review that was concluded in November 2009 — principally in the updated Access and Interconnection (2002/19/EC) and Framework (2002/21/EC) Directives, which all Member States are expected to transpose fully by May 2011. As such, the Minister says, "it takes into account the pro-competition, free-market based approach that UK supported during those particular negotiations", leading to the expectation "under these conditions, that new innovative services and content will flourish."

9.10 The Minister draws attention to one particular issue that this Recommendation addresses ("although not in an explicit way"), that of "regulatory forbearance/holiday". This, he explains, is where NRAs suspend the usual regulatory framework for operators of new-build networks creating, in effect, monopolies over content and products for the network owners: "This very protectionist stance is in fact prevented by both the Framework itself and this Recommendation."

9.11 The document has three sections:

— a series of policy and regulatory principles, known formally as "the Recitals";

— short sections that then set out: the aim and scope of the Recommendation; the need for a consistent approach and to take geographic factors into account; and, noting a series of standard definitions, a series of possible actions for NRAs to take when Significant Market Power (SMP) is ascertained during periodic market reviews; and

— two concluding annexes: the first sets out pricing principles to be considered by NRAs when enacting regulatory measures; the second considers the application of the principles of equivalence when regulating access to infrastructure as a regulatory measure.

67 The general idea behind Next Generation Networks (NGN) is that one network transports all information and services (voice, data, and media such as video) by encapsulating these into packets, as on the Internet. The International Telecommunications Union thus defines NGN as "a packet-based network able to provide Telecommunication Services to users and able to make use of multiple broadband, QoS-enabled transport technologies and in which service-related functions are independent of the underlying transport-related technologies. It enables unfettered access for users to networks and to competing service providers and services of their choice. It supports generalised mobility which will allow consistent and ubiquitous provision of services to users." See http://www.itu.int/en/pages/default.aspx for further information.

9.12 The Minister says that the Recommendation has due regard to the principle of subsidiarity, noting that different actions are appropriate for the EU, national Governments, NRAs and industry stakeholders.

9.13 He also notes that the NRAs (i.e., Ofcom in the UK) are asked to take "utmost account" of this Recommendation when deciding which regulatory remedies to impose on undertakings with SMP following the periodic reviews Ofcom must conduct of the markets for Wholesale Local Access (Market 4, in the jargon) and Wholesale Broadband Access (Market 7). As such, the Minister says, the Recommendation therefore does not set an absolute requirement to implement all of its provisions.

9.14 The Minister says that it is also worth noting that the Recommendation allows for the application of "Virtual Unbundled Local Access", which is considered by Ofcom and most UK stakeholders to be the measure with the best prospects of promoting competition in NGA.[68]

The Government's view

9.15 The Minister notes that the stated aim of the Recommendation is to foster the development of the single market by enhancing legal certainty, as well as promoting investment, competition and innovation in the market for broadband services, covering in particular the transition from copper to NGA (fibre) networks and not explicitly addressing wireless broadband.

9.16 The Minister describes the aims of the Recommendation and its proposed regulatory actions in order to achieve those aims as:

> "fully in line with Government policy and as previously noted, supported (and indeed championed) by the UK during negotiations. Indeed the UK was instrumental in ensuring the Recommendation, while recognising that incentives are required for investment in NGA, was pro-competitive and did not include any notion of regulatory forbearance."

9.17 The Minister notes that most of the provisions in the Recommendation are issues for NRAs to consider when deciding which regulatory remedies to impose on undertakings with SMP and concern principally the Wholesale Local Access (WLA). He says that Ofcom has already been considering these issues in its latest reviews, with the WLA market review

68 For further information, see for instance "EU Business" at http://www.eubusiness.com/news-eu/telecoms-uk.206/, which says that on 23 March 2010, Ofcom informed the Commission of its draft plans to include within the wholesale local access market, a virtual unbundled local access product (VULA); Ofcom explaining that VULA is an electronic means to provide virtual, bitstream-type access that is similar to local physical access (i.e. physical unbundling of fibre or copper local loops and access to ducts), enabling interconnection at local level and supporting many services, and allowing alternative operators access to end users It also notes that, though the Commission largely endorsed Ofcom's plans, it also emphasised that telecoms regulators should, as a matter of principle, mandate unbundled access to the fibre loop irrespective of the network architecture used by the dominant operator, and stressed that a VULA remedy should be just a transitory measure and should be replaced by fibre unbundling as soon as it is technically and economically feasible, as only fibre unbundling will give alternative operators full and direct control over the product they offer to end-users.

having been competed on 7 October 2010 [69] and the Wholesale Broadband Access (WBA) market review expected to be completed by the end of 2010.[70]

9.18 The Minister also says that the Recommendation:

> "relates to the potential decisions of Member States in only one respect, in stating that they may (in some circumstances) — separately to the market reviews considered above — also impose reciprocal sharing of facilities on undertakings operating an electronic communications network. [71] The policy on this issue is already under consideration as part of the BIS consultation on implementing the revised EC regulatory framework for electronic communications."

9.19 Finally, the Minister says that the Recommendation was adopted on 21 September after a consultative process with the Communications Committee[72] and the European Parliament.

Conclusion

9.20 **We are grateful to the Minister for his further helpful Explanatory Memorandum on this complex subject.**

9.21 **Though the Recommendation raises no legal or political issues, we are drawing it to the attention of the House because of the importance of broadband development in the EU, and its part in the Commission's overall Broadband Strategy.**

9.22 **We now clear the document.**

69 The final Ofcom statement is at http://stakeholders.ofcom.org.uk/consultations/wla/statement.

70 The latest Ofcom consultation document is at http://stakeholders.ofcom.org.uk/consultations/wholesale-broadband-markets/.

71 Under Article 12 of the Framework Directive.

72 The Communications Committee consists of senior officials from the Member State authorities responsible for telecoms and was established under the 2002 Framework Directive to assist the Commission in carrying out its executive powers under the regulatory framework governing telecoms in the EU. In addition, the Cocom provides a platform through which to exchange information on market developments and regulatory activities. For further information, see http://ec.europa.eu/information_society/policy/ecomm/implementation_enforcement/comm_committee/index_en.htm.

10 Approval of international fisheries agreements

(29004) 13994/07 COM(07) 595	Draft Council Regulation authorising the Commission to approve modifications to protocols of fisheries partnership agreements concluded between the European Community and third countries

Legal base	Articles 37 and 300(4) EC; consultation; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letter of 11 October 2010
Previous Committee Report	HC 16–v (2007–08), chapter 2 (5 December 2007)
To be discussed in Council	See paragraph 10.6 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 Over many years, we and our predecessors have considered from time to time documents concerning either the conclusion (or extension) of a fisheries partnership agreement with a third country providing EU fishing vessels with catch opportunities in the waters of the country in question, in return for a financial payment. Almost invariably, such documents comprise a draft Council Decision and a draft Council Regulation formally approving the agreement on behalf of the EU, and, because agreements of this kind usually relate to waters in which the UK industry has no interest, the documents tend to be cleared without our making a substantive Report to the House.

10.2 These fisheries partnership agreements and their associated protocols now enable amendments to be made where appropriate both to the fishing opportunities provided and to the related financial contribution by the EU. In order to streamline the decision-making process, the Commission put forward in October 2007 this proposal that any such amendments should in future be approved by itself, rather than the Council, subject to it securing the necessary qualified majority within the Committee for Fisheries and Aquaculture. However, this would also be subject to any new fishing opportunities being distributed among the interested Member States in accordance with the allocation key set out in the Council Regulation concluding the protocol of the relevant agreement, and to the new financial contribution not being more than double the amount in the original agreement.

10.3 Our predecessors were told by the then Government that the change proposed could undermine the Council's powers, and raised important questions about the roles, responsibilities and powers of the different institutions. It therefore said that the UK would need to have a convincing explanation from the Commission of the necessity for such a change before agreeing, though it added that "the proposal will theoretically have little impact on UK policy".

10.4 In their Report of 5 December 2007, our predecessors drew the proposal to the attention of the House, and said that they would be interested to learn in due course

whether the Commission was able to give any explanation beyond the need to streamline procedures, and whether this met the Government's concerns. They also raised a number of questions on the proposal, including whether it would simply apply to partnership agreements where fishing opportunities are provided in exchange for a financial contribution, or whether it would also apply to agreements, such as those with Norway, based on reciprocal access to fish stocks. Pending this further information, they said that they were holding the document under scrutiny.

10.5 They subsequently noted (but did not report to the House) a letter of 21 February 2008 from the Government, drawing attention to the difference of view between the Commission and a significant number of Member States (including the UK) over the implications which the proposal would have for the competence of the Council in this area, and indicating that the Presidency was reflecting on what the next steps should be.

Minister's letter of 11 October 2010

10.6 We have received from the Parliamentary Under Secretary for Natural Environment and Fisheries at the Department for Environment, Food & Rural Affairs (Mr Richard Benyon) a letter of 11 October 2010 saying that the Commission has now withdrawn the proposal entirely, and has not indicated any plans to re-draft or submit an alternative.

Conclusion

10.7 **In the light of this information, we are content to clear the document.**

11 European Security and Defence Policy and Guinea-Bissau

(31617)	Council Decision amending and extending Joint Action 2008/112/CFSP
—	on the European Union mission in support of security sector reform
—	in the Republic of Guinea-Bissau (EU SSR GUINEA-BISSAU)

Legal base	Article 28 and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 4 October 2010
Previous Committee Report	HC 428–i (2010–11), chapter 56 (8 September 2010); also see (31072) —: HC 19–xxx (2008–09), chapter 6 (4 November 2009); (30551) — HC 19–xv (2008–09), chapter 12 (29 April 2009); and (29349) — : HC 16–ix (2007–08), chapter 12 (23 January 2008)
Discussed in Council	25 May 2010 Competitiveness Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested (reported on 8 September 2010)

Background

11.1 The Foreign and Commonwealth Office website paints a troubled and unhappy picture of Guinea-Bissau's move to independence, via a protracted guerrilla war and then Portugal's own 1974 "carnation revolution": firstly, one-party rule, then a coup in 1980 which "began a pattern of military coups and instability, which has persisted until quite recently". That coup was led by Joao Bernardo "Nino" Vieira, who became the first directly-elected President in 1994, after the acceptance of multi-party democracy in 1991 (a presidential democracy which allows for multiparty politics and an elected national assembly).

11.2 The period from 1998 to 2004 was notable for a further coup attempt; protracted stalemate between loyalist and rebel forces; the intervention of troops from neighbouring Senegal and Guinea, as well as from the regional peacekeeping force, ECOMOG; elections in December 1999 and January 2000; and the eventual election of opposition leader Kumba Yala in February 2000.

11.3 The first half of this present decade then consisted of further manifestations of unresolved tensions between the government and the military hierarchy: a further attempted military rebellion; subsequent rule by President Yala "characterised by chronic political instability"; his eventual deposition in a bloodless coup in September 2003 supported by all political parties, including Yala's own; the installation of a businessman as interim President; and legislative elections in March 2004 in which no party came out with an overall majority.

11.4 A further period of political turmoil followed the June 2005 presidential elections, following which ex-President Vieira eventually emerged as the winner in a close finish, and was sworn in as President on 1 October; including ex-president Yala's return from exile in late 2006; and culminating in the collapse of the government coalition in March 2007. After a stand-off the opposition leader Martinho N'Dafa Kabi became Prime Minister in April, and the political situation in the country steadied. The mandate of the legislature ended on April 21st 2008. The President then passed a temporary constitutional amendment allowing the continuation of the legislature until further elections could take place. These occurred on 16 November 2008 and resulted in a new Prime Minister, Carlos Gomez Junior, being appointed in January 2009. Following the March 2009 assassination of President Viera, presidential elections were held in June 2009 and resulted in the election of the currently serving President, Malam Bacai Sanhá. The entry (which was last reviewed on 1 July 2010) closes as follows:

> "Media reports have bought to public attention a growing problem of drug trafficking via Guinea-Bissau. Drugs coming from Latin America are being smuggled to Europe via the country, taking advantage of the mangrove swamps and jagged coastline, and the poor capacity of the government to deal with the problem. On 9 April the current Air Force head, Ibraima Papa Camara, and former navy chief Bubo Na Tchuto were named "drug kingpins" by the US. Bubo Na Tchuto's political influence in Guinea-Bissau remains apparent."[73]

Joint Action 2008/112/CFSP

11.5 The then Committee cleared the Joint Action in January 2008. It established EUSSR Guinea-Bissau, which was to be launched in May 2008 and last for 12 months. The preamble noted that the promotion of peace, security and stability in Africa and Europe was a key strategic priority of the Joint Africa-EU Strategy adopted in December 2007, and that security sector reform (SSR) in Guinea-Bissau was essential for the country's stability and sustainable development.

11.6 The Mission's tasks include:

- advising and contributing to the development of detailed resizing/restructuring plans for the armed forces;
- assisting in the development of an underpinning doctrine for employment of the Armed Forces, including the areas of command, control and logistic support, and mainstreaming the counter narcotics effort;
- supporting the development of detailed plans for the restructuring of police bodies into four services;
- advising on the planning and development of an effective criminal investigations capacity.

73 See FCO Country Profile at http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/guinea-bissau?profile=politics&pg=7.

11.7 In April 2009, the then Committee cleared a "no cost" six-month extension until 30 November 2009; and a further, very-low-cost six-month extension until 31 May 2010. As our recent Report notes, there had continued to be political distractions, but also the election of a new President and an indication "that the Mission will receive the necessary political support over the next six months to complete the tasks set out in its current mandate." The then Minister for Europe supported the extension: it stemmed, he explained, from a recent review and would enable the EU to: "reach a better understanding of plans by the wider International Community (notably the Economic Community of West African States and the UN) to increase their presence in Guinea-Bissau; conclude the mission's existing work; and "build bridges towards further implementation in the future." The extension "should be used by the Mission to complete the tasks of its current mandate (without taking on any additional ones) and to prepare the conditions for engagement by another SSR actor in the future." There was to be a strategic review on the future of EU engagement in Guinea-Bissau, which would be submitted to the Political and Security Committee[74] by the end of January 2010. The review would focus on "where, amongst other International Community interventions, the EU can add most value to stabilisation efforts in Guinea-Bissau in the future [and] …form the basis for making an informed judgement about any subsequent EU engagement in Guinea-Bissau after the end of the mandate of the Mission."

11.8 Three years after the first commitment by the then Guinea-Bissau authorities to security sector reform, there was a strong sense of disillusionment running through the then Minister's comments, and of this being the last chance for the latest President and government. But the EU had yet to lose patience with an ESDP mission and cut its losses. In clearing that latest extension, the then Committee therefore asked the then Minister to write with information about the outcome of the review and the PSC's assessment and recommendations, ahead of any final determination about what form any further EU involvement might or might not take.

The Council Decision

11.9 Nothing was heard from him. Instead, in an Explanatory Memorandum of 21 May 2010, the new Minister for Europe (David Lidington) said that a further four-month extension had been proposed in response to a military mutiny that took place in Guinea-Bissau on 1 April. It was:

> "intended to demonstrate strong EU support to the weakened civilian government of Guinea-Bissau, allow the government time to reassert its authority over the military, while allowing time for the EU to reach a decision on whether the conditions exist for longer term CSDP engagement."

74 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.

11.10 The Minister's position is set out in detail in our previous Report. In essence, this further extension would add €630,000 to the total expenditure of €7.13 million so far. One measure of progress would be the extent to which the Guinea-Bissau government met the demands set out in an EU démarche following the 1 April military mutiny, viz:

- the immediate and unconditional liberation of the Armed Forces Chief and all of the other personnel detained in violation of the law;
- the establishment of the legal responsibility of and disciplinary measures against those found to be responsible for the incidents of 1 April and the putting into place of a framework for the continuation of the reforms;
- the affirmation of the primacy of the civilian authorities and the legitimate democratic authorities; and
- a guarantee of the respect for all parts of the Vienna Convention and diplomatic immunity.

11.11 The Minister seemed not to hold great hopes for a positive outcome. The size of the mission would reduced, which he said was "an explicit acknowledgement that, until the current situation is resolved, there is little chance of the Mission achieving success, but this approach maintains a CSDP foothold in-country". Guinea-Bissau's own development, security and stability would, he judged, be damaged if the Mission were pulled out immediately. But "there should be a period of reflection in order to re-assess conditions on the ground before making a more informed decision on the future of CSDP engagement". So, there would be a further review of engagement two months into the proposed four month extension to consider whether the EU should launch a new mission after 30 September 2010. If conditions on the ground had not improved and made serious Security Sector Reform unlikely, then the Minister believed the EU should consider closing the mission.

Our assessment

11.12 We felt that it was for others to judge whether or not this was the right approach, given how much had been spent and how little had been achieved.

11.13 For our part, we noted that the Committee had heard nothing from the Foreign and Commonwealth Office about developments since last November, despite its request to the previous Minister to write with information about the outcome of the January 2010 review and the PSC's assessment and recommendations, ahead of any final determination about what form any further EU involvement might or might not take.

11.14 Instead, a further review of engagement was now in prospect, two months into the proposed four month extension, to consider whether the EU should launch a new mission after 30 September 2010. In addition to clearing the document, we therefore also asked the

new Minister to let us know the outcome and his views, so that we are not again presented with scrutinising a *fait accompli*.[75]

The Minister's letter of 4 October 2010

11.15 The Minister begins by rehearsing some of the background. He recalls that the PSC's January strategic review stated that, at the time, the Guinea-Bissau authorities were committed to taking forward security sector reform (SSR) but lacked the capacity to do so; and also mentioned that there were gaps in the international coverage of SSR, in particular reform of the military structures, which the EU might usefully fill. Member State working groups then considered the issue in more detail and concluded that because of the illegal drug trafficking and organised crime in West Africa and Guinea-Bissau, it was of strategic importance to the EU to continue the SSR effort through a CSDP mission. However, Member States were clear that the mission could only continue and have a chance of success if the Guinea-Bissau authorities demonstrated tangible and clear commitment to SSR, specifically by the adoption of the organic laws by the Guinea-Bissau Parliament which the mission had helped to draft. On this basis, the EU began planning for a new CSDP mission to be deployed from 1 June 2010. The new mission was to be smaller than EUSSR Guinea-Bissau, have a greater emphasis on military reform and a more direct coordination with the UN.

11.16 However, the Minister notes, planning for the new CSDP mission was brought to a halt by a military mutiny in Guinea-Bissau. He continues as follows:

> "On 1 April 2010, rogue elements of the Guinea-Bissau military, led by the Deputy Chief of Defence (Major General Indjai), unlawfully detained the Chief of Defence (CHOD) Captain Jose Zamora Induta and Prime Minister Carlos Gomes Junior. The Prime Minister was later released but Major General Indjai remains CHOD and no assurances been provided regarding the safety of Captain José Zamora Induta who remains under detention.
>
> "In order to encourage a return to democratic oversight after the mutiny, the EU issued a demarche to the Guinea-Bissau Government which set out the conditions that would need to be met in order for CSDP engagement to continue. These conditions included the unconditional release of the detained CHOD and the prosecution of those responsible for the events of 1 April. Regretfully the Guinea-Bissau Government was unable to meet these conditions and the former Deputy Chief of Defence has since been appointed formally by the Guinea-Bissau President as CHOD."

11.17 As a result, the Minister then says: a second EU strategic review was undertaken and presented to the PSC on 9 July; it concluded that conditions in country would not enable the new CSDP mission to take real steps towards SSR and recommended that EUSSR Guinea-Bissau be closed from 30 September; and the PSC agreed with this conclusion:

75 See headnote: HC 428–i (2010–11), chapter 56 (8 September 2010).

> "The Government supported the decision to close EUSSR Guinea-Bissau. The deployment of a new mission would have meant EU personnel working with individuals that had engaged in unconstitutional activity. This would have cast doubt on the credibility of any SSR work undertaken. Crucially, the events of 1 April brought into question the commitment of the local authorities to meaningful SSR, without which a new mission would have struggled to have the necessary impact. Although EUSSR Guinea-Bissau will be closed, the EU will be exploring alternative ways of remaining engaged in Guinea-Bissau in order to avoid abandoning Guinea-Bissau at a critical time. The UK position in any future discussions on this issue will be to ensure that continued engagement is effective and represents good value for money."

Conclusion

11.18 **There can be little doubt that this is the right course of action. We again leave it to others to judge the utility of this exercise hitherto.**

11.19 **We look forward to hearing from the Minister in due course, should ways of remaining engaged in Guinea-Bissau necessitate a further Council Decision.**

11.20 **In the meantime, we are reporting the end of this chapter because of the interest in the House in European Security and Defence Policy.**

12 EU restrictive measures against Côte d'Ivoire

(32081) — —	Draft Council Decision extending and amending Common Position 2004/852/CFSP on restrictive measures against Côte d'Ivoire

Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 22 October 2010
Previous Committee Report	None; but see (27131) 16033/05: HC 34–xv (18 January 2006), chapter 15 (18 January 2006) and HC 38–i (2004–05) chapter 24 (1 December 2004)
To be discussed in Council	25 October 2010 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

12.1 As the previous Committee's earlier Report notes, the Kimberley Process is a joint government, international diamond industry and civil society initiative to stem the flow of

"conflict diamonds" — rough diamonds that are used by rebel movements to finance wars against legitimate governments and which are generally regarded as having contributed to devastating conflicts in countries such as Angola, Côte d'Ivoire, the Democratic Republic of Congo and Sierra Leone. According to the KP website, the Kimberley Process Certification Scheme (KPCS) imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as "conflict-free", and as of December 2009, the KP had 49 members, representing 75 countries, with the European Community and its Member States counting as an individual participant.[76]

12.2 That same earlier Report also noted that a serious political and military crisis had beset the Côte d'Ivoire since September 2002, with the EU having repeatedly expressed concern at subsequent human rights violations by both sides, chiefly prior to the signing of the Linas Marcoussis peace agreement (LMA) in January 2003 but also subsequently. The LMA agreement identified reforms that needed to take place to ensure an end to violence. However, the agreement was not signed by either the President or Government of Côte d'Ivoire (GCI). In July 2003, all sides signed a new Agreement — Accra III — but in November 2003 the GCI breached the ceasefire and crossed a UN-held line to attack the northern rebels in contravention of UN Security Council Resolution 1528. In April 2004 a UN mission (UNOCI) was established, with the French 'Licorne' force taking the role of rapid deployment support. In November 2004 government forces attempted to attack the *Forces Nouvelles* (FN) across the cease-fire line. On 6 November, government planes bombed French positions, killing nine French peacekeepers; the French retaliated by destroying the Ivorian air force. Riots ensued across Abidjan, targeting French nationals and the French army; around 8,000 French nationals were evacuated or subsequently left.

EU Common Position 2004/852/CFSP

12.3 In November 2004 the United Nations Security Council (UNSC) unanimously adopted resolution 1572 (2004) imposing an arms embargo against Côte d'Ivoire with immediate effect. The resolution also imposed a travel ban and an assets freeze against individuals who constitute a threat to the peace and reconciliation process, to come into force on 15 December 2004. The African Union, in a statement on 14 November 2004, gave its full support to the resolution. The first EU Common Position implemented the terms of resolution 1572 across the European Union. In addition, it prohibited the supply of equipment which might be used for internal repression. It was cleared by the then Committee on 1 December 2004 and agreed at the 13 December 2004 General Affairs and External Relations Council.[77]

12.4 The criteria for lifting the arms embargo and restrictive measures was full implementation of the LMA and Accra agreements, i.e. demobilisation, disarmament and resettlement (DDR) of combatants as well as free, fair and credible elections. These criteria had not been met. Therefore, on 15 December 2005 the UNSC agreed resolution 1643 to renew all the above measures (save the assets freeze, which was not time-specific and does not require renewal).

76 For further information on the Kimberley Process, see http://www.kimberleyprocess.com/.

77 See headnote: HC 38–i (2004–05) chapter 24 (1 December 2004).

12.5 UNSCR 1643 included the addition of a ban on the import of all rough diamonds from Côte d'Ivoire. From the outset, in November 2002, the GCI suspended itself from the KPCS, and any diamond exports from Côte d'Ivoire were treated as illicit by all other KPCS participants. However, there was evidence that Côte d'Ivoire diamonds were being smuggled to neighbouring states who were not KPCS participants — e.g., Mali — where they were able to enter the legitimate trade, despite the fact that Kimberley Process participants are supposed to encompass 99.8% of the international diamond trade and none is supposed to buy from or sell to non-KPCS participants. The purchase of Ivoirean diamonds also contributed to regional instability by providing an important income for the FN, who controlled some of the largest mines and also extracted revenues from road-blocks near the border areas, where natural resources, including diamonds, left the country. The November 2005 Kimberley Process Meeting concluded that the ongoing production of rough diamonds in Côte d'Ivoire, and the possible introduction of such illicit diamonds into the legitimate diamond trade, threatened the integrity and credibility of the whole KPCS. By making diamonds from Côte d'Ivoire illicit in international law, it was hoped that the UN ban would reinforce the Kimberley Process and assist its planned investigation into the production capacity of the Ivoirean diamond trade.

12.6 At that time, the then Minister for Europe (Douglas Alexander) noted that, under Article 11 of the Treaty on European Union, one of the objectives of the Common Foreign and Security Policy was "to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter" and that the EU's implementation of UN Security Council Resolution 1643 was crucial to the furthering of this aim. The then Government supported the renewal of the sanctions and the addition of a diamond ban as part of a broader strategy to establish lasting peace and security in Côte d'Ivoire, judged that the diamond ban would only affect those associated with the illegal diamond trade, and would not result in the negative humanitarian effects that a ban on legal commodity exports, such as cocoa, might have.[78]

The previous Committee's assessment

12.7 As the then Minister for Europe made clear, the political situation in Côte d'Ivoire was little improved, and illicit diamond smuggling there appeared not only to be stoking the fires of instability but also to be threatening the integrity and credibility of the whole Kimberley Process. With the overcoming of such threats to the peace and security being crucial to the successful implementation of the recently agreed EU Strategy on Africa, the previous Committee judged it appropriate to draw the extension, in scope as well as duration, of the Common Position to the attention of the House.

78 Côte d'Ivoire's economy is based on the export of cash crops. It is the largest producer of cocoa in the world, producing 40% of global supply, and the fifth largest producer of robusta coffee. It is estimated that 650,000 farmers work solely in the cocoa sector, which represents 40% of GDP and 60% of export revenues. The economy has expanded into agro-industry and the manufacture of consumer goods for domestic and regional markets. The conflict had a negative effect on the economy.

Subsequent developments

12.8 A series of negotiations followed, involving, at different points, the mediation efforts of France, Ghana, South Africa and the African Union. An international contact group met monthly to discuss the problem from November 2005 to February 2007. Various formulations of unity governments were tried, offering ministerial posts to former rebels from the FN and political opposition. No progress was made during this time on the two key issues — disarmament of the former rebels and other militia, and the identification of the population and establishment of credible and accepted electoral lists.

12.9 In March 2007 a new agreement was signed between the President and the leader of the New Forces, Guillaume Soro, under the mediation of Burkinabe President Blaise Compaore — the Ouagadougou Accords — under which Soro became Prime Minister. The formal division between the rebel-held north and the government south ended and the country was officially re-united in April 2007. But significant progress has yet to be made on re-integrating the rebel forces into the army, or on the national identification process, and the Ouagadougou accord has had to be supplemented by a further agreement in November 2007.

The proposed extension and amendment of Common Position 2004/852/CFSP

12.10 In his Explanatory Memorandum of 22 October 2010, the Minister for Europe (David Lidington) says that:

— Côte d'Ivoire is, after five years and six postponements, still on track to hold Presidential elections on 31 October 2010;

— the outcome remains uncertain and there is a high risk of demonstrations turning violent during and after this period; and

— the Ivorian security forces currently have little or no capacity to deal with protests using non-lethal equipment.

12.11 Recalling the elements of the Common Position thus far, the Minister explains that:

— UNSCR 1946 was adopted on 15 October 2010 renewing sanctions for a period of six months;

— the arms embargo allows, where agreed by the UN Sanctions Committee, the supply of non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order.

12.12 The Minister continues as follows:

> "France intends to supply non-lethal crowd control equipment to Cote d'Ivoire, but cannot do so legally until the EU Council Decision and then subsequently the Council Regulations are brought into line with UNSCR 1946. We and other Member States support the French action in this case.

> "In order for the Ivorian security forces to receive this crowd control equipment for use during the electoral process the Council Decision must be adopted by 25 October 2010. Once the Council Decision is adopted, the Council Regulation (the legal act giving effect to the Council Decision in the EU) will need to be amended and then adopted quickly thereafter. Failure to adopt both Decision and Regulation will mean that non-lethal crowd control equipment will not be available to the Ivorian security forces during the electoral process. Due to the process involved it is likely that any such equipment will not be available to the Ivorians in time for the first round of elections on 31 October, but if the changes are agreed and adopted then it should be available to them before the planned second round of elections on 28 November."

The Government's view

12.13 The Minister reiterates his support for the renewal of the restrictive measures and the exemption on the arms embargo to allow the supply of non-lethal equipment for the purpose of crowd control.

12.14 He goes on to say that, due to the pressing need for the Ivorian security forces to have this equipment during the imminent electoral process, the Council Decision needs to be adopted as soon as is possible, and continues as follows:

> "I regret that it has been necessary to override parliamentary scrutiny in order to adopt the Council Decision and I further regret that this will, in due course, be necessary again, in respect of the Council Regulation. If we did not override parliamentary scrutiny in regard to this matter then the Council Decision and Regulation would not be adopted in time for the Ivorian security forces to be equipped with non-lethal crowd control equipment."

The Minister's letter of 22 October 2010

12.15 The Minister's separate letter to the Committee chairman adds nothing of substance to his Explanatory Memorandum other than to say that:

> "the responsibility to keep your Committee informed on issues concerning sanctions is something I take seriously and the need for the override of scrutiny on this occasion is regrettably unavoidable due to the timing of the UN resolution renewal and the imminent election date in Cote d'Ivoire."

Conclusion

12.16 **We are reporting this development to the House because we think that it should be aware of this change of policy. We accept that, the change to the UN resolution not having been made until 15 October, it was not possible for the Minister to have submitted the proposal in time for our meeting on 20 October, and therefore do not object to his having over-ridden scrutiny on this occasion and in these circumstances. Though unhappy with the quality of the Minister's Explanatory Memorandum, we have no wish to intervene in the process, and accordingly clear the document.**

12.17 **Our unhappiness stems from the Minister's failure properly to explain important aspects of the proposal. We note that the exception to the arms embargo is for "non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order". We also note that the Ivorian security forces currently have little or no capacity to deal with protests using non-lethal equipment. This presumably also means that those forces have little or no experience of using such equipment, let alone appropriately or proportionally. Yet the Minister provides no information about what equipment is to be supplied, and how its non-lethality is to be guaranteed; nor any indication of how the Ivorian security services are to be trained in its proper use; nor about the general political situation in Côte d'Ivoire and the likelihood of the equipment having to be used during the elections; nor what is to happen to the equipment once the elections are over. It seems that this decision, no doubt at the UN as well as within the EU, has been driven by France. Given recent history in the Côte d'Ivoire, this is unsurprising. But the EU as a whole is involved, and would be criticised should matters not turn out as planned. All in all, the impression given by the Minister's Explanatory Memorandum is that it was as last minute and hurried as this whole exercise appears to have been.**

12.18 **We would accordingly be grateful if the Minister would write to us with this information, and also ensure that further such changes to sanctions regimes are fully explained in the way that this one has not been.**

13 Stability and Growth Pact

(a)	
(31896) 12936/10 COM(10) 439	Commission Communication: *Follow-up to the Council Decision of 10 May 2010 addressed to Greece, with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit*
(b)	
(31897) 12937/10 COM(10) 440	Recommendation for a Council Decision amending Council Decision 2010/320/EU of 10 May 2010 addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit

Legal base	(a) — (b) Articles 126(9) and 136 TFEU; —; QMV of eurozone Member States
Documents originated	19 August 2010
Deposited in Parliament	1 September 2010
Department	HM Treasury
Basis of consideration	EM of 22 September 2010
Previous Committee Report	None
Discussed in Council	7 September 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

13.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a "reference value" of 3%.[79] Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State.[80] These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission's current economic forecasts. If a Member State's programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though

79 This obligation does not apply to Member States, including the UK, whilst they remain outside the eurozone, but they are required to endeavour to avoid excessive deficits.

80 The 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) that have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.

such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact's preventative arm.

13.2 On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU (formerly Article 104 EC) and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows ECOFIN to require publication of additional information by the Member State concerned before issuing bonds and securities, to invite the European Investment Bank to reconsider its lending policy for the Member State concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

13.3 On 10 May 2010 a Council Decision was addressed to Greece with a view to:

- reinforcing and deepening Commission surveillance of Greece; and
- setting out the measures that Greece would need to take to end the present excessive deficit situation 'as rapidly as possible, at the latest, by the deadline of 2014' and to comply with the conditionality for the granting of the joint eurozone/IMF package of support.[81]

The documents

13.4 The Commission Communication, document (a), assesses the progress made by Greece in implementing the measures set out by the May 2010 Council Decision. The Communication's two annexes provide details of implementation for measures to be adopted by end-June 2010 and measures to be adopted in September 2010. The assessment is based on a report submitted by the Greek Government in August 2010, in accordance with the Decision and on a review carried out in conjunction with the IMF between 24 July and 4 August 2010. As background, the Commission outlines Greece's fiscal consolidation plans and actions:

- the target is for the general government budget deficit to progressively reduce from 13.6% of GDP in 200 to reach 2.6% of GDP by 2014;
- in the course of 2010 Greece has adopted four fiscal consolidation packages, with measures quantified by the Commission at 8% of GDP; and
- of this, measures taken in response to the May 2010 Council Decision amount to 2.5% of GDP in 2010 — these are the subject of the assessment.

81 See (31615) 9443/10: HC 428–i (2010–11) chapter 69 (8 September 2010), and (31611) 9606/10 (31796) 12119/10: HC 428–i (2010–11) chapter 7 (8 September 2010).

13.5 The Commission assesses Greece as having met the quantitative criteria set with respect to fiscal consolidation and notes that the budget deficit contracted more than expected in the first half of the year:

- on a cash basis, total state outflows were reduced by 16.9% (against a target of 5.3%) while cash receipts increased by 5.9% (against a target of 15.6% for the year as a whole);
- receipt intake is expected to increase in the second half of the year, as some measures only took effect in July 2010;
- consolidation by local government and social security funds has been less effective than that by central government; and
- the cash figures will require end-year adjustments to reflect items such as accounts payable and called guarantees.

13.6 The Commission also identifies a number of risks to continued fiscal consolidation in the coming months:

- tax revenue has been performing below target;
- historically the accumulation of accounts payable has been an issue, especially in the health services;
- as the economy contracts, more state guarantees may be called upon;
- performance by local governments and social security funds may slip in the second half of the year;
- given the sharp reduction in expenditure in the first half of the year, some 'catch-up spend' may take place in the second half of the year; and
- public enterprises are reliant on subsidies and transfers.

13.7 The Commission says that Greece has also achieved significant progress in structural fiscal reforms:

- a strengthened budget law and implementing measures against tax evasion have been introduced;
- pension reform has been legislated ahead of schedule, although it will require some follow-up actions;
- broader structural reform is also on track, with good progress on business environment reform, absorption of structural and cohesion funds and labour market reform;
- the Financial Stability Fund has been established; and
- the Bank of Greece is in the process of strengthening its banking supervision function.

13.8 The report submitted to the Commission included most of the information and data required by the May 2010 Council Decision. In addition it contained detailed information on implementation of structural reform. However, some public spending data remained incomplete, and the Commission sets out where processes need to be strengthened.

13.9 The Commission's conclusion is that Greece is satisfactorily complying with the conditions set by the Council Decision and that the budgetary deficit ceilings are achievable.

13.10 Reviews are conducted quarterly, and the second review is expected to take place in the autumn.

13.11 In its Recommendation, document (b), the Commission presents a draft Council Decision, adopted by the ECOFIN Council on 7 September 2010, to amend conditions set for Greece in the May 2010 Council Decision, to reflect developments since then. The Recommendation summarises the Commission's conclusions on how Greece is complying with conditionality and outlines economic developments in Greece since May 2010. It notes in particular the higher than expected impact of indirect tax increases on inflation, which, in turn, have increased the forecast for nominal GDP. The Commission then details some amendments to programme conditionality, to reflect the changed circumstances — these do not constitute a reduction in the adjustment's programme level of ambition.

13.12 The main amendments are:

- fiscal consolidation targets as a percentage of GDP are revised to take into account higher than forecast nominal GDP growth (consolidation target levels are unchanged);
- approval of pension reform legislation is removed from the conditions, reflecting the fact that the Greek parliament has approved pension reform ahead of the programme's schedule — in its place are introduced a small number of detailed actions related to pension reform implementation that are still outstanding; and
- more detailed measures are specified for some conditions relating to structural reform (in particular the health services, railway operators and a review of central administration).

The Government's view

13.13 The Financial Secretary to the Treasury (Mr Mark Hoban) says that the Commission Communication does not have any direct policy implications for the UK. However the Government will be monitoring the situation closely as this issue is of importance to all Member States. The Minister says that the Government broadly agrees with the Commission's assessment and that Greece's compliance with its adjustment programme is subject to separate scrutiny from the IMF Board.

13.14 The Minister also says that there are no direct financial implications to the UK arising from the Council Decision. But he adds that:

- on 10 May 2010 the General Affairs Council took note of the conclusions of the Member States, adopted on 5 May 2010, that "Member States whose currency is the euro have decided to provide stability support to Greece in an intergovernmental framework via pooled bilateral loans. The EU Member States entrust the Commission with the tasks in relation to the coordination and management of the stability support set out in an inter-creditor agreement to be concluded by the euro area Member States providing the support." As the UK is not in the eurozone there are no financial implications arising from these loans to the UK;

- the IMF will follow normal procedures in financing its stand-by arrangement with Greece — the IMF borrows resources from its members to finance its ongoing lending operations, contributions are drawn widely across members' "quota subscriptions" to the IMF as well as through bilateral loans and the UK participates in these arrangements along with other IMF members;

- UK loans to the IMF are held as part of the Official Reserves and do not add to public sector net debt as they are treated as financial assets;

- there are a number of safeguards to protect UK contributions to the IMF — these include the conditions attached to IMF programmes, the IMF's provision of support through instalments and the IMF's status as a preferred creditor;

- in parallel to the assistance being provided to Greece, on 9 May 2010 the ECOFIN Council agreed a European Financial Stabilisation Mechanism to support Member States in need, up to the level of €60 billion (£49.10 billon);[82]

- should the mechanism be called upon the Commission would raise the money on capital markets — loans would be granted in parallel with IMF programmes and would be subject to policy conditionality, the EU budget would be used to guarantee the loans and only where there were defaults on loan repayments would there be a cost to the EU budget;

- Member States would be liable for a share through their monthly subscriptions to the EU budget — based on the UK's contribution to the 2010 EU Budget, the UK's share would be approximately 13.8% of any increase, or up to a maximum of around €8 billion (around £6.5 billion);

- eurozone Member States also agreed up to €440 billion (£359.70 billon) to complement the mechanism through a Special Purpose Vehicle — a voluntary intergovernmental agreement of eurozone Member States, lasting three years, which has no bearing on the EU budget; and

- the Government has chosen not to participate in the Special Purpose Vehicle and will not make contributions — there is therefore no question of any liability arising to the UK.

82 *Ibid*.

Conclusion

13.15 **We are grateful to the Minister for the information he gives us about the latest developments in relation to Greece's fiscal situation and clear the documents from scrutiny.**

14 The marketing of replica firearms

(31919) 12761/10 COM(10) 404	Commission report to the European Parliament and Council: *The placing on the market of replica firearms*

Legal base	—
Document originated	27 July 2010
Deposited in Parliament	8 September 2010
Department	Home Office
Basis of consideration	EM of 27 September 2010
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Clear

Background

14.1 In 1991, the Council adopted a Directive establishing minimum standards for the acquisition and possession of weapons ("the Weapons Directive").[83] Member States had to implement the Directive by 1 January 1993 — the date by which the internal market was to be established — but remained free to maintain or introduce more stringent measures than those specified in the Directive. The Directive identifies four categories of firearms and requires dealers[84] in the two most lethal categories to obtain authorisation to trade in firearms and to maintain a register of traded firearms. The Directive prohibits the acquisition and possession of the most lethal category of firearms and specifies minimum criteria for the acquisition and possession of certain other firearms based on age (the purchaser or owner must be at least 18) and a risk assessment of the likelihood of danger to the purchaser/owner, to public order or to public safety. The Directive also regulates the transfer of firearms from one Member State to another, requiring in most cases the issuing of a licence or, if travelling with a firearm, prior authorisation by the competent national

83 Council Directive 91/477/EEC, OJ L 256, 13.9.1991, p.51.

84 A dealer is defined in Article 1(2) as "any natural or legal person whose trade or business consists wholly or partly in the manufacture, trade, exchange, hiring out, repair or conversion of firearms".

authorities.[85] The Directive does not affect Member States' right to take measures to prevent the illegal trade in firearms.

14.2 In 2008, in response to police intelligence showing an increase in the use of weapons that could be converted into real firearms, the Directive was amended to include within its scope "any portable barrelled weapon that … may be converted to expel a shot, bullet or projectile by the action of a combustible propellant". The amended Directive further specifies that:

> "an object shall be considered as being capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:
>
> —it has the appearance of a firearm, and
>
> —as a result of its construction or the material from which it is made, it can be so converted."[86]

14.3 The 2008 Directive introduced a new requirement for manufacturers to affix a unique marking to each assembled firearm to enable it to be identified and traced; required Member States to ensure strict controls on mail order purchases (if authorised) of firearms and ammunition and to introduce, by the end of 2014, a computerised database recording all firearms covered by the Directive; required individuals to obtain a licence to purchase or own the most lethal categories of firearms; and strengthened controls on the activities of brokers.

14.4 The 2008 Directive also required the Commission to produce a report for the European Parliament and the Council presenting the conclusions of a study on the marketing of replica firearms in EU Member States with a view to determining whether further categories of replica firearms should be brought within the scope of the Weapons Directive.

The Commission's report

14.5 The Commission reports that the Weapons Directive, as amended, only applies to replicas which can be converted into firearms. Replicas of this nature are so similar, in terms of their appearance and manufacture, to real firearms, that the requirements of the Directive concerning marking, traceability, and registration are readily applicable. Other types of replica remain outside the scope of the Directive.

14.6 The report notes that there is no common understanding of the term "replica firearms":

> "The term 'replicas' covers objects which differ considerably from one Member State to another and vary greatly in their nature, complexity and level of danger".[87]

85 There are less onerous requirements for hunters and target shooters who may apply for a European firearms pass.

86 Article 1(1) of Directive 2008/51/EC, OJ L 179, 8.7.2008, p.5.

87 Paragraph 2.2 of the report.

Replicas may include, for example, reproductions, imitations and copies, as well as a further category of "alarm guns" — portable weapons which are not designed to shoot solid projectiles, but which may shoot blanks, gas and teargas cartridges. Some leisure activities, such as "airsoft" — a game in which opposing teams use imitation plastic guns to shoot plastic pellets — and the launchers used for "paintballs" may use equipment which resembles real firearms.

14.7 Responses by Member States to a Commission questionnaire reveal considerable differences as regards perceptions of risk associated with replicas. According to the Commission, nine Member States do not include the concept of a replica in their national legislation; fifteen do, but none of these Member States reports any significant security or public order issues concerning replicas, or problems with transfers or imports from other countries. The UK is in a minority of three Member States (the others are Portugal and the Netherlands) which do have strict regulatory controls on replicas, reproduction weapons or realistic imitations. So, for example, Dutch law prohibits the sale and marketing of certain replica firearms, regardless of whether they can shoot projectiles or be converted into real firearms. The UK and Portugal require specific colouring for realistic imitation firearms (the UK) or for replicas for creative use (Portugal). Moreover, the Commission reports that:

> "The UK expresses a particular concern relating to the fact that neighbouring countries generally have less restrictive legislation on the marketing of certain alarm guns, the illegal conversion of which is considered possible. As it is illegal to place such alarm guns on the UK market (and therefore to import them), controlling this ban involves additional operations on the part of the responsible authorities."[88]

14.8 The Commission notes the difficulty of quantifying the number of replicas in circulation or the degree of threat that they present for the safety of property or persons. Certain replicas, particularly alarm guns, are prevalent in some Member States for reasons of self-defence.[89]

14.9 The report concludes that "there is very little to suggest that European harmonisation of national legislation on replicas would improve the functioning of the internal market by removing barriers to the free movement of goods or by eliminating distortions of competition". Member States already have "a real discretion in issuing rules on the placing on the market and use of replicas", and in regulating the acquisition, possession and transfer of replicas. Bringing all replicas within the scope of the Weapons Directive would, the Commission suggests, be difficult for two reasons. First, it would necessitate a clear definition of what is meant by a replica. Second, Member States' responses to the Commission's questionnaire do not indicate that problems associated with the trade in replicas are of such a magnitude as to justify subjecting the manufacturers, dealers and owners of replicas to all the obligations contained in the Weapons Directive.

88 Paragraph 6.3 of the report.

89 For example, the Commission estimates that between 15 and 18 million replicas are owned in Germany, of which most are alarm guns but some are used for "airsoft".

The Government's view

14.10 The Parliamentary Under Secretary for Crime Prevention (James Brokenshire) explains in his Explanatory Memorandum of 27 September 2010, that the Firearms Act 1982 provides that imitation firearms which are readily convertible into functioning firearms are to be treated as such and subject to the controls contained in the Act. The UK also has "robust measures" in domestic legislation concerning realistic imitation firearms, notably the Violent Crime Reduction Act 2006 and 2007 Regulations on Realistic Imitation Firearms which prohibit the manufacture, importation or sale of realistic imitation firearms, subject to certain exceptions. Since these domestic measures came into force, offences involving the use of realistic imitation firearms have reduced significantly from a peak of 3,737 offences in England and Wales in 2004–05 to 1,511 offences in 2008–09, but the Minister adds that their misuse remains a concern.

14.11 The Minister notes the report's conclusion that replica firearms should not be brought within the scope of the Weapons Directive and indicates that it is open to the European Parliament or the Council to draw a different conclusion. The Minister says that the legal purchase of realistic imitation firearms in other Member States can cause a problem of illegal importation into the UK. He adds:

> "Any proposal by the Commission to tackle these problems across the EU could therefore be beneficial in terms of ensuring consistency across Member States".

Conclusion

14.12 **We understand that the Weapons Directive, introduced as an internal market measure in 1991, is intended to establish limitations on the free circulation of potentially lethal goods and provide robust security guarantees to protect the safety of individuals. Amendments made in 2008 ensure that the most lethal imitations or replicas — those capable of being converted into real firearms — are now included within the scope of the Directive. This still leaves many different types of replica firearms outside the scope of the Directive. For example, fake weapons which look like real guns can be used to commit offences, even though they may not be capable of being converted into real firearms. At present, Member States are at liberty to introduce their own controls and regulations to reflect national perceptions of risk.**

14.13 **The Minister tells us that there has been a significant and welcome reduction in the number of offences committed in the UK which involve the use of realistic imitation firearms since UK legislation prohibiting their manufacture, importation and sale took effect in October 2007. This suggests that UK legislation is having an effect. It is not clear whether further regulation at EU level would increase the beneficial effect, not least because the statistics provided by the Minister do not indicate how many, if any, of the realistic imitations involved in the commission of criminal offences in the UK were obtained as a result of illegal importation from another EU Member State.**

14.14 **We note that the Commission's report has been prepared for the European Parliament and Council and consider that it merits further discussion at this level. As the report simply presents the conclusions drawn by the Commission as a result of its**

study on the marketing of replicas across the EU, we are content to clear it from scrutiny but, in so doing, we ask the Minister to keep us informed of the outcome of any further deliberations at Council level.

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

Department for Business, Innovation and Skills

Anti-Dumping Measures

(31938) 12851/10 COM(10) 432	Draft Council Regulation amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 (imposing definitive anti-dumping and countervailing duties on imports of polyethylene terephthalate (PET) film originating in India, and maintaining the extension of those duties to imports of polyethylene terephthalate (PET) film consigned from, inter alia, Israel), granting an exemption from those measures to one Israeli exporter and terminating the registration of imports from that exporter.

Polyethylene terephthalate film is used in many types of packaging, and anti-dumping measures have applied since 1999 to imports from India and since 2004 to those from Israel. Following an investigation by the Commission, this measure would grant an exemption a producer in Israel.

(31939) 12835/10 COM(10) 435	Draft Council Regulation re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd., Foshan.

Imports of ironing boards from China have been subject to anti-dumping duties since 2007, but the European Court of Justice ruled that a Chinese exporter had been given insufficient time to comment on this measure. The duty applying to it was therefore suspended in December 2009, but, following further examination by the Commission, is now being re-imposed.

(32005) 12984/10 COM(10) 442	Draft Council Regulation amending Regulation (EC) No.1631/2005 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating, inter alia, in the People's Republic of China.

Trichloroisocyanuric acid is used to disinfect swimming pools and in laundry bleach, and imports from China have been subject to anti-dumping duties since 2005. Following a request for a review, this measure would reduce the levy of duty imposed on imports from an individual exporter.

(32006) 12991/10 COM(10) 445	Draft Council Regulation terminating the partial interim review of Council Regulation (EC) No.661/2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia.

Imports of ammonium nitrate from Russia have been subject to anti-dumping duties since 1995. In 2009, the Commission was requested to review the application of these duties to an individual exporter, but has now concluded that no changes should be made.

(32033) 13055/10 COM(10) 455	Draft Council Regulation imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates.

Polyethylene terephthalate is used for the manufacture of food packaging and plastic bottles for non-alcoholic drinks, and, following a complaint on behalf of EU producers, this measure imposes definitive countervailing duties on imports from Pakistan and the United Arab Emirates.

Other

(31749) — COM(10) 292	Report to the European Securities Committee and to the European Parliament on convergence between International Financial Reporting Standards (IFRS) and third country national Generally Accepted Accounting Principles (GAAPs).
(31890) 12764/10 COM(10) 411	Commission Report to the European Parliament and the Council on the impact of the European Parliament and Council Decisions modifying the legal bases of the European Programmes in the areas of Lifelong Learning, Culture, Youth and Citizenship.
(31973) 14102/10 COM(10) 481	Commission Report to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the review of Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European cooperative society with regard to the involvement of employees.
(32049) 14603/10 COM(10) 544	Draft Regulation of the European Parliament and of the Council repealing Council Regulation (EC) No.1541/98 on proof of origin for certain textile products falling within Section XI of the Combined Nomenclature and released for free circulation in the Community, and on the conditions for the acceptance of such proof and amending Council Regulation (EEC) No.3030/93 on common rules for imports of certain textile products from third countries.

Department for Culture, Media and Sport

(31986) 14119/10 COM(10) 487	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on opportunities and challenges for European cinema in the digital area.

Department for Environment, Food and Rural Affairs

(32007) 14306/10 COM(10) 539	Draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers.

Department of Health

(31931) 13440/10 COM(10) 443	Commission Report to the European Parliament and the Council on the issue of the reprocessing of medical devices in the European Union, in accordance with Article 12a of Directive 93/42/EEC.

Department for Transport

(32009) 14355/10 COM(10) 505	Draft Regulation of the European Parliament and of the Council on statistical returns in respect of the carriage of goods by road (Recast).

HM Treasury

(31612) 9286/10 + ADD 1 COM(10) 188	Report from the Commission to the budgetary authority on guarantees covered by the general budget - Situation at 30 June 2009.
(31762) 11660/10 COM(10) 342	Draft Council Regulation (EU) laying down the weightings applicable from 1 July 2009 to the remuneration of officials, temporary staff and contract staff of the European Communities serving in third countries.
(31972) — COM(10) 468	2009 Fourth Annual Report from the Commission to the European Parliament and the Council on the implementation of Community assistance under Council Regulation (EC) No.389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community.
(32048) 14584/10 COM(10) 540	Draft Council Implementing Decision amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council Directive 2006/112/EC on the common system of value added tax.

Formal minutes

Wednesday 27 October 2010

Members present:

Mr William Cash, in the Chair

Mr James Clappison	Chris Kelly
Michael Connarty	Stephen Phillips
Julie Elliott	Jacob Rees-Mogg
Kelvin Hopkins	Henry Smith

1. Scrutiny of Documents

The Committee deliberated.

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

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

Paragraphs 1.1 to 1.19 read and agreed to.

Paragraph 1.20 read, amended and agreed to.

Paragraphs 1.21 to 2.11 read and agreed to.

Paragraph 2.12 read, amended and agreed to.

Paragraphs 2.13 to 6.10 read and agreed to.

Headnote read, amended and agreed to.

Paragraphs 7.1 to 7.12 read and agreed to.

Paragraph 7.13 read, amended and agreed to.

Paragraphs 8.1 to 12.16 read and agreed to.

Paragraph 12.17 read, amended and agreed to.

Paragraphs 12.18 to 15 read, amended and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

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

2. Scrutiny of Pre- and Post-Council Written Ministerial Statements

The Committee considered Pre- and Post-Council Ministerial Statements.

[Adjourned till Wednesday 3 November at 2.00 pm.

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

Mr William Cash MP (*Conservative, Stone*) (Chair)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk)*
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Julie Elliott MP (*Labour, Sunderland Central)*
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)
Nia Griffith MP (*Labour, Llanelli*)
Chris Heaton-Harris MP (*Conservative, Daventry*)
Kelvin Hopkins MP (*Labour, Luton North*)
Chris Kelly MP (*Conservative, Dudley South*)
Tony Lloyd MP (*Labour, Manchester Central*)
Penny Mordaunt MP (*Conservative, Portsmouth North*)
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
Jacob Rees-Mogg MP (*Conservative, North East Somerset)*
Henry Smith MP (*Conservative, Crawley*)
Ian Swales MP (*Liberal Democrat, Redcar*)